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Thursday
December 6, 1979

Highlights

Briefings on How to Use the Federal Register—For details on briefings in **Washington, D.C.** and **Dallas, Texas,** see announcement in the Reader Aids Section at the end of this issue.

70145 **Civil Rights Program** CSA issues rules regarding requirements and procedures for initial and refunding grants awarded by Community Services Administration; effective 12–6–79

70239 **Law Enforcement Education Program** Justice/LEAA announces competitive research grant to study arson adjudication in United States; apply by 3–7–80

70189 **Natural Gas** DOE/FERC proposes to establish the maximum lawful price for gas from new onshore production wells; comments by 1–23–80, public hearing 12–17–79

70118 **Gasoline Deregulation** DOE/ERA issues rule to exempt butane and natural gasoline from Mandatory Petroleum Allocation and Price Regulations; effective 1–1–80

70267 **Urban Blight** DOT/FHWA gives notice of study and invites comments; comments by 9–30–80

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Area Code 202–523–5240

Highlights

70362 Section 8 Housing Assistance Program HUD issues rule amending disposition of HUD-owned projects; effective 12–26–79, comments by 2–4–80 (Part III of this issue)

70204 Federal Motor Vehicle Safety Standards DOT/NATSA proposes to upgrade side impact protection and to extend its applicability; comments by 3–5–80, public meeting 1–31 and 2–1–80

70424 Federal Procurement FEMA issues interim regulations establishing policies and procedures for acquisition of personal property and nonpersonal services; effective 12–6–79, comments by 2–4–80 (Part VII of this issue)

70380 Walk-Behind Power Lawn Mowers CPSC issues regulations requiring manufacturers and importers to certify with Commission's Safety Standards; effective after 12–31–81 (Part IV of this issue)

70196 Outer Continental Shelf Interior/GS proposes regulations requiring all materials, equipment, tools, containers and all other items used must be properly identified; comments by 2–4–80

70408 High-Level Radioactive Wastes NRC proposes licensing of receipt and disposal at geologic repositories; comments by 3–3–80 (Part VI of this issue)

70143 Pesticide EPA issues rule establishing tolerances for residues of Amitraz; effective 12–6–79

70164 Transportation of Liquids by Pipeline DOT/MTS issues rule regarding procedures for operations, maintenance and emergencies; effective 7–15–80, 7–15–81

70158 General Radio Mobile Services FCC adopts new emission limitation standards for VHF and UHF analog and digital transmitters; 1–7–80

70192 State Highway Safety Agencies DOT/NHTSA/FHWA proposes to establish new requirements for authority and function; comments by 1–21–80

70293 Sunshine Act Meetings

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70390 Part V, DOE, Office of Leasing Policy Development
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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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 6

Acceptance and Retention of Certain Gifts and Decorations From Foreign Governments by U.S. Employees; Correction

AGENCY: General Accounting Office.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published at 44 FR 44135, July 27, 1979 relating to Part 6—Code of Ethics.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Richard T. Cambosos, Attorney Advisor, Office of General Counsel, General Accounting Office, Washington, D.C. 20548 (202–275–5544).

In FR Doc. 79–23302 the amendment numbered 4 appearing on page 44139 for the issue for July 27, 1979, is corrected by deleting "6.56(a)(2)(iv) and (5)" and inserting in its place "6.56".

Elmer B. Staats,

Comptroller General of the United States.

[FR Doc. 79–37447 Filed 12–5–79; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 423

Flax Crop Insurance Regulations; Corrections

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; corrections.

SUMMARY: The final rulemaking published in the **Federal Register** on Monday, November 26, 1979 (44 FR 67343–67349), on the Flax Crop Insurance Regulations, contained several typographical errors. This notice is being published to correct those errors.

EFFECTIVE DATE: December 6, 1979.

ADDRESS: Any suggestions or inquiries on this notice should sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

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. The corrections are as follows:

PART 423—FLAX CROP INSURANCE

1. The second subpart heading, found in the left column of page 67344 (44 FR 67344), following the authority citation and preceding the first section heading (§ 423.1 Availability of flax insurance), is hereby deleted.

2. The single asterisk (*) footnote, following the example at the top of the left column on page 67345 (44 FR 67345), is hereby corrected to read as follows:
*Your guarantee will be on a unit basis (acres X per acre guarantee X share)

3. Section 3(b) of the Appendix (additional terms and conditions), found in the center column on page 67348 (44 FR 67348), is corrected in the seventh line thereof to read as follows:

3. Irrigated Acreage. * * *
(b) * * *

Corporation, shall be considered as due to an

Issued in Washington, D.C., on November 28, 1979.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

W. Otto Johnson,

Deputy Manager

Dated: November 29, 1979.

[FR Doc. 79–37482 Filed 12–5–79; 8:45 am]
BILLING CODE 3410–08–M

7 CFR Part 424

Rice Crop Insurance Regulations; Corrections

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; corrections.

SUMMARY: The final rulemaking published in the **Federal Register** on Monday, November 26, 1979 (44 FR 67349–67355), on the Rice Crop Insurance Regulations, contained several typographical errors. This notice is being published to correct those errors.

EFFECTIVE DATE: December 6, 1979.

ADDRESS: Any suggestions or inquiries on this notice should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

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.

The corrections are as follows:

1. Section 424.7 is hereby corrected by moving the asterisked footnotes (* and **), found at the bottom of the left column on page 67351 (44 FR 67351) up to the end of section A of the Rice Crop Insurance Contract to read as follows:

§ 424.7 The application and policy.

* * * * *

(d) * * *
A. * * *

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

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

2. The word corporation, found in section 3(b) of the Appendix (additional terms and conditions) in the center column of page 67364 (44 FR 67354), is hereby corrected to read "Corporation".

Issued in Washington, D.C., on November 29, 1979.

Dated: November 29, 1979.

Peter F. Cole, *Secretary,*

Federal Crop Insurance Corporation.

Approved by:

W. Otto Johnson,

Deputy Manager

[FR Doc. 79–37483 Filed 12–5–79; 8:45 am]
BILLING CODE 3410–08–M

7 CFR Part 432

Corn Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: The final rulemaking published in the **Federal Register** on Monday, November 26, 1979 (44 FR 67361–67369), on the Corn Crop

Insurance Regulations, contained a typographical error. This notice is being published to correct that error.

EFFECTIVE DATE: December 6, 1979.

ADDRESS: Any suggestion or inquiries on this notice should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

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.

The correction is as follows:

1. § 432.7 is hereby corrected by moving the asterisked footnotes (* and **), found at the bottom of the left column on page 67363 (44 F.R. 67363) up to the end of section A of the Corn Crop Insurance Contract to read as follows:

§ 432.7 Application and policy.

* * * * *

(d) * * *

A. * * *

*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.

Issued in Washington, D.C., on November 29, 1979.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: November 29, 1979.

Approved by:

W. Otto Johnson,

Deputy Manager.

[FR Doc. 79-37484 Filed 12-5-79; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 469 and Navel Orange Regulation 468, Amdt 1.]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 7–13, 1979, and increases the quantity of such oranges that may be so shipped during the period November 30–December 6, 1979. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective December 7, 1979 and the amendment is effective for the period November 30–December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on December 4, 1979 to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges has improved.

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

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, phone (202) 447–5975.

§ 907.769 Navel Orange Regulation 469.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period December 7, 1979, through December 13, 1979, are established as follows:

(1) District 1: 1,335,000 cartons;

(2) District 2: unlimited movement;

(3) District 3: 120,000 cartons;

(4) District 4: 45,000 cartons.

(b) As used in this section, "handle," "District 1," "District 2," "District 3," "District 4" and "carton" means the same as defined in the marketing order.

2. Paragraph (a)(1), (a)(3), and (a)(4) in § 907.768 Navel Orange Regulation 468 (44 FR 68478), is hereby amended to read:

(1) District 1: 1,260,000 cartons;

(3) District 3: 112,000 cartons;

(4) District 4: 28,000 cartons.

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

Dated: December 5, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-37742 Filed 12-5-79; 12:08 pm]

BILLING CODE 3410-02-M

7 CFR Part 982

Handling of Filberts Grown in Oregon and Washington; Free and Restricted Percentages for the 1979–80 Marketing Policy Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule

SUMMARY: This rule establishes marketing percentages for inshell filberts for the marketing policy year beginning August 1, 1979. The action is taken under the marketing order for filberts grown in Oregon and Washington to promote orderly marketing conditions.

EFFECTIVE DATES: August 1, 1979 through July 31, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Higgins, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: On November 5, 1979, notice was published in the **Federal Register** (44 FR 63547) on the proposed establishment of free and restricted percentages of 35 percent and 65 percent, respectively. No comments were received. The percentages were

recommended by the Filbert Control Board. The Board is established under the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The percentages are based upon the following estimates by the Filbert Control Board for the 1979–80 marketing policy year:

Inshell Supply

(1) Total production—11,550.
(2) Less substandard, etc.—1,040.
(3) Merchantable production—10,510.
(4) Carryover August 1, 1979 of merchantable filberts—63.
(5) Supply subject to regulation (Item 3 plus Item 4)—10,573.

Inshell Requirements

(6) Trade demand—5,000.
(7) Carryover July 31, 1980—400.
(8) Total—5,400.
(9) Less carryover August 1, 1979 not subject to 1979–80 regulation—1,687.
(10) Inshell requirements—3,713.

Percentages

(11) Free percentage (Item 10 divided by Item 5)—35.
(12) Restricted percentage (100 percent minus 35 percent)—65.

The free percentage prescribes that portion of the total merchantable supply subject to regulation which may be handled as inshell filberts. The restricted percentage prescribes that portion which must be withheld from such handling. Restricted filberts may be shelled (for domestic or foreign consumption), exported, or disposed of in outlets determined by the Filbert Control Board to be noncompetitive with normal market outlets for inshell filberts.

FINDINGS: After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Filbert Control Board, and other available information, it is found that to establish this rule will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective time of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The order requires that free and restricted percentages for a particular marketing policy year shall apply to all inshell filberts handled during that year, and this rule automatically applies to all such filberts beginning August 1, 1979.

This regulation has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should not be classified "significant". An Impact Analysis is available from William J. Higgins, (202) 447–5053.

Section 982.229 is added and the free and restricted percentages read as follows:

§ 982.229 Free and restricted percentages—1979–80 marketing policy year.

The free and restricted percentages for merchantable filberts for the 1979–80 marketing policy year shall be 35 percent and 65 percent, respectively.

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

Dated: November 30, 1979.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

(FR Doc. 79-37552 Filed 12-5-79; 8:45 am)
BILLING CODE 3410-02-M

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7 CFR Part 989

Raisins Produced From Grapes Grown in California; Interim Change in Free and Reserve Percentages for 1979–80 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the preliminary marketing percentages recently designated for Dipped and Related Seedless raisins from the 1979 production. The estimated 1979 production of these raisins has been revised downward. This change requires the revision specified. Although revised downward, the production of these raisins is still in excess of domestic and Western Hemisphere market needs, and the percentages are intended to tailor the supply to these needs. Excess supplies would be available primarily for export to approved countries outside the Western Hemisphere.

EFFECTIVE DATES: August 1, 1979 through July 31, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Higgins, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This rule makes an interim change in the preliminary free tonnage and reserve tonnage percentages for 1979 crop Dipped and Related Seedless raisins by increasing the free tonnage percentage from 56 percent to 65 percent and by reducing the reserve tonnage percentage from 44 percent to 35 percent. The preliminary Dipped and Related Seedless percentages for the 1979–80 crop year were published in the **Federal Register** on November 20, 1979 (§ 989.233; 44 FR 66574). That crop year began August 1, 1979.

This interim change in the percentages would be pursuant to § 989.55 of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was unanimously recommended under § 989.54(b) by the Raisin Administrative Committee, established under the order as the agency to administer its terms and provisions under USDA supervision.

The preliminary free and reserve tonnage percentages for Dipped and Related Seedless raisins were issued by the Department on November 15, 1979 (989.233; 44 FR 66574). These percentages were based on a 1979 production estimate for those raisins of 14,500 tons. The 1979 production is now estimated to be 13,600 tons. This 900-ton reduction in the estimated 1979 production is the reason for the interim change in percentages hereinafter specified.

After consideration of all relevant matter presented, including that in the notice issued in connection with the designation of the preliminary free and reserve tonnage percentages for Dipped and Related Seedless raisins (§ 989.233; 44 FR 62901), the information and recommendation of the Committee, and other available information, it is found that the designation, under § 989.55 of the order, of the interim change in the preliminary free and reserve tonnage percentages applicable to Dipped and Related Seedless raisins, for the 1979–80 crop year, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is further found that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The percentages designated herein for the 1979–80 crop year apply to all Dipped and Related Seedless raisins acquired by handlers during that crop year; (2) handlers are marketing 1979 crop raisins, and this action must be

taken promptly to achieve its purpose of allowing handlers to use the additional free tonnage quickly; (3) handlers are aware of this action as recommended by the Committee and require no additional time to comply; and (4) this action relieves restrictions on handlers.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this action warrants publication without opportunity for further public comment. A determination has been made that this action should be classified "significant". An impact analysis is available from William J. Higgins, (202) 447–5053.

Therefore, § 989.233 to be included in Subpart — Supplementary Regulations (7 CFR 989.202–989.232; 44 FR 66574) is revised by changing the Dipped and Related Seedless raisin free tonnage percentage from 56 percent to 65 percent and the reserve tonnage percentage from 44 percent to 35 percent.

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

Dated: December 3, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 79-37550 Filed 12-5-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 210, 211, and 212

[Docket No. ERA-R-79-14]

Mandatory Petroleum Allocation and Price Regulations; Butane and Natural Gasoline Deregulation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is amending 10 CFR Parts 210, 211 and 212 to exempt butane and natural gasoline from its Mandatory Petroleum Allocation and Price Regulations.

EFFECTIVE DATE: January 1, 1980.

ADDRESSES: Further comments to Public Hearing Management, Docket No. ERA–R–79–14, Department of Energy, Room 2313, 2000 M Street, NW., 20461.

FOR FURTHER INFORMATION CONTACT: Bill Webb (Office of Public Information), Economic Regulatory Administration, Room B–100, 2000 M Street, NW., Washington, D.C. 20461, (202) 634–2170.

Bob Reinstein (Regulations and Emergency Planning), Economic Regulatory Administration, Room 7216, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–7351.

Kristina Clark (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6744.

SUPPLEMENTARY INFORMATION: I. Background, II. Comments Received, III. Regulatory Analysis, IV. Exemption, V. Standby Authority, VI. Additional Comments Requested, VII. Procedural Requirements.

I. Background

On March 28, 1979, the Economic Regulatory Administration of the Department of Energy issued a Notice of Proposed Rulemaking and Public Hearing on Butane and Natural Gasoline Deregulation (44 FR 19423, April 3, 1979). We concurrently issued a draft regulatory analysis on the deregulation of butane and natural gasoline.

Comments were requested on our tentative conclusion that exemption of butane and natural gasoline from the Mandatory Petroleum Allocation and Price Regulations, (10 CFR Parts 210, 211, and 212) promulgated under the Emergency Petroleum Allocation Act of 1973, as amended ("EPAA" Pub. L. 93–159), would be consistent with the objectives set forth in Section 4(b)(1) of the EPAA as amended by Section 451 of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94–163). Comments also were solicited on the following tentative conclusions of the regulatory analysis:

(1) Butane and natural gasoline are not in short supply.

(2) Exemption of butane and natural gasoline from the allocation and price regulations will not have an adverse impact on the supply of any other oil or refined petroleum product subject to the EPAA.

(3) Competition and market forces are adequate to protect consumers following exemption of butane and natural gasoline from regulation.

(4) Exemption of butane and natural gasoline from regulation will not result in inequitable prices for any class of user of butane, natural gasoline or other products.

Finally, comments were requested on what changes, if any, would be necessary under 10 CFR Part 212, Subpart E (Refiners), Subpart F (Resellers and Retailers) and Subpart K (Natural Gas Liquids) if price and allocation controls were removed from butane and natural gasoline and such controls remained in effect with respect to propane.

II. Comments Received

The ERA invited written comments on the notice concerning butane and natural gasoline deregulation through May 18, 1979, and a public hearing was held in Washington, D.C. on May 9, 1979. Over forty parties submitted oral and written comments in response to the April 3, 1979 notice. Those offering comments included major integrated refining companies, small refining companies, independent gas processors, trade associations, industrial users, natural gas utilities, consumer representatives and a state energy office.

All of those commenting in response to the notice on butane and natural gasoline deregulation recommended that ERA exempt butane and natural gasoline from the allocation and price regulations. These recommendations were based generally upon agreement with our projections as to supply, demand and price, and other findings and views with respect to requirements of Section 12 of the EPAA, as set forth in our draft regulatory analysis. A number of commenters pointed out that butane and natural gasoline prices and supplies had been subject to a great deal of fluctuation during the months between publication of the draft regulatory analysis and the hearing. Nevertheless, they agreed that butane and natural gasoline should be deregulated. These commenters shared the generally widespread view that a free market would operate much more efficiently than the regulations both in setting prices and assuring supplies. Also widespread was the view that the cost of compliance with the regulations was a significant financial burden to firms and that continued regulation could cause market distortions. Many parties expressed the opinion that deregulation would encourage additional natural gas liquid extraction and plant investment which would displace imports. Although the commenters anticipated minimal price increases, they did anticipate that deregulation might result in selective price increases to reflect the increased cost of capital.

Two commenters, a trade association and a refiner, recommended that new butane uses continue to be controlled on a case by case basis. However, the majority of comments received on the subject of new demand of natural gas liquid products for SNG plants, for gas utility use or for boiler fuel use were generally opposed to any limitations on the end uses of these products.

We determined that any attempt to maintain controls on the end uses of butane on a case-by-case basis would

be difficult to administer, inconsistent with the objectives of deregulation and lacking in any clear regulatory benefits. Therefore, we did not include such end use controls in the final rule adopted today.

Many commenters were opposed to the inclusion of natural gas liquids under our proposed definition of "covered products" in Section 212.31. Most of these commenters expressed the view that "natural gas liquids" should be replaced with "the propane component of natural gas liquids." Other commenters requested that a new Section 212.62 be added to exempt specifically the butane and natural gasoline components of natural gas liquids.

In light of the comments received, we are adopting a new Section 212.62 which makes clear that butane and natural gasoline, whether fractionated or as part of a raw stream, would be exempted from controls. However, where natural gas liquids are priced without reference to component products, we determined it would be inconsistent with the regulatory scheme to deregulate that product and therefore are adopting the definition of "covered products" essentially as proposed.

Several parties recommended that if butane and natural gasoline were deregulated, the ERA should establish a mechanism to allocate costs of exempt products to covered products and revise the Section 212.168 method of cost allocation to exempt products. One commenter recommended the establishment of a mechanism to allocate unrecovered butane and natural gasoline costs as of the date of deregulation to the remaining covered products. Such provisions would amount to *de facto* deregulation of propane and are outside the scope of this rulemaking. Therefore they were not adopted.

Some commenters also recommended the establishment of guidelines to which the DOE would refer in its determination that reimposition of standby regulations would be appropriate. The establishment of guidelines for reimposition of standby controls was not considered in connection with this rulemaking because we determined it went beyond the scope of the proposed rule.

III. Regulatory Analysis

In accordance with the provisions of Executive Order 12044 as implemented by DOE Order 2030 (44 FR 1032, January 3, 1979), we prepared a regulatory analysis of the proposal to exempt butane and natural gasoline from the Mandatory Petroleum Allocation and Price Regulations. A draft regulatory analysis was published in March, 1979 prior to the issuance of the proposed rule on deregulation of butane and natural gasoline. With this final rule, we are issuing a final regulatory analysis which supplements the data and conclusions of the draft regulatory analysis. The Executive Summary of the final regulatory analysis is included as an appendix to this rule.

A copy of the final regulatory analysis is available from the ERA Office of Public Information, Room B–110, 2000 M Street, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

IV. Exemption

Based upon our consideration of the comments of those persons who participated in the rulemaking proceeding and all other available information, we have concluded that butane and natural gasoline should be exempted from the allocation and price regulations. This conclusion is supported by the findings of the regulatory analysis conducted during the course of this rulemaking procedure.

Since we published the draft regulatory analysis the butane and natural gasoline markets have been subject to price and supply fluctuations that were not wholly anticipated. We have continued to analyze these markets and have revised both data and conclusions, as summarized in the Executive Summary of the regulatory analysis.

We conclude that, notwithstanding these market fluctuations, it remains appropriate to deregulate these products. The butane and natural gasoline markets typically are characterized by complex interrelationships with other refinery and gas plant products. To the extent that we are able to analyze the effects of the current regulatory scheme on prices and supplies and forecast the impacts of deregulation we have concluded that deregulation will have little effect on supply, demand and price. Because the primary use for both butane and natural gasoline is gasoline feedstock, prices and supplies tend to be influenced more by the motor gasoline market than by regulatory constraints. Given this strong relationship between the motor gasoline market and the butane and natural gasoline markets, we believe that the relative impact of deregulation will be minor. This expectation is supported by the fact that despite the regulations, the butane and natural gasoline markets were subject recently to significant fluctuations which occurred at a time when the motor gasoline market was characterized by similar fluctuations in price and supply.

Although we are unable to forecast with certainty that deregulation will have no harmful impacts, we also can point to no measurable benefits associated with continued regulation. There appears to be little correlation between regulations and prices, and we have not been able to establish how, or if, the regulations affect supply. We have determined that the purposes for which controls were established are no longer served and that regulation of these products does not result in economic efficiency. We conclude that a market free from regulatory constraints can do as good a job, or better, in allocating butane and natural gasoline. Thus, we do not foresee any adverse impacts which would warrant a continuation of controls.

Accordingly, butane and natural gasoline, as raw natural gas liquids, or mixed components of natural gas streams, will no longer be covered products under Part 211 (allocation) and Part 212 (price) of the Mandatory Petroleum Allocation and Price Regulations effective January 1, 1980.

We emphasize that the removal of price controls on butane and natural gasoline, including the butane and natural gasoline components of natural gas liquids, cannot be used in particular cases to achieve a *de facto* removal of price controls on propane. For example, if a producer-seller of liquid hydrocarbons prices each component thereof separately, this is a sale of the respective separately priced products.[1] A gas processor-purchaser cannot take increased product costs attributable to uncontrolled components (butane, natural gasoline or ethane) of these liquid hydrocarbons and allocate those increased product costs to propane when it is fractionated and separately sold. Similarly, sales of natural gas liquids, as defined in 10 CFR 212.162 (i.e. all sales where discrete prices are not assigned to separate products) remain fully subject to price controls. This final rule also cannot be construed to allow seller to reallocate costs attributable to natural gas liquids or to take any increased product or nonproduct costs (including banked costs) attributable to natural gas liquid products that are hereby exempted from price controls and pass those costs on to purchasers of propane.

We also wish to emphasize our concern that adequate supplies of butane continue to be available at reasonable prices to agricultural and residential users. As discussed in the regulatory analysis, a small percentage

[1] See, *e.g., El Paso Natural Gas Co.*, Interpretation 1978–32, 43 FR 29534 (July 10, 1978).

of total butane demand is for residential and agricultural use. We have solicited views from refiners and natural gas processors as to whether adequate butane would remain available for these purposes. In general we have received positive responses and commitments that these small users would continue to be served.

Nonetheless, if any group of residential or agricultural users appears to be adversely affected under deregulation, we are prepared to issue individual orders and adopt rules as necessary to protect these users.

V. Standby Authority

Section 12(f) of the EPAA provides that following the exemption of any refined product category from regulation, the DOE shall have the authority at any time to reimpose price regulations if necessary to attain the objectives of the EPAA. For this reason, we are adopting amendments which exempt butane and natural gasoline from the general allocation and price regulations but which do not delete those regulations from the Code of Federal Regulations. We have, in effect, converted them to standby status, so that, in the event of shortages or other occurrence which might require reimposition of regulations, we may, with appropriate modifications, quickly put them back into effect. We will continue to analyze the butane and natural gasoline market after deregulation and we will be prepared to take whatever action may become appropriate with regard to the regulation of these products.

VI. Additional Comments Requested

You are invited to submit additional comments and views on what impacts deregulation of butane and natural gasoline may have on the pricing or allocation of products which remain under controls, particularly propane.

We also, invite your comments on what, if any, additional changes to 10 CFR Part 212 might be appropriate in view of the exemption of butane and natural gasoline from controls and the continued regulation of propane.

All comments should be sent to the address set forth in the "Addresses" section above. Comments should be identified on the outside envelope and on documents submitted with the designation "Butane and Natural Gasoline Deregulation" Docket No. ERA–R–79–14. All comments received will be available for public inspection in the ERA Office of Public Information, Room B–110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Any information or data 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 the information or data and to treat it according to our determination.

VII. Procedural Requirements

In accordance with section 404 of the Department of Energy Organization Act ("DOE Act," 42 U.S.C. 7101 *et seq.*), the Federal Energy Regulatory Commission received a copy of the proposed rule and has declined to determine that the rule may significantly affect any of its functions under sections 402(a)(1), (b), or (c)(1) of the DOE Act.

After reviewing the final rule pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq., DOE has determined that deregulation of butane and natural gasoline does not constitute major Federal action significantly affecting the quality of the human environment and will not produce a measurable impact on the national environment.

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. A copy of this Rule was provided to the EPA Administrator who responded that EPA does not foresee this rule having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of EPA.

(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 94–163, 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; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 210, 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below, effective January 1, 1980.

Issued in Washington, D.C., November 29, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Section 210.35 is amended by adding paragraph (i) and (j) to read as follows:

§ 210.35 Exempted products.

* * * * *

(i)(1) Butane and the butane component of natural gas liquids is exempt from the provisions of Part 211 of this chapter.

(2) Butane as defined in § 212.31 of this chapter and the butane component of natural gas liquids is exempt from the provisions of Part 212 of this chapter.

(j)(1) Natural gasoline and the natural gasoline component of natural gas liquids is exempt from the provisions of Part 211 of this chapter.

(2) Natural gasoline as defined in § 212.31 of this chapter and the natural gasoline component of natural gas liquids is exempt from the provisions of Part 212 of this chapter.

2. Section 211.1 is amended in paragraph (b) by adding subparagraph (11) to read as follows:

§ 211.1 Scope.

* * * * *

(b) *Exclusions.*

* * * * *

(11) Notwithstanding the other provisions of this part, including Subparts D and E of this part, butane and natural gasoline and the butane and the natural gasoline components of natural gas liquids are excluded from this part.

* * * * *

3. Section 212.31 is amended in the definition of "covered products" to read as follows:

§ 212.31 Definition.

* * * * *

"Covered products" means crude oil, gasoline, natural gas liquids and propane. A blend of two or more particular covered products is considered to be that particular covered product constituting the major portion of the blend. A blend of one or more covered products with one or more non-petroleum-based products is a covered product if the covered product or products constitutes more than 50 percent by volume of the blend, and is that covered product which is the most predominant by volume in the blend.

4. Part 212 is amended by adding new §§ 212.60, 212.61 and 212.62 as follows:

§ 212.60 Butane.

The prices charged for butane are exempt from the provisions of this part.

§ 212.61 Natural gasoline.

The prices charged for natural gasoline are exempt from the provisions of this part.

§ 212.62 Butane and natural gasoline components of natural gas liquids.

The prices charged for the butane and natural gasoline components of natural gas liquids are exempt from the provisions of this part.

Appendix—Summary of Final Regulatory Analysis

This report is a Supplement to the March 1979 report *Draft Regulatory Analysis, Deregulation of Butane and Natural Gasoline,* which was prepared as an examination of the potential impacts of exempting these products from the Mandatory Petroleum Allocation and Price Regulations. This Supplement presents additional data which has become available since preparation of the Draft Regulatory Analysis (DRA), presents further analysis of current and historical data, reexamines the conclusions of the DRA regarding projected supply, demand, and price trends, and adds further discussion of possible impacts and alternatives to deregulation.

Section 1 presents additional data available since preparation of the DRA.

- Demand for butane for petrochemical use has increased over levels estimated in the DRA and is now estimated to be 100 MB/D in 1980.
- Demand for butane and natural gasoline for motor gasoline production has been consistent with the trends discussed in the DRA. This use is estimated to amount to about 1300 MB/D of total butane demand of 1467 MB/D in 1980, and to account for almost all demand for natural gasoline of about 330 MB/D.
- Other demand data presented in Section 1 are consistent with historical trends. These demands account for only about 4 percent of total butane demand.
- Butane and natural gasoline production data presented here are consistent with trends presented and analyzed in the DRA.
- Butane stock levels are somewhat below historical trends, but this appears to be due to a variety of factors, including changes in the data reporting system, and does not appear to indicate any serious supply problems.
- Butane and natural gasoline prices have risen significantly since preparation of the DRA in response to high crude oil and gasoline prices.

Sections 2 and 3 present further analysis of available data and a reassessment of the supply, demand, and price projections of the DRA.

- Butane and natural gasoline demand for gasoline production is estimated to continue to follow the trend analyzed in the DRA; since this is by far the largest demand for these products, the major conclusions in the DRA regarding overall demand outlook are unchanged.
- Butane demand for petrochemical feedstock use is projected to be somewhat higher in the short term than estimated in the DRA because of relative price differentials between these and heavier feedstocks derived from crude oil; over the longer term heavier feedstocks are expected to predominate, as discused in the DRA.
- Butane and natural gasoline production is estimated to be somewhat higher than projected in the DRA because of higher projections for natural gas production.
- Supply is generally projected to be in balance with demand through 1980 and no impacts of deregulation are expected on aggregate supply or demand.
- Prices for butane and natural gasoline are projected to follow their historical relationship to gasoline prices and, under adequate crude oil and gasoline supply assumptions, 1980 market prices might be 55–65 cents/gallon for butane and 60–70 cents/gallon for natural gasoline.
- If crude oil and gasoline supplies are short, 1980 projected market prices could be as much as 20 cents/gallon higher than under adequate supply assumptions, and could therefore be somewhat higher under deregulation than current regulations might allow.
- The precise price impact of deregulation cannot be calculated because of the complex relationship of these products to other refinery and gas plant products and the various provisions of the regulations which allow flexibility in the allocation of costs among products, and the timing of recovery of these costs. Prices under current regulations appear very close to the prices that would be set by market forces.
- Motor gasoline prices set the ultimate limit on prices for butane and natural gasoline prices, and both market forces and the guidelines of the Council on Wage and Price Stability act to restrain gasoline prices.

Section 4 examines other possible impacts of deregulation and alternatives to deregulation and concludes that deregulation is consistent with the objectives of authorizing legislation and with the criteria specifically listed in reference to deregulation (exemption) actions.

- Butane and natural gasoline are no longer in short supply and deregulation will not have an adverse impact on the supply of these products or any other product.
- A few individual users may have to shift suppliers or switch to another fuel or feedstock as a result of deregulation (such as small refiners and independent petrochemical companies), but these actions would take place in an unregulated market in any case and are not inconsistent with the objectives of the EPAA.
- Deregulation will allow for more efficient and rational economic planning and investment and will allow butane and natural gasoline to find those markets where they have the highest value; this will help to assure adequate supplies to all users at equitable prices.
- The NGL industry is complex and thus both the benefits of the current regulations and their adverse impacts are difficult to calculate. Deregulation would permit limited resources of both government and industry to be allocated to other pressing energy problems.
- Alternatives such as partial deregulation and phased deregulation are not considered practical because they continue or even increase the complexity of the regulations with few compensating benefits.

[FR Doc. 79-37539 Filed 12-5-79; 8:45 am]
BILLING CODE 6450-01-M

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10 CFR Part 212

Adjustments To Lower and Upper Tier Crude Oil Price Ceilings To Reflect Impact of Inflation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA), of the Department of Energy (DOE) hereby issues Crude Oil Price Schedule No. 17 which provides for monthly increases in the ceiling prices for lower tier and upper tier crude oil to take into account the impact of inflation. This action will result in estimated first sale prices for the months of December 1979, and January and February 1980 of $6.14, $6.18, and $6.22 per barrel (lower tier) and $13.72, $13.81, and $13.90 per barrel (upper tier), respectively.

EFFECTIVE DATE: December 1, 1979.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B110, Washington, D.C. 20461, 202–634–2170.

Charles P. Little (Crude Oil Pricing Branch), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128, Washington, D.C. 20461, 202–254–6296.

Ben McRae (Office of General Counsel), Department of Energy, 1000 Independence Avenue, S.W., Room 6A–127, Washington, D.C. 20585, 202–252–6739.

SUPPLEMENTARY INFORMATION: A. *Introduction.*—B. *Crude Oil Price Schedule No. 17.*

A. Introduction

On August 31, 1979, we issued Crude Oil Price Schedule No. 16 (44 FR 52173, September 7, 1979), which continued the crude oil pricing policy of permitting the prices for lower tier and upper tier crude oil to increase to adjust for the impact of inflation. We have decided to continue

this policy during the months of December 1979, and January and February 1980. Accordingly we are issuing Crude Oil Price Schedule No. 17 which provides for increases in the ceiling prices for lower tier and upper tier crude oil during those months to take into account the impact of inflation.

B. Crude Oil Price Schedule No. 17

Under Crude Oil Price Schedule No. 17 the November 1979 lower tier ceiling price (the May 15, 1973 posted price plus $2.41 per barrel, resulting in an average first sale price of approximately $6.10 per barrel), and the November 1979 upper tier price (the September 30, 1975 posted price plus $.96, resulting in an average first sale price of approximately $13.63 per barrel), are adjusted for inflation for December 1979, and January and February 1980, based on the first revision of the GNP deflator published on November 21, 1979, which reflects an annual rate of inflation of 8.0 percent.

1. *Lower tier ceiling prices.* Adjustments to ceiling prices for lower tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in December 1979, and in January and February 1980, are determined pursuant to the following methodology:

A. ERA has computed a monthly adjustment factor of .00643 which when applied over a twelve-month period yields an effective annual rate of adjustment of 8.0 percent.
B. December 1979 adjustment = ($6.10)(.00643) per barrel = $.039 per barrel rounded to $.04 per barrel.
C. January 1980 adjustment = ($6.10 + .04)(.00643) per barrel = $.039 per barrel rounded to $.04 per barrel.
D. February 1980 adjustment = ($6.10 + .04 + .04) (.00643) per barrel = $.0397 per barrel rounded to $.04 per barrel.

Based upon the monthly adjustments computed above, estimated average lower tier ceiling prices for the months of December 1979, and January and February 1980 are computed as follows:

December 1979 = $6.10 + $.04 = $6.14.
January 1980 = $6.14 + $.04 = $6.18.
February 1980 = $6.18 + $.04 = $6.22.

Using an average highest posted field price on May 15, 1973 of $3.69 per barrel and the monthly adjustments as computed above, lower tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price[1]
December 1979	May 15, 1973 highest posted field price plus $2.45.	$6.14
January 1980	May 15, 1973 highest posted field price plus $2.49.	6.18
February 1980	May 15, 1973 highest posted field price plus $2.53.	6.22

[1] Estimated average first sale price.

2. *Upper tier ceiling prices.* Adjustments to ceiling prices for upper tier crude oil and the approximate average first sale prices pursuant to those ceiling prices in December 1979, and January and February 1980 are determined pursuant to the following methodology:

A. Adjustment factor (explained above) = .00643.
B. December 1979 adjustment = ($13.63) (.00643) per barrel = $.088 per barrel rounded to $.09 per barrel.
C. January 1980 adjustment = ($13.63 + .09) (.00643) per barrel = $.088 per barrel rounded to $.09 per barrel.
D. February 1980 adjustment = ($13.63 + .09 + .09) (.00643) per barrel = $.089 per barrel rounded to $.09 per barrel.

Based upon monthly adjustments computed above, estimated average upper tier ceiling prices for the months of December 1979, and January and February 1980, are computed as follows:

December 1979 = $13.63 + $.09 = $13.72.
January 1980 = $13.72 + $.09 = $13.81.
February 1980 = $13.81 + $.09 = $13.90.

Using an average highest posted field price on September 30, 1975 of $12.67 per barrel and the monthly adjustments as computed above, upper tier prices for the next 3 months have been determined as follows:

Month	Ceiling price	Price[1]
December 1979	September 30, 1975 highest posted field price plus $1.05.	$13.72
January 1980	September 30, 1975 highest posted field price plus $1.14.	13.81
February 1980	September 30, 1975 highest posted field price plus $1.23.	13.90

[1] Estimated average first sale price.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended, Pub. L. 94–385; Energy Policy and Conservation Act, Pub. L. 94–163, as amended, Pub. L. 94–385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95–91; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective December 1, 1979.

Issued in Washington, D.C., November 30, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Section 212.77 is amended in the appendix to add Schedule No. 17 of Monthly Price Adjustments, as follows:

§ 212.77 Adjustments to ceilings prices.

* * * * *

Appendix

* * * * *

Schedule No. 17 of Monthly Price Adjustments

Effective: December 1, 1979

Month	Lower tier, May 15, 1973, posted price[1] (plus)	Upper tier, Sept. 30, 1975, posted price[2] (plus)
1976:		
February	1.35	−1.32
March	1.38	−1.25
April	1.41	−1.18
May	1.45	−1.11
June	1.48	−1.05
July	1.48	−1.05
August	1.48	−1.05
September	1.48	−1.05
October	1.48	−1.05
November	1.48	−1.05
December	1.48	−1.05
1977:		
January	1.48	−1.25
February	1.48	−1.25
March	1.48	−1.70
April	1.48	−1.70
May	1.48	−1.70
June	1.48	−1.70
July	1.48	−1.70
August	1.48	−1.70
September	1.51	−1.44
October	1.54	−1.18
November	1.57	−.92
December	1.59	−.87
1978:		
January	1.61	−.82
February	1.63	−.77
March	1.66	−.71
April	1.69	−.65
May	1.72	−.59
June	1.75	−.52
July	1.78	−.45
August	1.81	−.38
September	1.86	−.28
October	1.91	−.17
November	1.96	−.06
December	1.99	.01
1979:		
January	2.02	.08
February	2.05	.15
March	2.09	.23
April	2.13	.31
May	2.17	.39
June	2.21	.48
July	2.25	.57
August	2.29	.66
September	2.33	.76
October	2.37	.86
November	2.41	.96
December	2.45	1.05
1980:		
January	2.49	1.14
February	2.53	1.23

[1] The price referred to in 10 CFR 212.73(b)(1) or in 212.73(c)(1), 212.73(c)(3), and 212.73(c)(4).
[2] The price referred to in 10 CFR 212.74(b)(1).

This schedule of monthly price adjustments was issued by the Economic Regulatory Administration on December 1, 1979, pursuant to 10 CFR 212.77. It restates without change the

lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February 1976 through November 1979, as determined under 10 CFR 212.73, 212.74, and 212.77. Both lower tier and upper tier ceiling prices, which were increased under Schedule No. 16 effective September 1, 1979, are further increased as indicated in this schedule, effective December 1, 1979.

This schedule is effective only through February 29, 1980.

[FR Doc. 79-37553 Filed 12-5-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Airworthiness Docket No. 79-ASW-25; Amdt. 39-3626]

Airworthiness Directives; Bell Models 204B, 205A-1 and 212 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Bell Models 204B, 205A-1, and 212 helicopters by deleting the requirement to measure the radius in the bottom of the pillow block bushing hole. The amendment is needed because the FAA has determined that of the cases of cracking that occurred in service, none have initiated in the bottom of the pillow block bushing hole. The cracks originate in the side of the hole near the top or through the center section of the yoke adjacent to the data plate.

DATES: Effective December 1, 1979. Compliance schedule as prescribed in the AD.

ADDRESSES: The applicable maintenance manual revisions may be obtained from Publication Distribution, Logistics Department, Bell Helicopter Textron, P.O. Box 482, Forth Worth, Texas 76101 or from the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Forth Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, Extension 517.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3572, 44 FR 55556, AD 79-20-05, which currently requires an initial and then repetitive inspections at 2400-hour intervals and corrosion protection and sealing of the main rotor yokes on Bell Models 204B, 205A-1, and 212 helicopters. After issuing Amendment 39-3572, the FAA has determined that the inspection for a radius less than .050 inch in the bottom of the pillow block bushing holes is not required. Of the cases of cracked yokes that have been found in service, none of the cracks have initiated in the bottom of the pillow block bushing hole. The cracks originate in the side of the hole near the top or through the center section of the yoke adjacent to the data plate.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

§ 39.13 [Amended]

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 amending Amendment 39-3572, 44 FR 55556, AD 79-20-05 by revising paragraph (b)(1) to read as follows:

Conduct the following inspections: (1) Inspect yoke for corrosion pits, scratches, and damage in the pillow block bushing hole, in each spindle radius, and yoke web section by using a five power or higher magnifying glass.

This amendment becomes effective December 1, 1979.

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

Issued in Fort Worth, Texas, on November 21, 1979.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-37345 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-SO-82; Amdt. No. 39-3630]

Airworthiness Directives; Luscombe (Larsen Luscombe) Model 8 Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection of the vertical stabilizer forward attach fitting, P/N 28444 or 28453, for cracks on Luscombe (Larson Luscombe) Model 8 Series airplanes. The AD is needed to prevent failure of the vertical stabilizer forward attach fitting which could result in loss of the vertical stabilizer from the airplane.

DATES: Effective December 17, 1979. Compliance required within the next 10 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 two reports of failure of the vertical stabilizer forward attach fitting, one of which resulted in the crash of the airplane, on Luscombe (Larsen Luscombe) Model 8 Series airplanes. Since this condition is likely to exist on other airplanes of the same type design, and Airworthiness Directive is being issued which requires inspection and replacement, as necessary, of the vertical stabilizer forward attach fitting, P/N 28444 or 28453, on Luscombe (Larsen Luscombe) Model 8 Series 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):

Luscombe (Larsen Luscombe): Model 8 Series, certificated in all categories. Compliance is required as indicated, unless already accomplished.

a. Within the next 10 hours time in service from the effective date of this AD, accomplish the following:

(1) Remove the vertical stabilizer forward attach fitting, P/N 28444 or 28453, from the airplane.

(2) Using a dye-penetrant method, inspect the fitting for cracks around the aft flanges which attach to the vertical stabilizer. If cracks are found, replace the fitting with an approved serviceable part before further flight.

b. Within the next 100 hours time in service after the inspection in item a, and at intervals not to exceed 100 hours time in service thereafter, remove the vertical stabilizer fairings and visually inspect the aft flanges of the vertical stabilizer forward attach fitting,

P/N 28444 or 28453, for cracks. If cracks are found, replace the fitting with an approved serviceable part before further flight.

This Airworthiness Directive does not apply to airplanes with steel fittings installed.

An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320.

This amendment is effective December 17, 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, Georgia, on November 23, 1979.

George R. La Caille,

Acting Director, Southern Region.

[FR Doc. 79-37347 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-ASW-56; Amdt. 39-3620]

Airworthiness Directives; Swearingen Model SA226 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the modification of Rosemount SAS Servos P/N 9-50D1001 as detailed in Swearingen Aviation Corporation Service Bulletin SB A27-024 dated November 13, 1979, on Swearingen Model SA226 series airplanes. The AD is prompted by a report of a manufacturing defect within the SAS servo which could result in a jammed elevator.

DATES: Effective December 10, 1979. Compliance required within the next 10 hours time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Swearingen Aviation Corporation, P.O. Box 32486, San Antonio, Texas 78284, or from the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John D. Swihart, Systems and Equipment Section, Engineering and Manufacturing Branch, ASW-213, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, extension 518.

SUPPLEMENTARY INFORMATION: The FAA has determined that in one instance the three clutch attachment screws on the internal face of the clutch housing assembly of the Rosemount SAS Servo P/N 9-50D1001 were not staked, resulting in a jammed elevator. 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 the removal and inspection of Rosemount SAS Servos P/N 9-50D1001, as detailed in Swearingen Aviation Corporation Service Bulletin SB A27-024 on Swearingen Aviation Corporation Model SA226 series 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 amendent 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:

SWEARINGEN

Applies to Models SA226-T, SA226-AT, and SA226-TC airplanes, certificated in all categories, that incorporate Rosemount SAS Servo P/N 9-50D1001.

Compliance is required within the next 10 hours time in service unless already accomplished. (NOTE: The compliance time given here is, in some instances, different from SB A27-024.)

To prevent the possible jamming of the elevator, accomplish the following:

Remove, disassemble, inspect, modify if necessary, and reidentify servos in accordance with the accomplishment instructions in Swearingen Aviation Corporation Service Bulletin SB A27-024 dated November 13, 1979. All Rosemount P/N 9-50D1001 servos not presently installed must also be disassembled, inspected, modified if necessary, and reidentified prior to installation.

Aircraft may be flown in accordance with FAR 21.197 to a base where this AD can be accomplished.

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. 522(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Swearingen Aviation Corporation, P.O. Box 32486, San Antonio, Texas 76284. These documents may also be examined at Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76101, and at FAA Headquarters, 800 Independence Avenue S.W., Washington, D.C. 20591. This amendment becomes effective December 10, 1979.

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

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

Issued in Fort Worth, Texas, on November 26, 1979.

The incorporation by reference in this document was approved by the Director of the Federal Register on June 19, 1967.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 79-37346 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-ASW-43]

Designation of Transition Area; Belen, N. Mex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate the transition area at Belen, NM. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Alexander Municipal Airport. The circumstance which created the need for the action is the development of a standard instrument approach procedure using the Socorro VORTAC. 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: Manuel R. Hugonnett, Airspace and Procedures Branch (ASW-536), 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 56375) stating that the Federal Aviation Administration proposed to designate the Belen, NM, 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. No objections were received to the proposal. 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 71) designates the Belen, NM, transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Alexander 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 GMT, January 24, 1980, as follows.

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

Belen, NM

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Alexander Municipal Airport (latitude 34°38'51" N., longitude 106°49'57" 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 Regulatary 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 23, 1979.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 79-37348 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9075]

Irving E. Miller; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires an individual party to a complaint issued against Bankers Life and Casualty Company and others, to cease, in connection with the advertising, promotion and sale of land, misrepresenting that land purchase is a safe investment; involves little financial risk; and is a means of achieving financial security. The order requires that all advertising, promotion materials and sales contracts include specified disclosures regarding risks involved in undeveloped land investment; the advisability of consulting with a real estate specialist prior to contracting; the availability and cost of water, sewage disposal and utilities; and the identity of lots in flood plain areas. Mr. Miller is required to provide customers with cooling-off periods and information regarding rights to cancellation and refund; and from using certain contractual provisions including one by which defaulting purchasers forfeit all payments made. Additionally, the order requires Mr. Miller to release in favor of consumers who have paid for their lots in full any security interest he has or obtains in subdivisions.

DATES: Complaint issued February 26, 1976. Decision issued November 7, 1979.[1]

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: On Monday, August 27, 1979, there was published in the Federal Register, 44 FR 50047, a proposed consent agreement with analysis In the Matter of Irving E. Miller, an individual, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

Codification, appearing at 44 FR 54471, remains unchanged.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-37495 Filed 12-5-79; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-2997]

Jaymar-Ruby, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Michigan City, Ind. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sale periods for its products. The company is prohibited from soliciting the identity of dealers who fail to conform to suggested prices; and from taking any adverse action against them. Additionally, the firm is prohibited from restricting the use of product trademarks or other identification in the advertising and sale of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

DATES: Complaint and order issued Nov. 8, 1979.[1]

FOR FURTHER INFORMATION CONTACT: William A. Arbitman, Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: On Wednesday, Aug. 29, 1979, there was published in the Federal Register, 44 FR 50614, a proposed consent agreement with analysis In the Matter of Jaymar-Ruby, Inc., a corporation, for the

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

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

purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers. Subpart—Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures. Subpart—Cutting Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.635 Refusing sales to, or same terms and conditions; § 13.655 Threatening disciplinary action or otherwise. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or Withholding corrections, adjustments or action owed. Subpart—Maintaining Resale Prices; § 13.1145 Discrimination; § 13.1145–5 Against price cutters; § 13.1145–45 In favor of price maintainers; § 13.1150 Penalties; § 13.1165 Systems of espionage; § 13.1165–80 Requiring information of price cutting.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-37496 Filed 12-5-79; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket C-2998]

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

AGENCY: Federal Trade Commission.

ACTION: Final order.

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

DATES: Complaint and order issued Nov. 8, 1979.[1]

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

SUPPLEMENTARY INFORMATION: On Thursday, August 30, 1979, there was published in the **Federal Register**, 44 FR 50862, a proposed consent agreement with analysis In the Matter of Roofing Contractors Association, a non-profit corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade. Subpart—Controlling, Unfairly, Seller-Suppliers: § 13.530 Controlling, unfairly, seller-suppliers. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures. Subpart—Maintaining Resale Prices: § 13.1165 Systems of espionage.

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

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-37494 Filed 12-5-79; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket C-2996]

Gant, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a New Haven, Conn. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sales periods for its products. The firm is prohibited from soliciting the identity of dealers who fail to conform to such prices, and from taking any adverse action against them. Additionally, the firm is prohibited from restricting the use of product trademarks or other identification in the sale of advertising of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

DATES: Complaint and order issued Nov. 6, 1979[1]

FOR FURTHER INFORMATION CONTACT: William A. Arbitman, Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: On Wednesday, Aug. 29, 1979, there was published in the **Federal Register**, 44 FR 50612, a proposed consent agreement with analysis In the Matter of Gant, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Coercing and Intimidating: § 13.350 Customers or prospective customers. Subpart-Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures. Subpart-Cutting Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.635 Refusing sales to, or same terms and conditions; § 13.655 Threatening disciplinary action or otherwise. Subpart-Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart-Maintaining Resale Prices: § 13.1145 Discrimination; 13.1145–5 Against price cutters; 13.1145–45 In favor of price maintainers; § 13.1150 Penalties; § 13.1165 Systems of espionage; 13.1165–80 Requiring information of price cutting.

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

Carol M. Thomas,

Secretary.

[FR Doc. 79-37497 Filed 12-5-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

[CP 79-12]

Safety Standard for Walk-Behind Power Lawn Mowers; Denial of Petition To Extend Effective Date

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: The Commission has denied a petition (CP 79–12) from the Outdoor Power Equipment Institute (OPEI) requesting that the Commission extend the effective date of the Safety Standard for Walk-Behind Power Lawn Mowers by 18 months, to July 1, 1983. The petition is denied because the information available at this time indicates that manufacturers can comply with the present effective date of December 31, 1981, and because it is important that the standard go into effect as soon as is reasonably possible in order to help prevent the 77,000 blade contact injuries that occur each year due to contact with the blades of walk-behind power lawn mowers. The Commission is presently evaluating another petition from OPEI asking the Commission to begin a proceeding to amend the substantive provisions of the standard. The Commission expects to consider that petition by mid-December, 1979. If the Commission grants that petition, the question of whether a change in the effective date of the standard is appropriate will be reconsidered at that time.

FOR FURTHER INFORMATION CONTACT: William Kitzes, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; phone (301) 492–6557.

SUPPLEMENTARY INFORMATION: On February 26, 1979, the Commission promulgated the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205 (44 FR 9990; February 15, 1979). The standard contains performance requirements intended to reduce injuries from contact with the rotating blades of rotary walk-behind power lawn mowers having a rigid or semi-rigid blade, the type consumers usually use. The standard also requires a label warning of the danger of blade contact on both reel-type and rotary walk-behind power lawn mowers. In order to reduce injuries to the operator's hands and feet, the standard requires that rotary walk-behind power mowers have a blade control system that will stop the mower blade within 3 seconds after the operator's hands leave the normal operating position. If the manufacturer chooses to stop the blade by stopping the engine, the mower must be equipped with a power start mechanism. If the mower has only manual start, stopping the blade by stopping the engine is not allowed by the standard. In order to reduce injuries to the operator's feet, the standard also requires that if the rear periphery and discharge chute of a mower is probed with a specified foot probe, neither the probe nor any part of the mower shall enter the path of the blade.

The performance requirements of the standard apply to all of the subject rotary power lawn mowers manufactured after December 31, 1981. The labeling requirement is applicable to both rotary and reel-type power mowers manufactured after December 31, 1979.

The Commission estimates that each year there are approximately 77,000 injuries caused by contact with the blades of walk-behind power lawn mowers. The standard is expected to eliminate or reduce the severity of about 60,000 blade contact injuries per year, or 77% of all such injuries. A detailed explanation of the standard's provisions, rationale, and expected impact on consumers and manufacturers is given in the **Federal Register** notice which published the final standard (44 FR 9990; February 15, 1979).

On February 26, 1979, the Outdoor Power Equipment Institute (OPEI) filed a petition for review of the standard in the U.S. Court of Appeals for the Fifth Circuit (No. 79–1469). A petition filed by John Hayward in the U.S. Court of Appeals for the District of Columbia Circuit has been consolidated with the OPEI petition in the Fifth Circuit.

On September 12, 1979, OPEI filed a petition (No. CP 79–13) with the Commission asking that the standard be amended to allow, as a permissible alternative to the 3 second blade stopping requirement, the use of mowers whose blades are inaccessible as determined by the use of a specified probe intended to simulate the human hand. The Commission's staff is presently evaluating this petition, and it is expected that it will be considered by the Commission by mid-December, 1979.

Prior to that petition, on August 17, 1979, OPEI filed with the Commission the petition that is the subject of this notice (No. CP 79–12) asking for an extension of the effective date of the standard from December 31, 1981, to July 1, 1983. In its petition, OPEI argued that the extension was justified for the following general reasons:

1. OPEI believes that there is a substantial likelihood that the standard will not be upheld by the Court in the petitions for review and that if the effective date is not extended, manufacturers will incur costs for engineering, purchasing, tooling, and production that will be unnecessary if the standard is not upheld.

2. If the effective date of the standard is not extended, manufacturers will be required to incur substantial expenses of redesign, retesting, and retooling a second time in order to comply with any safety standard that may be issued by the Commission addressing the hazard of objects that are thrown by the rotating mower blade.

3. OPEI believes that the standard's effective date should be extended so that manufacturers will not have to continue to develop mowers that comply with the blade stopping requirement while the Commission considers OPEI's petition to allow alternative hand probe requirements.

4. Lastly, OPEI argues that, in any event, the standard's present effective

date does not provide adequate time to develop and test reliable clutch/brake devices to comply with the standard's blade stopping time requirement.

These contentions by the petitioner are discussed separately below.

1. *The petitions for review.* Judicial review of consumer product safety rules issued by the Commission is provided for in section 11 of the Consumer Product Safety Act, 15 U.S.C. 2060, which states that the "rule shall not be affirmed unless the findings under section 9(c) [of the CPSA] are supported by substantial evidence on the record taken as a whole." In addition, such rules must be issued in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. 553, and other applicable statutes.

The Safety Standard for Walk-Behind Power Lawn Mowers was promulgated by the Commission on February 26, 1979, as a result of a vote by the Commissioners on February 5, 1979. At the time of the filing of this petition for an 18-month extension of the effective date (August 17, 1979), the petitioners had not filed a brief or made any other communication to the Commission of their reasons for why the standard should not be upheld on judicial review. Therefore, at the time of the filing of this petition, there was no reason advanced by OPEI to support its claim that the petitions "raise substantial questions as to the merits of the standard and the manner in which it was promulgated."

The Commission's findings under section 9(c) of the CPSA were discussed at length in the **Federal Register** notice that issued the final rule, as were possible alternative means of achieving safety and the reasons for adopting the provisions of the final rule. The Commission believes that the record in this proceeding clearly supports the rule's provisions.

The views of the public were also solicited in formulating the provisions of the final rule. In response to the proposal of May 5, 1977, the Commission received 118 written comments. An informal proceeding to receive oral comments on the proposal was held on June 12, 1977. Those persons who submitted comments by August 12, 1977, were given a further opportunity until September 6, 1977 to submit comments on oral or written comments that were submitted by others (42 FR 34892). In addition, the Commission received a number of late comments, which it considered; and the Commission's staff held several public meetings to discuss various issues concerning the lawn mower proposal. Also, on November 2, 1978 (43 FR 51038), the Commission requested additional comments on the data it had received concerning the safety and reliability of brake-clutch mechanisms. Twenty-one additional written comments were received in response to this request, and these comments were addressed. Also addressed were oral comments on this issue that were presented during a proceeding held on December 11, 1978.

Comments on the proposal were submitted by individual lawn mower manufacturers, the lawn mower industry trade association, private testing laboratories, private inventors, individual consumers, and a consumer testing organization.

The Commission concludes that the notice and comment provisions of the Administrative Procedure Act have been amply complied with in this case.

For the reasons stated above, the Commission does not agree that there is a substantial likelihood that the petitions for review will succeed on the merits.

To support its request for an extension of the effective date of the standard, OPEI notes that the economic effect of the standard will be large and that the portion of the retail price of mowers that is attributable to the standard will be almost $200,000,000 during the first year the standard is in effect. OPEI also contends that the capital expenditures by the industry for retooling will be a major burden. These figures, however, assume that the judicial proceeding will not be resolved before the industry will have to make retooling expenditures and, in the case of the cited retail price impact, that manufacturers will proceed to sell mowers that comply with the standard to consumers. As will be explained below, these assumptions may not be accurate.

Available information indicates that the following schedule approximates the time periods that are required for manufacturers to produce mowers that comply with the performance requirements of the present standard: (*See* Research Report on Economic Impact of Proposed Safety Standard for Power Lawn Mowers, Battelle Columbus Laboratories, December 30, 1976.)

Activity	Time required (months)
Redesign appropriate systems and components	1-4
Build prototype of modified unit incorporating design changes	2
Test design	4
Redesign and incorporate change	1-3
Modify prototype and test redesigned models	2
Complete final design and release for production tooling	1-2
Order and receive production tooling	6-8
Manufacture components and assemble first production units	2
Test first production units	2-3
	21-30

Based on the above timetable, in order to produce complying mowers by September 1981, manufacturers must make final design and order production tooling 10 to 15 months before September 1981, or somewhere between June and November of 1980. This lead time may be lengthened if major changes in mower decks are required or if many lawn mower manufacturers order components at the same time from the same component manufacturers.

Brake-clutch and engine suppliers are subject to a similar timetable. One major engine supplier has indicated to the Commission that his firm will require one year to develop a final heavy flywheel engine design and another year to order and receive tooling and begin production. The other major engine supplier already produces heavy flywheel engines. The major engine producers should now be in the process of developing designs and planning for increased production of heavy flywheel engines for brake-clutch mowers.

Brake-clutch manufacturers should also be well into the development phase. Some have final designs, and are planning to expand their production to meet the needs of the walk-behind mower markets. For both engine and brake-clutch manufacturers, commitments to production tooling will have to be made in the next 9 to 14 months. If engine and brake-clutch manufacturers have not received firm orders for the necessary components, they may be delaying their tooling decisions.

From the information available to the Commission, therefore, it appears that major capital expenditures will not be incurred by manufacturers and component suppliers until the period from June through October of 1980. Until that time, manufacturers of mowers, engines, and brake-clutch devices will continue to incur incremental costs for research and development. If the standard is set aside by the Court, the manufacturers will have to write off these expenditures to the extent that they do not proceed with the production of mowers that comply with the standard. It appears that some of these costs would be absorbed by the manufacturers and some of the costs would be passed on to consumers. Since manufacturers would always have the option of passing the costs on to consumers, it cannot be said that they

would suffer any irreparable harm if the effective date of the standard is not extended at this time. The Commission also notes that an extension could create a competitive disadvantage for manufacturers who have already made good faith efforts to comply with the standard.

As explained above, if the standard is set aside, and if manufacturers do not incorporate a blade stopping feature in the absence of a mandatory requirement to do so, the expenses incurred by manufacturers in preparing to meet the standard will cause retail price increases to consumers. Even if firm commitments for retooling had been made, however, the retail price impact should be considerably less than that required to comply with the standard. The possibility that these expenses will result in a price increase to consumers that is not accompanied by an increase in the safety of mowers must be weighed against the fact that large numbers of serious injuries are occurring with the mowers that are presently on the market, and that it is essential that some mower improvements be made to reduce the number of injuries that are occurring. The Commission believes that it would be speculative to conclude that the standard may be set aside upon judicial review and that the possibility of this occurrence is greatly outweighed by the need for a standard to be in effect as soon as possible.

The Commission notes that the economic impact on the affected manufacturers and consumers could be minimized if the judicial proceeding is concluded prior to the time at which substantial commitments are made for retooling or parts orders. In this regard, the Commission observes that OPEI's request for a stay in the effective date was made more than 6 months after the Commission voted to issue the standard. Also, OPEI has made no attempt to expedite the pending petitions for review. In fact, OPEI requested and received a 2½ week extension of the time for filing its brief. The Commission would be willing to join with OPEI in a request to the Court that oral argument be set as soon as feasible after filing of the briefs.

OPEI also contends that approximately 20 companies would discontinue their lawn mower business as a result of the standard and that total lawn mower sales would decline almost 20 percent. These figures appear to be based on an estimate of the economic effect of an early version of the standard, which included garden tractors, riding mowers, and reel mowers within the scope of the standard and which addressed a number of hazards in addition to blade contact. The Commission expects that, after the standard is in effect, the dollar volume of mower sales will increase slightly and the unit volume would decrease 10–15 percent. The Commission also believes that the number of firms leaving the industry will be somewhat less than the 20 mentioned in the petition and the adoption of the standard might create an opportunity for other firms to enter the field. These possible effects were fully considered by the Commission in its determination that the provisions of the standard were reasonably necessary and in the public interest.

In any event, these effects noted by OPEI will not be fully realized unless the standard goes into effect and, to that extent, the figures are not persuasive that the effective date of the standard should be extended at this time.

2. *The interrelatonship of requirements addressing thrown objects and blade contact injuries.* In the form in which the standard was proposed (44 FR 23052; May 5, 1977), the standard contained requirements intended to protect against the risk of injury caused by objects propelled by the rotating blade. After the comments on the proposal were received, the Commission decided to initially proceed to issue requirements for walk-behind mower blade contact injuries only and to issue any requirements addressing thrown objects injuries or riding mowers at a later time. The Commission acknowledged, however, that there may be design interlationships between the blade stop and foot probe requirements, addressing blade contact injuries, and any requirements addressing thrown objects. The Commission indicated that it expected to be able to issue thrown objects requirements by the end of 1979 and that such requirements would have the same effective date as the blade contact requirements (December 31, 1981).

In its petition to extend the effective date, OPEI refers to the separate consideration of blade contact requirements and thrown objects requirements, and notes that the schedule originally forecast by the Commission will not be met. OPEI argues that the economic impact of both sets of requirements will therefore be greater than that originally predicted by the Commission and the contractors and that the effective date of the blade contact requirements should be extended to obviate the need for double tooling costs that might be incurred in making any modifications required to comply with a thrown objects requirement.

The Commission is presently conducting a thorough evaluation of the actions that could be taken to address thrown objects injuries, and it is not possible at this time to predict with any degree of certainty when appropriate requirements might be issued. While the Commission acknowledges that there may be increased costs associated with having separate effective dates for the blade contact requirements and thrown objects requirements, the Commission cannot justify delaying the benefits to consumers that will be caused by the anticipated reduction in blade contact injuries as a result of the standard that has been issued.

The Commission's staff anticipates that the retail price impact of having separate effective dates for blade contact and thrown objects requirements should not exceed about $2 per mower. It is possible, however, that high capital costs would be imposed on certain firms and that some firms may decide to cease mower production as a result. However, not all thrown objects design solutions will necessarily require major retooling. In many cases, new parts or shields may be sufficient, and the petition does not substantiate the assertion that a major retooling will be necessary.

These economic effects of issuing a thrown objects standard at a later time will be thoroughly evaluated by the Commission in deciding whether to issue thrown objects requirements and in determining the appropriate effective date for those requirements.

3. *Possible amendment to incorporate hand probe requirements as an alternative to blade stopping time requirements.* At the time of the filing of this petition to extend the effective date of the standard, OPEI described a petition that it intended to file asking the Commission to amend the standard to allow mowers whose blades are inaccessible as determined by a specified probe intended to simulate the human hand but which do not comply with the blade stopping time requirement. This latter petition (No. CP 79–13) was filed by OPEI on September 12, 1979, and the Commission estimates that it will at least be mid-December, 1979, before the staff has completed its evaluation of this petition and the Commission has had an opportunity to vote on whether to begin a proceeding to amend the standard to provide for the use of hand probes.

OPEI first presented a preliminary proposal for hand probes and associated test procedures to the CPSC on March of 1978. The staff evaluation of this

proposal disclosed major deficiencies in the probe configurations and test procedure and concluded that OPEI's proposal could not be used as the basis for the development of mandatory hand probe requirements.

In the fall of 1978, shortly before the Commission was to consider the issuance of the final standard, the industry, through OPEI, renewed its efforts to incorporate provisions for hand probes into a final standard. The industry suggested that adequate and supportable blade accessibility test criteria and requirements could be developed within six months, that the Commission should cooperate with the industry in developing these tests, and that the Commission should delay issuance of a final standard until these tests could be incorporated into the standard. The industry began its development effort in December of 1979.

After considering OPEI's proposal for hand probes prior to issuing the final standard, the Commission concluded that, based on the information available at that time, requirements for such probes were not feasible. In the **Federal Register** notice that issued the final standard, the Commission stated:

> * * * [I] t is not clear that criteria for the construction and manipulation of such probes, sufficient to reproduce the range of actions that could be developed with the resources that may be available. Also, the time required for development of such probes, the development of proposed mandatory requirements, the response to comments that are received on the proposal, and the issuance of a final standard would be excessive in view of the number of ongoing injuries caused by contact with blades of power mowers. For these reasons, and because of the limited resources of the Commission, the Commission concludes that performance requirements of the type suggested by the mower industry trade association are not feasible for proposal as mandatory requirements.

The Commission did indicate, however, that it would permit the staff to cooperate with the industry effort and that, if suitable probes were developed, the Commission would consider whether the probes were appropriate for inclusion in the mandatory standard and would consider at that time whether an extension of the effective date of the standard was appropriate.

Ten months after the industry effort was begun, OPEI submitted its hand probe petition, which suggested a specific hand probe and various test procedures. As explained above, the Commission's evaluation of this petition is not yet complete. It is premature to speculate on the results of the full evaluation of the hand probe petition at the time. However, the Commission believes that since it will make a decision on whether to amend the standard to allow for a hand probe alternative before manufacturers will need to invest large sums for retooling, it is preferable for manufacturers to continue to expend incremental costs for research and development than to grant an extenstion that will have the effect of delaying the effective date by at least one full production year. (Even a 6 month extension during pendency of the hand probe petition would result in a delay in the production of complying mowers of 1 full production year since the normal production year runs from late summer to spring.)

It the Commisssion decides to initiate a proceeding to amend the standard in response to OPEI's hand probe petition, however, the Commission would also consider at that time whether a change in the present effective date of the standard is appropriate.

4. *Is the present effective date reasonable?* OPEI contends that the present effective date of the standard is unreasonable for the following reasons:

1. That, although the effective date of the standard is December 31, 1981, because the normal production year begins in the late summer or early fall, the manufacturers would actually have to comply with the standard by the summer of 1981.

2. That this effective date eliminates an important summer testing season.

3. That manufacturers will not have time to develop and test devices that comply with the standard's requirements.

4. That additional time is needed to develop and confirm the reliability of the devices required by the standard.

These arguments were fully considered by the Commission at the time of issuance of the standard. Upon consideration of the arguments in this petition and other available information, the Commission concludes that the development schedule set out above is adequate for manufacturers to develop or obtain the components necessary to comply with the standard before the production year that begins just prior to the effective date of the standard. The Commission's reasons for this determination were completely set out in the **Federal Register** notice that issued the final standard.

In order to demonstrate the difficulty in producing brake-clutch units, OPEI's petition also states that none of the commercially available brake-clutch units have performed without a hazardous failure. However, the information available to the Commission clearly shows that reliable brake-clutch units can be developed and produced before the effective date of the standard, as discussed in the **Federal Register** notice issuing the standard.

Conclusion

After considering the petition (CP 79–12) submitted by OPEI, and other information available to the Commission, and in view of the public interest in having the protection of the standard as soon as reasonably possible, the Commission denies the petition for the reasons explained above. However, if the Commission grants petition CP 79–13, also submitted by OPEI, it will consider whether any change in the effective date of the standard is warranted at that time.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

December 3, 1979.

[FR Doc. 79–37509 Filed 12–5–79; ;8:45 am]

BILLING CODE 6355–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 231

[Release No. 33–6157]

Disclosure of Management Remuneration by Certain Foreign Private Issuers; Interpretive Guideline

AGENCY: Securities and Exchange Commission.

ACTION: Publication of an interpretive guideline.

SUMMARY: The Commission publishes an interpretive guideline for the disclosure of management remuneration by certain foreign private issuers. Although domestic issuers are generally required to disclose the total remuneration and other benefits paid to or accrued for certain of the highest paid directors and officers, the staff has not objected to the disclosure of such information on an aggregate group basis by certain foreign issuers. This guideline publishes that interpretation.

EFFECTIVE DATE: January 7, 1980.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus or Ronald Adee, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202/272–3246) or (202/272–3250).

SUPPLEMENTARY INFORMATION: The Commission today authorized the publication of Guide 63, "Disclosure Relating to Management Remuneration By Certain Foreign Private Issuers," of

the Guides For the Preparation and Filing of Registration Statements Under The Securities Act of 1933 (15 U.S.C. 77a et seq., as amended by Pub. L. 94–29 (June 4, 1975)) (the "Securities Act"). In a separate release under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. 94–29 (June 4, 1975)) (the "Exchange Act"), Release No. 34–16371, also published today, the Commission adopted Form 20–F, an integrated registration and annual report form authorized for use by certain foreign private issuers. Guide 63 is consistent with the provisions of Form 20–F pertaining to disclosure of management remuneration.

In Securities Act Release No. 33–5880 (November 2, 1977) (42 FR 58676, November 10, 1977), the Commission published for comment a proposed Guide 63 that would have required the identity of each director and the three highest paid officers and the total dollar amount of direct remuneration and related benefits paid or accrued for that named group in the aggregate. That proposal is not included in Guide 63 published today. Guide 63, like all existing guidelines for preparing Securities Act registration statements, is not a Commission rule nor does it bear the Commission's official approval. Rather, it represents the policies and practices that are followed by the Division of Corporation Finance in administering the disclosure requirements of the Securities Act.

Discussion

Historically, certain disclosure accommodations have been made under both the Securities Act and the Exchange Act for certain foreign private issuers.[1] One of these accommodations is in the area of management remuneration where aggregations for the entire officer-director group in lieu of disclosures relating to individuals have been permitted.[2] Such individual management remuneration disclosures are not generally required in foreign countries. Prior Forms 20 and 20–K and the new Form 20–F specifically provide this accommodation. Unlike registration and reporting forms adopted under the Exchange Act, no special forms have been adopted under the Securities Act for foreign private issuers. Notwithstanding the absence of any specific accommodation provision in the registration statement forms under the Securities Act, the staff historically has followed the specified requirements in Forms 20 and 20–K with respect to disclosures of management remuneration in registration statements filed under the Securities Act and has not objected to group management remuneration information where individual management remuneration information is not required by, or otherwise made in, the applicable foreign jurisdictions.

In Exchange Act Release No. 34–14128 (November 2, 1977) (42 FR 58684, November 10, 1977) proposing Form 20–F, the Commission proposed to modify the historical accommodations by requiring the identification by name of the three highest paid directors and officers and the aggregate remuneration paid to them. Guide 63, proposed in Securities Act Release No. 33–5880 (November 2, 1977), was consistent with the proposed Form 20–F. However, as explained in Exchange Act Release No. 34–16371, the Commission has decided to retain the traditional accommodations to certain foreign issuers concerning their disclosure of management remuneration. Accordingly, the final version of Guide 63 conforms to the requirements of the adopted Form 20–F.

Guide 63 permits disclosure of only the aggregate remuneration and related benefits paid to or accrued for all directors and officers as a group unless foreign law or regulations require such disclosure on an individual basis.

Text of the Guide

Guide 63. Disclosures Relating To Management Remuneration by Certain Foreign Private Issuers

Various registration forms contain items requiring the disclosure of information with respect to remuneration, pension, retirement, options to purchase securities and similar benefits paid to, accrued for, held by and proposed to be paid in the future to certain designated officers and directors on an individual basis. Non-North American private issuers may respond to the remuneration and related benefits items by indicating the aggregative payments paid or accrued to all directors and officers as a group. However, if the registrant discloses to its shareholders or otherwise makes public, pursuant to applicable foreign laws or regulations or stock exchange requirements or otherwise, the information specified in these items for individually named directors and officers, then such information should also be disclosed in response to these items.

Authorization of Publication for Guide

The Commission hereby authorizes publication of Guide 63 and, accordingly, it is added to 17 CFR Part 231, pursuant to the Securities Act of 1933 particularly Sections 7 and 10 thereof. [Secs. 7, 10, 48 Stat. 78, 81, 15 U.S.C. 77g and 77j.]

By the Commission.

George A. Fitzsimmons,

Secretary.

November 29, 1979.

[FR Doc. 79–37401 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

[1] Historically, Canadian and other North American private issuers have been treated, generally, the same as domestic issuers for the purposes of registration and reporting under both Acts. The primary exception is in connection with registration pursuant to Section 12(g) of the Exchange Act and subsequent reporting under Section 13(a) of that Act where Canadian and other North American foreign private issuers generally are treated similarly to other foreign private issuers. This distinction will be continued in the proposed guide.

[2] For example, Item 4(a) of Regulation S–K (17 CFR 229.20) requires disclosure of the identity of and the amounts paid to the five highest paid directors and officers whose total remuneration exceeds $50,000.

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17 CFR Part 239

[Release No. 33–6156]

Short Form for Registration of Securities for Rights Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments which revise the short form for the registration of securities to expand its usage by certain foreign private issuers for certain rights offerings to security holders.

EFFECTIVE DATE: January 7, 1980.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus or Ronald Adee, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202/272–3246) or (202/272–3250).

SUPPLEMENTARY INFORMATION: The Commission announces amendments to Form S–16 [17 CFR 239.27], a form for the registration of certain securities under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)]. The amendments extend the availability of the Form S–16 for use in rights offerings to security holders by certain foreign private issuers.

Discussion

These amendments were published for comment in Securities Act Release No. 33–5879 (November 2, 1977) (42 FR 58677, November 10, 1977) in conjunction with Form 20–F, the proposed integrated registration

statement and annual reporting form for certain foreign private issuers under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a, et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)].[1] The subject proposals were made conditional on the adoption of that proposed form.[2] The proposals were premised upon the concept that the foreign issuer's annual report would be comparable in form and content to an annual report filed by a domestic issuer on Form 10–K [17 CFR 249.310]. In a concurrent release,[3] the Commission is announcing the adoption of new Form 20–F. The disclosure requirements therein have been reduced somewhat from those proposed. Nevertheless, the Commission has determined to adopt the proposals to amend Form S–16 substantially as proposed as an initial step in the resolution of the problems associated with exclusion of United States investors from direct participation in unregistered rights offerings by foreign issuers. Although no commentators objected to the proposals, several questioned its usefulness since the proposed Form 20–F was tantamount to preparing a Form S–1 annually which is more frequent than rights offerings. The reduced requirements of the Form 20–F should alleviate this concern. Under the amendments adopted today, Form S–16 will be available for registration by certain foreign issuers of securities to be offered upon the exercise of outstanding rights granted on a pro rata basis to existing holders by the issuer of the securities underlying the rights.

Except as discussed below, issuers using Form S–16 for rights offerings would continue to be required to satisfy the eligibility conditions for the use of Form S–7 (17 CFR 236.26). Four of these conditions are generally that issuers (1) be organized in the United States, (2) have their principal business operations in the United States, (3) if foreign, file the same reports under the Exchange Act as domestic issuers and (4) if a Section 15(d) reporting company, have furnished to security holders a report containing the information called for in Rule 14a–3(b) [17 CFR 240.14a–3(b)] and Part II of Form 10–K. In order to enable foreign private issuers to use Form S–16 for rights offerings, the amendments adopted today exempt such issuers from these conditions [4] and require their compliance with either of two alternative conditions. The first is that the issuer shall have furnished or will furnish with the prospectus, to all its security holders who are residents of the United States, including those holding under American Depositary Receipts or similar arrangements, a copy of the issuer's latest annual report to security holders, if in the English language. As a part of this condition, the issuer must also undertake either in the annual report to security holders or in the prospectus, that upon the written request of any such United States holder, the holder will be sent a copy of the issuer's latest annual report filed with the Commission under the Exchange Act on new Form 20–F. It is understood that this provision would impose an obligation on the issuer to take appropriate steps to assure that the disclosure documents would be transmitted to the beneficial owners when the securities are held by nominees or depositories. As an alternative to the foregoing condition, the issuer might simply furnish with the prospectus a copy of its latest annual report filed with the Commission on Form 20–F.

EFFECTIVE DATE: The amendments contained in this release shall be effective January 7, 1980. Eligible foreign issuers may then use Form S–16 for rights offerings as soon as they file an annual report on Form 20–F which may be filed prior to the time it would otherwise be required.

Text of the Amendments

The text of the amendments is set forth below:

Form S–16 (17 CFR 239.27), is amended as follows:

§ 239.27 Form S–16, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

A. Rule as to use of Form S–16

* * * * *

3. *Rights Offerings.* Securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered, provided such rights are granted on a pro rata basis to all existing securityholders of the class of securities to which the rights attach. A foreign private issuer (as defined in Rule 3b–4(c) of the Exchange Act, 17 CFR 240.3b–4(c)) which satisfies all of the provisions of the Rule as to Use of Form S–7, except the provisions in General Instruction A(a) of Form S–7 relating to incorporation and principal business and the filing with the Commission of the same type of reports filed by domestic issuers and the provision in General Instruction A(b)(3), may register rights offerings on this form, provided such foreign issuer:

(i) Furnished previously or furnishes with the prospectus to all its securityholders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, copies of its latest annual report to securityholders, if in the English language, and such annual report to securityholders or the propsectus contains the issuer's undertaking to send promptly to any such United States holder, upon written request, a copy of the issuer's latest annual report filed with the Commission under the Exchange Act on Form 20–F; or

(ii) Furnishes with the prospectus a copy of its latest annual report filed with the Commission under the Exchange Act of Form 20–F.

* * * * *

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 658; sec. 1, 79 Stat. 1051; 15 U.S.C. 77f, 77g, 77j, 77s(a))

Statutory Authority: The foregoing action is taken pursuant to the Securities Act of 1933, particularly sections 6, 7, 10 and 19(a) thereof.

Dated: November 29, 1979.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–37402 Filed 12–5–79; 8:45 am]

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17 CFR Parts 240 and 249

[Release No. 34–16371]

Rules, Registration and Annual Report Form for Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to forms and rules.

SUMMARY: The Commission announces the adoption of amendments to the registration statement, periodic report, and annual report forms authorized for use by certain foreign private issuers. The amendments consolidate the registration and annual report forms into a single form and increase the disclosure requirements presently applicable to foreign private issuers.

The amendments to the periodic report form basically require English translations of certain documents furnished or otherwise disseminated to securityholders. The rules governing the periodic report form authorized for foreign private issuers are amended to make that form unavailable to essentially United States companies. The Commission is also adopting amendments to the rule which presently

[1] Exchange Act Release No. 34–14128 (November 2, 1977) (42 FR 58684, November 10, 1977).

[2] Contemporary proposals to extend the use of Form S–16 for rights offerings by domestic and North American foreign issuers which otherwise satisfy the eligibility conditions to its use were adopted previously. Securities Act Release No. 33–5923 (April 11, 1978) (43 FR 16672, April 19, 1978).

[3] Exchange Act Release No. 34–16371.

[4] These conditions will not be waived, however, in connection with the use of Form S–16 for other primary offerings, including the sale of any securities not taken down by existing security holders in rights offerings.

exempts certain foreign securities from the proxy, tender offer and insider trading provisions of the Securities Exchange Act to limit such exemptions only to the proxy and insider trading provisions.

EFFECTIVE DATE: For registration statements and Form 6–K reports filed after December 31, 1979 and for annual reports relating to fiscal years ending on or after December 31, 1979. The amendments to Rules 3a12–3, 13a–16 and 15d–16 will be effective on December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202/272–3246) or Ronald Adee (202/272–3250), Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 500 N. Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announces the adoption of Form 20–F, amendments to Form 6–K (17 CFR 249.306), and Rules 3a12–3 (17 CFR 240.3a12–3), 13a–16 (17 CFR 240.13a–16) and 15d–16 (17 CFR 240.15d–16). Form 20–F, which consolidates and replaces the existing Forms 20 (17 CFR 249.220) and 20–K (17 CFR 249.320), is the registration and annual report form available for use by certain foreign private issuers[1] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)]. Form 20–F generally calls for narrative disclosure somewhat less extensive than Forms 10 (17 CFR 249.210) and 10–K (17 CFR 249.310) but which nevertheless is a substantial increase in the disclosure required by Forms 20 and 20–K.[2]

Form 6–K, an interim reporting form, is amended to require English translations or English versions of material press releases and information sent to foreign securityholders. Rule 3a12–3 is revised so that the tender offer provisions of Section 14 of the Exchange Act will apply to the securities of certain foreign private issuers. The amendments to Rules 13a–16 and 15d–16 prohibit the use of Form 6–K by essentially United States registrants which are also prohibited from using Form 20–F.

The proposed version of these forms and rules was published for public comment in Exchange Act Release No. 34–14128 (November 2, 1977) (42 FR 58684, November 10, 1977) (the "1977 Release"). As proposed, the forms would have required disclosure substantially equivalent to that received from domestic issuers. The Commission had previously solicited the views of the public concerning this general concept as a way of improving the disclosures then required by Forms 20 and 20–K.[3]

In a concurrent release, Exchange Act Release No. 34–16372, the Commission is withdrawing proposed amendments to Guides 1 and 2 and is deferring action on proposed amendments to Guide 3 of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Exchange Act (the "Exchange Act Guides"), which would have applied the Exchange Act Guides to registration statements and reports filed by foreign private issuers.

General Statement

Under the federal securities laws, the Commission's primary mandate is that of investor protection. Thus, United States investors in foreign securities should be supplied with information equal as nearly as possible and practicable to that provided to investors in securities of domestic issuers.

The task of assessing appropriate disclosure requirements for foreign issuers is an important one. The world capital markets are becoming increasingly international in nature. Not only the Commission, but the other organizations discussed below are today concerned with the examination and reevaluation of the general systems of securities regulation in international markets. The Commission believes that this examination should be a continuing and evolutionary one and that its action, herein announced, represents an important step, but only a step, in the harmonization of international disclosure standards.

The amendments announced today represent a significant improvement in the amount of information required of foreign issuers in the United States, placing their required disclosures on a level closer to that required of domestic issuers. At the same time, the Commission recognizes that there are differences in various national laws and businesses and accounting customs which the Commission should take into account when assessing disclosure requirements for foreign issuers. As will be noted, significant reductions in the proposed disclosure requirements have been made in the areas of most concern to foreign issuers.[4] The public commentary has been helpful to the Commission. Not only have significant changes been made in the major aspects of the requirements as proposed, but also almost every item in its new Form 20–F has been modified to reflect suggestions made to the Commission.

The forms and rules adopted and amended herein are of general application and have thus been considered by the Commission. The Commission recognizes, however, that at times registrants may find themselves in circumstances where particular requirements may, in their view, be inappropriate. In such instances, the Commission, through its Division of Corporation Finance, stands ready to discuss formal or informal modifications of requirements as applied to the circumstances of a particular registrant. In this regard, the Commission will maintain its traditionally flexible approach and attitude in administering the disclosure requirements for foreign issuers to avoid undue hardship in particular cases.

The developing unification of international capital markets has caused other organizations to explore the harmonization of disclosure and financial reporting standards. Notable among these organizations are three public organizations, the Organization for Economic Cooperation and Development ("OECD"), the European Economic Community ("EEC") and the United Nations Commission on Transnational Corporation ("UN"), and one private organization, the International Accounting Standards Committee ("IASC"). The Commission has reviewed and been influenced by the standards proposed or adopted by these organizations and believes its present action is broadly consistent therewith. The Commission will continue to encourage and participate to the extent practical with the work of these organizations.

The amendments adopted today also represent another step in the Commission's continuing efforts to integrate further the corporate disclosure requirements under the federal securities laws by permitting information provided to investors pursuant to the disclosure requirements of the Exchange Act to be relied upon in lieu of disclosure which would otherwise be required in registration statements under the Securities Act of

[1] Rule 3b–4 (17 CFR 240.3b–4) defines foreign private issuer as any foreign issuer other than a government.

[2] The Commission is also announcing amendments to Form S–16 (17 CFR 239.27) and publishing Guide 63. For a discussion of these amendments, see Securities Act Releases No. 33–6156, and 33–6157 respectively.

[3] Exchange Act Release No. 34–13056 (December 10, 1976) (41 FR 36992, December 15, 1976) (the "1976 Release"). The public comments received in response to both releases are available for public inspection in File S7–661.

[4] These areas are: industry segment reporting, time of filing requirements, management remuneration and English translations of documents furnished with periodic reports.

1933 (the "Securities Act") (15 U.S.C. 77a et seq., as amended by Pub. L. 94–29 (June 4, 1975)). In this connection, the Commission today announced in a concurrent release [5] the adoption of amendments to Form S–16 (17 CFR 239.27) under the Securities Act to permit use of that form for rights offerings by certain foreign issuers.

I. Summary of Public Comments

The Commission received 54 letters commenting on the general concept of substantially equivalent disclosure for foreign and domestic issuers,[6] and 61 letters commenting on the specific proposals.[7] Since many commentators responded to each release, the total number of commentators on both releases was 88.[8]

The foreign private issuer commentators, with one exception, generally were opposed, in whole or part, to the proposed Form 20–F. A number indicated that they would be compelled to re-evaluate their participation in the United States capital markets in terms of their own benefits and costs if the proposals were adopted. Others were critical of the imposition of increased requirements after they had become subject to the reporting requirements of the Exchange Act. The major disclosure proposals to which the foreign issuers objected were those relating to financial reporting on an industry segment basis, particularly with respect to profitability, and the disclosure of management remuneration on an individual basis. Other major objections included the proposal to reduce the filing period for the annual report from six to four months after the close of the fiscal year, the proposed requirement for English translations of all documents furnished with Form 6–K and the general increased costs of compliance. The cost objections related primarily to the costs involved in implementing accounting systems to obtain indusrty segment information and, particularly in the case of Japanese issuers, to increased costs that would be necessitated for United States consultants and translators.

The remaining non-issuer commentators, with several exceptions, also were opposed to the proposals. Their major objections included the following: the lack of any showing of abuses based on present disclosure requirements; the lack of empirical data relating to perceived benefits of or need for the proposed requirement; the lack of any showing of competitive disadvantage to domestic issuers; the perceived reluctance and/or refusal of foreign issuers to comply with the proposals if adopted and the consequent impairment of the United States capital market for foreign securities, the international flow of capital and investment opportunities for United States investors; and the imbalance of costs and benefits. The general consensus of this group of commentators was that the Commission should withdraw its proposals or, prior to any definitive decisions, hold public hearings and/or increase contacts with appropriate foreign organizations with the objective of setting acceptable international standards of disclosure and financial reporting. Generally, these commentators identified disclosure compliance problems of foreign issuers without rejecting the concept of more meaningful disclosure per se.

Some of the commentators suggested alternative approaches such as: reciprocal or country-of-origin treatment, deference to international standards to be developed, application only to future registrants or reporting issuers, differentiations between foreign issuer which have made public offerings in the United States and those only listing securities on United States stock exchanges, differentiation between issuers in the developed and the less developed countries, differentiation based on whether debt or equity securities ar invovled and consideration of other factors, including whether the foreign issuers are regulated by specific governmental authorities in their domiciles and thus subject to specialized reporting requirements of such authorities. A number of commentators indicated that accommodations, provisions for specific relief and transitional periods would be necessary before certain of the proposed disclosure requirements could be met by foreign companies. Other commentators stressed the importance of maintaining separate registration and reporting forms for foreign issuers to assure that future amendments to the counterpart domestic forms would not be applied automatically to foreign issuers without specific consideration.

The Commission and its staff have considered carefully all public comments received and alternatives suggested. In addition, as previously noted, consideration was also given to the various disclosure guidelines being developed or already promulgated by various international and regional organizations, including particularly those of the OECD,[9] the EEC [10] and the UN.[11] As a result, significant revisions have been incorporated in the amendments adopted today, particularly in Form 20–F. The Commission believes that the Form 20–F reflects the approach of these guidelines and requires disclosure in comparable detail. Certain of the suggested alternatives have been followed, but in modified form. For example, in certain cases reference is made to foreign law and requirements as the basis for disclosure in the Form 20–F.

Overall, the Commission has endeavored to act in a way consistent with the harmonization of international standards, seeking to require the disclosure of material information while acknowledging legitimate concerns raised by differing national requirements and practices.

Synopsis

The following brief synopsis is intended to assist interested parties to understand the amendments adopted.

A. General Instructions

As proposed, annual reports on Form 20–F would have been required to be filed within four months after the end of the registrant's fiscal year. Many commentators explained that foreign registrants need more time to prepare their annual report since they must first comply with applicable foreign regulations which often allow more than four months time in which to furnish annual reports to shareholders. Consequently, General Instruction A(c) has retained the present requirement that the annual report must be filed within six months after the end of the registrant's fiscal year.

B. Narrative Disclosure

The narrative disclosure called for by Form 20–F contains more disclosure items than the previously existing Forms 20 and 20–K but fewer disclosure items than required by Form 10–K. Except as noted below, the adopted disclosure items generally are as proposed in Exchange Act Release No. 14128.

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[5] Securities Act Release No. 33–6156.

[6] The 1976 Release.

[7] The 1977 Release.

[8] The summary, discussed in this section, relates primarily to comments received in response to the specific proposals in the 1977 Release. See that release for a summary of the comments received on the 1976 Release.

[9] E.g. "Guidelines For Multinational Enterprises," (1976) and "Minimum Disclosure Rules Applicable To All Publicly Offered Securities," (1976).

[10] E.g. "The Fourth Directive On Annual Accounting," (1978); "The Sixth Directive On Publication Of Prospectus When Securities Are Admitted To Official Stock Exchange Quotation," (Proposed); "Seventh Directive On Group Accounts," (Proposed); and "The Eighth Directive Auditing Practices," (Proposed).

[11] Report of the Group of Experts of International Standards of Accounting and Reporting, UN Document E/C 10/33 (1977).

Item 1. Description of Business.—Item 1, Description of Business, was proposed to be substantially identical to the business description in the then contemporary Form 10–K, now Item 1 of Regulation S–K [17 CFR 229.20]. However, the adopted item is based on Form S–18 which calls for less extensive business disclosure than Regulation S–K. The item adopted recognizes that foreign jurisdictions do not generally require the level of disclosure contemplated by Regulation S–K.

Virtually all foreign issuers commented that they would be unable, and in some cases, unwilling, to comply with the industry segment requirements as proposed. The proposed industry segment disclosure requirement has been modified to require quantitative disclosure on a revenue basis only with a narrative discussion requirement if revenue and profit contributions of the respective segments differ significantly.

Item 2. Summary of Operations and Management's Discussion and Analysis.—The proposed requirement for a five year Summary of Operations and a related Management's Discussion and Analysis of the Summary has not been adopted. As announced in Exchange Act Release No. 15068 (August 16, 1978) [43 FR 37460, August 23, 1978], the Commission is presently considering amendments to the Form 10–K, including the requirements relating to the Summary of Operations and the Management's Discussion and Analysis. Consequently, the Commission has decided to adopt a requirement for an analysis of the income statements filed as part of the Form 20–F and to consider whether any revisions in that requirement would be necessary when the final requirements for the Form 10–K have been developed.

Item 3. Description of Property.—As proposed, this item was substantially similar to the description of property item in the Form 10–K as in effect in 1977 prior to the promulgation of Item 2 of Form S–K and Rule 3.18(k) of Regulation S–X.[12] Paragraph (a) of Item 3, calling for a general description of the registrant's property, was adopted as proposed except for the deletion of a discussion of property on an industry segment basis.

Two commentators, both major oil companies, vigorously opposed the proposals. Notwithstanding their objections, the Commission believes that reserve and production information is important to investors in oil and gas companies and that disclosure of such information would not unduly burden these registrants.

The item as adopted and the related appendix require, as a minimum, general information about the quantities of reserves and production of registrants involved in oil and gas operations. Moreover, such registrants must either comply with Rule 3.18 of Regulation S–X or discuss the differences between that Rule and the principles used. The discussion should state the effects of the differences if practicable.

Item 4. Control of Registrant.—If the registrant's voting securities are in registered rather than bearer form, disclosure must be made of all beneficial owners of more than ten percent of registrant's stock and of the aggregate beneficial ownership of directors and officers as a group. This item, as proposed and adopted, is otherwise substantially the same as Item 6 of Regulation S–K except that the ownership percentage requiring disclosure has been raised to ten percent from five percent to be consistent with international guidelines.

Item 5. Directors and Officers.—This item requires only a list of the names and positions with registrant for each director and officer. The proposed extensive disclosure of their business experience and general background was deleted primarily because it is inconsistent with the requirements of many foreign jurisdictions and international guidelines.[13]

Items 6 and 7. Remuneration of and Options Granted to Directors and Officers.—The proposed version of these items would have required (a) identification of the three highest paid officers or directors, and the aggregate remuneration and similar benefits paid to that group, and (b) aggregate remuneration and similar benefits paid to all directors and officers as a group. However, the remuneration and similar benefits paid to specified individuals would not have been required to be disclosed unless mandated by foreign law or regulation.

Taking into account the large critical comment this proposal engendered and for the reasons given by those commentators, the Commission has decided to delete the specific requirement for the identification of the three highest paid directors or officers and the aggregate amount paid to them. The items as adopted conform to the present disclosure practices of foreign issuers in registration statements filed under the Securities Act and in the Forms 20 and 20–K.

Item 8. Pending Legal Proceedings.—This item was adopted substantially as proposed except for the deletion of the requirement relating to the disclosure of environment litigation.

Item 9. Nature of Trading Market.—This item, as proposed and adopted, requires a description of the principal trading market outside the United States for the registrant's securities.

Items 10, 11 and 12. Description of Securities.—These three items require a brief description of the terms of the securities being registered. These items were adopted as proposed.

Item 13. Exchange Controls.—This item, similar to an existing item in the Form 20, requires a brief description of any limitations of a United States security-holder's right to receive dividends or interest payments or right to vote.

Item 14. Taxation.—This item, adopted as proposed, requires a brief description of the taxes to which United States security holders are subject and any relevant tax treaties.

Item 15. Changes in Securities.—This item, adopted as proposed, requires a description of material changes in the terms of the registered security or a substitution of the assets securing the registered security.

Item 16. Defaults upon Senior Securities.—This item requires identification of any defaults on senior securities. It was adopted as proposed.

Item 17. Interest of Management in Certain Transactions.—As proposed, this item would have required a description of material transactions between the registrant and its management similar to that specified in Items 4(e) and (f) of Regulation S–K. The Commission has decided to condition the disclosure of such information on its being made public pursuant to foreign laws or otherwise. All the proposed instructions were deleted because foreign law and regulations will provide the basis for disclosure.

Financial Statements.—The financial statements filed as part of the Form 20–F are not required to comply with United States generally accepted accounting principles or Regulation S–X. However, a discussion of the differences of the principles used from United States generally accepted accounting principles and Regulation S–X is required.

Exhibits.—The exhibits required to be filed are substantially the same as those required by the Form 10–K. In the proposed Form 20–F, Item 4 would have required a list of all parents and subsidiaries. As adopted, Instructions A.7 and B.4 only require that such a list

[12] 17 CFR 210.3–18. This rule relates to the financial accounting and reporting for oil and gas producing activities.

[13] This information is perhaps most relevant in proxy solicitation. Most foreign issuers are exempt therefrom, however, by Rule 3a12–3.

be provided upon request by the Commission. Several commentators strongly objected to the proposal since in many foreign countries operations are customarily carried through a large number of affiliated companies. The Commission agrees with these commentators that in many situations a detailed description of such affiliations would not assist investors, but the Commission believes that this information should be provided if warranted by the circumstances.

C. Proposals Deleted

The following proposed items have not been adopted because the information they would have required was largely irrelevant to United States investors in foreign securities, disclosed elsewhere in the Form 20–F or because of other reasons: (1) Item 2: Summary of Operations, (2) Item 12: Recent Sales of Unregistered Securities, (3) Item 18: Indemnification of Directors and Officers, (4) Item 21: Increases and Decreases in Outstanding Securities and Indebtedness, (5) Item 22: Submission of Matters to a Vote of Security Holders, (6) Item 23: Acquisition or Disposition of Assets, (7) Item 24: Changes in registrant's Certifying Accountant, and (8) Item 25: Reports on Form 6–K.

D. Form 6–K and Rules 13a–16 and 15d–16

Foreign private issuers entitled to file annual reports on Form 20–F are not required to file the quarterly reports on Form 10–Q [17 CFR 249.308a] or current reports on Form 8–K [17 CFR 249.308] as domestic issuers are. Rather, such foreign issuers furnish Form 6–K reports which require the furnishing of information and material to investors made public pursuant to foreign law, stock exchange regulations or distributed to security holders.

Recognizing that many of these documents required to be furnished in Form 6–K reports are in a foreign language, the Commission desired to make these reports more useful to United States security holders and market intermediaries by proposing that all documents, papers, and exhibits furnished with the report be either translated into English or summarized in an English version. Many foreign issuer commentators objected to this proposal on the basis of the costs involved in translating these documents and concern for legal liability in the event of inaccurate translations. The proposals as well as the present Form 6–K requirements were also criticized on the basis that documents or reports furnished, because of differing customs and practices particularly in the financial reporting area, might be considered misleading and otherwise result in unnecessary and burdensome submissions.

As adopted, Form 6–K requires English translations, versions or summaries only of information distributed to security holders and of material press releases. Other types of information and documents need be furnished only if English translations, versions or summaries are prepared by the issuer. The Commission believes that this compromise will benefit United States shareholders and at the same time alleviate to a great extent the concerns of and burdens on foreign issuers.

Rules 13a–16 and 15d–16 prescribe the requirement to furnish Form 6–K for foreign private issuers subject to Rules 13a–1 [17 CFR 240.13a–1] and 15d–1 [17 CFR 240.15d–1], the annual report requirements for issuers with securities registered under Section 12 of the Exchange Act and for issuers with effective registration statements under the Securities Act, respectively. The Commission adopts the proposed amendments to Rules 13a–16 and 15d–16 which, in conformity with the General Instructions to Form 20–F, prohibit essentially United States companies from using Form 6–K.

E. Rule 3a12–3

Rule 3a12–3 by its terms presently exempts from Sections 14 and 16 of the Exchange Act the securities of certain foreign issuers.

The Commission is adopting amendments to Rule 3a12–3 which would: (1) delete reference to Form 21 which was repealed as of June 30, 1967; [14] (2) change the reference therein to former Form 20 to Form 20–F; (3) make clear that the exemption applies only with respect to securities actually registered pursuant to section 12 and for which such registration on the specified forms was authorized and (4) make clear that the exemption applies only to the provisions respecting proxy solicitations and the furnishing of information statements.

The third of those amendments is intended to conform the rule with prior staff intepretations to the effect that (a) the exemption from the proxy solicitation and information statement provisions of Section 14 and the insider trading provisions of Section 16 does not apply to those securities which, although required to be registered, are not so registered and (b) the exemption would not be lost if the issuer voluntarily registers the securities and/or files periodic and annual reports on the more demanding registration and reporting forms prescribed for domestic issuers.

The fourth of those amendments is to correct an oversight in not amending the rule when Congress, in 1968, adopted the "Williams Act Amendments" which added sections 13(d), 13(e), 14(d), 14(e), and 14(f) to the Exchange Act.[15] These sections govern the acquisitions of or tender offers for securities registered under Section 12 of the Exchange Act. The Commission is of the view that it would be contrary to the public interest and the protection of United States investors to continue the present literal exemption for securities of foreign issuers from the acquisition and tender offer provisions of the Act.[16] These latter provisions are as important to those United States investors who invest in securities of foreign issuers as to those who invest in the securities of domestic issuers, as well as to the issuers of such foreign securities.

F. Guides for the Preparation and Filing of Reports and Registration Statements Under the Securities Exchange Act of 1934

The Commission also published for comment proposals clarifying that the Exchange Act Guides apply to foreign private issuers. These Guides are Guide 1, Summary of Operations; Guide 2, Disclosure of Extractive Reserves and Natural Gas Supplies; and Guide 3, Statistical Disclosure by Bank Holding Companies.

These proposals are not adopted. The application of Guides 1 and 2 is preempted by items in the Form 20–F. Item 2 of the Form 20–F requires a modified version of the Management's Discussion and Analysis. Item 3 and the Appendix specify the required disclosure of reserves and production for registrants in extractive industries. Since comments are being solicited on Guide 3, the Commission believes that it would be inappropriate to apply Guide 3 to foreign issuers at the present time. Therefore, the proposals relating to Guides 1 and 2 are withdrawn but action on Guide 3 is deferred.[17]

Certain Findings

In publishing the 1977 proposals, the Commission specifically invited comments with respect to: (1) whether

[14] Exchange Act Release No. 34–8067 (April 28, 1967), 32 FR 7851 (May 30, 1967).

[15] Pub. L. 90–439, 82 Stat. 454–547 (15 U.S.C. 77m (d), (e), 78n (d), (e), (f)).

[16] However, the exemption from Section 14(f) of the Exchange Act is retained since that provision is related to the proxy solicitation provisions of Section 14 from which these foreign issuers remain exempt.

[17] Release No. 34–16372.

the cost of the proposals to an issuer outweigh their benefits to investors and the public interest; and (2) the adverse impact or burdens of the proposals on competition which are neither necessary nor appropriate in furthering the purposes of the Exchange Act.

Since many of the amendments adopted represent significant relaxations from the proposals, especially those relating to industry segment information and the English translations of documents, the commentators' concern with cost has been alleviated. In any event, the Commission finds that the costs imposed on issuers by the rules and forms adopted herein are not unreasonable and are outweighed by the benefits which will accrue to investors.

As required by section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the rules and forms adopted herein will have on competition. The Commission finds that compliance by issuers and affiliates with these actions will not impose any significant burden on competition. In any event, the Commission has determined that any possible competitive burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these actions to investors.

Text of the Amendments

Parts 240 and 249 of Chapter 11 of Title 17 of the Code of Federal Regulations are amended as follows:

1. Section 240.3a12–3 is revised to read as follows:

§ 240.3a12–3 Exemption from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

(a) Securities for which the filing of registration statements on Form 18 [17 CFR 249.218] are authorized shall be exempt from the operation of sections 14 and 16 of the Act.

(b) Securities registered under section 12 of the Act on Form 20 [17 CFR 249.220] or Form 20–F [17 CFR 249.220F] or on Form 8–A [17 CFR 249.208a] or Form 8–B [17 CFR 249.208(b)] in lieu of Forms 20 or 20–F or for which registration on such forms were so authorized shall be exempt from the operation of sections 14(a), 14(b), 14(c), 14(f), and 16 of the Act except that this paragraph shall not apply if at the end of the last fiscal year of the issuer (1) more than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States, and (2) the business of such issuer is administered principally in the United States or 50 percent or more of the members of the Board of Directors are residents of the United States. For the purpose of this paragraph the term "resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee or the depositary as being located in the United States.

(c) Securities registered under section 12 of the Act on Forms 16 [17 CFR 249.216] or 19 [17 CFR 249.219] shall be exempt from the operations of sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act if the securities deposited pursuant to the voting trust or other agreement are so exempt pursuant to paragraph (b) of this section.

2. Paragraphs (a) (1) and (2) of § 240.13a–16 are revised to read as follows:

§ 240.13a–16 Reports of foreign private issuers on Form 6–K [17 CFR 249.306].

(a) Every foreign private issuer which is subject to Rule 13a–1 [17 CFR 240.13a–1] shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file quarterly reports pursuant to Rule 13a–12 [17 CFR 240.13a–12];

(2) Foreign private issuers not authorized to use Form 20–F [17 CFR 249.220F] for annual reports required by Rule 13a–1; or

* * * * *

3. Paragraphs (a) (1) and (2) of § 240.15d–16 are revised to read as follows:

§ 240.15d–16 Reports of foreign private issuers on Form 6–K [17 CFR 249.306].

(a) Every foreign private issuer which is subject to Rule 15d–1 [17 CFR 240.15d–1] shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file quarterly reports pursuant to Rule 15d–12 [17 CFR 240.15d–12];

(2) Foreign private issuers not authorized to use Form 20–F [17 CFR 249.220F] for annual reports required by Rule 15d–1; or

* * * * *

§§ 249.220 and 249.320 [Deleted]

4. Sections 249.220 and 249.320 are deleted and their provisions consolidated into a new § 249.220f reading as follows:

§ 249.220f Form 20–F, for registration of securities of foreign private issuers pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934, and for annual reports of foreign private issuers filed pursuant to Sections 13 or 15(d) of that Act.

(a) This form is to be used for registration pursuant to Section 12 of the Securities Exchange Act of 1934 of any class of securities of any foreign private issuer except that it shall not be used by:

(1) Any North American issuer if (i) the securities are to be registered pursuant to Section 12(b) of the Act; (ii) if the securities are to be registered under Section 12(g) of the Act as a result of the termination of the exemption provided by Rule 12g3–2(d) [17 CFR 240.12(g)3–2(d)]; or (iii) the issuer has had the same or any other class of securities registered pursuant to Section 12 of the Act on Form 10 [17 CFR 249.210], or Form 8–A [17 CFR 249.208a] or Form 8–B [17 CFR 249.208b] in lieu of Form 10 within one year prior to the date on which the registration statement is filed or required to be filed under Section 12(g); or

(2) Any foreign private issuer if at the end of the last fiscal year of the issuer (i) more than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (ii) the business of such issuer is administered principally in the United States or 50 percent or more of the members of the Board of Directors are residents of the United States.

(b) This form is to be used for annual reports of foreign private issuers filed under Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 pursuant to Rule 13a–1 [17 CFR 240.13a–1] or 15d–1 [17 CFR 240.15d–1] except that it shall not be used by:

(1) Any North American issuer:

(i) Which has any class of securities registered pursuant to Section 12 of the Act on Form 10, or on Forms 8–A or 8–B in lieu of Form 10; (ii) which is filing the report pursuant to Section 15(d) of the Act; (iii) whose obligation to file reports pursuant to Section 15(d) of the Act is suspended as a result of the registration of a class of securities pursuant to Section 12(g) of the Act; or (iv) which has registered securities under Section 12(g) of the Act as a result of termination of the exemption provided by Rule 12g3–2(d); or

(2) Any foreign private issuer if at the end of the fiscal year being reported on (i) more than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (ii) the business of such issuer is administered principally in the United States or 50 percent or more of the members of the Board of Directors are residents of the United States.

(c) Annual reports on this form shall be filed within six months after the end of the fiscal year covered by such report.

Copies of the adopted Form 20–F will be forwarded to all foreign private issuers presently filing annual reports on Form 20–K. Copies of the Form 20–F have been filed with the Office of Federal Register and additional copies may be obtained from the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

5. The General Instructions to Form 6–K are revised as follows:

§ 249.306 Form 6–K, report of foreign issuer pursuant to rules 13a–16 (§ 240.13a–16 of this chapter) and 15d–16 (§ 240.15d–16 of this chapter) under the Securities Exchange Act of 1934.

* * * * *

B. Information and Document Required to be Furnished

Subject to General Instruction D herein, an issuer furnishing a report on this form shall furnish whatever information, not previously furnished, such issuer (i) is required to make public in the country of its domicile or in which it is incorporated or organized pursuant to the law of that country, or (ii) filed with a foreign stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributed to its security holders.

The information required to be furnished pursuant to (i), (ii), or (iii) above is that which is significant with respect to the issuer and its subsidiaries concerning: changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of security holders; and any other information which the registrant deems of material importance to security holders.

* * * * *

C. Preparation and Filing of Report

This report shall consist of a cover page, the document or report furnished by the issuer, and a signature page. Eight complete copies of each report on this form shall be deposited with the Commission. At least one complete copy shall be filed with each United States stock exchange on which any security of the registrant is listed and registered under Section 12(b) of the Act. At least one of the copies deposited with the Commission and one filed with each such exchange shall be manually signed. Unsigned copies shall be conformed.

D. Translations of Papers and Documents Into English

Reference is made to Rule 12b–12(d) (17 CFR 240.12b–12(d)). Information required to be furnished pursuant to General Instruction B in the form of press releases and all communications or materials distributed directly to securityholders of each class of securities to which any reporting obligation under Section 13(a) or 15(d) of the Act relates shall be in the English language. English versions or adequate summaries in the English language of such materials may be furnished in lieu of original English translations.

Notwithstanding General Instruction B, no other documents or reports, including prospectuses or offering circulars relating to entirely foreign offerings, need be furnished unless the issuer otherwise has prepared or caused to be prepared English translations, English versions or summaries in English thereof. If no such English translations, versions or summary have been prepared, it will be sufficient to provide a brief description in English of any such documents or reports. In no event are copies of original language documents or reports required to be furnished.

* * * * *

(Secs. 3, 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; Proc. No. 2695, 60 Stat. 1352; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; secs. 1, 2, 6, 28(a), 28(b), 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 121, 155; 15 U.S.C. 78c, 78*l*, 78m, 78o(d), 78w(a))

Statutory Authority for Amendments

The amendments to Forms 20, 20–K and 6–K and to Rules 13a–16 and 15d–16 are adopted pursuant to Sections 12, 13, 15(d) and 23(a) of the Exchange Act. The amendments to Rule 3a12–3 are adopted pursuant to Sections 3(a)(12), 12(b), 12(h), 13, 14, 15(d), and 23(a) of the Exchange Act.[18]

By the Commission.

George A. Fitzsimmons,

Secretary.

November 29, 1979.

[FR Doc. 79–37399 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

[18] Forms filed as part of the original document.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 79–307]

Leather Handbags From Colombia; Revocation of Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Revocation of Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that the countervailing duty determination on leather handbags from Colombia is being revoked because the subsidies paid to exporters and/or manufacturers of this merchandise have been eliminated and there is no likelihood of resumption.

EFFECTIVE DATE: Exports on or after November 15, 1979.

FOR FURTHER INFORMATION CONTACT: Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220, telephone (202) 566–2951.

SUPPLEMENTARY INFORMATION: A notice entitled "Leather Handbags from Colombia; Final Countervailing Duty Order," T.D. 78–125, was published in the **Federal Register** of May 2, 1978 (43 FR 18660). That notice stated that it had been determined that manufacturers and/or exporters of leather handbags from Colombia received benefits which constituted the payment or bestowal of a bounty or grant, within the meaning of Section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), by virtue of the granting of a tax rebate certificate, known as a "CAT", by the Government of Colombia upon export of the subject merchandise. Accordingly, imports of leather handbags from Colombia were subject to countervailing duties.

Concurrent with the above determination, a notice entitled "Waiver of Countervailing Duties—Handbags from Colombia", T.D. 78–124, concerning the subject merchandise was published in the **Federal Register** (43 FR 18659). The waiver was conditioned on the gradual elimination of the net bounty determined by Treasury through actions taken by Colombian handbag exporters to renounce their receipt of the benefit. This renunciation has already occurred.

Subsequent to the waiver, due to facts brought to light in a separate countervailing duty determination involving *Certain Textiles and Textile Products from Colombia* (43 FR 53525),

Treasury determined that there was an additional benefit received by Colombian handbag exporters after reconsidering two allowances earlier permitted. Those allowances involved the effective reduction of the value of the CAT through its discount in the stock exchange and its further reduction due to currency devaluation. This resulted in additional bounty of 0.6 percent *ad valorem* for exporters of handbags from Colombia.

As of November 15, 1979, the Colombian handbag exporters renounced the additional benefit, leaving no further "net subsidy" derived from the tax rebate certificate program. The Government of Colombia will continue to provide Treasury with quarterly reports confirming the renunciation of benefits. Accordingly, it is determined that a bounty or grant within the meaning of Section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), is no longer being paid or bestowed upon the manufacture, production or exportation of leather handbags from Colombia, and there is no likelihood of resumption of the payment or bestowal of a bounty or grant on such merchandise.

T.D. 78–125 is hereby revoked with respect to all entries of dutiable leather handbags exported from Colombia on or after November 15, 1979; entries of this merchandise exported prior to that date are still eligible for the waiver of countervailing duties. Customs officers will be instructed to proceed with liquidation of all entries of the subject merchandise without regard to countervailing duties.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47)) is amended by deleting from the column headed "Country", the name "Colombia"; from the column headed "Commodity", the words "Handbags" and "Leather Handbags"; from the column headed "Treasury Decision," the numbers "78–124" and "78–125"; and from the column headed "Action", the words "Bounty declared-rate" and "Imposition of countervailing duties waived".

(R.S. 251, Sections 303, as amended, 624, 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101–5, May 16, 1979, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and Section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of revocation order by the Commissioner of Customs, are hereby waived.

David R. Brennan,

Acting General Counsel of the Treasury.

November 30, 1979.

[FR Doc. 79–37499 Filed 12–5–79; 8:45 am]

BILLING CODE 4810–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 31a, 31b, 31g, and 31h

Indian Education

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This document confirms the effective date for final rules previously issued by the Bureau of Indian Affairs and published by the **Federal Register** on (1) Indian Education Policies; (2) Transfer of Indian Education Functions; (3) Indian School Equalization Program; and (4) Education Personnel. The effective date for final rules must be published in the **Federal Register** to fulfill requirements of the Office of Federal Register and to inform the public.

EFFECTIVE DATE: Parts 25 CFR 31a and 31b, are effective November 23, 1979; Part 25 CFR 31g, is effective December 24, 1979; and Part 25 CFR 31h, is effective December 10, 1979.

FOR FURTHER INFORMATION CONTACT: Rick C. Lavis, Deputy Assistant Secretary, Department of the Interior, 18th and C Streets, NW., Washington, D.C (202) 343–7163.

SUPPLEMENTARY INFORMATION: The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9) and redelegated to the Assistant Secretary for Indian Affairs by 209 DM 8.

The final rule documents for Parts 31a, 31b, 31g, and 31h were previously published in the **Federal Register** without an effective date to comply with the statutory language of Section 1138 of the Education Amendments of 1978 (Public Law 95–561). The effective date for each of the following parts of 25 CFR has been determined to be: (1) November 23, 1979, for 25 CFR 31a, Indian Education Policies, previously published in 44 FR 58096 dated October 9, 1979; (2) November 23, 1979, for 25 CFR 31b, Transfer of Indian Education Functions, previously published in 44 FR 58101 dated October 9, 1979; (3) December 10, 1979, for 25 CFR 31h, Indian School Equalization Program, previously published in 44 FR 61848 dated October 26, 1979; and (4) December 24, 1979, for 25 CFR 31g, Education Personnel, previously published in 44 FR 65008 dated November 8, 1979.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

November 28, 1979.

[FR Doc. 79–37500 Filed 12–5–79; 8:45 am]

BILLING CODE 4310–02–M

25 CFR Part 112a

Management of Osage Judgment Funds for Education and Socioeconomic Programs

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Amendment of final rule.

SUMMARY: This document changes date and time requirements relative to the establishment of an Osage Tribal Education Committee as published in the **Federal Register** at 43 FR 37175, August 22, 1978, as amended (43 FR 55759). Those regulations require that an Osage Tribal Education Committee "be selected and convene their first meeting within (90) days after these regulations become final." However, extreme delays have resulted from complex conditions surrounding administration of the $1 million. Those delays have prevented fulfillment of the (90) day time requirement. Therefore, the Bureau extends the time requirement for selecting the committee and convening their first meeting.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Ramona Osborne, Bureau of Indian Affairs, Office of Indian Education Programs, Washington, D.C. 202–343–7387.

SUPPLEMENTARY INFORMATION: The substantive provisions of the regulations are not changed by this amendment, therefore, no comments have been sought from the public.

The primary author of this document is Ramona L. Osborne, Education Specialist, Office of Indian Education Programs, BIA, Washington, D.C. (202) 343–7387.

PART 112a—MANAGEMENT OF OSAGE JUDGEMENT FUNDS FOR EDUCATION AND SOCIOECONOMIC PROGRAMS

Accordingly, paragraph (c) of § 112a.5 of 25 CFR is revised to read as follows:

§ 112a.5 Establishment of Osage Tribal Education Committee.

* * * * *

(c) The committee shall be selected and convene their first meeting on a date early enough to enable awards to begin with the second semester of the 1979–80 academic year.

* * * * *

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

November 23, 1979.

[FR Doc. 79-37646 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1356-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the Illinois State Implementation Plan which was proposed in the **Federal Register** on May 7, 1979 (44 FR 26765). The revision requires Commonwealth Edison Company to bring particulate emissions from coal fired boilers at its Kincaid Generating Station located near Sicily in Christian County, Illinois into compliance with a 0.1 pound paticulate per million BTU heat input emission limitation by October 31, 1981. Until that time Edison must limit particulate emissions to .3 lb. particulate per million BTU heat input for Edison's Kincaid Units No. 1 and No. 2. In addition Edison must construct, install and begin operation of new particulate removal control equipment and a new chimney at its Kincaid Station by October 31, 1981, and report its progress to the Illinois Environmental Protection Agency every three months starting September 1, 1978.

The supporting documentation submitted by the State of Illinois demonstrates that this SIP revision will not interfere with the attainment and maintenance of National Ambient Air Quality Standards for particulate matter.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Maxine Borcherding, State Implementation Plan Coordinator, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: On December 1, 1977 Commonwealth Edison Company (Edison) filed a petition for a variance from the emission limit for particulate matter for its coal-fired steam-powered electric generating station in Christian County, Illinois, commonly known as Kincaid Station. The variance was requested from Rule 203(g)(1)(B) of the Illinois Pollution Control Board Rules and Regulations for Air Pollution and extended the date for final compliance to October 31, 1981.

On July 20, 1978 the Illinois Pollution Control Board granted Edison's variance petition. The Order was submitted to USEPA as a site specific revision to the Illinois State Implementation Plan on August 14, 1978. On May 7, 1979, (44 FR 26765) the Administrator published a Notice of Proposed Rulemaking on this revision to the Illinois State Implementation Plan and invited public comment. Interested parties were given until June 6, 1979 to submit written comments on the proposed SIP revision. No comments were received.

Final approval of this revision to the Illinois State Implementation Plan is the subject of today's rulemaking. The revision was submitted to the Environmental Protection Agency after notice and public hearings were held in accordance with the procedural requirements of 40 CFR 51.4 and 51.6.

The Proposed SIP revision limits particulate emissons to .3 lb. of particulate per million BTU actual heat input from Kincaid Units No. 1 and No. 2 until October 31, 1981. During this period Edison shall construct, install and begin operation of new particulate removal control equipment and a new chimney at its Kincaid Station and report its progess to the Illinois Environmental Protection Agency every three months starting September 1, 1978.

The revision is effective upon publication (date of publication). The Administrator finds good cause for making this revision effective immediately as the compliance schedule is already effective in the State of Illinois and Federal approval imposes no additional requirement on the affected source.

After review of all relevant materials, the Administrator has determined that the proposed revision meets requirements of section 110(a)(3) of the Clean Air Act and EPA regulations in 40 CFR Part 51.6. The proposed revision is legally enforceable, will not interfere with attainment or maintenance of the NAAQS and has been subjected to reasonable notice and public hearing; accordingly the revision is approved.

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

Subpart O—Illinois

1. Section 52.720 is amended by adding a new paragraph (c)(14) as follows:

§ 52.720 Identification plan.

* * * * *

(c) The plan revision[s] listed below were submitted on the date specified.

* * * * *

(14) Revision consisting of an Illinois Pollution Control Board Order issued on July 20, 1978 to Commonwealth Edison Company, Christian County, Illinois and submitted on August 14, 1978 by the Illinois Environmental Protection Agency.

(42 U.S.C. § 7410)

Dated: November 16, 1979.

Barbara Blum,

Acting Administrator.

[FR Doc. 79-37498 Filed 12-5-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1369-5]

California State Implementation Plan Revision: Tuolumne County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

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

EFFECTIVE DATE: January 7, 1980.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano, (415) 556–2938.

SUPPLEMENTARY INFORMATION: On May 31, 1977 (42 FR 27618), EPA published a Notice of Proposed Rulemaking for revisions to the Tuolumne County APCD's rules and regulations submitted on February 10, 1977 by the California

Air Resources Board for inclusion in the California SIP.

The changes contained in the above mentioned submittal that are being acted upon by this notice include the following:

(a) New rules to control pathological incineration and abrasive blasting;

(b) Amended rules for controlling open outdoor fires including agricultural burning, and visible emissions;

(c) Several administrative changes in the procedures before the hearing board;

(d) Minor wording and renumbering changes to several rules; and

(e) Renumbering changes to sections of the California Health and Safety Code.

The Notice of Proposed Rulemaking provided for a 30-day public comment period. No comments were received.

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions. All rules submitted have been evaluated in accordance with 40 CFR Part 51. The revisions approved in this action are consistent with all EPA requirements.

It is the purpose of this notice to approve all of the revisions contained in the February 10, 1977 submittal, and incorporate them into the California SIP, with the exception of those rules discussed below.

No action is being taken on Rule 307, *Exceptions to Rule 306.* Action on this rule will be taken in a separate Federal Register notice.

Rule 207, *Particulate Matter,* combines and condenses existing Rules 404 and 407(b) and exempts woodfired boilers and incinerators from the existing 0.1 grain per cubic foot emission limitation. Since the change establishes a less stringent emission rate than previously required and no control strategy demonstration was submitted to show that this revision will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), the rule is disapproved. The previously approved Rules 404 and 407(b), submitted on June 30, 1972, remain in effect.

The applicability of Rule 209, *Fossil Fuel-Steam Generator Facility,* is now restricted by limiting its force to facilities burning fossil fuel. This exempts a potentially significant source of pollution, namely, wood-fired boilers. Because no control strategy demonstration has been submitted to show that this revision will not interfere with the attainment and maintenance of the NAAQS, the rule is disapproved. The previously approved Rule 408, submitted on June 30, 1972, remains in effect.

Rule 322, *Mechanized Burners,* exempts open burning by mechanized burners from the "no burn day" requirement. As no control strategy demonstration was submitted to show that this revision will not interfere with the attainment and maintenance of the NAAQS, the rule is disapproved.

EPA is approving Regulation VII as a procedure for the granting of variances; however, each variance must satisfy the requirements of Section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by the EPA as a revision to the SIP.

In addition, the revocation of Rule 413, *Organic Liquid Loading* and Rule 414, *Effluent Oil Water Separators* is disapproved. No control strategy demonstration was submitted to show that this revocation will not interfere with the attainment and maintenance of the NAAQS.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

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 the regulations being acted upon in this notice and determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

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

Date: November 29, 1979.

Douglas M. Costle,

Administrator.

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

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(37)(v)(B) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(37) * * *

(v) * * *

(B) New or amended rules 102, 202, 203, 206, 207, 208, 209, 213, 215, 216, 217, 301, 302, 303, 304, 308, 319, 321, 322, 323, 324, 402, 407, 409, 601, 602, 603, 604, 605, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, and 717 and rescinded rules 413 and 414.

* * * * *

2. Section 52.226 is amended by adding paragraphs (b)(3)(iii) and (iv) as follows:

§ 52.226 Control strategy and regulations: Particulate matter, San Joaquin Valley Intrastate Region.

* * * * *

(b) * * *

(3) * * *

(iii) Rule 207, *Particulate Matter,* submitted on February 10, 1977, is disapproved and the previously approved Rules 404 and 407(b), submitted on June 30, 1972, remain in effect.

(iv) Rule 209, *Fossil Fuel-Steam Generator Facility,* submitted on February 10, 1977, is disapproved and the previously approved Rule 408, submitted on June 30, 1972, remains in effect.

* * * * *

3. Section 52.269 is amended by adding paragraphs (b)(1)(ii)(C) and (D) as follows:

§ 52.269 Control strategy: Photochemical oxidants (hydrocarbons) and carbon monoxide.

(b) * * *

(1) * * *

(ii) * * *

(C) The revocation of Rule 413, *Organic Liquid Loadings,* submitted February 10, 1977, is disapproved; and the previously aproved Rule 413 submitted on June 30, 1972 remains in effect.

(D) The revocation of Rule 414, *Effluent Oil Water Separators,* submitted on February 10, 1977, is disapproved; and the previously approved Rule 414 submitted on June 30, 1972, remains in effect.

* * * * *

4. Section 52.273 is amended by adding paragraph (a)(3)(x) as follows:

§ 52.273 Open burning.

(a) * * *

(3) * * *

(x) Tuolumne County APCD.

(A) Rule 322, Mechanized Burners, submitted on February 10, 1977, is disapproved.

* * * * *

[FR Doc. 79-37460 Filed 12-5-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1369-6]

Proposed Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of Maryland has submitted a proposed revision of the State Implementation Plan (SIP) consisting of a Consent Order for the Dickerson Generating Station of the Potomac Electric Power Company (PEPCO) at Dickerson, Maryland. This revision is being approved. The schedule in the order requires PEPCO to achieve compliance with Maryland's particulate regulation by April 14, 1979, and specifies other milestones which the company must meet toward that end. Installation of particulate control equipment has been completed. For sulfur dioxide, a demonstration of compliance with National Ambient Air Quality Standards (NAAQS) around the plant to the year 1985 was made by PEPCO as required by the Consent Order. Both Maryland and EPA concur that sulfur dioxide air quality standards are presently being met, and that air quality modeling shows no violations of either the NAAQS or the Prevention of Significant Deterioration (PSD) increment. If at a later time violations are found or projected, the compliance schedule provides for an expeditious conversion to low-sulfur fuel. If no violations are measured or predicted, the plant may continue to burn higher-sulfur fuel (about 1.8%) with a reevaluation every five years.

EFFECTIVE DATE: This revision will be effective December 6, 1979.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Sheridan.

Bureau of Air Quality and Noise Control, State of Maryland, 201 West Preston Street, Baltimore, Maryland 21201, ATTN: George Ferreri.

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

FOR FURTHER INFORMATION CONTACT: William E. Belanger (3AH13), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone Number 215–597–8188.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 1978, the Acting Governor of Maryland, Blair Lee III, submitted to EPA, Region III a proposed revision of the Maryland State Implementation Plan consisting of a Consent Order for the Dickerson Generating Station of the Potomac Electric Power Company (PEPCO). In his letter, the Governor certified that the order was adopted in accordance with the public hearing and notice requirements of 40 CFR 51.4 and all relevant State procedural requirements, and asked that EPA consider the Consent Order as a revision of the State Implementation Plan. The order states that PEPCO at Dickerson, as of the date of the order, was not in compliance with the State's emission limitation for particulate matter as applicable to this facility, and establishes a schedule for improvement of control equipment to ensure compliance with that limitation. The final date for compliance with the applicable particulate regulations was April 14, 1979. The particulate control systems became operational for the Number 1 and the Number 2 scrubbers on June 22, 1979, and June 30, 1979 respectively.

The order also establishes an interim increase in the allowable emission limit for sulfur dioxide (SO_2). This limit is 2.8 pounds per million BTU and is approximately equal to 1.8% sulfur-in-fuel. The existing limitation is approximately 1% sulfur.

On August 27, 1979, the Regional Administrator acknowledged receipt of these amendments and provided for a 30-day public comment period (44 FR 50066). During the period no comments were received.

II. Evaluation

The air quality impact of the proposed change was modeled for Units 1, 2, and 3 based on the 122-meter stack height which was in existence at the time of the 1970 amendments to the Clean Air Act. The conclusions of EPA with regard to attainment were drawn from three different modeling packages submitted by PEPCO at different times during the history of this proposed revision. EPA's conclusions with regard to attainment are as follows:

1. The report by H.E. Cramer Co. dated February, 1979 shows that all applicable Federal SO_2 and particulate standards will be met on the elevated terrain in the vicinity of the Dickerson plant using the Cramer model.

2. The report by TERA Corporation dated September 15, 1977 shows attainment of the Federal 24-hour SO_2 and particulate standards on the flat terrain surrounding the plant using the CRSTER model.

3. The report by Pickard, Lowe and Garrick, Inc. and INTERA, Inc. dated February 24, 1978 shows attainment of the Federal three-hour secondary SO_2 standard using a model similar to CRSTER.

4. The report by TERA Corporation dated September 15, 1977 shows attainment of the Federal annual standards for SO_2 and particulate using the AQDM and CRSTER models.

It was proposed in the August 27, 1979 **Federal Register** notice (44 FR 50066) to approve the revision based on a statistical method, which accounts for sulfur variability in the fuel, called the Method of Expected Exceedances. This was because the Cramer model showed the possibility of a violation of the 24-hour SO_2 standard in the flat terrain near the plant. Since the EPA's statistical analysis was performed, EPA policy has designated the CRSTER model as the benchmark model for single source in relatively flat terrain (see memo from Robert Neligan dated June 22, 1979. Because an earlier modeling effort using CRSTER shows no violations of the 24-hour SO_2 standard in the flat terrain around the plant, it is no longer necessary to address the modeled potential for violations predicted by the Cramer model. EPA has concluded that the proposed change shows no violations of the air quality standards whether or not fuel variability is considered. The Method of Expected Exceedances is therefore no longer a factor in the approvability of this revision.

Since this action is a SIP relaxation, an analysis of the impact on the PSD increment is required. EPA has determined that the air quality baseline as measured in 1977 and the projected air quality resulting from the proposed emission limitation are equivalent; thus no consumption of the PSD increment from this revision will occur.

Under the Order, PEPCO is required to submit new projections of SO_2 and Total Suspended Particulates air quality levels based on actual ambient air measurements and emissions, by July 1, 1979, and every five years thereafter. The Consent Order further states that if the study should find or project a violation, PEPCO will come into compliance expeditiously on a preset schedule. The analysis due July 1, 1979 was preformed by PEPCO. Evaluations by both Maryland and EPA concur with the conclusion that there are no projected violations of the NAAQS or PSD increment under the present plant configuration using the stack height previously defined.

III. EPA Action

The Agency believes that the changes covered by the Consent Order for the Dickerson Power Plant will not interfere with attainment or maintenance of the

Air Quality Standards. Therefore, the Administrator approves the Consent Order submitted by Maryland on August 8, 1978 as a revision to the Maryland State Implementation Plan, effective immediately. Concurrently, the Administrator amends 40 CFR 52.1070 (Identification of Plan) of Subpart V (Maryland) to incorporate this revision in the Maryland SIP.

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.

(42 U.S.C. 7401–7642)

Dated: November 29, 1979.

Douglas M. Costle,

Administrator.

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

Subpart V—Maryland

1. In § 52.1070 Identification of Plan subparagraph (25) is added to paragraph (c) to read as follows.

§ 52.1070 Identification of Plan.

* * * * *

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

(25) Consent Order dated July 28, 1978 between the Potomac Electric Power Company and the Department of Health and Mental Hygiene of the State of Maryland in the Circuit Court for Montgomery County (No. 49352—Equity) submitted on August 8, 1978 by Acting Governor Blair Lee.

[FR Doc. 79–37461 Filed 12–5–79; 8:45 am]

BILLING CODE 6560–01–M

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40 CFR Part 81

[FRL 1369–4]

Georgia; Redesignation of Sandersville TSP Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 24, 1979 (44 FR 49703), the Agency proposed to change the nonattainment designation of Sandersville, Georgia for Total Suspended Particulates (TSP) to attainment. This proposal was based on measured air quality data showing attainment of the national ambient air quality standards for TSP for 24 calendar months. No comments were received in response to the proposal notice. This change is made final as proposed.

EFFECTIVE DATE: These actions are effective today, December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Walter Bishop, Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, Telephone: 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: On March 3, 1979, Sandersville, Georgia was designated as nonattainment for TSP. The basis for this designation was violations of the secondary standard at the Morningside Drive site in Sandersville, Georgia.

On August 1, 1979, the director of Georgia's Environmental Protection Division submitted air quality data showing that the national ambient air quality standards for TSP were not violated at the Morningside Drive site (Sandersville) during the period July 1, 1977, through June, 1979, and requested that the status of the area be redesignated as attainment. On August 24, 1979, EPA proposed redesignation. EPA has verified that the data in question meet all applicable Agency criteria established to assure the validity and representativeness of air quality data. Accordingly, the area is redesignated as the State requests.

(Secs. 107, 171, 301, Clean Air Act (42 U.S.C. 7407, 7501, 7801))

Dated: November 29, 1979.

Douglas M. Costle,

Administrator.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, as follows: Subpart 81—Section 107 Attainment Status Designation

* * * * *

In § 81.311, the attainment status designation table for TSP is revised to read as follows:

§ 81.311 Georgia.

Georgia—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
That portion of Fulton County within northwest section of Atlanta..	X	X	.....	.....
That portion of Chatham County within the north central section of Savannah.	X	X	.....	.....
That portion of the northern part of Walker County which includes Rossville.	X	X	.....	.....
Rest of State.....	.....	.....	.....	X

[FR Doc. 79–37459 Filed 12–5–79; 8:45 am]

BILLING CODE 6560–01–M

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40 CFR Part 180

[PP 6F1817/R222; FRL 1371–2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Amitraz

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide amitraz in or on apples at zero parts per million (ppm); pears at 3 ppm; and in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at zero ppm. The regulation was requested by The Upjohn Co. This rule establishes maximum permissible levels for residues of amitraz in or on apples; pears; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep.

EFFECTIVE DATE: Effective on December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Sanders, Product Manager (PM) 12, Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, SW., Washington, DC 20460 (202/426–2635).

SUPPLEMENTARY INFORMATION: On August 5, 1976, notice was given (41 FR 32778) that The Upjohn Co., Kalamazoo, MI 49001, had filed a pesticide petition (PP 6F1817) with the EPA. This petition proposed that 40 CFR 180 be amended to establish tolerances for combined residues of the insecticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*-[[2,4-dimethylphenyl]imino]methyl]-*N*-methylmethanimidamide) and its metabolities containing the 2,4-

dimethylaniline moiety (calculated as the parent compound) in or on the raw agricultural commodities apples at 1 ppm; pears at 3 ppm; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm. No comments were received in response to this notice of filing.

On March 30, 1977, the EPA issued a notice of Rebuttable Presumption Against Registration (RPAR) of pesticide products containing amitraz (42 FR 18299–392, April 6, 1977) on the basis that amitraz met the risk criterion for oncogenic effects (40 CFR 162.11(a)(3)(ii)(A)). Amitraz was a new pesticide for which an end use had not been approved.

The petitioner and other interested persons were provided the opportunity to submit data and information to rebut the presumption. After reviewing the rebuttals, on January 12, 1979, the EPA published in the **Federal Register** a notice of determination and availability of Position Document 3 (44 FR 2678–2682). Position Document 3 analyzed the rebuttals, presented the Agency's analysis of the risks and benefits resulting from the uses of amitraz, and proposed a decision to conclude the RPAR process.

The EPA determined that in a qualitative sense, amitraz should be regarded as a carcinogen although the existing evidence is relatively weak. Therefore, the Agency concluded that the proposed uses of amitraz on apples and pears could pose a small risk of cancer to certain exposed groups. Information reviewed as to the benefits of the proposed uses indicated that there may be significant benefits from the use of amitraz on pears and insignificant or speculative benefits from its use on apples.

After weighing these risks and benefits, the Agency proposed to conditionally register amitraz on pears for four years provided that the registrant (petitioner) agreed to submit additional risk and benefit data. The Agency proposed not to register amitraz for use on apples because such use could result in unreasonable adverse effects in humans.

Comments were received from the Secretary of Agriculture on the impact of the proposed action on the agricultural economy and from the Scientific Advisory Panel (SAP) on the impact of the proposed action on health and the environment. After considering these comments, EPA concluded that no modification of its assessment of the risks and benefits of amitraz was warranted and decided to stand by its proposed decision. The EPA issued a Notice of Intent to Conditionally Register Amitraz for Use on Pears in the **Federal Register** of June 7, 1979 (44 FR 32736). The SAP and Department of Agriculture comments are discussed in detail in Position Document 4, published in the **Federal Register** of October 17, 1979 (44 FR 59938).

As a condition of registration of amitraz for use on pears, the petitioner is required to submit another mouse oncogenic bioassay within four years with annual reports of progress and test results. On May 31, 1979, in a letter to this Agency, the petitioner indicated that the oncogenicity study is scheduled to be initiated by December 1979 and submitted to the Agency in December 1982. The petitioner also agreed to voluntarily remove this product from the market should the second oncogenicity study exceed the risk criteria for chronic toxicity in 40 CFR 162.11.

Moreover, the petitioner/registrant is also required to submit additional benefits data within four years and comply with the labeling restrictions specified in Position Document 3. If the petitioner/registrant does not comply with those stipulations, the conditional registration for amitraz may be cancelled under the provisions of section 6(e) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included two-year rat and dog feeding studies with a no-observed-effect level (NOEL) of 50 and 10 ppm, respectively; a multigeneration rat reproduction study with an NOEL of 15 ppm; rat and rabbit teratology studies which were negative at 12 (highest level fed to rats) and 25 milligrams (mg)/kilogram (kg) of body weight (bw)/day, respectively and an 80-week mouse oncogenicity study, which showed weakly positive evidence of oncogenicity risks in females at 400 ppm, the highest level fed. There is some uncertainty in estimating the cancer risk from this study because of irregularities in the study which may have compromised its reliability for predicting long-term risks. The irregularities are: (1) the accidental dosing of animals with paraformaldehyde in the last 14 weeks of the study, (2) a nearly significant difference between the number of tumor-bearing females in one quadrant of cages as compared to another quadrant, and (3) the suboptimal length of the study (80 weeks instead of 104 weeks).

On the basis of the mouse study, the Agency considers the cancer risk from dietary exposure of amitraz-treated pears over the four-year registration period to be very small. If it is assumed as a worst possible case that amitraz residues would be present in all treated fresh pears at the proposed tolerance level and that all pears would be treated with amitraz, the lifetime risk of cancer from consuming fresh and processed pears is roughly estimated to be 9×10^{-6} per person. Based on the two-year dog feeding study with a 10 ppm NOEL and using a safety factor of 100, the acceptable daily intake (ADI) for man is 0.0025 mg/kg bw/day with regard to chronic effects other than oncogenicity. The proposed tolerances will utilize less than 41.3 percent of the ADI. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is calculated to be 0.0619 mg/day/1.5-kg of diet. No permanent tolerances have been established for amitraz residues.

The metabolism of amitraz is adequately understood and an adequate analytical method (gas chromatography using a flame ionization detector) is available for enforcement purposes. Restrictions and conditions of regulatory actions against amitraz are outlined in the Notice of Determination concluding the RPAR on amitraz in the **Federal Register** of January 12, 1979 (44 FR 2678) as modified by Position Document 4 (44 FR 59940). There is no reasonable expectation of secondary residues in eggs, meat, milk, or poultry as delineated in 40 CFR 180.6(a)(3) as a result of the use of amitraz on pears. Since the use of amitraz on apples would result in risks which exceed the benefits of that use and therefore would cause unreasonable adverse effects in humans, the Agency has concluded that available scientific data do not justify the establishment of an amitraz tolerance level greater than zero ppm (the no detectable level) on apples. Accordingly, the EPA has reduced the proposed tolerances in or on apples from 1 ppm to 0 ppm and in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep from 0.05 ppm to 0 ppm.

The pesticide is considered useful for the purpose for which the tolerance in or on pears is sought, and it is concluded that the tolerances of 3 ppm in or on pears and 0 ppm in or on apples and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep established by amending 40 CFR 180 will protect the public health. It is concluded, therefore, that the tolerances be established as set forth below.

Any person adversely affected by this regulation may, on or before January 7,

1980, file written objections with the Hearing Clerk, EPA, Rm. M–3708 (A–110), 401 M St. SW., Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulations deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective December 6, 1979, Part 180 is amended as set forth below.

(Section 408(d)(2), of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(d)(2)])

Dated: November 28, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

1. Part 180, Subpart C, is amended by adding the new § 180.287 to read as follows:

§ 180.287 Amitraz; tolerances for residues.

Tolerances are established for residues of the insecticide amitraz (*N'*-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)-imino]methyl]-*N*-methylmethanimidamide) and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the following raw agricultural commodities:

Commodity and parts per million: Apples—0, Cattle, fat—0; Cattle, mbyp—0; Cattle, meat—0; Goats, fat—0; Goats, mbpy—0; Goats, meat—0; Hogs, fat—0; Hogs, mbyp—0; Hogs, meat—0; Horses, fat—0; Horses, mbyp—0; Horses, meat—0; Pears—3; Sheep, fat—0; Sheep, mbyp—0; Sheep, meat—0.

2. In Title 40, Part 180, Subpart C, of the Code of Federal Regulations on page 464, § 180.287 *2-(Thiocyanomethylthio) benzothiazole; tolerances for residues* is incorrectly designated as § 180.287. The correct designation should be § 180.288. Therefore, the section is editorially revised in the heading by redesignating the section to read as follows:

§ 180.288 2-(Thiocyanomethylthio) benzothiazole; tolerances for residues.

* * * * *

[FR Doc. 79–37488; Filed 12–5–79; 8:45 am]

BILLING CODE 6560–01–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1010

Civil Rights Program Requirements of CSA Grantees; Civil Rights Regulations

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: This part prescribes the Civil Rights Program—Requirements and Procedures—for initial and refunding grants of assistance awarded by the Community Services Administration. This part is promulgated pursuant to Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, 42 U.S.C. 2000d, and section 624 of the Economic Opportunity Act of 1964, as amended, Pub. L. 88–452, as amended by Pub. L. 92–424, 42 U.S.C. 2971c. Additionally, it serves to implement Executive Order 11764 and Parts 42 and 50.3 of Title 28 of the Code of Federal Regulations.

Other regulations which serve to implement section 504 of the Rehabilitation Act of 1973 were recently published in proposed form (43 FR 28758). The comment period has ended and after publication in final form, these regulations will be integrated with this part.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Mosina Jordan, Associate Director Office of Human Rights, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, (202) 653–5675.

SUPPLEMENTARY INFORMATION: CSA has promulgated numerous civil rights requirements over the years. These are contained in various instructions, notices and guidelines. This part integrates all of CSA's Civil Rights requirements into one program. Additionally it seeks to add the requirement that every decision to make a grant of assistance be preceded by a formal determination of compliance. No application for financial assistance shall be approved unless the applicant is determined to be in compliance with Title VI of the Civil Rights Act of 1964 and this part or has agreed in writing to take specific corrective action within a specified time period in order to achieve compliance.

This part prescribes the programs and activities covered. It defines the types of prohibited discrimination and the responsibilities of applicants and grantees; it establishes the procedures for determing compliance, including the processes for pre-award and post-award reviews and complaint resolution; it outlines the procedures to bring about compliance and, where necessary, to terminate or deny assistance.

A companion document "CSA Grantees Civil Rights Program Manual" will be developed to provide grantees with details to assist them in complying with this part.

In adopting this final rule, CSA considered written comments received as a result of the publication of the proposed rule, 42 FR 18378, April 6, 1977. CSA also considered comments made by the Assistant Attorney General, Civil Rights Division, pursuant to his responsibilities as set out in 28 CFR 42.401 *et seq.*, and Executive Order 11764.

Most of the comments received from the public related to editorial modifications. The only substantive comment received from the public proposed the inclusion of a back-pay remedy under Subpart D pursuant to the authority of Section 624 of the Economic Opportunity Act of 1964, as amended. This proposal has been incorporated in the final rule in § 1010.30.4.

Frank N. Jones,

Assistant Director for Legal Affairs and General Counsel.

45 CFR Chapter X, Part 1010, is revised to read as follows:

PART 1010—CIVIL RIGHTS PROGRAM REQUIREMENTS OF CSA GRANTEES; CIVIL RIGHTS REGULATIONS

Subpart A—General

Sec.
1010.1–1 Purpose.
1010.1–2 Applicability.
1010.1–3 Definitions.

Subpart B—Discrimination Prohibited

1010.10–1 General.
1010.10–2 Discrimination prohibited—specific discriminatory actions prohibited.
1010.10–3 Discrimination prohibited—employment practices.

Subpart C—Responsibilities of Grantee

1010.20–1 Assurances.
1010.20–2 Required grantee civil rights program.
1010.20–3 Data and information requirements.

Subpart D—Conduct of Investigations and Reviews

1010.30–1 Pre-award compliance reviews.
1010.30–2 Post-award reviews.

Sec.

1010.30–3 Complaint investigations.
1010.30–4 Back-pay award.
1010.30–5 Complaints filed with State and local commissions or the U.S. Equal Employment Opportunity Commission.
1010.30–6 Intimidation.
1010.30–7 Adjustment of time limits.

Subpart E—Procedure for Effecting Compliance

1010.40–1 General.
1010.40–2 Termination of or refusal to grant or to continue financial assistance.
1010.40–3 Hearings.
1010.40–4 Decisions and Notices.
1010.40–5 Judicial review.

Subpart F—Miscellaneous

1010.50–1 Role of CSA officials.
1010.50–2 Continuing State programs.
1010.50–3 Effect on other regulations, forms and instructions.
1010.50–4 Supervision and coordination.
APPENDIX A—Federal Financial Assistance to which this part Applies Funding Authorities under the Economic Opportunity Act of 1964, As Amended.
APPENDIX B—Activities to which this part applies when a primary objective of the Federal financial assistance is to provide employment.
APPENDIX C—Application of Part 1010 to Federal Financial Assistance of Community Services Administration.

Authority: The provisions of this part are issued under section 602, 624, 603, 223 and 244 (8) of The Economic Opportunity Act, of 1964, as amended 78 stat. 528, 42 U.S.C. 2942; 86 stat. 696, 42 U.S.C. 2971C; 78 stat. 530, 42 U.S.C. 2943; 81 stat. 701, 42 U.S.C. 2837; section 602 and 603, Title VI, Civil Rights Act of 1964, 78 stat. 252, 42 U.S.C. 2000d–1; 78 stat. 253, 42 U.S.C. 2000d–2; Executive Order 11764, 28 CFR Parts 42 and 50.3.

Subpart A—General

§ 1010.1–1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and Section 624 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c, to the end that:

(a) No person on the basis of race, color, or national origin, be excluded from participation in or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Community Services Administration (CSA).

(b) No person on the ground of sex be excluded from participation in, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

(c) No person with responsibilities in the operation of a program receiving financial assistance under the Economic Opportunity Act of 1964, as amended will discriminate with respect to any such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

§ 1010.1–2 Applicability.

(a) This part applies to all grantees and their delegate agencies receiving financial assistance from CSA. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Any assistance to any individual who is the ultimate beneficiary under any such program.

(b) This part also applies to any program which is funded and administered by CSA with funds transferred from another Federal agency to CSA.

§ 1010.1–3 Definitions.

As used in this part—

(a) "CSA" means the Community Services Administration, and includes all of its organizational units.

(b) "Director" means the Director of the Community Services Administration.

(c) "Associate Director for Human Rights" means the CSA official responsible for implementing and enforcing CSA's Civil Rights program.

(d) "Responsible CSA official" with respect to any program receiving Federal financial assistance means the Director or other official of CSA who by law or by delegation has the principal responsibility within CSA for the administration of the law extending such assistance.

(e) "Title VI" means Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d–4.

(f) "United States" means the states of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Cana Zone, and the Territories and possessions of the United States, and the term "State" means any one of the foregoing.

(g) "Federal financial assistance" includes (1) grants, loans, or donation of Federal funds, (2) the grant or donation of Federal property and interest in property, (3) the detail of Federal personnel, (4) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, at a nominal consideration, or at a consideration which is reduced of the purpose of assisting the grantee, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

(h) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through an employee of the grantee or provided by others through contracts or other arrangements with the grantee, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions whch must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal resources or such non-Federal resources.

(i) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein. The provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(j) "Grantee" means any state, political subdivision, instrumentality of any state or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any state, to whom Federal financial assistance is extended directly or through another grantee. Such term does not include any ultimate beneficiary under a federally assisted program.

(k) "Grantee Board" means the entity responsible for the administration of funds received pursuant to the Economic Opportunity Act of 1964, as amended.

(l) "Applicant" means one who submits an application, request, or plan required to be approved by CSA or by a grantee as a condition of eligibility for Federal financial assistance. The term "application" means any such application, request or plan.

(m) In complying with the requirements of this part, it will be necessary to refer to persons by race, color or national origin. The following designations will be used by grantees in reporting participant characteristics:

(1) Black, not of Hispanic origin. A person having origins in any of the black racial groups of Africa;

(2) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(3) Asian or Pacific Islander. A person having origins in any of the original people of the Far East, Southeast Asia; the Indian Subcontinent, or the Pacific Islands. The area includes, for example, China, India, Japan, Korea, the Philipine Islands, and Samoa;

(4) American Indian or Alaskan Native. A person who has origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition;

(5) White, not of Hispanic origin. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(6) Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis; and

(7) Paragraphs (m) (1) through (7) of this section are in conformity with Directive #15 of the Office of Federal Statistical Policy and Standards which replaced OMB Directive A–46.

Subpart B—Discrimination Prohibited

§ 1010.10–1 General.

(a) No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefit of or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under the Economic Opportunity Act of 1964, as amended.

(c) No person with responsibilities in the operation of a program receiving financial assistance under the Economic Opportunity Act of 1964, as amended, will discriminate with respect to any such program because of race, creed, color, national origin, sex, political affiliation or beliefs.

(d) An individual shall not be deemed subjected to discrimination by reason of his/her exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, sex or national origin different from his/hers, for example, programs funded exclusively to serve on-reservation Indians.

§ 1010.10–2 Discrimination prohibited—Specific discriminatory actions prohibited.

(a) A grantee under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, sex, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different from that provided to others under the program;

(3) Subject an individual to segragation or separate treatment in any manner related to his/her receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services, or otherwise afford him/her an opportunity to do so which is different from that afforded others under the program, including the opportunity to participate in the program as an employee to the extent that employment practices are covered in § 1010.10.3; or

(7) Deny any person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(b) A grantee, in determining the type of services, financial aid, or other benefits or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under or on such program, or the class of individuals to be afforded an opportunity to participate in any such program may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, sex, or national origin, or have the effect of substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

(c) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground of race, color, sex, or national origin or with the purpose or effect of substantially impairing the accomplishment of the objectives of this part.

(d) The enumeration of specific forms of prohibited discrimination in this subpart does not limit the generality of this subpart's probibition.

(e) In administratering a program in which the grantee has previously discriminated against persons on the ground of race, color, sex, or national origin, the grantee must take affirmative action to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a grantee, in administrating a program may take affirmative action to overcome the effects or conditions which result in limiting participation by persons of a particular race, color, sex, or national origin.

§ 1010.10–3 Discrimination prohibited—Employment practices.

(a) Where a primary objective of the Federal financial assistance is to provide employment, a grantee may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities). This prohibition applies where a primary objective of the Federal financial assistance is:

(1) To reduce unemployment or to help individuals through employment to meet subsistence needs;

(2) To assist individuals through employment to meet expenses incident to the commencement or continuation of their education or training;

(3) To provide work experience which contributes to the education or training of individuals; or

(4) To provide remunerative activity to individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market.

(b) Where a primary objective of the Federal financial assistance is not to

provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulations, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(c) Where a program receives financial assistance under the Economic Opportunity Act of 1964, as amended, a grantee may not (directly or through contractual or other arrangements):

(1) Subject an individual to discrimination on the basis of sex in its employment practices in connection with the program; and

(2) In connection with any positions funded in whole or in part with funds made available under the Act, subject an individual to discrimination on the basis of race, creed, color, national origin, sex, political affiliation or beliefs.

(d) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive Order which supersedes it.

(e) Enforcement of Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part with respect to covered employment practices shall not be superseded by state and local merit systems relating to the same grantee.

Subpart C—Responsibilities of Grantee

§ 1010.20–1 Assurances.

(a) *Economic Opportunity Assurance.* Every application for financial assistance for a program under the Economic Opportunity Act of 1964, as amended, as well as every grant, contract, or agreement with respect to such program shall specifically provide:

(1) That no person with responsibilities in the operation of such programs will discriminate with respect to any such program on the basis of race, creed, color, national origin, sex, political affiliation or beliefs; and

(2) That compliance with such provision shall be determined by this part.

(b) *General.* Every application for Federal financial assistance to a program to which this subpart applies shall, as a condition to the extension of any Federal assistance, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by this part. In the case where Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the grantee, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose involving the provision of similar services and benefits, or for as long as the grantee retains ownership or possession of the property, whichever is longer. The Associate Director for Human Rights or his/her designee shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(c) *Real property.* In the case of real property, structures or improvements thereon, or interest therein, which were acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the grantee retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is acquired or improved with Federal financial assistance, the grantee shall agree to include a covenant assuring nondiscrimination in any subsequent transfer of such property. Where the property is obtained from the Federal government, such covenant may also include a condition coupled with a right to be reserved by CSA to have title to the property revert to the Federal government in the event of the breach of the covenant where at the discretion of the Associate Director for Human Rights or his/her designee such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Associate Director for Human Rights or his/her designee may agree, upon written request of the transferee to accomplish such financing, and upon such conditions as he/she deems appropriate, to forebear the exercise of such right to have title revert to CSA for so long as the lien of such mortgage or other encumbrance remains effective.

(d) *Elementary and Secondary Schools.* In the case of any program for the benefit of elementary or secondary school students which, as a necessary part of such program, utilizes to a substantial extent the facilities of an elementary or secondary school or school system, the requirements of Section 1010.20–1 shall be deemed to be satisfied if such school or school system:

(1) Is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order; or

(2) Submits a plan for the desegration of such school or school system which the Department of Health, Education and Welfare determines is adequate to accomplish the purposes of Title VI and this part within the earliest practicable time, and provides assurances that it will carry out such plan. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform with such final order, including any future modification of such order.

The provisions of this paragraph do not apply to programs for pre-school children.

(e) *Institutions of Higher Education.* In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this paragraph shall extend to admission practices and to all other practices relating to the treatment of students. The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to

the entire institution unless the institution establishes, to the satisfaction of the Associate Director for Human Rights or his/her designee that the institution's practices in designated parts or programs of the institution in no way affect the beneficiaries of or participants in the programs for which Federal financial assistance is sought. If in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1010.20-2 Required grantee civil rights program.

(a) To be eligible for funding, each CSA grantee shall have an affirmative action plan approved by the Associate Director for Human Rights or his/her designee which shall include the following:

(1) A written Equal Opportunity Policy;

(2) An Equal Opportunity Committee;

(3) An Equal Opportunity Officer;

(4) A written discrimination complaint procedure at a minimum incorporating the procedures in Subpart D, § 1010.30-3.

(5) A data-collection, record-keeping and reporting system to provide the information required by this part.

(6) A comprehensive self-analysis, which shall include a comparison of the provision of benefits on the basis of race, sex, and national origin as to the eligible racial, sexual, and national origin population.

This analysis shall also include a comparison of the grantee's employment by race, sex and national origin to the racial, sexual, and national origin characteristics of the relevant work-force. Where significant disparities are found, the recipient shall determine the reasons and, if appropriate, set forth corrective actions.

(b) The recipient of CSA financial assistance is required to implement its CSA-approved affirmative action plan and to ensure compliance with this part. At a minimum, the following requirements must be met:

(1) Each grantee board shall formally adopt an Equal Opportunity Policy and establish an Equal Opportunity Committee which shall reflect the composition of the board in regard to representation of the public, private and low-income sectors.

(2) The Equal Opportunity Committee shall review the determinations of the Equal Opportunity Officer (EOO) regarding complaints of discrimination and shall oversee the enforcement of the grantee's civil rights program.

(3) Grantees shall have at least one EOO, who shall report directly to the Board of Directors on EO matters, with responsibility for the civil rights program required by this part and such additional personnel as are necessary to carry out the requirements of this part. The EOO shall not be the Executive Director, Deputy Director or Personnel Officer. The Regional Human Rights Chief will make the determination whether the EOO will be full-time or part-time.

(4) The EOO shall undergo training as prescribed by CSA. All expenses incurred by such training shall be borne by the grantee.

(5) The EOO shall be granted the authority to carry out the following activities:

(i) Receive and attempt to resolve complaints of discrimination;

(ii) Provide aggrieved persons with information and advice on equal opportunity procedures including local, state, and Federal redress procedures, and notification of the filing deadlines for Equal Employment Opportunity Commission complaints, where applicable;

(iii) Take other steps which may assist in the resolution of a problem, prior to the filing of a formal complaint;

(iv) Assist, if requested by a complainant, in preparing a formal complaint to CSA of alleged discrimination based on race, color, creed, sex, national origin, age, handicap, political affiliation or beliefs; and

(v) Provide staff leadership in developing, implementing, and evaluating the grantee's Affirmative Action Plan (AAP).

(6) Grantees shall display, in conspicuous places, posters which summarize the rights of the employees, program participants and beneficiaries under Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part. Such posters shall describe the functions of the EOO and the procedures for filing complaints of discrimination, including the right to complain directly to CSA.

(7) In addition to the posters, each grantee shall make available information regarding the provisions of this part and its applicability to the program under which the grantee receives Federal financial assistance and make such information available in such manner as the Associate Director for Human Rights or his/her designee finds necessary to apprise such persons of the protections against discrimination assured them by Title VI, the Economic Opportunity Act, and this part.

(8) Grantee shall make its posters and other material available in a language other than English where a significant number or proportion of the population eligible to be served or likely to be directly affected a by Federally assisted program need services in another language. The Associate Director for Human Rights or his/her designee will determine when publication in a language other than English is necessary.

§ 1010.20-3 Data and information requirements.

(a) Each grantee shall collect, maintain, and, upon request of CSA, submit the information set forth in this section. All of the information set forth shall be collected unless the Associate Director for Human Rights or his/her designee grants a written exemption to any information requirement for good cause shown by the grantee.

(b) To the extent that CSA has supplied or prescribed forms for the following information such forms shall be utilized by the grantee.

(c) Grantees shall collect and maintain the following information:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of race, color, sex or national origin.

(2) The population eligible to be served by race, color, sex or national origin.

(3) The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying services to any persons on the basis of race, color, sex or national origin.

(4) The present or proposed membership by race, color, sex and national origin in any policy making or advisory body which is an integral part of the program.

(5) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary adverse impact on persons on the basis of race, color, sex or national origin.

(6) Data regarding covered employment, including use or planned use of bilingual public contact employees serving the beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English.

(7) A brief description of any of its pending applications to other Federal agencies for assistance and of assistance being provided at the time of the application or requested report.

(8) A statement describing any civil rights compliance reviews regarding the applicant or grantee conducted during the two-year period before the applicant or report, and the results of those reviews.

(d) In addition to the data and information required in § 1010.20–3(c)(1)–(8), each applicant or grantee shall:

(1) Promptly notify CSA of any lawsuits filed against the applicant or grantee alleging discrimination on the basis of race, color, sex or national origin,

(2) Maintain a log of complaints under Title VI and this part identifying each complainant by race, color, sex or national origin, the nature of the complaint, the date the complaint was filed, the date the grantee's investigation was completed and the disposition and the date of disposition; and

(3) Where CSA determines that it is necessary and appropriate for the enforcement of Title VI or this part, additional data such as demographic maps, the racial or sexual composition of affected neighborhoods, or census data will be required, however, only to the extent that the information is readily available or the requirement can be complied with by reasonable effort.

(e) *Access to Sources of Information.* Each grantee shall permit access by the responsible CSA official or his/her designee during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a grantee is in the exclusive possession of any other agency, institution or person and that agency, institution or person fails or refuses to furnish this information, the grantee shall set forth in writing the efforts it has made to obtain the information and provide this information to the CSA official requesting such information.

Subpart D—Conduct of Investigations and Reviews

§ 1010.30–1 Pre-award compliance reviews.

(a) Prior to approval of financial assistance, all applications for financial assistance shall be reviewed by the Associate Director for Human rights or his/her designee, who will make a written determination as to whether the applicant is in compliance with Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and the requirements of this part. The basis for such a determination shall be submission of an assurance of compliance and a review of the compliance data and information submitted by the applicant, and any relevant compliance review reports on file with CSA. Where a determination cannot be made from this data, the Office of Human Rights will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, communicating with local government officials or protected class organizations and field reviews.

(b) No application shall be approved unless it is determined that the applicant is in compliance with Title VI, section 624 of the Economic Opportunity Act of 1964, as amended, and this part or the applicant has agreed in writing to take necessary enumerated steps within a stated period of time to come into compliance. Such an agreement must be approved by the Associate Director for Human Rights and made a part of the conditions of the grant.

(c) If the grantee fails or refuses to enter into such an agreement, the Associate Director for Human rights shall notify the recipient and the Assistant Attorney General for Civil Rights in writing of:

(1) The preliminary findings setting forth the reasons for the applicant's noncompliance;

(2) The actions necessary to come into compliance; and

(3) The fact that the applicant has 10 days to come into compliance and that the applicant may provide during this time a documentary submission responding to, rebutting, or denying the allegations raised in the notice to them.

(d) If within this 10-day period the applicant has not complied with the actions set forth to come into compliance, or voluntary compliance has not been secured, or has not satisfactorily rebutted the allegations, the Associate Director for Human Rights shall make a formal determination of compliance, notify the grantee and the Assistant Attorney General for Civil Rights, and institute proceedings under Subpart E.

(e) CSA shall defer action on applications for assistance during the pendency of enforcement proceedings under this section.

§ 1010.30–2 Post-award review.

(a) Each grantee shall submit an annual report which will contain the compliance information specified in § 1010.20–3.

(b) The Office of Human Rights will periodically conduct compliance reviews of selected grantees.

(c) The Office of Human Rights shall seek to review those grantees which have the greatest disparity in the delivery of services or which appear to have the most serious employment problems as defined by § 1010.10–3. Selection for review shall be made on the basis of the following factors:

(1) The relative disparities between the percentage of the eligible minority or female populations, if appropriate, receiving program benefits and the percentage of eligible minorities or females, if appropriate, in the eligible population.

(2) The relative disparities between the percentage of minorities and females in the relevant labor market and the percentage of minorities and females employed by the grantee;

(3) The number and nature of compliants filed against a grantee either with CSA or other Federal agencies;

(4) The scope of problems revealed as a result of an investigation of a, compliant filed with CSA and other appropriate Federal, state and local civil rights agencies; and

(5) The amount of assistance provided to a grantee.

(d) Within 15 days of the selection of a grantee for review, the grantee shall be notified that it has been selected for a compliance review and the review shall be initiated.

(e) The grantee shall be informed that it may at any time prior to CSA's findings make a documentary submission responding to, rebutting, or denying allegations raised in the course of the compliance review.

(f) Within 180 days for the initiation of a compliance review, the Associate Director for Human Rights or his/her designee shall notify the grantee in writing of:

(1) Preliminary findings;

(2) Recommendations for achieving voluntary compliance, where appropriate; and

(3) The opportunity to engage in voluntary compliance negotiations, where appropriate.

The Associate Director for Human Rights or his/her designee shall notify the Assistant Attorney General for Civil Rights at the same time he/she notifies the grantee of any matter where recommendations for achieving voluntary compliance are made.

(g) If within 50 days of CSA's recommendations for achieving voluntary compliance the recommendations have not been agreed to, or voluntary compliance has not been secured, or the preliminary findings have not been shown to be false the Associate Director for Human

Rights shall make a formal written determination of noncompliance. At the same time the grantee is notified of this determination, it shall be forwarded to the Assistant Attorney General for Civil Rights. This determination shall be made no later than 14 days after the conclusion of the 50-day negotiation period.

(h) Where the Associate Director for Human Rights makes a formal determination of noncompliance, the grantee and the Assistant Attorney General shall be immediately advised in writing of the determination and of the fact that the grantee has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Associate Director shall institute proceedings under Subpart E.

(i) All agreements to come into voluntary compliance shall be in writing, shall set forth the specific steps the grantee has agreed to take, and shall be signed by the Associate Director for Human Rights or his/her designee and an official of the grantee with authority to legally bind the grantee.

§ 1010.30–3 Complaint investigations.

(a) *Local Complaint Procedures.* (1) *Submission of an Equal Opportunity Complaint.* Any person who believes he/she has encountered discrimination because of race, color, creed, sex, national origin, age, political affiliation, beliefs or handicap may first file a complaint with the Equal Opportunity Officer (EOO) of the grantee not more than 180 calendar days after the act complained of occurred. A copy of the complaint shall be immediately mailed to the Associate Director for Human Rights or his/her designee by the Equal Opportunity Officer.

(2) *Resolution and Decision by the Grantee.* (i) The EOO shall make every effort to resolve the complaint informally. The EOO shall, if requested by the complainant, assist in discussions with any party to the complaint and may take other steps which may assist in the resolution of the complaint.

(ii) The aggrieved person has the right to be accompanied, represented and advised by a representative or attorney of his/her choice. If the aggrieved person or the representative is an employee of the agency, he/she shall be given a reasonable amount of working time to prepare and present his/her request for a resolution of the complaint. These procedures shall be included in the grantee's personnel policies and must be approved by the CSA Office of Human Rights.

(iii) The EOO shall have 21 days to attempt to resolve the complaint before CSA will begin processing the complaint, if it has been filed with CSA or CSA otherwise assumes jurisdiction.

(iv) The EOO shall be given access within the agency to any information necessary for resolving the complaint.

(v) The EOO shall inform the complainant of the right to file a formal complaint with CSA and any other appropriate Federal, state and local civil rights agencies.

(vi) Nothing in this subpart should be construed to mean that a complainant cannot file a complaint directly with CSA at any time.

(3) *Reports on Grantee Efforts at Resolution.* (i) When the EOO has completed attempts to resolve the complaint, a report shall be prepared, setting out a summary of the complaint, the preliminary inquiry and the disposition of the complaint, indicating the basis for that disposition.

(ii) Copies of the report shall be given to the grantee's board, the complainant and to the Office of Human Rights. A report shall be forwarded within 21 days of the filing of a complaint, regardless of the disposition of the complaint.

(b) *CSA Complaint Procedures.* (1) *Filing of Complaint with CSA.* (i) If the result of the procedures outlined in § 1010.30–3(a) is unsatisfactory to the complainant, a formal complaint may be filed within 10 calendar days of receipt of the report of the EOO.

(ii) A complainant may file a complaint directly with CSA. However no complaint will be investigated if not received by CSA or the local EOO within 180 days of the date of the alleged discrimination unless the time for filing is extended, for good cause, by the Associate Director for Human Rights or his/her designee. If a complaint is filed with the local EOO and CSA, CSA shall not begin processing the complaint until the 21 days set forth in § 1010.30–3(a)(2)(iii) have expired.

(2) Within 25 days of receipt of a complaint, the Associate Director for Human Rights or his/her designee shall:

(i) Ascertain whether CSA has jurisdiction over the complaint;

(ii) If it is determined that CSA has jurisdiction, notify the grantee involved of the complaint and initiate the investigation; and

(iii) If it is determined that CSA does not have jurisdiction, notify the complainant of that fact in writing.

(3) The grantee shall be notified that it may at any time prior to CSA's findings make a documentary submission responding to, rebutting, or denying allegations raised in the course of the complaint investigation.

(4) Within 180 days of the initiation of a complaint investigation, the Associate Director for Human Rights or his/her designee shall notify the grantee in writing of:

(i) the preliminary findings;

(ii) recommendations for achieving voluntary compliance, where appropriate; and

(iii) the opportunity to engage in voluntary compliance negotiations, where appropriate.

The Associate Director for Human Rights or his/her designee shall notify the Assistant Attorney General for Civil Rights at the same time he/she notifies the grantee of any matter where recommendations for achieving voluntary compliance are made.

(5) If within 50 days of CSA's recommendation for achieving voluntary compliance, the recommendations have not been agreed to, voluntary compliance has not been secured, or the preliminary findings have not been shown to be false the Associate Director for Human Rights shall make a formal written determination of noncompliance. At the same time the grantee is notified of this determination, it shall be forwarded to the Assistant Attorney General for Civil Rights. This determination shall be made no later than 14 days after the conclusion of the 50-day negotiation period.

(6) If the Associate Director for Human Rights makes a formal determination of noncompliance, the grantee and the Assistant Attorney General for Civil Rights shall be advised in writing that the determination has been made and the grantee has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been secured within the 10-day period, the Director shall institute proceedings under Subpart E.

(7) All agreements to come into voluntary compliance shall be in writing, shall set forth the specific steps the grantee has agreed to take, and shall be signed by the Associate Director for Human Rights and an official of the grantee with authority to legally bind the grantee.

§ 1010.30–4 Back-pay award.

CSA grant funds may lawfully be used to cover back-pay awards resulting from judgments or settlements arising from complaints of discrimination. However, CSA reserves the right to determine whether to allow the program cost on a case-by-case basis after the expenditure of grant funds so as not to influence the decision of the grantee to settle. Consideration will be given to such factors as the grantee's conduct subject to the claim of discrimination, and whether the complainant's salary is funded by CSA.

§ 1010.30–5 Complaints filed with State and local commissions or the Equal Employment Opportunity Commission.

When a complaint is filed with CSA and with the Equal Employment Opportunity Commission or another Federal, state or local agency, the Associate Director for Human Rights or his/her designee shall communicate with the other agency and shall arrange to handle the complaint so as to avoid duplication and to secure an effective resolution of the complaint. It shall be the general practice of CSA to investigate a Title VI complaint, unless there appears to be a compelling reason to do otherwise. In cases where Title VI complaints are not investigated, the compelling reason shall be set forth in writing to the complainant and Assistant Attorney General for Civil Rights.

§ 1010.30–6 Intimidation.

No grantee shall intimidate, retaliate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 624 of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2971c; Title VI of the Civil Rights Act of 1964, as amended, or this part, or because he/she has made a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any preliminary inquiries thereunder.

§ 1010.30–7 Adjustment of time limits.

The time limits listed in § 1010.30–3 (b)(2) through (b)(4) of this section shall be appropriately adjusted where CSA requests another Federal agency to act on the complaint. CSA will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, CSA shall institute appropriate actions as required by this subpart.

Subpart E—Procedure for Effecting Compliance

§ 1010.40–1 General.

(a) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any applicable law of the United States or any assurance or other contractual undertaking.

(b) Noncompliance with Subpart C. If an applicant fails or refuses to furnish an assurance required under Subpart C or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that subpart, Federal financial assistance may be refused in accordance with the procedures of this subpart.

(C) The Agency may defer action on applications for assistance to the grantee or applicant during the pendency of enforcement proceedings under this part.

§ 1010.40–2 Termination of or refusal to grant or to continue financial assistance.

(a) No order suspending, terminating or refusing to grant or continue Federal financial assistance for failure to comply with this part shall become effective until:

(1) The Associate Director for Human Rights or his/her designee has advised the applicant or grantee of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or grantee to comply with a requirement imposed by or pursuant to this subpart;

(3) The action has been reviewed by the Director of CSA pursuant to § 1010.40–4 or he/she has had the opportunity to review and did not do so; and

(4) The expiration of 30 days after the Director of CSA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or grantee as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been found.

(b) Voluntary compliance will be determined as not being available, if a voluntary compliance agreement is not arrived at during the period for voluntary compliance negotiations set forth by this part.

(c) Section 1010.40–2(a)(4) does not apply to actions concerning discrimination on the basis of creed, political affiliation or belief or to employment discrimination on the basis of race or national origin not covered by Title VI, § 1010.10–3(a), and § 1010.10–3(b).

§ 1010.40–3 Hearings.

(a) *Opportunity for Hearing.* Whenever an opportunity for a hearing is required by this part, reasonable notice of such hearing shall be given by registered or certified mail, return receipt requested. This notice shall advise the applicant or grantee of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and either (a) fix a date less than 20 days after the date of such notice within which the applicant or grantee may request of the responsible CSA official that the matter be scheduled for hearing, or (b) advise the applicant or grantee that the matter in question has been set for hearing at a stated place and time. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or grantee may waive a hearing and submit written information and argument for the record. The failure of an applicant or grantee to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of Title VI and this subpart and consent to the making of a decision on the basis of such information as is available.

(b) *Time and Place of Hearing.* Hearings shall be at a time and place in Washington, D.C. fixed by the responsible CSA official or his/her designee unless he/she determines for cause that another location should be selected. Hearings shall be held before a hearing officer who shall be referred to hereinafter as the hearing examiner.

(c) *Right to Counsel.* In all proceedings under this section, the applicant or grantee and CSA shall have the right to be represented by counsel.

(d) *Procedures, Evidence and Record.* (1) The hearing, decision, and any review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (Sections 5–8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper, relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 1010.40–2 of this part, taking of testimony, exhibits, arguments and briefs, requests for findings, and

other related matters. Both CSA and the applicant or grantee shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing examiner.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this section, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing examiner. The hearing examiner may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence unless dispensed with by stipulation. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI, the Director may, by agreement with such other departments or agencies, provide for consolidated or joint hearings, and for the application to such hearings of rules of procedure consistent with this part. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with Section 1010.40–4.

§ 1010.40–4 Decisions and notices.

(a) *Initial Decision.* The hearing examiner shall make an initial decision. A copy of such initial decision shall be mailed to the applicant or grantee. The applicant or grantee may within 30 days of the mailing of the initial decision file with the Director of CSA its exceptions to the initial decision. In the absence of exceptions, the Director of CSA may, on his/her own motion, within 45 days after the initial decision, serve on the applicant or grantee a notice that he/she will review the decision. Upon the filing of such exceptions or of such notice of review, the Director of CSA shall review the initial decision and issue his/her own decision thereon. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of CSA.

(b) *Final Decision.* Whenever the Director of CSA makes the initial decision pursuant to paragraph (c) of this section, or whenever the hearing examiner issues an initial decision, the applicant or grantee and complainant shall be given a copy of the decision. A copy of the final decision of the Director of CSA shall be given to the applicant or grantee and the complainant.

(c) *Waived Hearings.* Whenever a hearing is waived pursuant to Section 1010.40–3(a), a decision shall be made by the Director of CSA on the record and a copy of such decision shall be given to the applicant or grantee and to the complainant.

(d) *Rulings Required.* The decision of a hearing examiner shall set forth each of his/her findings, conclusions, or exceptions presented, and shall identify the requirement or requirements imposed by or pursuant to this part, Title VI, or Section 624 of the Economic Opportunity Act of 1964, as amended, that the applicant or grantee has failed to comply with.

(e) *Content of Orders.* The final decision may provide for suspension or termination or, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purpose of Title VI and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or grantee determined to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Associate Director for Human Rights that it will fully comply with this part.

(f) *Post-Termination Proceedings.* (1) An applicant or grantee adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or grantee adversely affected by an order issued pursuant to paragraph (e) of this section may at any time request the Associate Director for Human Rights to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or grantee has met the requirements of paragraph (f)(1) of this section. If the Associate Director for Human Rights determines that those requirements have been satisfied, he/she shall restore such eligibility.

(3) If the Associate Director for Human Rights denies any such request, the applicant or grantee may submit a written request for a hearing to the Director of CSA specifying why it believes such denial to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with such rules of procedure as are issued by the Director of CSA. The applicant or grantee will be restored to eligibility if it proves at a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 1010.40–5 Judicial review.

Any action taken pursuant to Title VI of the Civil Rights Act of 1964 is subject to judicial review as provided in Section 603 of Title VI.

Supart F—Miscellaneous

§ 1010.50–1 Role of CSA officials.

CSA shall to the fullest extent practicable in accordance with the requirements of this part seek the cooperation of grantees in obtaining compliance with this part, and shall provide assistance and guidance to grantees to help them comply voluntarily with this part.

§ 1010.50–2 Continuing State programs.

(a) Each state agency administering a continuing program which receives Federal assistance from CSA shall establish a Title VI compliance program for itself and other grantees which obtain financial assistance through it.

(b) This program will parallel the provisions of this part, including the maintenance of records necessary to permit Federal officials to determine compliance of the state agency and the sub-grantees with Title VI and this part.

§ 1010.50–3 Effect on other regulations, forms, and instructions.

Nothing in this part shall be deemed to supersede (a) Executive Order 11246 and regulations issued thereunder, or (b) any other regulations or instructions insofar as they prohibit discrimination on the grounds of race, color, national origin or sex in any program or situation to which this part is applicable, or prohibit discrimination on any other ground.

§ 1010.50–4 Supervision and coordination.

The Director of CSA may assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of this part other than the right to review a hearing examiner's initial decision as provided

in § 1010.40–4. Any action taken, determination made, or requirements imposed by an official of another department or agency acting pursuant to such an assignment or responsibility shall have the same effect as though such action had been taken by the responsible official of CSA.

Appendix A.—*Federal Financial Assistance to Which This Part Applies Funding Authorities Under the Economic Opportunity Act of 1964, as Amended*

EOA section	42 U.S.C. section	Federal financial assistance
101	2712	Research, Demonstration & Pilot Projects.
221	2808	Community Action.
222(a)(5)	2809	Community Food and Nutrition.
222(a)(7)	2809	Senior Opportunities and Services.
222(a)(11)	2809	Rural Housing Development and Rehabilitation.
222(a)(12)	2809	Emergency Energy Conservation Services.
222(a)(13)	2809	Summer Youth Recreation.
226	2813	Design and Planning Assistance Programs.
227	2814	National Youth Sports Programs.
228	2815	Consumer Action and Cooperative Programs.
230	2823	Technical Assistance and Training.
231	2824	State Agency Assistance.
232	2825	Research and Pilot Programs.
234	2827	Special Assistance.
235	2828	Demonstration Community Partnerships.
302(a)	2851	Loans to Low Income Families (Rural Loan Programs).
312	2862	Assistance for Migrant, and Other Seasonally Employed, Farmworkers and their Families.
712	2982a	Community Development Corp.
247(b)	2985e	Research and Planning (Community Economic Development).
901(a)	2995	Program and Project Evaluation.

Appendix B.—*Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is To Provide Employment*

Inner-City Youth Employment Program

Appendix C.—*Application of Part 1010 to Federal Financial Assistance of Community Services Administration*

Nondiscrimination in Federally Assisted Programs

(A) *Examples:*

The following examples, without being exhaustive, illustrate the application of the non-discrimination provisions of this part in programs or projects receiving Federal financial assistance from the Community Services Administration.

1. Denial of the opportunity to participate in a program because of race, color or national origin.—An Off-reservation Native American funded program in an urban area denies a Caucasian the opportunity to participate in the food and nutrition component of the program because she/he is not a Native American.

2. Failure to ensure that all segments of the low-income community have an equal opportunity to participate in the board member representation elective process because of race, color, or national origin.—A Community Action Agency in a multiracial community utilizing a mobile voting booth for board member elections in the area served, allots an equal amount of time in each of the ethnic and racial areas except for the Black community.

3. Providing a disproportionate allocation to one sector of a community with a predominant monoracial composition where the disproportionate allocation is not justified by a CSA-approved program objective.—A Community Action Agency serving a poverty population composed of 10% White, 77% Black, 10% Hispanic and 3% Oriental provides the White poverty community with 50% and the Black poverty community with 20% of the funds available to the poverty area served.

The above disproportionate allocations may be justifiable if the CSA-approved program objective was to address unemployment, and if 90% of the White poverty area was unemployed compared to 5% of the Black poverty area.

4. The utilization of sites and facilities that have historically discriminated, which affects the participation of beneficiaires because of race, color, or national origin.—A Community Action Agency in a multiracial community which is predominately Black leases a facility for use as a neighborhood service center in an exclusive White area that is inaccessible to the Black community.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12, 14, 15 and 16

[CGD 79-161]

Shipment and Discharge of Seamen

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This amendment sets out the procedures to be followed by masters of certain U.S. vessels bound on foreign and intercoastal voyages when shipping and discharging seamen. The shipment and discharge of seamen on these vessels had been conducted under supervision of Coast Guard officials functioning as shipping commissioners. However, the Department of Transportation's FY–80 Appropriation Act (Pub. L. 96–131) prohibits the expenditure of funds by any federal agency for pay or administrative expenses in connection with shipping commissioners in the United States. Therefore, masters of these vessels will, pursuant to statute, assume the total responsibility for the shipment and discharge of seamen aboard their vessels. These amendments revise current Coast Guard regulations to reflect that fact.

EFFECTIVE DATE: December 3, 1979.

FOR FURTHER INFORMATION CONTACT: Commander Scott D. McCowen, Office of Merchant Marine Safety, Room 1400, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202) 426–2240.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication. The extent of the restriction on Coast Guard expenditures could not be determined with certainty and it became effective upon passage of the Appropriation Act. Additionally, because the restriction is effective immediately delay in publication of the rule could lead to disruption in the shipping industry since masters would have no guidance concerning the shipment and discharge of seamen on foreign and intercoastal voyages. Therefore, notice and public procedure hereon are unnecessary and impracticable and good cause exists for making this rule effective in fewer than 30 days after publication.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Commander Scott D. McCowen, Project Manager, Office of Merchant Marine Safety, and Lieutenant John W. Salter, Project Counsel, Office of the Chief Counsel.

DISCUSSION OF REGULATIONS: The passage of the Department of Transportation's FY–80 Appropriation Act (Pub. L. 96–131, November 30, 1979) necessitates the revision and deletion of certain Coast Guard regulations pertaining to the shipment and discharge of seamen before shipping commissioners. A provision of the Act prohibits the expenditure of funds by any federal agency for pay or administrative expenses related to shipping commissioner activities in the United States. This provision effectively precludes the Coast Guard from continuing to supervise the shipment and discharge of seamen through Coast Guard personnel acting as shipping commissioners. The prohibition also relieves Customs officials of the mandate in 46 U.S.C. 543 to act when Coast Guard personnel are not available to perform the duties of shipping commissioners. The Act however does not affect the responsibilities of U.S. Counsuls abroad for safeguarding the well-being of seamen in foreign ports.

The office of shipping commissioners was established by the Shipping Commissioners Act of 1872. Originally the commissioners were court officers. However, over the years they have functioned under the various departments of the government until 1946 when all shipping commissioner powers were vested in the Commandant

of the Coast Guard by the 1946 Reorganization Plan No. 3, 60 Stat. 1097. The statutory creation of shipping commissioners initially stemmed from the need to protect merchant seamen from the inequities and abuses effected by vessel owners and masters in the nineteenth century. Historically, the shipping commissioner has provided protection for seamen by acting as an arbiter in shipping agreement disputes and assuring that seamen were entering into shipping agreements of their own free will, while in full control of their mental faculties. The primary duties of commissioners involved the signing on and discharge of seamen, approval of allotments, and disposition of wages and effects of deceased seamen.

During the past forty years seamen's unions have largely eliminated the need for shipping commissioners. through collective bargaining and the establishment of grievance procedures, merchant seamen are now afforded better protection, food, living and working conditions than are mandated by the statutes under which the shipping commissioner functions. Congress in recognition of these facts has, through the DOT Appropriation Act, effectively terminated the shipping commissioner function of government officials in the United States.

Current Coast Guard regulations in 46 CFR Parts 14–16 are primarily concerned with the function and duties of shipping commissioner. The majority of the regulations in part 14 address the procedures to be followed by government officials acting as shipping commissioners when seamen were signed on and discharged from vessels sailing under foreign and intercoastal articles mandated by 46 U.S.C. 564. These rules revise those regulations by substituting the master for the shipping commissioner in most instances.

With no government officials to act as shipping commissioners the master of vessels bound on foreign and intercoastal voyages will assume the responsibility for signing on and discharging seamen aboard their vessels. The provisions of 46 U.S.C. 546 authorize the master of any vessel to perform the duties of shipping commissioner when engaging seamen "in any district where no shipping commissioner shall have been appointed". Since no district will have appointed shipping commissioners, masters may sign on seamen and, generally perform the function of a commissioner in respect to the shipment of seamen. In fact if a master wishes to commence a voyage he either must sign on the crew and execute articles or sail in violation of law.

The masters of merchant vessel of 100 gross tons and over, bound on a foreign or intercoastal voyage, will also be required under 46 U.S.C. 643 to effect the discharge of seamen aboard their vessels. Subsection (k) of 643 provides "where vessels are not required to sign on and discharge the crew before a Coast Guard official (shipping commissioner) the duties required by subsections (d) and (e) of this section * * * *shall* be performed by the master of such vessel". Subsections (d) and (e) pertain to entries in continuous discharge books and issuance of certificates of discharge. There being no government official to perform the duties of shipping commissioner, the Coast Guard has concluded that legally the vessel becomes one "not required to sign on and discharge the crew before a shipping commissioner." Therefore the master must perform the duties set out in subsections (d) and (e) of 46 U.S.C. 564 and sign off seamen on his vessel by issuing certificates of discharge and making entries in continuous discharge books.

These amendments revise current regulations pertaining to the shipment and discharge of seamen to reflect the responsibility of masters as discussed above. References to shipping commissioners and Collectors of Customs have been deleted and the procedures masters must now follow have been added.

The provisions of § 14.05–10(b) add a requirement for masters of certain merchant vessels of 100 gross tons and upwards sailing under foreign and intercoastal shipping articles to forward to the Commandant reports of the shipment and discharge of seamen aboard their vessels. This information had been secured by shipping commissioners and forwarded to the Commandant in the form of copies of the vessels shipping articles. However, since the crew of these vessels will no longer be shipped or discharged before a shipping commissioner the provisions of subsection (1) of 46 U.S.C. 643 will be applicable and the master will be required to file reports on CG Form 735T, in the same manner as masters of vessels engaged in the coastwise trade. The paragraph does contain a provision that allows masters sailing under foreign and intercoastal articles to submit a copy of the articles in place of the report on CG Form 735T since both forms contain substantially the same information and the articles have already been prepared by the master.

This document also deletes the regulations in 46 CFR Parts 15 and 16 pertaining to allotments for seamen and the disposition of wages of deceased or deserter seamen by shipping commissioners. With the passage of the DOT Appropriation Act there is no longer any government official functioning as a shipping commissioner to approve an allotment as required by 46 U.S.C. 599 nor receive seaman's wages as authorized by 46 U.S.C. 622.

The current § 14.01–10 pertaining to the reporting of lost, stolen, or destroyed continuous discharge books, certificates of identification or certificates of discharges is being revised and transferred to Part 12 of 46 CFR and redesignated § 12.02–24. As revised the section will contain no reference to shipping commissioners or Collector of Customs. The section is included in part 12 since that part primarily deals with documents issued by the Coast Guard.

In consideration of the foregoing, Chapter 1 of Title 46, Code of Federal Regulations is amended as follows:

PART 12—CERTIFICATION OF SEAMEN

1. By amending Part 12 by adding § 12.02–24 to read as follows:

§ 12.02–24 Reporting loss or recovery of continuous discharge book, merchant mariners document, or certificate of discharge.

Whenever a continuous discharge book, merchant mariners document, or certificate of discharge is reported to an Officer in Charge, Marine Inspection (OCMI), as having been stolen, lost, or destroyed, the OCMI shall immediately report the fact by letter to the Commandant, giving all the facts incident to its loss or destruction. By the same procedure the OCMI shall report the recovery of a continuous discharge book, merchant mariners document or certificate of discharge with all the facts incident to its recovery, and shall forward the recovered book, document, or discharge to the Commandant.

2. By revising Part 14 in its entirety to read as follows.

PART 14—SHIPMENT AND DISCHARGE OF SEAMEN

Subpart 14.01—General

Sec.

14.01–1 Purpose of Part.
14.01–3 Coast Guard address.
14.01–5 Foreign or Intercoastal voyages upon which shipping articles are required.
14.01–7 Voyages upon which shipping articles are not required.

Subpart 14.05—Shipping Articles

14.05–1 Form of shipping articles.
14.05–2 Posting copy of shipping articles.

Sec.
14.05–3 Preparation of shipping articles.
14.05–5 Production of documents by seamen signing shipping articles.
14.05–7 Paying off seamen during foreign or intercoastal voyage.
14.05–10 Reporting shipment and discharge of seamen.
14.05–15 Completing entries in shipping articles at completion of voyage.

Subpart 14.10—Discharging Seamen

14.10–1 Entries in continuous discharge book.
14.10–5 Entries in certificates of discharge to merchant seamen.
14.10–7 Issuance of certificate of character upon discharge of seaman.
14.10–10 Discharging a seaman in a foreign port.
14.10–15 Certificate of discharge issued pending issuance of duplicate continuous discharge book.
14.10–20 Discharge of seamen in special cases.

Subpart 14.15—Disclosure of Information Regarding Shipment and Discharge of Merchant Mariners.

14.15–1 Availability of information to the public.

Authority: The provisions of Part 14 are issued under Pub. L. 96–131, R.S. 4551, as amended, sec. 13, 38 Stat. 1169, as amended, sec. 7, 49 Stat. 1936, as amended, sec. 6(b)(1), 80 Stat. 938; 46 U.S.C. 643, 672, 689, 49 U.S.C. 1655(b); 49 CFR 1.46(b), unless otherwise noted.

Subpart 14.01—General

§ 14.01–1 Purpose of part.

This part prescribes rules for the shipment and discharge of seamen on certain United States vessels.

§ 14.01–3 Coast Guard address.

Each form or report required in this part to be submitted to the Commandant shall be forwarded to: Commandant (G–MVP–1/TP12), U.S. Coast Guard, Washington, D.C. 20593.

§ 14.01–5 Foreign or intercoastal voyages upon which shipping articles are required.

(a) Prior to proceeding on any foreign or intercoastal voyage listed in this section, or the engagement of replacement or additional seamen for such a voyage, the master shall make an agreement (shipping articles) in writing with each seaman. The articles shall be signed by the master and each seaman so engaged.

(b) Except as provided in § 14.01–7, shipping articles are required for the following voyages and vessels:

(1) A voyage by a United States vessel from a port in the United States to any foreign port other than ports in the following areas:

(i) British North American possessions.

(ii) West India Islands.

(iii) Republic of Mexico.

(2) A voyage by a United States vessel of 75 gross tons or upward between a United States port on the Atlantic and a United States port on the Pacific, or vice versa.

Note.—The provisions of R.S. 4520, (46 U.S.C. 574) require the master of any United States vessel of 50 gross tons or upward, bound from a port in one state to a port in any other than an adjoining state, to make an agreement (shipping articles) with every seaman engaged.

§ 14.01–7 Voyages upon which shipping articles are not required.

(a) Shipping articles are not required but may be utilized for the following classes of vessels:

(1) Vessels engaged exclusively in fishing or whaling.

(2) Yachts.

(3) Vessels upon which the seamen are by custom or agreement entitled to participate in the profits or results of a cruise or voyage.

Subpart 14.05—Shipping Articles

§ 14.05–1 Form of shipping articles.

(a) The form and content of shipping articles for foreign or intercoastal voyages are generally controlled by R.S. 4511 (46 U.S.C. 564), R.S. 4512 (46 U.S.C. 565), and R.S. 4612 (46 U.S.C. 713, Tables A and B).

(b) The Coast Guard Officer in Charge, Marine Inspection will, as a matter of convenience, supply form CG–705A (shipping articles) upon request. Form CG–705A is considered to comply with the requirements of the statutes noted in paragraph (a) of this section. Any other form of shipping articles complying with the requirements of the statutes noted in paragraph (a) may be utilized.

Note.—Detailed instructions for the completion of form CG–705A are contained in Navigation and Vessel Inspection Circular #8–79, which may be obtained at any Coast Guard Marine Inspection or Safety Office.

§ 14.05–2 Posting copy of shipping articles.

(a) At the commencement of a foreign or intercoastal voyage the master shall ensure a legible copy of the shipping articles, omitting signatures (Forecastle Card), is posted at a place accessible to the crew. Form CG–704 or equivalent may be utilized for this purpose.

§ 14.05–3 Preparation of shipping articles.

(a) Shipping articles for foreign or intercoastal voyages shall be made out in duplicate. The original shall be retained by the master, who shall enter therein any changes made in the crew during the voyage.

§ 14.05–5 Production of documents by seamen signing shipping articles.

(a) At the time of engagement, each seaman shall present to the master any certificate or license as may be required by law for the service to be performed.

§ 14.05–7 Paying off seamen during foreign or intercoastal voyage.

(a) In case of the paying off of any members of the crew during a foreign or intercoastal voyage, each seaman shall sign the release on the original of the shipping articles. In a foreign port, where a United States consul is available, the release shall be executed by the master and seaman before the consul or his representative. In a foreign port where a United States consul is not available, the release need be executed only by the master and seaman.

§ 14.05–10 Reporting shipment and discharge of seamen.

(a) The master of each merchant vessel of one hundred gross tons or upward, shall report the employment, discharge or termination of the service of every seaman in the manner provided in this section. Reports need not be submitted by masters' of the following vessels:

(1) Vessels employed exclusively in trade on the navigable rivers of the United States.

(2) Fishing and whaling vessels.

(3) Yachts.

(4) Ferries and tugs used in ferry operations if such ferries and tugs are employed exclusively in trade on the Great Lakes, lakes (other than the Great Lakes), bays, sounds, bayous, canals, and harbors, and are not engaged on international voyages.

(5) Unrigged vessels other than seagoing barges.

(b) When a vessel is engaged on a foreign or intercoastal voyage, the master shall submit a Form CG–735–T to the Commandant prior to sailing and upon completion of the voyage. At the option of the master, a copy of the vessel's shipping articles may be submitted to the Commandant in lieu of Form CG–735–T. When utilized, Form CG–735–T shall contain the names, as well as the other information required by the form, of the master and each member of the crew shipped or discharged. During the term of the voyage the master shall submit supplementary reports on Form CG–735–T listing the names, as well as the other information required by the form, of each seaman engaged, discharged, or whose services have been otherwise terminated.

(c) When a vessel is engaged on a coastwise voyage not specifically

covered by paragraph (d) or (e) of this section, the master shall, prior to sailing, submit to the Commandant a Form CG–735–T listing the names, as well as other information required by the form, with the exception of the date and place of discharge, of the master and of each member of the crew shipped. Thereafter, at the end of each calendar month, the master shall submit a supplementary report on Form CG–735–T listing the name, as well as the other information required by the form, of each seaman engaged, discharged, or whose services were otherwise terminated since the previous submission of the form. When the voyage is completed the master shall submit a final report to the Commandant on Form CG–735–T.

(d) When a vessel is employed exclusively on bays or sounds, the master shall submit a Form CG–735–T, on the last day of each calendar month, listing the name, as well as the other information required by the form, of each seaman employed, discharged, or whose services were otherwise terminated during the month.

(e) When a vessel is employed exclusively on the Great Lakes, the master shall submit a Form CG–735–T at the commencement of the season, or when the vessel is put into service, lising the names, as well as the other information required by the form, with the exception of date and place of discharge, of each member of the crew. Thereafter, at the end of each calendar month, the master shall submit a supplementary report on Form CG–735–T listing the names, as well as the other information required by the form, of each seaman whose employment was terminated during the month and who was not reengaged on the vessel's next trip, and each seaman engaged during the month who was not also employed on the vessel in the same capacity on her last trip preceding the engagement. At the close of the season, or when the vessel is withdrawn from service, the master shall submit a final report to the Commandant on Form CG–735–T containing the information required by the form, concerning each seaman who has not been previously reported as discharged.

(f) Every discharge entry made on a Form CG–735–T shall agree exactly with the corresponding entry made in a Continuous Discharge Book (Form CG–719), the Record of Entry in Continuous Discharge Book (Form CG–718E), or on the certificate of Discharge to Merchant Seaman (Form CG–718A) issued to a seaman. Each record of entry or copy of the discharge shall be attached to Form CG–735–T on which discharges are reported.

(g) Any master who fails to comply with the requirements of this section is subject to a penalty of $500.

§ 14.05–15 Completing entries in shipping articles at completion of voyage.

(a) At the completion of a foreign or intercoastal voyage, when the crew is paid off, the release on the shipping articles shall be signed by all members of the crew.

(b) All entries made in continuous discharge books during the voyage, and all entries made in certificates of discharge issued during the voyage to seamen holding merchant mariner's documents shall be duplicated on the shipping articles.

Subpart 14.10—Discharging Seamen

§ 14.10–1 Entries in continuous discharge book.

(a) Upon the discharge of any seaman who holds a Continuous Discharge Book (Form CG–719), and the payment of wages, the master shall complete the required entries in the book.

(b) The master making the entries in the Continuous Discharge Book shall also prepare a Record of Entry in Continuous Discharge Book (Form CG–718E).

(c) The completed Form CG–718E shall be signed by the seaman in whose Continuous Discharge Book the original entry was made and by the master.

(d) All entries in a Continuous Discharge Book (Form CG–719) shall be made in black ink. All entries on Form CG–718E shall be made with a typewriter or an indelible pencil.

(e) The original copy of completed Form CG–718E shall be submitted to the Commandant. The duplicate copy of completed Form CG–718E may be retained by the master issuing such record of entry.

§ 14.10–5 Entries in certificate of discharge to merchant seaman.

(a) Upon the discharge of any seaman who holds a merchant mariner's document issued by the Coast Guard, and payment of wages, the master shall issue to the seaman a Certificate of Discharge to Merchant Seaman (Form CG–718A).

(b) The completed Form CG–718A shall be signed by the seaman to who it is issued and by the master of the vessel. The signatures shall be made with an indelible pencil before the issuance of the original copy to the seaman.

(c) All entries on Certificates of Discharge to Merchant Seaman (Form CG–718A) shall be made with a typewriter or an indelible pencil.

(d) The original completed Form CG–718A shall be issued to the seaman who signs the certificate. The yellow copy of the completed Form CG–718A may be retained by the master issuing such discharge. The white copy of completed Form CG–718A shall be submitted to the Commandant.

§ 14.10–7 Issuance of certificate of character upon discharge of seaman.

(a) Upon the discharge of each seaman from a vessel engaged on a voyage listed in § 14.01–5(b), the master shall make and sign in the official logbook, and on the articles should such an entry be called for, a report of the conduct, character and qualifications of the person discharged; or may state as the report that he declines to give any opinion.

§ 14.10–10 Discharging a seaman in a foreign port.

(a) Upon the discharge of any seaman in a foreign port the master shall make the required entries on the ship's articles and Form CG–718A or Form CG–718E, as appropriate. All entries shall be attested to by a U.S. Consular Officer in ports where such an officer is available.

§ 14.10–15 Certificate of discharge issued pending issuance of duplicate continuous discharge book.

(a) When a seaman's continuous discharge book has been lost, pending the issuance of a duplicate, the master shall furnish the seaman with a Certificate of Discharge to Merchant Seaman (Form CG–718A) at the completion of a voyage, and this fact shall be noted on the articles. The white copy of the certificate of discharge shall be forwarded to the Commandant.

§ 14.10–20 Discharge of seamen in special cases.

(a) Section 16 of the Act of December 21, 1898 (30 Stat. 759), amended in part R.S. 4581 (46 U.S.C. 683), relating to the discharge of seamen by consuls, to read:

> If a seaman is discharged on account of injury or illness, incapacitating him for service, the expenses of his maintenance and return to the United States shall be paid from the fund for the maintenance and transportation of destitute American seamen.

(b) Section 19 of the Seamen's Act of March 4, 1915 (38 Stat. 1185; 46 U.S.C. 683), adds to these words the following:

Provided: That at the discretion of the Commandant of the Coast Guard and under such regulations as he may prescribe, if any seaman incapacitated from service by injury or illness is on board a vessel so situated that a prompt discharge requiring the personal appearance of the master of the vessel before a United States consul or consular agent is impracticable, such seaman may be sent to a consul or consular agent, who shall care for him and defray the cost of his maintenance and transportation, as provided in this paragraph.

(c) The personal appearance of the master of the vessel before a United States consul or consular agent to consent to the discharge of a seaman who has been incapacitated by injury or illness may be waived by the consul under the following conditions:

(1) When the condition of the injured or ill seaman is such that prompt medical attention is necessary and cannot be furnished on shipboard, and

(2) When the master cannot proceed with the seaman to the consul without risk to the crew, the vessel, or the cargo.

(d) When the master cannot appear before the consul in person the master shall address to the consul in writing a full statement of the facts which render necessary the discharge of the seaman, together with a statement of the reasons why the master is unable to appear before the consul. The statement should cover the usual particulars set forth in a discharge and should be accompanied with an account of the wages due with the necessary funds to meet such wages, or (if the cash is not available) with an order to the owner for the amount due.

(e) If the consul shall deem the statement satisfactory, the seaman may be discharged as directed in R.S. 4581, as amended by Section 16 of the Act of December 21, 1898, and Section 19 of the Act of March 4, 1915, as if the master were present, attaching to the discharge and to the consul's relief account a copy of the statement submitted by the master.

(f) If the consul shall deem the statement unsatisfactory, and the condition of the seaman permits, the consul may decline to grant the discharge and direct that the seaman be returned to the vessel at its expense.

(g) When the condition of the injured or ill seaman is such that the seaman is incapable of completing the release for discharge at the time of removal from the vessel, the master shall complete the master's portion of the Mutual Release (Form CG–713A) and place the form with the seaman.

(1) If the seaman possesses a continuous discharge book, the master shall make the proper entries in the book and on the ship's articles and complete Form CG–718E. Form CG–718E shall be retained by the master until the termination of the voyage, at which time it shall be delivered to the vessel's owner or agent along with the shipping articles. Upon completion and presentation of the Mutual Release (Form CG–713A) to the vessel's owner or agent, the seaman shall receive all wages due. Form CG–718E shall then be signed by the seaman and the original copy forwarded to the Commandant. At this time a notation of the completion of the release should be made on the shipping articles and Form CG–713A attached thereto.

(2) If the seaman possesses a merchant mariner's document, the master shall complete a certificate of discharge on Form CG–718A, and make the proper entries on the ship's articles. Form CG–718A shall be retained by the master until the termination of the voyage, at which time it shall be delivered to the vessel's owner or agent along with the shipping articles. Upon completion and presentation of the Mutual Release (Form CG–713A) to the vessel's owner or agent, the seaman shall receive all wages due. Form CG–718A shall then be signed by the seaman and the original given to him. The white copy of Form CG–718A shall be forwarded to the Commandant. At this time a notation of the completion of the release should be made on the shipping articles and Form CG–713A attached thereto.

Subpart 14.15—Disclosure of Information Regarding Shipments and Discharges of Merchant Mariners

§ 14.15–1 Availability of information to the public.

The Coast Guard makes information available to the public in accordance with 49 CFR Part 7.

(14 U.S.C. 633, 5 U.S.C. 552, sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b).)

PART 15—ALLOTMENTS OF SEAMEN

3. By deleting Part 15.

PART 16—UNITED STATES SHIPPING COMMISSIONERS

4. By deleting Part 16.

(Pub. L. 96–131; 46 U.S.C. 643, 672, 689; 49 U.S.C. 1655(b); 49 CFR 1.46(b).)

Dated: December 3, 1979.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 79–37540 Filed 12–5–79; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 90 and 95

[Docket No. 21142; FCC 79–756]

Replacing the Low-Pass Audio Filtering Requirements With a Revised Emission Limitation Standard

AGENCY: Federal Communications Commission.

ACTION: Second Report and Order.

SUMMARY: The FCC adopts new emission limitation standards for VHF and UHF analog and digital transmitters to replace present rule requirements for low-pass filters for stations authorized under Parts 90 and 95 (General Mobile Radio stations only) of the Commission's rules.

EFFECTIVE DATE: January 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: William P. Berges, Private Radio Bureau, (202) 632–6497.

Second Report and Order

Adopted: November 20, 1979.

Released: December 3, 1979.

In the matter of amendment of Parts 89, 91, 93 and 95 (General Mobile Radio Service) of the Commission's rules and regulations to replace the low-pass audio filtering requirements with a revised emission limitation standard, Docket No. 21142. See also 43 FR 6822, February 16, 1978.

Introduction

1. On March 23, 1977, the Commission released a Notice of Proposed Rule Making to amend Parts 89, 91, 93 and 95 (General Mobile Radio Service) of the Commission's Rules.[1] The objective of this Notice was to determine whether the use of F3Y emission (digital voice modulation) should be permittd in secure communication systems, and whether the low-pass audio filter should be removed from digital voice, Automatic Vehicle Monitoring (AVM) and other high bit rate transmitters. After all comments to the original Notice were reviewed, the Commission determined the effects of the low-pass filter and the analog emission standard on the analog transmitted spectra, and developed an equivalent emission

[1] Parts 89, 91, and 93 for Land Mobile Radio Services were recently combined by the Commission into a single part, designated Part 90. Any further reference to the rules governing the Land Mobile Radio Services shall be to the new Part 90.

limitation standard for digital transmitters.

2. On Februaury 9, 1978, the Commission released a First Report and Order, which authorized the Police and Fire Radio Services to use F3Y emission (digital voice modulation). Furthermore, it authorized F9Y emission (non-voice digital modulation) in all Land Mobile Radio Services regulated by Part 90 of the Commission's rules. In connection with this, the Commission authorized on an "interim" basis, the removal of the low-pass filter from digital transmitters and adopted the new emission limitation standard for those digital transmitters that had the low-pass filter removed.

3. On February 9, 1978, the same date the Commission released the First Report and Order, the Commission released a Further Notice of Proposed Rule Making, with the following proposals:

a. To change the "interim" standard for digital transmitters adopted in the First Report and Order to a "permanent" status.

b. To amend Parts 90 and 95 (General Mobile Radio Service) of the Commission's Rules and remove the low-pass filter from analog transmitters that comply to the digital transmitter limitation standard adopted in the First Report and Order.

c. To apply the new emission standard to all transmitters operating in the 25–50, 150–174, 450–512, 806–821 and 851–866 MHz.

d. To review comments and technical data submitted in response to the Further Notice of Proposed Rule Making, and decide whether the emission limits and measurements described in EIA Standard RS–152–B should replace the emission limitation standard adopted by the Commission.[2]

e. To determine whether the Commission should standardize digitizing techniques, symbol rates, idling codes, encryption methods and carrier modulation of F3Y emission (digital voice modulation).

Measurement of Digital Emissions

4. In the comments to the Further Notice of Proposed Rule Making, Motorola claimed that digital transmitters are modulated by random digital pulses. This random signal, they said, is like noise, and its power is distributed equally on every hertz of its sideband. A spectrum analyzer, on the other hand, displays the power accumulated on all frequencies within its bandwidth. Therefore, the accumulated bandwidth power displayed by a spectrum analyzer, is not equivalent to the power on each sideband hertz of the modulated carrier. For this reason, they argued, the "interim" emission limitation standard, as described in the Commission's Rules, cannot be verified using the conventional spectrum analyzer method. The General Electric Company (GE) claimed, that the measuring capabilities of spectrum analyzers are limited, and ambiguous interpretation of measurements can be obtained, if the control settings are not specified. They recommended that the Commission should specify the spectrum analyzer IF and video filter settings.

5. We have reviewed these comments and we agree that a spectrum analyzer cannot resolve accurately the spectra emissions of a carrier modulated by random digital pulses. The sweep time of a spectrum analyzer is comparatively slow, and the fast moving random pulses superimpose different power levels of spectra on identical positions of the spectrum analyzer display. The carrier of a digital transmitter, however, is modulated by the digital pulses in a sequential manner. Therefore, the spectra power of the modulated carrier at any time, is a function of a single pulse in the digital signal. The minimum and maximum values of amplitude, pulse width and repetition frequency of the modulating digital pulses are well known, because they are predetermined during the design of the transmitter. For test purposes, repetitive digital pulses can be used, with constant amplitude, pulse width and repetition frequency, to modulate the carrier and obtain recurrent spectral emissions with identical spectral lines, which can be resolved accurately on the display of a spectrum analyzer.[3] The values of the test signal should be changed between the minimum and maximum specifications of the transmitter, to verify that the carrier sideband emissions are within the standards of the Commission's Rules. The transmitter emissions can be measured by using peak or average values. However, the values that are used to measure the transmitter sideband emission spectra, whether peak or average, should be identical to the values used to measure the unmodulated transmitter carrier power. The control settings of a spectrum analyzer depend on the manufacture and model of the equipment, pulse width and repetition frequency of the modulating signal, and whether the display is a line or pulse spectrum. We believe, therefore, that using good engineering practices, the proper control settings can be determined, and the inability of the spectrum analyzer to measure the spectra emissions of random digital signals circumvented, without compromising the validity of measurements.

EIA Measurement Standards

6. Various comments were received with respect to the replacement of the Commission's proposed limitation standard, by the measurement procedure described in EIA Standard RS–152–B. Motorola recommended that the Commission adopt this Standard either on a permanent basis, or as an approved alternate method if the Commission decides to adopt the "interim" standard on a permanent basis. GE recommended to approve the EIA Standard as an alternate method. International Business Machines Corporation (IBM) claimed that the Commission's "interim" Rules provide adequate protection to adjacent channels, that it can be implemented using practical measurement procedures, and should not be replaced by EIA Standard RS–152–B.

7. We have reviewed these comments and the test procedures described in the EIA Standards. As indicated in EIA Standard RS–152–B, however, the adjacent channel protection test procedure described in this document "* * * does not provide in itself a means of evaluating adjacent channel interference." [4] Moreover, the selectivity limits characterized in EIA Standards RS–152–B and RS–204–A are related to the audio output of the "companion receiver," but are not related to the RF sensitivity of that receiver.[5] Consequently, the receiver measurements cannot be correlated to the emission envelopes of transmitters. Furthermore, the test procedures described in these Standards are not

[2] EIA Standards RS–152–B, titled "Minimum Standards for Land Mobile Communication FM or PM Transmitters, 25–450 MHz" is a widely used guideline for the design of narrow band FM communication transmitters.

[3] An explanation of spectrum analyzer measurements is given in the Hewlett-Packard "Spectrum Analyzer Series, APPLICATION NOTE 150–2, SPECTRUM ANALYSIS * * * Pulsed RF". Although this publication deals primarily with amplitude modulated signals, the same principles can be applied to frequency modulated signals.

[4] See "Note" under paragraph 17.1, of EIA Standard RS–152–B.

[5] Adjacent channel spacings are described in EIA Standard RS–152–B, titled "Minimum Standards for Land Mobile Communication FM or PM Transmitters, 25–470 MHz," under Section 17, titled "Transmitter Sideband Spectrum." Receiver selectivity is described in EIA Standard RS–204–A, titled "Minimum Standard for Land Mobile Communication FM and PM Receivers, 25–470 MHz," under Section 11, titled "Adjacent Channel Selectivity and Desensitization," and paragraph 4.3, which describes the method of measurement for usable sensitivity of receivers.

very clear. As a result, with the Commission's "interim" rules in mind, the Commission, Motorola, and GE used different methods to derive different adjacent channel protection values for digital systems. In view of these findings and after considering this matter carefully, we have concluded that the adjacent channel protection procedures described in EIA Standards RS–152–B and RS–204–A cannot meet the emission limitation criteria of the Commission's standards and cannot replace the Commission's Rules.

Emission Standards of Digital Signals

8. GE, in their comments, requested that the 116 Log_{10} (f_d/6.1) requirement of the "interim" standard should be extended to 24.5 kHz and then maintained to 70 dB until 250% of the authorized bandwidth is reached. The 43 plus Log_{10} (P) spurious signal limitation could then be applied beyond this frequency. They also questioned whether the 50 plus 10 Log_{10} (P) limitation is adequate to provide sufficient protection to adjacent channels.

9. An examination of our data indicates that the UHF envelope reaches a maximum attenuation of 70 dB at 25 kHz. The attenuation at 30 kHz is approximately 71 dB. In view of these findings, the UHF emission limitation standard shall be amended to a maximum attentuation of 70 dB for all UHF systems. In our First Report and Order, however, we concluded that the sideband emission of a transmitter should not require any further attenuation, if a minimum absolute power level is reached. The 50 Log_{10} (P) limitation standard was derived using an absolute minimum power level of 10 microwatts. We believe that this power level should be adequate to provide sufficient protection to adjacent channels, regardless of frequency, bandwidth and functional operation of any transmitter. For this reason, we shall retain the 50 plus 10 Log_{10} (P) limitation standard for UHF systems.

10. In their comments, Motorola argued that the proposed uniform standard loosens the performance of UHF systems and tightens the performance of VHF and Tertiary systems. The splatter filter, they claimed, has no effect on the resultant spectrum at 15 kHz. Therefore, Tertiary operation is relatively independent of the transmitter frequency and is essentially a co-channel problem when using 5 kHz deviation.

11. We have reviewed these comments and re-examined our data. Our analysis shows that the VHF and UHF envelopes begin to diverge at 5 kHz. The rate of divergence, however, is small from 5 to 10 kHz. In connection with this, we have also considered the maximum permissible sideband emission of the original analog Rules, which stated that the minimum attenuation should be 25 dB at 10 kHz, and we have decided to maintain the 25 dB attenuation at 10 kHz. For these reasons, we shall maintain the "interim" attenuation slope for VHF and UHF transmitters between 5 and 10 kHz, with a 25 dB attenuation at 10 kHz, as specified in the First Report and Order. Furthermore, we agree with the Motorola claim that the VHF low-pass filter reaches a maximum attenuation of 28 dB at 15 kHz. Above 15 kHz, however, the sideband attenuation continues, due to the lower modulation indexes, until a maximum attenuation of 50 dB is reached at 25 kHz. In view of these findings, we shall take in consideration the maximum attenuation effect of the low-pass filter and modify the VHF emission envelope above 10 kHz. The new VHF rule shall read as follows:

The power of any VHF sideband emission shall be attenuated below the unmodulated transmitter output power (P), in accordance to the following schedule:

(a) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) by more than 5 kHz up to and including 10 kHz: At least 83 Log_{10} (f_d/5) decibels;

(b) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) by more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 29 Log_{10} (f_d^2/11) decibels or 50 decibels, whichever is the lesser attenuation;

It should be noted, however, that as this standard is stated, the minimum absolute power level of sideband emissions is 10 microwatts. Therefore, it is not required to reference the minimum sideband power level to the VHF transmitter output power level.

12. Motorola, in further comments, disagreed with the technique the Commission used to derive the "interim" emission envelope for digital transmitters. They claimed that the Commission assumed a linear summation of the various Bessel coefficient spectra that result from the individual components, when using multiple tone modulation, without considering the multiple tones and their spectra resulting from clipping.

13. When the digital "interim" emission limitation standard was developed by the Commission, the intention was to derive a digital emission envelope which corresponded to the worst case analog emission envelope permitted by the rules through the specification of low-pass filters. By doing this, both types of signals, digital and analog, could co-exist in the same environment. The digital emission limitation standard was developed by examining the effects of the analog low-pass filters and the resultant emission envelopes, for fundamental modulating frequencies between one and thirty kilohertz. Individual and composite Bessel coefficients resulting from modulating frequencies in the specified range were analyzed under conditions of no limiting or clipping (sine wave input) or maximum limiting or clipping (square wave input). However, the spectra resulting from clipping proved to be insignificant due to the attenuating effects of the low pass filters on the resultant harmonics. It was found that the worst case emission limits were obtained by using pure sine waves from one to thirty kilohertz as modulating frequencies.

Removal of Low-Pass Filter and Adoption of Uniform Emission Standards

14. With respect to the removal of the low-pass filter in the analog transmitters and the adoption of uniform emission standards for analog and digital systems, GE supported the Commission's recognition that the fundamental purpose of an emission limitation envelope is to preclude interference on unauthorized frequencies, regardless of types of modulations used. The distinction between analog and digital voice-privacy systems they claimed, will become increasingly difficult. To support their statement, they gave as an example the time position scrambler, presently offered by some manufacturers. This scrambler, they said, samples the voice signal and converts it into 300 millisecond time elements. They pointed out that this signal can be considered analog or digital. If the Commission adopts dual emission standards, one for analog and one for digital, they questioned whether the analog or digital standard should apply to this scrambled signal.

15. Motorola, however, disputed that a single standard must be used for both digital and analog systems. To support their position they claimed that the mathematical modeling of the FM process is totally different for the analog and digital modulation cases. The voice modulation for FM systems has never been fully modeled and thus never completely analyzed. On the other hand, unlike voice, most digital signals can be

fully described in precise mathematical terms. The analysis of such forms of modulation, although complex, has provided solutions which fully typify the digital modulation process. The measurement conditions to evaluate the two forms are necessarily different. Analog emissions are strongly dependent on the audio frequencies and amplitudes used in the measurement while digital emissions are not influenced by these factors. When viewed on a spectrum analyzer, it is necessary to relate the energy in the resulting IF signal to a power spectrum density which is a continuous function of frequency for digital modulation. In contrast, analog tone power spectra are discrete energy tones at well defined frequency intervals. Measurement of digital modulation relative to the proposed emission limitation standard can easily be correlated. In the analog case data on transmitters which meet or exceed splatter filter requirements do not show good correlation when using the same criteria utilized in developing the proposed standard. This indicates that each should be treated separately. They also argued that the question of whether a system is analog or digital from an operational standpoint is not relevant; the question is whether the transmission method uses analog or digital techniques. In further comments they claimed that the unresolved issues pertaining to the elimination of the low-pass filter requirement for analog transmitters are primarily of a technical, rather than a regulatory, nature; and that, therefore, it seems more appropriate that this matter be resolved in a technical forum than as a portion of a rule making procedure.

16. We have reviewed these comments and we decided that our legal mandate gives us the authority to consider all technical aspects in our proceedings, before we reach the regulatory decisions for the Commission's rules. Sections 4(i) and 303 of the Communications Act of 1934, as amended. Therefore, our rule making procedure is the proper forum that must be used to determine whether the low-pass filter should be removed from analog transmitters, and a single emission envelope standard adopted for digital and analog systems. In our First Report and Order, we analyzed all technical aspects, developed an emission envelope standard equivalent to the analog transmitters, and we applied this standard to digital transmitters operating with the low-pass filter removed. However, it is technically known that analog voice systems have a greater bandwidth efficiency than digital voice systems. In order to conserve bandwidth, systems developed for the Police and Fire Services in the future, could use hybrid modulating codes composed of digital signals with variable analog amplitudes. As GE claimed, if the Commission adopts different standards, one for analog and one for digital, it would be difficult to determine whether the analog or digital standard should be applied to such hybrid signals.

17. Furthermore, the primary objective of these proceedings is to determine the adoption of uniform emission standards not in accordance to the methods of modulating techniques but in accordance to the effect of the transmitted signal on the radiated spectra. If the emission limits of the radiated spectra, both for analog and digital signals, are identical, both analog and digital systems should be able to co-exist in the same environment regardless of the presence or absence of the low-pass filter in the transmitter. We agree that in many cases modulating signals can be complex and their radiated spectra cannot be measured using conventional test procedures. Complex signals, however, can be reduced into a range of basic test signals of known frequencies, amplitudes and pulse widths. Furthermore, known engineering techniques can be used to circumvent spectrum analyzer deficiencies without compromising the validity of measured radiated spectra related to transmitters under test. These test concepts have been used successfully for many years by the Commission to verify the emission spectra of analog transmitters. Many manufacturers, especially in the defense and aerospace industries, have used for many years the spectrum analyzer method to measure the emission spectra of digital voice transmitters. We believe, therefore, that as long as the transmitted spectra power of an analog or digital signal is within the boundaries of the emission limitation standards of the Commission's Rules, the argument of test procedures and signal simulation cannot be accepted as a justification to prevent the transmission of that signal.

18. In view of the foregoing, the Commission has decided to adopt on a permanent basis uniform emission limitation standards for analog and digital systems, and to remove the mandatory requirement of the low-pass filter from all transmitters operated in the 25–76, 150–174, 450–512, 806–821 and 851–866 MHz bands. For any system operating in the 25–76 and 150–174 MHz, the power of any sideband emission shall be attenuated below the unmodulated transmitter power output (P) in accordance to the following schedule:

(a) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 Log_{10} ($f_d/5$) decibels;

(b) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 29 Log_{10} ($f_d^2/11$) decibels or 50 decibels whichever is the lesser attenuation;

(c) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

For any system operating in the 450–512, 806–821 and 851–866 MHz band, the power of any sideband emission shall be attenuated below the unmodulated transmitter output power (P) in accordance to the following schedule:

(a) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 Log_{10} ($f_d/5$) decibels;

(b) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 116 Log_{10} ($f_d/6.1$) decibels or 50 plus 10 Log_{10} (P) or 70 decibels, whichever is the lesser attenuation;

(c) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth. At least 43 plus 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

Standards of Digital Formats

19. In further comments, GE recommended that the modulation and encryption of digital voice signals should be standardized. This GE recommendation is supported by Gulf Radiotelephone & Electronics, Inc. (GRE). As we stated in our First Report

and Order, however, the evolution of digital voice transmission should determine the types of encryption, modulation and code formats that can fulfill the public needs. We believe that in any particular case, the operating band, bit rate, communicating distance, terrain, level of desired security, discernibility of voice signal and many other factors, can be used as trade-offs to obtain the required signal to noise ratio for effective communication. Therefore, we have decided not to impose any standards on the encryption and modulation techniques of voice digital systems, unless it is shown in the future that definite advantages are apparent in the use of specific modulation and encryption techniques utilized in these systems.

Review of Other Comments

20. Motorola recommended to relate the attenuation of transmitters to the frequency band of operation, authorized bandwidth, power output and whether a particular transmitter is operated as a mobile/portable station or as a fixed/base station. Except for some minor modifications, their proposed maximum attenuation levels are identical to the ones specified in EIA Standard RS–152–B.[6]

21. The limitations of EIA Standard RS–152–B proposed by Motorola are referenced to the input DC power of the final amplifier of the transmitter. The efficiency of different final amplifiers, however, varies considerably, and it would not be possible to relate this input DC power to the output power of every transmitter. It would also be impossible for the Commission to determine which transmitters would be used as mobile/portable or fixed/base stations and to verify that the licensees would use these transmitters as authorized. Therefore, this proposal cannot be accepted as a criteria in this matter.

22. In further comments, GRE recommended that the rule making procedure of this docket should include Parts 81 and 83 of the Rules. Furthermore, this docket, they claimed, should be applicable to any type of transmitted information regardless if it is voice or not, and that the Commission should implement minimum receiver standards. Additional recommendations by IBM are related to digital non-voice pools with 75 kHz bandwidth channels. We have reviewed these GRE and IBM comments and we find them unrelated to the purpose of this docket. Therefore, we cannot consider them in this proceeding.

[6] See EIA Standard RS–152–B, paragraph 17.2.

23. In Part 2 of the Commission's Rules there is a prescribed test for emissions of voice modulation that consists solely of a 2500 Hz test tone. This test is based on the presumption of a high roll-off of the modulating signal resulting from the low-pass filter required by our rules. With the adoption of the rules in Appendix B the low-pass filter will no longer be required. Therefore, there will be no guarantee that the 2500 Hz test tone will be adequate to verify that higher frequencies and potentially interfering signals will not be produced by the transmitter. For this reason, a Notice of Proposed Rule Making pertaining to this matter will be issued in the near future to amend Part 2 of the Commission's Rules.

24. In view of the foregoing, the Commission has decided to proceed and adopt the authorization of F3Y emission in the Police and Fire Radio Services on a permanent basis. Furthermore, it has decided to authorize the optional removal of the low-pass filter in all Private Land Mobile Radio Services in Parts 90 and 95 (General Mobile Radio Service) of the Commission's Rules and Regulations. Analog and digital systems that have the low-pass filter removed, shall comply with the uniform emission limitation standards specified herein and the operational limitations set forth elsewhere in the Rules.

25. Accordingly, pursuant to the authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered, That effective January 7, 1980, Parts 90 and 95 of the Commission's Rules and Regulations are amended as set forth in Appendix B below.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Parties Filing Comments and Reply Comments

Comments

Gulf Radiotelephone & Electronics, Inc. (GRE)
General Electric Company (GE)
Motorola, Inc.
International Business Machines Corporation (IBM)

Reply Comments

General Electric Company (GE)
Motorola, Inc.

Appendix B

I. Part 90 of the Commission's Rules is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

1. Section 90.209 is amended by deleting paragraphs (c) and (f) and paragraphs (f)(1) and (f)(2) and by adding new paragraphs (c), (f) and (g) with their associated Subparagraphs to read as follows:

§ 90.209 Bandwidth limitations

* * * * *

(c) Except as provided in paragraphs (d), (f) and (g) of this section, the mean power of any emission from a transmitter equipped with an audio low-pass filter in accordance with the provisions of Paragraphs (e) and (f) of § 90.211 of this Part shall be attenuated below the mean output power of the transmitter in accordance with the following schedule: * * *

* * * * *

(f) For those transmitters that operate in the frequency bands of 25.0 to 50.0 MHz, 72.0 to 73.0 MHz, 75.4 to 76.0 MHz or 150.8 to 174.0 MHz that are not equipped with an audio low-pass filter in accordance with the provisions of paragraph (e) of § 90.211, the power of any emisson shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 Log_{10} ($f_d/5$) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 29 Log_{10} ($f_d^2/11$) decibels or 50 decibels, whichever is the lesser attenuation;

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

(g) For those transmitters that operate in the frequency bands 450.0 to 512.0 MHz, 806.0 to 821.0 MHz or 851.0 to 866.0 MHz that are not equipped with an audio low-pass filter in accordance with the provisions of paragraph (f) of § 90.211, the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to an including 10 kHz: At least 83 Log_{10} (f_d/5) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 116 Log_{10} (f_d/6.1) decibels or 50 plus 10 Log_{10} (P) or 70 decibels, whichever is the lesser attenuation;

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

2. Section 90.211, paragraph (h) is amended as follows:

§ 90.211 Modulation requirements.

* * * * *

(h) Transmitters subject to paragraphs (f) and (g) of § 90.209. will be exempt from the audio low-pass filter requirements of this section provided that transmitters used for digital emissions must be type accepted with the specific equipment that provide the digital modulating signal. The application for type acceptance shall contain such information as may be neccessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (g) and (h) of § 90.209

PART 95—PERSONAL RADIO SERVICE

Part 95 of the Commission's Rules is amended as follows:

1. Section 95.617 is amended by revising the text of paragraph (c)(1) and by adding a new paragraph (c) (1–a) to read as follows:

§ 95.617 Emission limitations.

* * * * *

(c) * * *

(1) For all transmitters exclusive of those in the General Mobil Service and for those transmitters in the General Mobile Radio Service which incorporate the audio low-pass filter specified in paragraph (e) of § 95.619, when using emissions other than single sideband: * * *

(1–a) For all transmitters in the General Mobile Radio Service using emissions other than single sideband, which do not use the audio low-pass filter specified in paragraph (e) of § 95.619 the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz. At least 83 Log_{10} (f_d/5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to an including 250 percent of the authorized bandwidth: At least 116 Log_{10} (f_d/6.1) decibels or 50 plus 10 Log_{10} (P) or 70 decibels, whichever is the lesser attenuation;

(iii) On any freqeuncy removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

* * * * *

2. Section 95.619 is amended by revising the text of paragraph (e) to read as follows:

§ 95.619 Modulation requirements.

* * * * *

(e) Each transmitter in the General Mobile Radio Service which is equipped with a modulation limiter in accordance with the provisions of paragaph (d) of this section shall also be equipped with an audio low-pass filter unless it complies with the emission limitations specified in paragraph (c) (1–a) of § 95.617. This audio low-pass filter shall be installed between the modulation limiter and the modulated stage and, at audio frequencies greater than 3 kHz up to an including 20 kHz, shall have an attenuation greater than the attenuation at 1 kHz by at least 60 Log_{10} (f/3) decibels where "f" is the audio frequency in kHz. At audio frequencies greater than 20 kHz, the attentuation shall be at least 50 decibels greater than the attenuation at 1 kHz.

* * * * *

[FR Doc. 79-37442 Filed 12-5-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1-143]

Delegation to the Assistant Secretary for Administration

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This change delegates to the Assistant Secretary for Administration certain authority that is currently vested in the Secretary of Transportation. The Secretary has authority under Pub. L. 89–670 to issue notices for publication in the Federal Register. The Secretary is delegating authority to issue notices for publication concerning systems of records pertinent to DOT programs and operations under the provisions of the Privacy Act of 1974 (Pub. L. 93–579) to the Assistant Secretary for Administration. The Assistant Secretary is responsible for the continuing administration of the provisions of the Privacy Act of 1974 which requires publication of notices for public comment on each system of records pertinent to DOT programs and operations. The Departmental directive implementing the Privacy Act authorizes the Assistant Secretary to publish these notices. However, the authority to issue the notices has never been delegated.

The authority is also being delegated to the Assistant Secretary since issuance of these notices is administrative in nature and can, therefore, be more effectively handled by him.

EFFECTIVE DATE: This amendment is effective on December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Lynne A. Whitaker, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 426–4723.

SUPPLEMENTAL INFORMATION: Since this amendment relates to Departmental management, it is excepted from notice and public procedure requirements and it may be made effective in fewer than 30 days after publication in the Federal Register.

Discussion of Delegation

The Secretary derives his authority to issue notices for publication from the Department of Transportation Act, Pub. L. 89–670. Under 49 CFR Part 10, the Assistant Secretary for Administration is responsible for the continuing administration of the provisions of the Privacy Act (Pub. L. 93–579) concerning the Department and for oversight of

Departmental activities stemming from the Act including publication of information on each system of records pertinent to DOT programs and operations. The provisions of the Privacy Act authorize the Assistant Secretary to publish notices concerning these systems of records. They do not, however, make provision for the issuance of notices which must precede their publication.

This section confers authority on the Assistant Secretary for Administration to issue notices, to be published in the **Federal Register**, covering systems of records pertinent to programs and operations maintained by the Department in connection with the Privacy Act.

Accordingly, Part I of Title 49 of the Code of Federal Regulations is amended by adding a new paragraph (m) to § 1.59, to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

* * * * *

(m) Issue notices of Department of Transportation systems of records as required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)).

(Sec. 9(e)(1), Department of Transportation Act. (49 U.S.C. 1657(e)).)

Issued in Washington, D.C. on November 21, 1979.

Neil Goldschmidt,

Secretary of Transportation.

[FR Doc. 79-37141 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-62-M

Materials Transportation Bureau

49 CFR Part 195

[Amdt. 195-16; Docket PS-51]

Transportation of Liquids by Pipeline; Reconsideration of Procedures for Operations, Maintenance and Emergencies

AGENCY: Materials Transportation Bureau (MTB).

ACTION: Final rule.

SUMMARY: A final rule was published July 16, 1979 (44 FR 41197), establishing the essentials for written procedures to be prepared and followed by operators of liquid pipelines for handling pipeline operations, maintenance and emergencies and for training, communications and public education. In response to six petitions for reconsideration, DOT has made certain changes to that final rule. Among these changes are: (1) to provide for the use of fail safe equipment in lieu of monitoring pipeline operations from attended locations, (2) to more clearly define those facilities which would require procedures for immediate response by the carrier in event of malfunction, and (3) to permit conversion of certain pipelines to service under Part 195 which were not designed and constructed in accordance with this Part.

DATE: Effective date of this final rule is July 15, 1980 except § 195.402(c)(8) & (c)(9) do not become effective until July 15, 1981.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, 202-426-2392.

SUPPLEMENTARY INFORMATION: Final rules (Amendment 195-15) were published (44 FR 41197, July 16, 1979) establishing the essentials of written procedures that are prepared and followed by carriers for handling pipeline operations, maintenance and emergencies. The Amendment also included new requirements for training, communications and public education. The American Petroleum Institute (API), Phillips Petroleum Company, Texas Eastern Products Pipeline Company, Exxon Company U.S.A., Exxon Pipeline Company, and Mid-America Pipeline System submitted petitions for reconsideration of various portions of the final rule. The disposition of the petitions together with the reasons for granting or denying the petitions, and the amended rules as a result of the petitions follow:

Scope of Rules: The API stated that the scope of the rules is vague. The API argued that use of the term " hazardous liquid pipelines" in the Summary portion of the final rules document makes it unclear whether the rules apply to all liquid pipelines or to Highly Volatile Liquid (HVL) pipelines only. The MTB disagrees. The rules themselves reveal which rules apply to all liquid pipelines and which apply to HVL pipelines only. Further, the Supplementary Information concerning General Requirements stated "The proposed regulations and final regulations apply to all liquid commodity pipelines operated by carriers engaged in interstate or foreign commerce with special provisions for HVL pipelines." The MTB believes the scope of the rules is clear as written.

Applicability of Rules to All Commodities

Three petitioners argued that neither the notice of proposed rulemaking (NPRM) nor the final rules document contained justification for applying the procedural rules to all hazardous liquid pipelines and recommended that the final rules apply only to pipelines transporting HVL. MTB disagrees with this view. The requirements for carriers to have written procedures to handle normal operations, abnormal operations, and emergencies for all liquid pipelines were prescribed by § 195.402 at the time Part 195 was adopted, long before Amendment 195-15 was written. Consequently, Amendment 195-15 does not establish a new requirement for carriers to have written procedures nor did it extend the existing rule to include additional commodities. Rather, it specified items that must be covered in complying with existing requirements. Further, although the NTSB report (NTSB-78-19) and the Battelle Study (DOT/OPS-75/06), quoted in the NPRM concern highly volatile liquids, the MTB cited these reports as data to support the need for carriers to have adequate procedures on all their pipelines rather than as data to indicate the need for better procedures on HVL pipelines only. Other NTSB reports not involving HVL also could have been cited as demonstrating the need for adequate procedures. Some of these reports are NTSB—PAR—73-2 "Crude Oil Explosion at Hearne, Texas", and NTSB—PAR—76-3, "Crude Oil Terminal Fire Near Lima, Ohio". In both of these accidents involving crude oil, lack of adequate procedures contributed to the cause of the accident. Approximately 10 percent of liquid pipeline accidents reported annually to the DOT on Form 7000-1 result from incorrect operations by carrier personnel. Additionally, many NTSB reports indicate that although incorrect operation may not have been the cause, the consequences of many liquid pipeline failures could have been lessened if the carriers had had adequate procedures for handling abnormal operations and emergencies. In view of the foregoing, the petitions to amend the final rules to be applicable only to HVL pipelines is denied.

Duplicate Regulations

One petitioner argued that safety considerations involving offshore liquid pipelines are adequately covered by OCS Orders No. 8 and 9 issued by the United States Geological Survey (USGS) of the Department of the Interior (DOI). The petitioner argued that these orders already provide for detailed contingency plans and training of personnel much like those prescribed by the final rule. MTB believes this petitioner misunderstands the applicability of the cited USGS Orders and Part 195 to offshore pipelines. A Memorandum of Understanding (MOU) was published in the **Federal Register** June 11, 1976 (FR 41, 23746), delineating DOT and DOI offshore pipeline responsibilities in order to avoid duplication of regulatory

efforts. This delineation of regulatory responsibilities was incorporated in Part 195 by Amendment 195–11, which modified the scope of Part 195 (§ 195.1) to exclude from coverage those offshore pipelines subject to DOI responsibilities under the MOU. Thus, OCS orders do not apply to safety aspects of offshore pipelines subject to Part 195.

Coordination With the Department of Interior

One petitioner argued that DOT failed to coordinate this rulemaking with DOI. In fact, this rulemaking was developed with DOI participation as evidenced by written comments submitted by DOI and available for inspection in the public docket.

§ 195.401(c)

One petitioner noted that the new § 195.401(c) did not contain the introductory words "Except as provided in § 195.5" as were in the previous § 195.402(d) [§ 195.402(d) was redesignated as § 195.401(c)] and that the Supplementary Information of the final rule made no mention of this deletion. The petitioner noted that the deletion was significant in that it would prevent conversion of pipelines to service under Part 195 unless the pipeline was designed and constructed in accordance with the Part.

The deletion of the introductory words "Except as provided in § 195.5" in § 195.401(c) was an inadvertent omission. Section 195.401(c) in this amendment contains the correction.

§ 195.402(a)

One petitioner recommended that the new § 195.402(a) be deleted, arguing that procedures for normal operations can give a carrier a competitive advantage and that disclosure of these procedures to the MTB might result in the loss of this advantage. The MTB believes this assertion strains credulity. Further, MTB field inspection personnel historically have examined carriers' operating procedures prepared under Part 195 without creating the sort of difficulty envisioned by the petitioner. Consequently, § 195.402(a) remains unchanged.

§ 195.402(b)

One petitioner recommended that the provisions for amendment of a carrier's procedures contained in § 195.402(b) apply to emergency procedures only, arguing that review of procedures for normal and abnormal operations would be impractical because of the time required to conduct the review. The MTB disagrees. As noted above concerning the applicability of rules to all commodities, approximately 10 percent of all liquid pipeline accidents are caused by improper operation by carrier personnel, and it is to reduce the incidence of these accidents as well as improve carriers' emergency responses that these rules have been promulgated. The MTB believes that a provision for review of all procedures is essential to ensure their adequacy and that time devoted to this review will pay rich dividends.

§ 195.402(c)(4) and § 195.402(c)(14)

Three petitioners recommended that § 195.402(c)(4) and § 195.402(c)(14) be deleted arguing that (1) § 195.402(c)(4) implies that carriers operate facilities which pose unacceptable safety hazards, (2) both paragraphs defy compliance, (3) the wording of the paragraphs does not inform carriers of their responsibilities, and (4) the substance of § 195.402(c)(4) is covered in other paragraphs under § 195.402(c). The MTB does not agree that the substance of § 195.402(c)(4) is covered elsewhere. The MTB does agree, however, that the wording of § 195.402(c)(4) can be improved to more clearly define the carrier's responsibilities and to dispel the inference that some existing facilities pose unacceptable safety hazards. As stated in Amendment 195–15, the intent of § 195.402(c)(4) is to require a carrier to analyze its pipeline system and its practices, and to identify those facilities and practices that would cause hazards to the public or to the system itself if failure or malfunction did occur. In order to more clearly set forth this intent, § 195.402(c)(4) has been rewritten to require the carrier to determine "those facilities which are located in areas that would require an immediate response by the carrier to avoid hazards to the public if the facilities failed or malfunctioned". This revised wording recognizes (1) that the location of a facility largely determines whether it might become a hazard to the public, and (2) a hazardous situation would be one that requires an immediate response by the carrier. It should be noted that reference to a carrier's "practices" has been deleted to avoid the misunderstanding that carriers might knowingly conduct hazardous practices. Section 195.14(c)(14) has been deleted as unnecessary because MTB believes it duplicates § 195.402(a) which requires carriers to prepare procedures to assure safe operation and maintenance.

§ 195.402(c)(5)

One commenter recommended the deletion of § 195.402(c)(5) arguing that (1) all carriers analyze pipeline failures without being required to do so and (2) cooperation with the Secretary is addressed in § 195.60. The MTB does not agree that all carriers adequately analyze all accidents to determine the causes; hence, there is a need to develop and follow procedures for these analyses. The wording within the parenthesis "in cooperation with the Secretary when appropriate" has been deleted from § 195.402(c)(5) to avoid duplication of, or confusion with, the requirements of § 195.60.

§ 195.402(c)(8), (c)(9), and (d)(2)

Five petitioners argued that § 195.402(c)(8) and (c)(9) are needlessly restrictive because these paragraphs provide no alternative to monitoring pipeline operational data from an attended location as a means to ensure safety. These petitioners argued that adequate safety is customarily provided by fail safe equipment and that use of such equipment should be allowed as an alternative to personnel monitoring. The MTB agrees with this view. Section 195.402 (c)(8) and (c)(9) have been amended to provide for the use of fail safe equipment.

Four peitioners noted that the words "points of receipt and delivery" in § 195.402(c)(9) and "inlet and outlet facilities" in § 195.402(d)(2) can be interpreted to require that all points of connection between pipelines where transfer of commodity is made would have to be monitored for safe operation. These petitioners argued that "detecting abnormal operating conditions" at these points as required by § 195.402(c)(9) and "checking variations from normal operation" as required by § 195.402(d)(2) would be inordinately expensive and would provide no increase in public safety. The petitioners argued that the cost to install the necessary telemetry equipment offshore and at remote locations onshore at these connection points would be very large.

The intent of § 195.402(c)(9) and § 195.402(d)(2) is to require carriers to detect abnormal conditions that can occur during transfer operations and to check for any further variations from normal operation after detected abnormalities have ended. MTB agrees that connection points between pipelines are not appropriate places to look for signs of abnormal operations. Detection can be more readily accomplished where the transfer operations are controlled. To clarify this intent, § 195.402(c)(9) has been rewritten to require, in the case of facilities not equipped to fail safe, monitoring of facilities "that control receipt and delivery of the commodity". The words "at outlet and inlet facilities" have been

deleted from § 195.402(d)(2) to avoid the confusion with points of connection between pipelines. The wording of this section, as amended, would still require carriers to check for operational/irregularities at points monitored under § 195.402(c)(9).

The words "including pressure and flow rates" have been deleted from § 195.402(d)(2). Although none of the petitioners made this specific recommendation, this deletion was made to allow greater flexibility to select appropriate means to ensure the integrity and safe operation of the pipeline system.

One commenter asserted that monitoring equipment would detect the occurrence of an accident but would not prevent an accident from occurring. The MTB believes that monitoring pipeline operational data can provide information to the carrier so that many accidents can be avoided and the effects of unavoidable accidents lessened. It is with this intent that § 195.402(c) (8) and (9) have been promulgated.

§ 195.402 (d)(1)(ii), and (d)(3).

One petitioner recommended that the requirement to respond to decreases in pressure or flow rate be deleted from § 195.402(d)(1)(ii) and that correcting abnormal operation of flow control equipment be deleted from § 195.402(d)(3) arguing that the only design limit which would lessen safety is the strength limit of the pipe and components. The MTB disagrees. Operating design limits are those limits or ranges of pressure, flow, temperature, etc., that a carrier imposes on its pipeline system to define normal operation. Operation outside these limits or ranges indicates an abnormal condition which should be investigated and corrected to avoid approaching the strength limits of the system and the potential for failure. The MTB believes these tasks are essential to ensure safety; hence these paragraphs remain unchanged.

§ 195.440

One petitioner objected to § 195.440 arguing that since virtually all public officials speak English, there is no reason to duplicate an educational program in other languages. The intent of § 195.440 is not to duplicate educational programs where English is commonly spoken, but where English is not commonly spoken, to conduct programs both in English and in the common language. Further, although it may be true that virtually all public officials speak English, the intent of this section is to require education of the public rather than public officials. Since the wording of the section conveys this intent, the section is not changed.

Costs

Five petitioners argued that the cost to comply with Amendment 195–15 would far outweigh the benefits. The costs arose largely because of the telemetering that would have been required by § 195.402(c)(8), (9) and d(2), according to these commenters. Because these paragraphs have been amended to permit installation of fail safe equipment in lieu of monitoring data from an attended location, and because the requirement to monitor pipeline data at "points of receipt and delivery" in § 195.402(c)(9) and at "inlet and outlet facilities" in § 195.402(d)(2) has been deleted, the MTB believes the expected cost of compliance with this final rule is clearly outweighed by the public safety benefits to be achieved by such compliance.

Time for Compliance

Two petitioners argued that compliance with Amendment 195–15 would not be possible within the one year prescribed by the Amendment. These petitioners argued that up to four years would be required to acquire and install the necessary telemetry equipment required by the Amendment. Because § 195.402(c)(8) and (9) have been revised to allow use of fail safe equipment, (much of which is already installed) in lieu of telemetry equipment, the MTB believes the time needed for compliance has been substantially reduced. However, in view of the time for compliance recommended by the petitioners, the MTB has extended the time as noted in the effective date for part of this final rule one year to July 15, 1981 to allow for orderly engineering, procurement, and installation of the equipment required by § 195.402(c)(8) and (9). The effective date for the remainder of the final rule remains as July 15, 1980.

Metrication

One commenter objected to the use of metric units in the definition of "HVL" arguing that metrication should be introduced as a separate rulemaking. The MTB does not consider metrication an issue subject to reconsideration in this proceeding or a matter for future rulemaking. The MTB has announced, consistent with Departmental policy, that the Federal pipelines safety standards in Parts 192 and 195 will be gradually modified to include metric units as new rules are adopted and existing rules are amended.

The MTB has determined that the provisions of this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034). A Final Evaluation is available in the public docket.

In view of the foregoing, 49 CFR Part 195 is amended as follows:

1. By amending § 195.401(c) to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided in § 195.5, no carrier may operate any part of a pipeline system upon which construction was begun after March 31, 1970, or in the case of offshore pipelines located between a production facility and a carrier's trunkline reception point, after July 31, 1977, unless it was designed and constructed as required by this part.

2. In § 195.402, by amending paragraphs (c)(4), (5), (8), and (9) and (d)(2) to read as follows, and by deleting paragraph (c)(14):

§ 195.402 Procedural manual for operations, maintenance and emergencies.

* * * * *

(c) * * *

(4) Determining which pipeline facilities are located in areas that would require an immediate response by the carrier to prevent hazards to the public if the facilities failed or malfunctioned.

(5) Analyzing pipeline accidents to determine their causes.

* * * * *

(8) In the case of a pipeline that is not equipped to fail safe, monitoring from an attended location pipeline pressure during startup until steady state pressure and flow conditions are reached and during shut-in to assure operation within limits prescribed by § 195.406.

(9) In the case of facilities not equipped to fail safe that are identified under § 195.402(c)(4) or that control receipt and delivery of the commodity, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location.

* * * * *

(d) * * *

(2) Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation.

* * * * *

(18 U.S.C. 831–835, 49 U.S.C. 1655, 491.53(b), App. A of Part 1)

Issued in Washington, D.C. on November 29, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 79-37349 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043, 1045B, 1046

[Ex Parte No. MC-96 (Sub-No. 2)]

Passenger Broker Entry Control

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The rules in this document establish a simplified licensing procedure for obtaining a passenger broker license. Applicants found fit will be granted a 3-year limited term license. A permanent license will be granted upon reapplication and a second finding of fitness. Applications may be opposed only on the basis that applicant is not fit to conduct a broker operation. The new application process is found at the end of this document under "Adopted Rules."

EFFECTIVE DATE: Applications will be accepted until February 4, 1980.

FOR FURTHER INFORMATION CONTACT: Peter Metrinko, 202-275-7885 or Donald J. Shaw, Jr., 202-275-7292.

SUPPLEMENTARY INFORMATION: For copies of the decision and simplified application process write: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. Or call toll free: (800) 424-9312. This decision establishes a simplified licensing procedure for persons wishing to perform operations as passenger brokers. Arrangement of motorcoach tours, between all points in the United States, will be authorized under the issued licenses. This simplified licensing procedure is consistent with the public interest and the national transportation policy. Applicants for a passenger broker license need only comply with the letter-application filing requirements listed below under "Adopted Rules".

Procedural History

By publication in the March 27, 1979, **Federal Register**, 44 FR 18459, comments were requested on whether the licensing procedure for passenger brokers should be changed. The notice of proposed rulemaking was published as Ex Parte No. MC-96, *Entry Control of Brokers.* Subsequently, the base proceeding was divided up into four proceedings. See Ex Parte No. 96 (Sub-No. 1), Passenger Broker Practices, (not printed) decided July 25, 1979, 44 FR 46847. The decision here deals only with the question of passenger broker entry control.

Current Procedures

Under current procedures, applicants are required to fill out an OP-OR-11 form, and await publication of the notice of the application in the **Federal Register.** Opposition to the application may be based on the issue of fitness, or on the grounds that a grant of the application will not be consistent with the public interest.[1] The application may be processed under the modified procedure, see 49 CFR 1100.247, or under oral hearing procedures.

Legislative History Behind Passenger Broker Regulation

Present broker regulation is largely governed by 49 U.S.C. 10924 (formerly, section 211 of the Interstate Commerce Act). The legislative history is somewhat sparse. The Commission examined the legislative history of broker regulation in *Carla Ticket Service, Inc., Broker Application,* 94 M.C.C. 579, 580-581 (1964):

> * * * The legislative history of section 211 of the act clearly reveals that the primary purpose of Congress in regulating motor transportation brokers is to protect carriers and the traveling and the shipping public against dishonest and financially unstable middlemen in the transportation industry. Although this may be the primary objective of section 211 of the act, it does not follow that this is the sole objective of section 211. If financial integrity and stability were the sole aim of regulation in this area, it would have been sufficient for Congress to have formulated a statutory standard in section 211(b) of the act which would have limited our function in broker application proceedings to determine whether or not the applicant is fit, willing, and able to perform the proposed service. Instead, the statutory standard formulated by Congress in section 211(b), in terms of which all broker applications must be evaluated, requires us to find (1) that the applicant is fit, willing, and able to perform the proposed service, and (2) that the proposed brokerage operation is or will be consistent with the public interest and the national transportation policy. As a matter of statutory construction, no word or clause in a statute should be rejected as superfluous or meaningless, but must be given its due force and meaning appropriate to the context, albeit not a strained or unnatural meaning. Cf., *Keystone Transp. Co. Contract Carrier Application,* 19 M.C.C. 475, 492. The "public interest" aspect of the involved statutory standard obviously encompasses a broader range of deliberation than does the "fitness" aspect of the statutory standard. Therefore, it seems clear to us that Congress intended, by requiring consideration of the "public interest" in section 211(b) of the Act, that our evaluation of broker applications on their merits not be limited to the issue of an applicant's fitness.
>
> It is not clear from the legislative history as to whether or not the "public interest" aspect of the standard enunciated in section 211(b) requires some consideration of relevant competitive factors in our judging broker applications on their merits. However, we think it significant that when section 211(b) was enacted, although Congress was cognizant of the fact that Commission proceedings were [usually] adversary in nature entailing the development of evidence relating to competitive factors among others, we were not directed to deviate from this method of procedure. Despite changes in other language of this particular section and reconsideration of the entire act, Congress has not seen fit to change this standard or otherwise suggest that our prior interpretation of section 211(b) is in error. * * * Under all circumstances we do not believe that Congress intended that the Commission be precluded from giving any consideration to competition in broker application cases.
>
> Consistent with the legislative history of section 211 broker applicants are required to show that their services will contribute something of value or be of benefit to carriers or the public. Consideration of existing broker service is, therefore, relevant to broker applications for it is obvious that the creation of needless duplicative services will neither advance the primary purpose of section 211 nor be of benefit to anyone.

Judicial review of the Commission's broker jurisdiction has been sparse. In the most relevant case, *Gray Line National Tours Corporation* v. *United States,* 380 F. Supp. 263, 265-266 (S.D.N.Y. 1974), the court examined the legislative history of broker regulation:

> * * * As is well known, the sources of the Motor Carrier Act of 1935 were ICC's report on Coordination of Motor Transportation, 182 I.C.C. 263 (1932), and three reports of Commissioner Joseph B. Eastman in his capacity as Federal Coordinator of Transportation during the Great Depression, S. Doc. No. 119, 73d Cong. 2d Sess. (1934), S. Doc. No. 152, 73d Cong. 2d Sess. (1934), and H.R. Doc. No. 89, 74th Cong. 1st Sess. (1935). The ICC report took note of the brokerage problem, saying at 182 I.C.C. at 279-80:
>
> With the development of long-haul motor transportation of passengers there has grown up in many cities the practice of selling transportation by agencies which do not represent any regular bus line. The practices of these agencies have given rise to many of the complaints registered by interstate bus passengers. The agencies advertise rates appreciably less than the fares of regular bus

[1] Fitness is the most important concern when examining a broker application. See *Holiday International, Inc., Broker Application,* 128 M.C.C. 34, 40 (1977), and cases cited therein; and *Auch Inter-Borough Transit Co. Extension-22 States,* 88 M.C.C. 455, 459 (1961). In *Auch,* the Commission stated that in an application proceeding for special operations authority, protection against unwarranted economic competition would not be extended to the protestant broker.

lines and then make arrangements with irregular operators, frequently the owners of private automobiles, to transport the passengers, the agency retaining a per cent of the fare collected as commission.

Its solution was to limit brokerage in passenger transportation to certificate holders, *id.* at 386.

The first of the two relevant reports of the Coordinator, S. Doc. No. 152, *supra*, at 45–49, 359, recommended regulation of "transportation agents or brokers" but said only that brokers should have to obtain a "permit", without specifying the standard. The second report, which recommended what became § 211, is more informative. It said, H.R. Doc. No. 89 *supra*, at 61–62:

Provision for more thorough-going regulation of brokers or transportation agents is made in the bill. To avoid confusion, the term "license" instead of "permit" is applied to the authority issued for brokerage operations. Licenses are required of all persons selling tickets or making contracts, agreements, or arrangements to provide transportation of persons or property in interstate or foreign commerce. Exemption of the agents of carriers holding certificates or permits is provided.

A showing of public interest and financial responsibility is a condition to the issuance of a license. The Commission shall make reasonable rules and require bond to protect the traveling or shipping public. These licenses are subject to revocation, as provided in section 312.

A desirable control over transportation effected through brokerage operations is afforded by the provision which requires brokers to employ carriers holding certificates or permits. If the broker or transportation agent himself performs any transportation, through agents or employees or by lease of equipment, he must secure a form of carrier authority, either a certificate or a permit, and take on the duties and responsibilities and subject himself to the regulation provided for motor carriers.

The Commission may prescribe the forms of brokers' accounts and require reports. It may also enforce appropriate penalties for unlawful operations.

The brief Senate Report on what became the Motor Carrier Act, S. Rep. No. 482, 74th Cong. 1st Sess. (1935), says nothing about brokers and the House Report, H.R. Rep. No. 1645, 74th Cong. 1st Sess. at 4 (1935), contains simply a condensed version of § 211(b) indeed omitting any reference to "the public interest and the national transportation policy," see note 1 supra.

The *Carla* opinion states that it is not clear from the legislative history whether the "public interest" standard required consideration of relevant economic factors. The Commission in *Carla* was taking an approach that, since Congress had not objected to its consideration of competitive aspects, the Commission was not "precluded from giving any consideration to competition in broker application cases." *Carla, supra*, at 581. However, nowhere in the legislative history is there a requirement that competitive factors be weighed in every application. More importantly, there is no definition of what "public interest" means, or how the processing of broker applications should be carried out to enhance the public interest. Quite clearly, this was to be up to the discretion of the Commission.

The Commission's policy statement in *Carla* should be compared with the earlier evaluation of competition and economic protection involving brokers in *Auch, supra*, at 459:

The fundamental purpose underlying the economic regulation of motor carriers was to protect the public from the damaging effects of ruinous competition among carriers. This regulatory concept derives its validity from the public utility characteristics of the transportation industry and, in particular, from the fact that common carriers of passengers must make a heavy investment in equipment, terminals and other transportation facilities in order to provide safe, economical, and reliable service. A broker of motor transportation, on the other hand, has no comparable investment in property or equipment. In contrast to the basic purpose underlying the economic regulation of motor carriers, brokers are licensed primarily for the purpose of protecting the traveling and shipping public against unscrupulous or dishonest purveyors of transportation. S. Doc. No. 152, 73d Cong., 2d sess. 226 (1934).

Major Issues for Resolution in This Proceeding

The principal questions for resolution in this proceeding are whether, under current economic conditions, the public interest is now being served by use of the *Carla* standards; whether individual processing of applications, and examination of local need for broker service is necessary or is accomplishing a valuable purpose; and whether there are other alternatives which might better serve the public interest.

The standard adopted in *Carla* was the product of an era during which the tight economic control of entry into the regulated transportation industry was assumed. The meager legislative history of broker regulation did not contradict the *Carla* standards. Where economic well being was promoted was never addressed in *Carla* directly. No economic analysis was performed prior to the policy declaration in *Carla*. The Commission simply announced a standard which was consistent with current regulatory philsophy in the field of motor carrier regulation, i.e., duplication in service was to be avoided. *Carla* announced the test as "creation of needless duplicative services will neither advance the primary purpose of section 211 (now, 49 U.S.C. 10924) nor be of benefit to anyone". The parallel standard used in many motor carrier application proceedings was that existing motor carriers should normally have the right to transport all the traffic they can handle adequately, efficiently, and economically in the territories they serve without the added competition of a new operation. See *C. & D. Oil Co. Contract Carrier Application*, 1 M.C.C. 329, 332 (1936). A typical *Carla* era common carrier decision denying an application, essentially based on a "needless duplication" type standard is *Harris Extension—Elkins, W. Va.*, 94 M.C.C. 227, 230 (1963). During this period, many decisions were based on the fact that, unless a different type, improved, or inadequate existing service could be shown, the stated willingness by a protesting motor carrier that it would handle the traffic, combined with the requisite operating authority, was generally sufficient grounds for denial. This contrasts with the present motor carrier entry standards which focus on the public interest in general, rather than exclusively on carrier benefits and harms. See *May Trucking Co.* v. *United States*, 593 F. 2d. 1349 (D.C. Cir. 1979).

In recent years it has become the Commission's growing perception that the examination of public witness testimony in passenger broker applications is without substantial value. Typically, the applicant will offer in support the testimony of clients or friends who praise applicant's character and promise to use the proposed services. Applicant has a difficult task, however. In many cases, although applicant has travel industry experience in either owning or working in a general service travel agency, it has no bus tour clientele to draw upon for support. Correspondingly, witness testimony is vague.

Existing brokers attempt to show that they offer a multitude of tours, that the witnesses have not availed themselves of the existing brokers' services, or that these services were used without complaint.

The Commission has come to believe that this evidentiary examination is of minor importance. First, applicant will probably depend for support on persons close to applicant. This may include personal friends, business contacts, et cetera, who will naturally praise applicant's integrity and business ability. There is no guarantee that these persons will ever use the proposed services. An applicant may propose a number of exotic tours, which existing brokers obviously are not offering, and assert that it contemplates reaching a different level of clientele. However,

applicant is not bound to offer those services. Nor does the Commission ever monitor the services subsequently offered.[2] Third, even if applicant did offer those tours, there is no way to forecast whether the public would use applicant. While sophisticated market research (which is rarely done in broker cases) could offer some directional clues or approximate chances for the applicant's eventual success, there are many other intangibles which will determine whether the public will actually go on the tours, including such large but immeasurable factors as customer satisfaction, loyalty to an existing broker, and the personality and salesmanship of the applicant. In short, we do not believe that anything substantial is accomplished in examining "need" for a broker service.

Another reason for our decision has to do with a salient characteristic of the motor carrier tour industry. It is largely a luxury service. While some individuals might view this type travel as one of their more important budget items, it is not usually essential, and consequently is not the highest priority in most household budgets. This is only one of many opportunities open to persons to pursue in their leisure time. And, motorcoach tours are but one form of travel. The tour industry is one where demand can be created, often by attractive packaging and promotion. The consumer can spend his leisure dollar on a variety of recreational activities. It is up to the operator of the motorcoach tour to attract this money and, through the offering of pleasurable tours, attract it on a repeat basis. There is nothing in the present application procedure which can foretell the eventual amount of demand for bus travel services. We doubt that a reasonable method can be found, short of employing sophisticated, expensive market research for every broker application.

The Commission also has come to recognize that there are strong institutional and psychological restraints to obtaining a broker license. Commission personnel are in daily contact with members of the public inquiring about the procedures, effort, and cost involved in obtaining a broker license. The public perception is that obtaining a broker license is very expensive (compare this to data submitted by existing brokers, discussed below) and time consuming with low chances of success. Our procedures are seen as overwhelmingly complicated. This is especially critical for the small businessman, who is probably appearing for the first time before the Commission seeking authority. In contrast, motor carriers typically make many application filings. They become accustomed to the application process, and to the various techniques that can be employed in obtaining authority quickly. For example, a motor carrier knows that by proper filing sequence it can begin to serve a shipper almost immediately under temporary authorities, which may be extended until the application for permanent authority is considered. There are no provisions for a broker to be granted temporary authority. It must plan long in advance of actual operations. Since tours must be planned and sold months before actual operation, a passenger broker must look to a lengthy gap between its time and money investment in the application process and the actual operation of the tour.

In summary, there are two basic reasons for the Commission's reexamination of the present broker standards. The present examination of "need" does not perform a valuable function, and there are strong institutional impediments to getting a broker license that deter the entrepreneur. It is for those reasons that the public was invited to comment on the various options in the notice of proposed rulemaking.

Comments of the Parties

Comments received were from the National Tour Brokers Association, Inc. (NTBA), which represents 202 licensed tour brokers. NTBA recommends that the Commission (1) reject a master licensing approach, (2) use the present application process, subject to certain improvements, (3) reject any new standard of proof, (4) issue regulations setting strict timetables for the application process, and implement expedited case processing procedures, (5) retain existing territorial restrictions in licenses, (6) require that a licensed tour broker maintain an established place of business, (7) increase the minimum bond to $10,000, and, (8) strengthen the Commission's enforcement program. The NTBA also submitted a study prepared by Arthur D. Little, Inc., and Opinion Research Corporation (hereinafter, Little Study).

General arguments made by NTBA include the following: (1) The Commission's proposed actions would eliminate the "public interest test" for tour broker licensing; (2) the statute regulating brokers was a pioneer consumer protection law; (3) removal of the "public interest test" contradicts prior Commission case law; (4) if cumbersome case processing is seen by the Commission to be a problem, the Commission should streamline the procedures, not change the required standard of proof; (5) the broker industry is characterized by sound competition, from other brokers as well as special operations conducted by motorcoach operators; (6) since removing territorial restrictions would result in the broker's forced to use buses from the national bus companies, smaller bus companies unauthorized to travel outside their designated areas will suffer; (7) increased competition will force many brokers to cancel tours because of lack of enrollment; and, (8) arranging motorcoach tours requires high expertise which general travel agents may lack.

The American Bus Association (ABA) is a national trade association for the intercity bus industry, with 400 operator members. Members of the ABA assertedly perform most of the brokered transportation at issue, and are competitive with brokers where members hold "special operations" authority. ABA takes no position on whether entry standards should be relaxed. It states that the intercity bus industry might benefit from an increase in the number of licensed brokers. However, it believes that fitness standards should be raised if entry becomes easier. The practices of brokers affect the bus industry, since the traveling public often fails to distinguish between the operator of the bus and the tour broker.

The American Society of Travel Agents, Inc., (ASTA) supports the elimination of the necessity of showing in case-by-case adjudication that the proposed operation is consistent with the public interest. They believe this will expand the availability of motorcoach tours to the traveling public. At the same time, to ensure adequate protection of the public, ASTA urges the adoption of tighter fitness requirements.

ASTA believes that applicants for broker licenses face a costly, time consuming process. In its view, the changing nature of the travel industry and the national economy requires a more flexible attitude on restraints towards competition. It states that there are a comparatively small number of licensed brokers. However, if liberalized entry be adopted, more specific fitness standards should be required. ASTA is of the opinion that the standards employed by the Commission in *Cook Broker Application*, 119 M.C.C. 709 (1974) require more explanation. ASTA proposes that each applicant be required to have a standard office open to the public and devoted solely to the sale of

[2] Nor should it. The broker should be free to change its offerings in response to public demand.

transportation. Broker licensing standards should include a minimum experience and competency requirement, or the successful completion of a reasonable examination. A strong commitment should be made to enforcement. ASTA takes the position that simply shifting the burden of proof in the application process is not enough, since existing brokers probably would raise arguments to meet the new standard, thus maintaining the present lengthy and expensive process.

ASTA believes that significant environmental benefits would be realized if entry were eased. New and innovative tours would be created. Greater competition should promote innovation. An increase in competition would not be ruinous to existing brokers if they are operating efficiently and responsibly.

Discussion and Conclusions

I. Evaluation of the Little Study

The Little Study is a June, 1977, characterization of the broker industry. Our examination of the Little Study added weight to our initial conclusion that the current licensing procedures used by the Commission are unnecessarily expensive and time consuming and are of little value.

We note at the outset that we have some problems with the methodology used in the study's interview process. For example, the introduction states that the information "will be used as part of NTBA's response to the recent ICC decision on deregulation of the process for obtaining a broker's license". This would invite self-serving answers. Second, many of the responses are broad estimates on the part of the brokers, dealing with such items as ages and incomes of the tour clients. However, in general we found that the responses shed light on the basic issue under examination—whether the current licensing process is a valuable tool to protect the traveling public.

We are conscious of the argument that easing entry into the broker industry would result in oversaturation of the market. Brokers would assertedly have to cancel tours, leading to the inconvenience of the public, or would suffer so much economically that they might be forced out of business, with the result that fewer tours might be offered.

The Little Study characterizes the "typical" motorcoach tour passenger as being an elderly female. A primary consideration for this tour traveler is personal attention to comfort needs. Once this person finds a broker who suits her preferences, the tendency is to remain loyal to that broker. There is a large amount of repeat business involved because of such factors as the undesirability of driving long distances.

It appears that loyalty and tour quality are two strong factors at work in the tour broker business. Even if entry be eased, existing brokers that have operated in a suitable manner would have a strong advantage of client loyalty. We conclude that the significance of severe and ruinous price competition would be lessened by the characteristic of the tour passenger to place personal comfort and attention at the head of the list.

A significant finding in the Little Study appears at pages 30 and 31, where 35 percent of the respondents in the survey stated that, prior to being a tour broker, they were in a non-travel business. We noted that, however, personal interviews during the Little Study revealed the belief of some brokers that special knowledge was required to conduct brokerage operations, including dealing with (1) our motorcoach regulations, (2) actual tour construction, and (3) tour members' desires.

We find it highly important that more than a third of those responding had no initial travel industry orientation. There is nothing specific in the responses that buttresses the contention that the knowledge required by the broker is beyond the grasp of those with or without travel experience.

Any business requires specialized knowledge. Many small businesses undergo a trial-and-error period. This does not mean that the business will not ultimately be successful.

We conclude that there is no evidence, on this record or from Commission experience, that the public has been harmed by the operations of inexperienced personnel. Such matters as our regulations can be readily learned, and help is available by contacting either local Commission field offices or the Commission's Small Business Assistance Office. The National Tour Brokers Association in the past has offered its members assistance with understanding the regulations. Passenger brokerage is not such a highly technical area that it requires a licensing process to assure the technical expertise of the licensees.

One potentiality we have looked at is whether the licensing of additional brokers could cause tour cancellations, leading to the inconvenience of the traveling public. Even under the present licensing system, cancellations are unavoidable. (p. 34, Little Study). The study also finds that tour brokers are conservative in their tour planning, to keep the level of cancellations low.

We do not believe that eased entry would have any significant long term effect on tour cancellations. As stated, tour reliability and loyalty to the broker are strong elements in patron preference. Existing efficient brokers should retain a steady base of repeat business. If a newly licensed organization cancels many tours, patrons will tend to do business with those brokers who are better judges of local tour needs and desires and through careful planning, do not annul many trips.

Under the rules we have adopted, brokers are required to inform customers that complaints about service may be made to the Commission. If it appears that, on a long term basis, a broker operates in such manner to cause inconvenience to customers, we will have sufficient notice of this when the broker's term license comes up for renewal into a permanent license.

Some tour cancellations are unavoidable. What is important is whether they have a bad effect on the tour patron. We are sensitive to the fact that persons may plan in advance for vacations. However, there are two alternatives for the tour patron who finds a tour cancelled suddenly. Especially with eased entry, there should be a number of other tour businesses to provide alternatives. Second, there are countless other vacation opportunities that can be arranged on short notice. The NTBA characterizes the possibility of tour cancellation as resulting in significant discomfort (for elderly, non-working people, a change in schedule; for working people, fixed schedule vacations). This is an exaggeration. The tour and recreational industries in this country offer an endless variety of opportunities, in every price range, and for every level of passive or active participation. Most of these involve short term planning.

According to the Little Study (page 69), financial loss to the broker is small from canceled tours. The ability of existing brokers to remain in business will not suffer through cancellation-related deposit losses. In many instances, booking trends of a particular tour are evident early in the season, and cancellations may be made more than 60 days in advance. This typical 30- to 60-day cancellation period demonstrates to us further that the traveling public is not overly inconvenienced. There is sufficient time to substitute. The ability of brokers to cancel tours without financial strain is also evident.

Our overall conclusion, then, is that there will be either no or negligible adverse effects from our adoption of

simplified entry procedures. Further to ensure that this will be the case, the Commission will reopen this proceeding at an appropriate time, but not more than 3 years from its effective date. At that time we will (1) examine any consumer complaints that have been received by our Bureau of Operations, and, (2) request public comment as to effects on bus travel, the financial stability of the tour broker industry, and on tour patrons. The licenses issued under these procedures will have three-year term limitations. At the conclusion of our re-examination, we will be in a better position to know if the term limitations should be removed, or if other modifications to the rules are needed.

If there is evidence that there have been adverse effects, the Commission will then be able to change procedures for licensing. We do not wish to speculate unduly as to what options would be available, but we would not be precluded from returning to some type of procedure which for example would involve looking at local market conditions, either on an individual application or regional basis. We also would not be precluded from terminating the present procedure if we discover that the increase in competition engendered from the introduction of new services has been contrary to the public interest.

Our decision to act in this matter is bolstered by our fortuitous experience with the brief period of licensing of brokers under the rules in Ex Parte No. MC–96, *Entry Control of Brokers*. Subsequently, we found in Ex Parte No. MC–96 (Sub-No. 4), *Property Broker Entry Control*, that the licensing of property brokers had in fact created a demand for broker services.

At pages 42–50 of the Little Study, there is an analysis of the time and cost factors involved in obtaining a broker license. It is clear that a major factor in time and cost (especially legal fees) is the amount of opposition a broker application receives. We realize that, if an application is unopposed, the Commission's summary grant process can speed up an application considerably.

Still, under present procedures the broker applicant can expect to wait quite a while from the time of initial filing until a license is received, if its application is opposed on the basis of "need".

Under the procedures adopted in this decision, the "need" phase of the process would be eliminated. Assuming that most applications would not be protested, since only fitness would be at issue, the processing time would be reduced in almost all cases to that required for unopposed broker cases under the present system.

While simplification of the process would have some time reduction benefits, we see the greatest benefits being in reduction of the cost of obtaining the license, and perhaps most important, in reduction of the psychological and complexity barriers to obtaining a license.

In the Little Study, the following data were reported (page 46):

Brokers' Estimated Cost of Obtaining a License (Includes Legal, Travel and Other Expenses)

Cost	Percent of brokers
Under $2,000	25
$2,000 to $5,000	13
$5,001 to $10,000	16
Over $10,000	23
Not reported	23

The costs involved under current procedures are too high. Under the adopted process, in most cases total cost would be reduced significantly assuming that the applicant did its own paperwork. The procedures adopted here allow applicants easily to complete the application process without legal assistance. We believe the procedures are easy to understand, simple in application, and still serve the important function of keeping unfit persons out of the broker industry.

In summary, we believe that the Little Study supports the decision here. It shows, among other things, that a significant number of brokers had no previous experience in the travel industry; that present tour clientele have preferences which show that stable operators will continue to attract loyal customers; that tour cancellations will not harm the broker industry, or lessen overall its capability to offer tours; and that the costs incurred by broker applicants have been high in the past.

II. Response to Public Comments

The NTBA argues that adoption of a simplified licensing procedure would remove the "public interest test" included by Congress in 49 U.S.C. 10924(2) (formerly Section 211 of the Interstate Commerce Act).

There is nothing in the legislative history which defines the public interest in such a manner as would require individual determinations for licensing. While the public interest has been considered through certain criteria in the past, we are not bound by them in the light of changing economic conditions, or where their reevaluation leads to a conclusion that they are no longer useful or consistent with the statutory standard of the public interest. We are not eliminating a public interest "test". We are altering the current application process better to meet the public interest. This alteration should result in a more competitive broker industry, the expansion in the use of energy-efficient motorcoaches for pleasure travel, a lower regulatory and paperwork burden on the public, while still ensuring the integrity of the broker industry.

Further, as stated earlier, if future economic conditions should warrant changing our procedures, we will do so again. For example, if the simplified licensing procedures adopted here were to lead to an overproliferation of services which resulted in harm to the public, we have the authority and capability to adopt other appropriate procedures.

We agree with NTBA that the original section 211 was a pioneer consumer protection law. It was not a law designed to protect tour monopolies. While the NTBA comments make reference to consumer protection with frequency, it is clear that this argument has as its main basis the economic protection of existing licensed brokers from additional competition. Every NTBA argument made—environmental protection, convenience of tour passengers, and stability of the industry—are all inextricably and conveniently bound with the common theme that additional competition in the tour broker industry would cause a chain of events to occur which would result in detriment to the public interest.

The NTBA alleges that cumbersome case processing cannot be the reason to eliminate a legal requirement, and that the Commission must act to reform these procedures. As stated above, there is no legal requirement in the governing statute that we make individual public interest findings in every application proceeding. A public interest finding can be made on a broader basis. Second, cumbersome case processing is only one reason for adoption of new procedures. The old procedures are of doubtful use in determining consumer demand. There is no reason to retain procedures which have so little value. We also maintain that additional entry into the broker industry has been forestalled because of the great expense, and the complexity of those procedures. The procedures adopted here could shorten the application proceeding by several months. The simplicity of the procedures, which will significantly lower the costs involved, will help erase the psychological barriers to making application for authority.

The NTBA alleges that removing territorial restrictions would result in the broker being forced to use buses from the national bus companies. The American Bus Association states, however, that the number of licensed brokers, standing alone, is not a matter of concern to authorized motor carriers of passengers, because brokers generate business for carriers. Second, many bus companies have incidental charter authority which is broad in scope. Third, if a broker finds that existing carriers do not have sufficient authority, it can support the carrier for additional authority, or it can obtain operating authority of its own.

Both the American Bus Association and ASTA stress the need for more stringent fitness standards. We have made findings in this report which we believe will add to the fitness standards.

The rules adopted here require the applicant to specify who will own and operate the business. This information will be published in the **Federal Register.** Existing brokers and other members of the transportation industry will have the opportunity to oppose applications on the basis of fitness of these persons. This will aid in weeding out persons whose past activities indicate they are unfit to be granted a license. However, we recognize that other fitness problems, if any, will only come about through actual operations. All tour brokers will be required, as specified below, to inform the tour passenger in writing that complaints about the tour service may be directed to the Commission. The Commission, where appropriate, will act on these complaints as they come in. Where a pattern of complaints develops, the Commission will be able to use this information to make any necessary changes in its regulations.

We do not believe that ASTA's suggestions concerning experience and permanent office location should be adopted at the present time, although this is not ruled out for the future. General business acumen is more important than specific travel agent experience. There is no evidence that licensed tour brokers without specific travel agent or other relevant experience have failed to act in a qualified manner. We also believe that the ATC requirements are overly technical, at least in application. See ATC Docket 78–460A, Office of Travel Agent Commissioner, served February 9, 1979. In that case, an applicant was denied accreditation as an ATC sales agent despite extensive travel related experience, because applicant did not have the requisite 2 years of experience in creating, generating, and promoting passenger transportation. That decision has been placed in the public docket of this case.

There is no evidence that operation from a standard office should be required. Some brokers conduct their business through the mail and never meet the traveler face to face. Legal service of process can be made at personal residences. An office requirement might also preclude those persons who wish to operate just a few tours a year. These persons may be serving small localities and will have smaller capital requirements. If at a future time a need for this requirement is shown, we can adopt an appropriate rule.

Ex Parte No. 96 (Sub-No. 1)

On August 9, 1979, the Commission's decision in Ex Parte No. MC 96 (Sub-No. 1), *Passenger Broker Practices,* appeared in the **Federal Register,** 44 FR 46847. The decision stated policies with regard to passenger broker/motor carrier affiliations, intermodal tours, and proper activities of the passenger broker at office locations and at agency locations.

The decision here to some extent will shape the imapct that Ex Parte No. MC 96 (Sub-No. 1) has on brokers. To the extent that a passenger broker retains a license obtained prior to the adoption of these rules, that license will continue to be interpreted by all provisions of the Ex Parte No. MC 96 (Sub-No. 1) policy statement. The policies stated with regard to passenger broker/motor carrier affiliations and proper activities of the broker and its agents will continue to have full effect on the licenses issued under these rules.

Reasons for the Application Method Chosen

Since fitness was found to be the sole test warranted our choice is for a letter-application procedure. The proposed procedures requested information regarding the identification of persons running the broker operation. We now believe this information should be published in the **Federal Register** so that the public will have the opportunity to comment on the fitness of the owners and operators of the broker operation.

The proposed licensing process has been modified in other ways. The requirement asking for a statement of good character is not necessary. It is unlikely that an applicant would submit uncomplimentary statements from others. Nor is it necessary to ask information about the experience of the applicant, or the purported ability to offer a satisfactory service to the public. These statements would only be self-serving, and meaningful analysis would not be possible. The adopted procedures contain sufficient safeguards to test operational fitness, since initially only a limited term license would be granted.

We have revised the internal processing procedures for the application, to conform to the handling of motor carrier applications. For example, the surety bond and service of process designation will not be filed with the application, but only after a grant of authority. This will simplify internal processing. It will also benefit applicants, since they will not have to pay premiums on the surety bond during the processing period.

Informal letter notification of eligibility to participate in a master certificate will not be used. Rather, actual licenses will be issued. This will allow the Commission to keep better information on the broker industry, and on individual operations.

The rules allow the applicant to file a reply to any contentions that it is unfit. An opposed application usually will involve no more than a three-step process: (1) Publication, (2) protest, and (3) reply. At this point the record will be complete, unless the Commission decides that more evidence under the modified procedure is necessary or that oral hearing is required. If the record is found to be complete, it will be sent to a Review Board for disposition.

Existing broker license holders wishing to receive the broad grant of authority available under these procedures must specifically apply under these rules. Their permanent licenses may be retained if they wish to continue operations under licenses more limited in scope, or while they apply under these rules.

Office Location

The adopted rules require that an applicant list the cities and States at which brokerage operations will be conducted, including operations conducted by the broker's agents, if any. See 49 CFR 1045B.1(g). The licenses issued under this procedure will authorize the broker to arrange motor vehicle transportation of passengers and their baggage, between all points in the United States, at specified office locations. If a broker, after receiving a license, decides to change or add office locations to its license, or to hire agents at other locations, it shall first request the Commission to modify its broker license to reflect all the new office locations. Since the clerical work required will be similar to that performed when a shipper or plantsite name change is made in a motor carrier

certificate no fee will be charged. Compare 49 CFR 1002.2(d)(15). The purpose of this notification requirement is that the Commission will have an accurate record of where broker operations are being conducted, to better monitor complaints from consumers.

The office location modification request must be accompanied by a newly submitted Form BOC–3 if the broker adds an office location in a State not previously listed in its license.

Addition to 49 CFR Part 1046

One new feature which will be incorporated into our regulations is a consumer notice requirement. Because we wish to be advised of consumer complaints, we will require passenger brokers to provide the following information to each passenger:

> The persons selling this service are governed by regulations of the Interstate Commerce Commission under License No. MC . Any complaints about transportation services provided may be directed to Bureau of Operations, Interstate Commerce Commission, Washington, D.C. 20423. Complaints about hotel accommodations and other non-transporation services are outside the Commission's jurisdiction.

This information shall be provided in (1) any written contract or service agreement entered into between the broker and the passengers, or (2) on a separate written notice to each passenger in the event there is no written contract or service agreement.

Part 1046 of Title 49 of the Code of Federal Regulations will be revised to include this requirement.

Surety Bonding

We agree with the NTBA that the surety bond should be increased to $10,000. Most brokers in the Little Study favored a higher bond amount than the present $5,000. There has been little experience with defaults in the broker industry. At the present time, $10,000 appears to be reasonable, since bonding only covers the transportation service itself, and not other ancillary tour services. If a default should occur, a broker must suspend operations until a new bond can be obtained. The Interstate Commerce Act clearly requires that a surety bond or other security be in effect for the license itself to be in effect, 49 U.S.C. 10927(b). This requirement will additionally serve to deter unscrupulous operations in the broker industry. 49 CFR 1043.4 will be revised accordingly.

Oral Argument

Several parties request oral argument. We do not believe that there is any need for oral argument, and there is nothing in the Administrative Procedure Act or the Fifth Amendment which requires this. Therefore, the requests will be denied.

Environmental and Energy Considerations and Findings

The notice of proposed rulemaking asked for comment on the environmental effects of a simplified licensing procedure. We conclude that our decision here, and subsequent operations under the rules adopted in the decision, will not significantly affect in an adverse manner either the quality of the human environment or conservation of energy resources.

We identified three areas of potential environmental concern: (1) Market saturation, (2) diversion from other transportation modes, and, (3) production of "new" trips. In the short term, the marketplace could become saturated with brokers and the introduction of additional motorcoach tours could exceed the demand for such services. Although duplicate services and increased competition to gain patronage might lead to fuel inefficient practices, sound business judgment would dictate better planning in the long run.

The second area of concern relates to diversion from other transport modes. Existing trips performed using automobile, railroad, or airplane could be diverted to motorcoach with attractive packaging and promotion. Automobile travel accounts for approximately 87 percent of all intercity passenger miles. Diversion to motorbus could result and environmental impacts would be beneficial. Were airplane and railroad users (which constitute 11 percent of the intercity market) diverted to motorcoach, environmental efficiencies could be further enhanced. In the latter case, air and rail services could operate below current efficiencies while bus efficiency could improve. Diversion from these two modes could lower overall systemwide efficiency, but absolute diversion is not expected to be substantial based on historical trends and other evidence. The largest potential for modal diversion to motorbus is anticipated principally from automobile travel.

The remaining area of possible environmental impact is from the production of trips that were not made previously. The tour industry is one where demand can be created. The consumer can spend leisure time on a variety of recreational activities. New and innovative tours could be created and greater competition should promote such innovation. Since new trips would be produced as a result of the subject action, an increase in energy consumption could also be expected. However, these trips would be performed on one of the most environmentally efficient modes. Consequently, any increase in energy usage would be mitigated to the extent that an environmental efficient mode would be employed.

The intercity bus industry could benefit from an increase in the number of licensed brokers since brokers generate business for carriers. To the extent automobile users switch to motorbus, energy conservation, air quality and roadway safety would be enhanced. New or induced trips could increase nationwide consumption levels but these would be performed on one of the most environmentally efficient travel modes.

General Finding of Public Interest

We find that the operations authorized by the rules adopted in this proceeding are and will be consistent with the public interest and the national transportation policy. The Commission's power to make such a general finding has found judicial approval, see *Chemical Leaman Tank Lines, Inc.* v. *United States*, 368 F. Supp. 925 (D. Del. 1973). See also *American Trucking Associations, Inc.* v. *I.C.C.*, U.S.C.A., D.C. Cir., No. 78–1407 and *Atchison, Topeka and Santa Fe Railroad Co.* v. *I.C.C.*, U.S.C.A., D.C. Cir., No. 78–1717. This proceeding does not grant authority to brokers. It merely establishes a procedure to obtain such authority. Our responsibilities under the Interstate Commerce Act make it necessary and advisable to adopt a simplified licensing procedure.

Dated November 8, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioner Trantum joined Commissioner Gresham in dissenting to the imposition of 3-year term limitations on these certificates.

Agatha L. Mergenovich,

Secretary.

Adopted Rules

These rules are added as Part 1045B to Title 49 of the Code of Federal Regulations:

PART 1045B—PASSENGER BROKER LICENSING

§ 1045B.1 Special procedures governing applications to become a passenger broker.

(a) *Scope.* These rules are used to make application to become a passenger broker. The authority granted under these rules allows the arranging of interstate motorcoach transportation of passengers and their baggage, for compensation, between all points in the United States.

(1) *Term of license.* If the application is granted, applicant will initially receive a 3-year limited term license. Applicant may later apply for a permanent license. This will be applicant's responsibility, and the Commission will not issue notice that a limited-term license is nearing expiration.

(b) *Application procedures.*—(1) *Application form.* There is no application form. Simply put the necessary information in a letter-application.

(2) *Where to send it.* Address it to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. Send an original and one copy of all material to the Commission.

(3) *Notarization.* The information in the letter must be sworn to (notarized). The notarization must show that the applicant has read the material being submitted, has knowledge of the facts in the letter, and knows they are true. See 49 CFR Part 1100, Appendix B, No. 6, for an example.

(4) *Fee.* The fee is as listed at 49 CFR 1002.2(d)(9).

(c) *Information needed.* Write in bold letters on the top of the first page of the letter-application letter "Special Passenger Broker Application." If you hold a broker license, list the MC number on the first page.

(1) *The caption summary.* The caption summary is prepared by the applicant. It will be published in the **Federal Register** to give the public an opportunity to make comments on whether applicant, or applicant's company, is fit to perform a brokerage service. The caption summary must be submitted in the manner set forth below. Fill in the blanks with the appropriate information. If the particular question is not applicable, write n/a in the space. If there is no business address, give personal residence. Addresses should contain, unless otherwise specified, the street, city, and State. List all addresses, if more than one.

Caption Summary

Applicant's name is————. The name under which operations will be performed is————.

Applicant is represented by————in this proceeding (applicant may represent itself), whose address is————.

Following are the name and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles:————.

The broker operations will be managed by———— whose business address is————.

Operations will be conducted at———— (list city, State for broker and all agency locations).

(2) *Other information.* Applicant must submit a statement that it has read and is familiar with the Commission's passenger broker regulations. They are set forth at 49 CFR Part 1046. Applicant must also submit a current balance sheet and income statment.

(3) *Errors in caption summary.* If applicant finds an error in the caption summary published in the **Federal Register**, it must inform the Commission within 30 days of the publication.

(d) *Processing.*—(1) *Incomplete applications.* If incomplete, an application will be returned with a notation as to why it was rejected. A complete application may be refiled at any time.

(2) *Opposed applications.* An application may be opposed only on the basis that that applicant (and business associates) are not fit to conduct the operations. Once a complete and properly submitted request for authority has been filed, the Commission will publish a notice (the caption summary) in the **Federal Register.** Any person may file a sworn statement in opposition with the Commission, with one copy, within 30 days of the **Federal Register** publication. The statement in opposition must contain all the material the protesting party plans to submit. It must be served upon applicant's representative, and shall certify that it has been served upon applicant's representative.

(4) *Reply.* Applicant may reply to this opposition statement. Replies are due within 20 days from the date the opposition statement is due. An original and one copy must be served upon the Commission, and one copy must be served upon the protesting party's representative. The reply shall certify that it has been served upon the protesting party's representative.

(5) *Decision process.* In an opposed case, after the reply, if any, is received, the record will be examined to see if additional evidence is necessary. If none is necessary, the case will be assigned to a Review Board for disposition under the modified procedure. If no opposition is received, and Commission examination does not reveal fitness objections, applicant will be granted appropriate authority.

(6) *Grants of authority.* The applicant will be sent a notice if it receives a grant of authority. This notice will inform applicant that it has 90 days to comply with the (i) surety bond and (ii) service of process designation requirements set forth below. The surety bond or service of process information shall not be sent until specifically requested.

(e) *Compliance.* After the grant of authority, applicant must submit a properly completed surety bond form (Form BMC–84) and service of process designation form (Form BOC–3). Send it to the Office of the Secretary. Contact the Commission's Bureau of Operations, Section of Motor, Water, and Forwarder Operations for assistance.

(1) *Form BOC–3.* Information must be provided on the form for each State in which the applicant or its agents will have an office or write contracts. If the operation will be from offices in one State, the applicant may designate itself to receive service of process in that State.

(2) *Form BOC–84.* Submit two copies of this form. Applicant and its insurance agent should request the surety company to complete the forms and return them to applicant. Send the forms to Bureau of Operations, Section of Motor, Water, Forwarder Operations (same Commission address as above). The company which furnishes the bond must be one that has been approved by the Commission. Most major companies that write surety bonds have this approval. Check with the Section of Motor, Water, and Forwarder Operations for acceptability. A surety bond must be kept in force at all times, or a broker's license will be suspended or revoked.

(3) *Commencement of operations.* The Commission will issue a 3-year limited-term license once compliance has been completed. When the license is received, operations may begin.

(f) *Limited term licenses.* Applicants successfully completing this procedure for the first time will be granted a limited term license. It will expire 3 years from the date of issuance, unless application is made for a permanent license. The Commission will not individually notify anyone that the license is expiring and that application for a permanent license should be made.

(1) *When to apply for a permanent license.* The permanent license shall be applied for in the period 120 days before

the 3-year term license is to expire. Applications received more than 120 days before the term expiration date will be rejected. Applications *received* (not date of mailing), after the term license has expired shall be treated as first time limited term applications.

(2) *Operations performed during the time of application for a permanent license.* If the application for a permanent license is received during the proper 120-day period, the broker may operate under its term license until final disposition of the permanent application. If the term license is allowed to expire before the permanent application is made, broker operations must cease until a new term license is granted.

(3) *What the permanent license application shall contain.* The permanent license application shall contain the information asked for in the term license application, except that the broker shall also indicate its term license number and indicate that it is now making a permanent application. The processing of the permanent application will correspond to the term license procedures. There will be no fee required for the second application.

(4) *Further investigation.* Authority received under this procedure is specifically conditioned upon the Commission's investigation of passenger broker entry control to commence within 3 years of the effective date of these rules. The Commission reserves the right to suspend or terminate these procedures at any time.

(g) *Office locations in licenses.* Licenses issued under this procedure shall list the office locations contained in the caption summary. Operations by the broker or its agents may be conducted only at these locations. If a broker wishes to change office locations, it must first inform the Office of Proceedings, Interstate Commerce Commission, Washington, D.C. in writing. No fee for this service is required. If an office in being opened in a State not listed in the old license, the broker must also send an updated Form BOC–3. Operations at the new location may be conducted when the modified license is received.

Modified Rules

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

§ 1043.4 [Amended]

Section 1043.4 of Part 1043, Title 49 of the Code of Federal Regulations, shall be revised in paragraph (b) as follows:

* * * * *

(b) A passenger broker must have a surety bond in effect for $10,000.

PART 1046—BROKERS OF PASSENGER TRANSPORTATION

Part 1046, Title 49 of the Code of Federal Regulations, is revised as follows:

Sec.

§ 1046.1 Information required to be recorded.
§ 1046.2 Information to be furnished to passengers.

§ 1046.1 Information required to be recorded.

Every passenger broker subject to 49 U.S.C. 10924 shall be required to keep a record of all passenger broker transactions, showing: (a) Origin and destination for each ticket sold, (b) name and address of the carrier for which the ticket is sold, (c) the amount received from the passenger, including, stated separately, amounts received for baggage or accessorial services, (d) payments made to each motor carrier served by the broker, and (e) amounts of the commissions earned by the brokers from the sale of transportation for each carrier.

§ 1046.2 Information to be furnished to passengers.

The following information shall be provided to each passenger in any written contract or service agreement entered into between the broker and the passenger, or in a separate written notice to each passenger in the event there is no written contract or service agreement:

The persons selling this service are governed by regulations of the interstate commerce commission under license No. MC ———. Any complaints about transportation services provided may be directed to Bureau of Operations, Interstate Commerce Commission, Washington, D.C. 20423. Complaints about hotel accommodations and other non-transportation services are outside the Commission's jurisdiction.

(49 U.S.C. 10101, 10321, 10921, 10924, 10925, and 10927, and 5 U.S.C. 552, 553, 558, and 559)

[FR Doc. 79–37458 Filed 12–5–79; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 44, No. 236
Thursday, December 6, 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 928

Handling of Papayas Grown in Hawaii; Proposed Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes minimum grade and size requirements for shipments of Hawaiian papayas. These requirements are designed to provide for orderly marketing in the interest of producers and consumers.

DATES: Written comments must be received by December 21, 1979. Proposed effective dates: January 1, 1980, through December 31, 1980.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This notice of proposed regulation is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted hy the Papaya Administrative Committee, and upon other information.

The committee estimates that 1980 production of Hawaiian papayas will total 60.0 million pounds, compared to 40.0 million pounds in 1979. Fresh sales are expected to increase substantially from the 5-year low of 35.0 million pounds last year to 53.0 million pounds during 1980, with the remaining 7.0 million pounds processed. In-state fresh sales are projected at 13.5 million pounds, compared to 10.5 million pounds for 1979. It is anticipated that out-of-state sales will amount to 75 percent of the total fresh sales and reach 39.5 million pounds, 15.0 million pounds more than in 1979.

The grade and size requirements are designed to prevent the shipment of Hawaiian papayas of a lower grade and smaller size than specified and are designed to provide ample supplies of good quality papayas in the interest of producers and consumers pursuant to the declared policy of the act.

This proposal has been reviewed under the USDA criteria for implementing Executive Order 12044. It is being published with less than a 60-day comment period because of insufficient time between the date when information became available upon which this proposed regulation is based and the effective date necessary to effectuate the declared policy of the act. A determination has been made that this action should not be classified "significant". A Draft Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

As proposed § 928.310 Papaya Regulation 10 would read as follows:

§ 928.310 Papaya Regulation 10.

Order. (a) No handler shall ship any container of papayas (except immature papayas handled pursuant to § 928.152 of this part):

(1) During the period January 1 through April 15, 1980, to any destination within the production area unless said papayas grade at least Hawaii No. 1, except that allowable tolerances for defects may total 10 percent: *Provided,* That not more than 5 percent shall be for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: *Provided further,* That such papayas shall individually weigh not less than 11 ounces each.

(2) During the period April 16 through December 31, 1980, to any destination within the production area unless said papayas grade at least Hawaii No. 1, except that the allowable tolerances for defects shall be 5 percent: *Provided,* That not more than 3 percent shall be permitted for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: *Provided further,* That such papayas individually weight not less than 13 ounces each.

(3) during the period January 1 through April 15, 1980, to any export destination unless said papayas grade at least Hawaii No. 1, except that the allowable tolerances for defects may total 10 percent: *Provided,* That not more than 5 percent shall be for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: *Provided further,* That such papayas shall individually weigh not less than 11 ounces each.

(4) During the period April 16 through December 31, 1980, to any export destination unless said papayas grade at least Hawaii No. 1, except that they shall be free from injury caused by bruises and free from deep scars; and scars, when scaly, cracked or not smooth, shall not aggregate a circle greater than 1 inch in diameter, or when smooth shall not aggregate more than 7.5 percent of the surface of the fruit, except that the total tolerance for all defects shall not exceed 3 percent: *Provided,* That of this amount not more than 1 percent shall be for immature fruit and not more than 1 percent shall be for decay: *Provided further,* That such papayas shall individually weigh not less than 11 ounces each.

(b) When used herein, "Hawaii No. 1" shall have the same meaning as set forth in the Standards for Hawaii Grown Papayas, as amended, Subsection 5.32, Section 5, Regulation 1, Division of Marketing and Consumer Services, Department of Agriculture, State of Hawaii, issued pursuant tto Section 147–4, Part I, and Section 147–22, Part II, Chapter 147, Title 11, Volume 3, Hawaii Revised Statutes. All other terms shall have the same meaning as when used in the marketing agreement and order.

Dated: December 3, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-37551 Filed 12-5-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. 19829; Petition Notice No. PR-79-13]

Petition for Rulemaking of the Aircraft Owners & Pilots Association; Special Air Traffic Rules for San Diego International Airport—Lindbergh Field, San Diego, Calif.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of petition for rulemaking; request for comments.

SUMMARY: This notice publishes for public comment the petition of the Aircraft Owners and Pilots Association (AOPA), dated November 29, 1979, on behalf of its members, for amendment of Part 93 of the Federal Aviation Regulations (14 CFR Part 93). Part 93 contains special air traffic rules and airport traffic patterns for operation of aircraft within the airspace designated under the rules. The AOPA petition requests, for the reasons disclosed, the initiation of rulemaking proceedings leading to a special air traffic rule for San Diego International Airport—Lindbergh Field, that would designate safety corridors for operations to and from the airport, prohibit aircraft operations within the corridors without air traffic control authorization, and require large turbine powered airplanes when operating below 12,000 feet MSL to or from the airport to remain within the designated safety corridors. The petition also contains certain "procedural proposals" not involving rulemaking action.

The petition involves some issues similar to those involved in a FAA initiated notice of proposed rulemaking also published in this issue of the **Federal Register.** That notice (Notice No. 79-AWE-17) proposes to establish a terminal control area (TCA) for the primary airports San Diego International Airport (Lindbergh Field) and Miramar Naval Air Station, San Diego, California. The AOPA petition is being published verbatim in order to receive public comment on both matters simultaneously and ensure due consideration of each separately under the applicable FAA general rulemaking procedures. Although this notice sets forth the contents of the AOPA petition as received by the FAA without change, its publication in accordance with FAA procedures governing the processing of petitions for rulemaking does not present an FAA position on the merits of the petition. This notice does not propose an amendment of the current Federal Aviation Regulations.

DATES: Comments must be received on or before February 5, 1980.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Docket No. 19829, 800 Independence Avenue, SW., Washington, D. C. 20591.

FOR FURTHER INFORMATION CONTACT: William E. Broadwater, Airspace and Air Traffic Rules Division (AAT-200), Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D. C. 20591; telephone (202) 426-3731.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition for rulemaking as they may desire. Communications should identify the regulatory docket or petition notice number and be submitted in duplicate to the address for submitting comments indicated above under the caption "ADDRESSES." All communications timely received in the Rules Docket will be considered by the FAA before taking action on the petition for rule making. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Background

The AOPA petitioned the FAA under the general rulemaking procedures contained in FAR Part 11 to amend Part 93 of the Federal Aviation Regulations (FARs). Part 93 contains the special air traffic and airport traffic rules applicable to specified aircraft operations within the designated airspace. Those rules are based on the particular conditions and needs for safe and efficient use of the affected airspace by aircraft. They are specifically tailored for the terminal environment in which they apply and may be in addition to, or in lieu of, the requirements that generally apply to aircraft operations.

While all comments are invited and will receive due consideration, to assist the FAA in its review of the AOPA petition, comments are particularly welcomed on the following matters concerning the petition:

1. Any benefit or disadvantage anticipated in the San Diego area from the recommended means for providing control and separation for controlled aircraft and VFR, uncontrolled, aircraft to ensure efficient use of available airspace and greater protection in the airspace used by passenger-carrying aircraft.

2. Any benefit or disadvantage anticipated in the San Diego area from establishing separate, special air traffic rules to prescribe safety corridors and associated requirements for increased control of aircraft and protection of airspace from unknown and uncontrolled aircraft in order to provide an adequate level of safety and efficient use of the airspace.

3. Any benefit or disadvantage anticipated in the San Diego terminal air traffic control system from the recommendations in the petition, including considerations of controller workload, equipment, nonavailability of designated corridors during adverse weather or other limiting conditions, and other system factors.

4. Any specific changes that may have occurred in the factual basis for the FAA regulatory and administrative conclusions since 1970, when the current terminal control area (TCA) concept was implemented in the Federal Aviation Regulations under Amendments 71-6 and 91-78 (35 FR 7782; May 21, 1970) and the 21 individual TCAs established and modified under that concept.

5. Any specific economic, environmental, energy, or other consequences (including costs and benefits) anticipated as to (1) operators of aircraft precluded from operating in the designated safety corridors because, for any reason, Air Traffic Control authorization is not obtained, (2) operators of aircraft required to operate within the safety corridors when below 12,500 feet MSL operating to or from San Diego International Airport, (3) other transient operators or operators of aircraft to or from other airports in the San Diego terminal area (generally within approximately 40 miles of San Diego International Airport and below 12,500 feet MSL), and (4) operators of other airports (civil and military) in the San Diego terminal area.

6. Any impacts on the operation of aircraft in the San Diego terminal area (1) outside the designated safety corridors and (2) inside the corridors, including occasions when the corridors are not available due to such conditions as limited access to corridors or adverse weather.

7. Any changes, and the consequences of those changes, anticipated in the manner in which large turbine engine-powered airplanes would be flown in and near the San Diego area in order to conform to the requirements of the recommended rules.

8. Any changes or impacts anticipated in the various aircraft operations to or from other airports in the San Diego terminal area, including whether traffic conflicts and collision potential for those aircraft would be reduced.

9. Any clarification or changes that should be considered in the class of aircraft required to operate within, or remain clear of, the designated corridors.

10. Any changes anticipated in the noise distribution and community noise levels around the airports in the San Diego terminal area, including those represented by single event and cumulative levels shown by (Ldn) noise contours over noise sensitive areas.

11. Any benefit or disadvantage anticipated involving delays to aircraft and fuel consumption associated with the recommended rule and how it would affect different airspace users.

12. Any airspace designation, operating, or equipment requirements in addition to those recommended in the petition that might be needed and should be considered.

13. Any benefit or disadvantage anticipated in the San Diego area involving implementation of the congressional mandates to promote civil aviation, and to provide safety in air commerce, and to manage and control the navigable airspace to ensure its safe and efficient use by aircraft, including the mandate reemphasized by the Airline Deregulation Act of 1958, to further achieve the highest degree of safety in air transportation and air commerce expected by the traveling and shipping public.

14. Any other matters considered to affect a decision whether further public rule-making procedures should be initiated on the recommendations presented in the petition.

The AOPA Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rule making of the Aircraft Owners and Pilots Association, dated November 29, 1979.

Issued in Washington, D.C., on December 3, 1979.

Edward P. Faberman,

Acting Associate Chief Counsel, Regulations & Enforcement Division.

Aircraft Owners & Pilots Association

November 29, 1979.

Hon. Langhorne M. Bond,
Administrator, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C.

Dear Mr. Bond: This is to petition you, pursuant to Section 11.25 of the Federal Aviation Regulations, for the establishment of special air traffic rules in FAR Part 93 for San Diego International-Lindbergh Field, San Diego, California.

This petition is submitted by the Aircraft Owners and Pilots Association (AOPA) on behalf of 240,000 members who have authorized AOPA to represent their interests in aviation matters. AOPA members are principal users of the airspace, owning two-thirds of the 200,000 general aviation aircraft and flying three-quarters of the 36,000,000 general aviation flight hours. We believe the rules proposed in this petition will benefit all users of the affected airspace to a greater degree than alternative rules presently advocated by others.

Regulatory Proposal

AOPA proposes that special air traffic rules be established for the airspace depicted in Appendix A requiring that no person may operate an aircraft within that airspace except in compliance with the following rules:

1. No person may operate an aircraft within the designated airspace unless an appropriate authorization has been received from ATC.

2. Each person operating a large turbine engine powered airplane to or from the San Diego International-Lindbergh Field Airport shall, when below 12,500 feet MSL, operate in the designated safety corridors.

Procedural Proposals

AOPA recommends that all existing standard terminal arrival routes (STARS) and standard instrument departure routes (SIDS) for the San Diego International-Lindbergh Field be adjusted so as to contain these routes in the proposed safety corridors. Specific recommendations for the STARS and SIDS are in Appendix B.

Further, AOPA has some accompanying procedural recommendations:

1. The designated airspace should be depicted on all visual and instrument navigation aeronautical charts to the current specifications for terminal control areas. These charts also should contain, in a convenient location, the appropriate ATC radio frequencies necessary to request clearance into or through the safety corridors.

2. FAA should investigate the need for alteration of the traffic flow in the San Diego area. AOPA believes that the Mission Bay VORTAC should be relocated, with appropriate changes in the airway structure, since the current location clearly is causing a hazardous situation.

Background

In 1969, AOPA and the Air Line Pilots Association jointly recommended the establishment of safety corridors for the segregation of high-performance and low-performance aircraft in busier terminal locations.

In June 1977, we made specific recommendations to the Congress and FAA as to the future needs of the air traffic control system. These recommendations included a clear need for safety corridors.

In November 1978, after the San Diego midair collision, AOPA forwarded to FAA, specific recommendations on the need for safety corridors.

In April 1979, in light of the NASA draft report which in effect refuted FAA's arguments concerning the effect of control on safety from near collisions, AOPA asked FAA to stop guessing and simulate existing terminal airspace plans and proposal alterations. FAA has refused to perform these simulations.

Documentation supporting these developments is available in the files of both AOPA and FAA, but was too bulky to include here.

With the recent alleged increase in near midair collisions in the San Diego area, coupled with FAA failure to do the requested simulation, AOPA now forwards these specific proposals. AOPA is not confident that our exact specifications are 100 percent correct, just as no one is confident of the appropriateness of any TCA proposal that may be forthcoming from the FAA. We are confident that the corridor concept is a better answer to the San Diego traffic flow problem than the normal TCA configuration. Simulation is still recommended for fine-tuning the corridor configuration and procedures.

Simulation and investigation of current traffic could be most useful in both the alteration of the terminal traffic flow and the relocation of navaids.

It should be noted that in mid-1979, the FAA Air Traffic Service circularized for comment a proposal to alter ATC procedures dealing with visual separation. The proposal was to require the controller to provide vertical or horizontal separation to an aircraft overtaking or converging on another. AOPA concurred with the proposal, since we had recommended essentially the same thing in November 1978. We understand that the air carriers using Lindbergh Field are significantly concerned about the safety of using visual approaches and visual separation. We suggest, therefore, that those carriers instruct their pilots to refuse visual approaches and separation until the AOPA proposed safety corridors can be established.

Public Interest

We are aware of air carrier comments rejecting the concept of corridors because it is alleged that they sometimes require a few minutes of additional flight time. However, we believe that safety is the first consideration and this is supported by the wording of the Federal Aviation Act that requires the Administrator to give full consideration to the duty resting upon the air carriers to perform their services with the highest possible degree of safety in the public interest. The carriers shoudl place safety above the interests of short-cutting flight paths and saving a few minutes at the possible expense of safety.

Safety corridors permit maximum safe utilization of the public airspace under reasonable rules and this, too, is in keeping with the instructions of the Congress to the Administrator with regard to promulgation of "reasonable rules." A continual expansion of the large blocks of airspace under the TCA concept and the associated restrictions that they impose on the flying public is not in the

public interest, as envisioned by the Congress.

The following positive results can be expected from the adoption of AOPA's proposal.

1. Air safety will be enhanced in the San Diego area.

2. The burden of safety restrictions is equitably and reasonably distributed to all airspace users.

3. Clearly defined flight paths are established for high performance aircraft, thus protecting all concerned.

4. Rerouting of both IFR and VFR aircraft around a large San Diego TCA will be minimized, resulting in fuel savings.

5. Profile descents are accommodated.

6. Airspace not required by high-performance aircraft is released for use by other aircraft.

7. Controller work load will be reduced and better service provided than with a large conventional TCA.

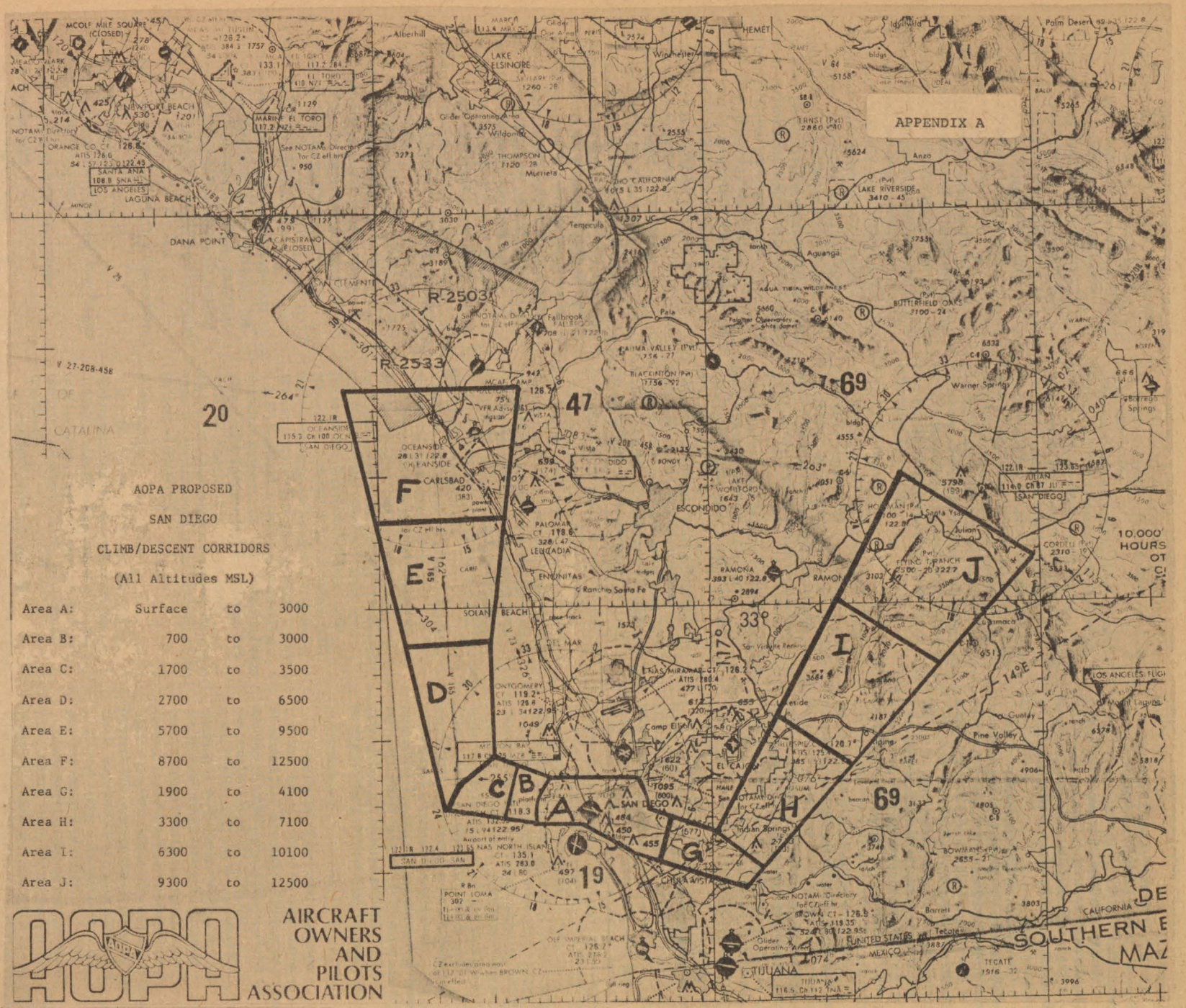
AOPA is of the opinion that our proposal is the safest and most practical designation of the San Diego airspace.

Sincerely,

John L. Baker,

President.

BILLING CODE 4910-13-M



BILLING CODE 4910-13-C

Appendix B

AOPA Proposed San Diego Standard Terminal Arrival Routes

* Julian One Arrival:
Los Angeles Transition: Radar vectors direct to Julian VORTAC. Thence via JLI R–200 to Swatt Intersection. (Altitude: at or above 12,500 MSL to JLI, then remain in corridor.)
* Oceanside One Arrival:
* Los Angeles Transition: Direct Oceanside VORTAC. Thence via OCN R–162 to Sargs Intersection. (Altitude: at or above 12,500 to OCN, then remain in corridor.)
* Julian Transition: Direct Julian VORTAC. Thence via the JLI R–260 until intercepting OCN R–162, then via OCN R–162 to Sargs Intersection. (Altitude: at or above 12,500 MSL until intercepting the OCN R–162 then remain in corridor.)

AOPA Proposed San Diego Standard Instrument Departure Routes

* Julian One Departure (all Runway 9 departures): Via the LOC BC RWY 27 localizer course to Swatt Intersection. Thence via the Julian VORTAC R–200 to JLI. Thence . . . (Altitude: remain in corridor to 12,500 MSL.)
* Oceanside One Departure (all Runway 27 departures): Via the ILS RWY 9 localizer course to Sargs Intersection. Thence via the Oceanside VORTAC R–162 to OCN. Thence . . . (Altitude: remain in corridor to 12,500 MLS.)

[FR Doc. 79–37486 Filed 12–5–79; 8:45 am]

BILLING CODE 4910–13

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14 CFR Part 71

[Airspace Docket No. 79–AL–20]

Designation of Transition Area; St. Marys, Alaska; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to Notice of Proposed Rulemaking.

SUMMARY: In a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on October 25, 1979, Volume 44, Page 61378, the phrase "including that airspace between these bearings," was inadvertently omitted from the description of the proposed St. Marys transition area. This correction would include the omitted phrase after "(344° M) bearing from the St. Marys NDB" in the St. Marys transition description.

DATES: The comment period on this proposed rule is extended to January 7, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry M. Wylie, Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Box 14, 701 C Street, Anchorage, Alaska 99513, telephone (907) 271–5903.

SUPPLEMENTARY INFORMATION: Federal Register Document 79–32871 was published on October 25, 1979 (44 FR 61378) and proposed designation of the St. Marys transition area. In the description, the phrase "including that airspace between these bearings," was indavertently omitted. Action is taken herein to correct this error.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the description of the St. Marys transition area contained in **Federal Register** Document 79–32871, appearing on Page 61378 in the **Federal Register** of October 25, 1979, is corrected to read as follows:

St. Marys, Alaska

That airspace extending upward from 700 feet above the surface within 4.5 miles east and 9.5 miles west of the 198° True (180° M) bearing from the St. Marys NDB, extending from the NDB to 18.5 miles south of the NDB and within 9.5 miles west of the 351° True (333° M) bearing from the St. Marys NDB, and 9.5 miles east of the 002° True (344° M) bearing from the St. Marys NDB, including that airspace between these bearings, extending from the NDB to 21 miles north of the NDB.

(This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 1134, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and rountine amendments are necessary to keep them operationally current and promote safe flight operations, and anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Anchorage, Alaska, on November 20, 1979.

Robert L. Faith,

Director, Alaskan Region.

[FR Doc. 79–37139 Filed 12–5–79; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 18605/79–AWE–17]

Proposed Group II Terminal Control Area—San Diego, Calif.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of a comprehensive program announced on December 27, 1978, in the FAA Administrator's Plan for Enhanced Safety of Flight Operations in the National Airspace System, the FAA proposed to establish a Group II Terminal Control Area (TCA) at San Diego, Calif. Operations in the proposed TCA would be subject to the operating and equipment rules for operation in Group II TCAs specified in § 91.90(b) of Part 91 of the Federal Aviation Regulations. This includes, among other rules, the requirement to have an operable VOR/TACAN receiver, two-way radio, and a transponder to operate in the TCA. An altitude encoder would not be required. This action is intended to increase the capability of the Air Traffic Control (ATC) system to separate all aircraft in the terminal airspace around the San Diego International Airport (Lindbergh Field), San Diego, Calif. It is based on data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involves visual flight rules (VFR) aircraft that are not required to be under ATC control. The objective of this proposal is to substantially icrease safety while accommodating the legitimate concerns of airspace users.

DATES: Comments must be received on or before February 5, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Western Region, Attention: Chief, Air Traffic Division, Docket No. 18605/79–AWE–17, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, Calif. 90261.

The docket for this action may be examined at the office of the Regional Air Traffic Division, at the above address, or at the FAA Office of the Chief Counsel, Rules Docket (AGC–24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Richard Morrison, Airspace and Procedures Branch, Air Traffic Division (AWE–530), Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, Calif. 90261; telephone: (213) 536–6180.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written date, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation

Administration, 15000 Aviation Boulevard, Lawndale, Calif. 90261. All communications received on or before February 5, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the FAA Regional and Headquarters Rules Dockets for examination by interested persons.

Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 18605/79-AWE-17." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Prior Public Participation

The proposal contained in this notice was preceded with broad and helpful public participation with the FAA in considering the development of an airspace description for a TCA that is responsive to the need to increase safety and to the needs of both transient and local aircraft operators who might be affected. Initially, numerous meetings were held with known local groups and interests to receive and discuss their needs and views for the preliminary TCA configuration. After those local meetings, a tentative TCA configuration was prepared for further public discussion at subsequent local informal airspace meetings. An extensive publicity effort was made to invite all interested persons to participate in those meetings. In addition to published notices, notice was given through bulk mailing of notices to hundreds of persons believed to have an interest in the proposal, through posting of notices in airports, and through press, radio, and TV coverage. As a result of those meetings, further adjustments to TCA configurations have been made and are reflected in the configuration proposed in this notice. An additional opportunity for public participation is provided by this notice to ensure full consideration of public concerns at every stage of the rulemaking process. Based on the public participation and other available data, several locations that were included among the 44 candidates for new TCAs have been dropped from further consideration. Other locations may be dropped later.

Relationship to AOPA Petition for Rulemaking

The FAA recently received a petition for rulemaking from the Aircraft Owners and Pilots Association (AOPA), on behalf of its members, to amend Part 93 of the Federal Aviation Regulations to establish a special air traffic rule for San Diego International Airport (Lindbergh Field). That petition, which is published for public comment elsewhere in today's **Federal Register**, requests the FAA to initiate rulemaking procedures to establish "designated safety cooridors" for arrivals and departures of aircraft to and from San Diego International Airport. This notice, while proposing airspace and air traffic rules in the form of a TCA in the San Diego, California area, does not respond to that petition and should not be confused with it. While this notice necessarily involves some issues similar to those raised by the AOPA petition, it does not prejudge the disposition which will be made of the petition by the FAA after due consideration of its merits in accordance with the applicable provisions of Part 11 of the Federal Aviation Regulations.

Background: The Need for Increased Positive Control in Terminal Airspace

The takeoff and landing phases of flight result in the concentration of inflight aircraft in a relatively limited volume of airspace surrounding an airport. The number of aircraft per unit volume of airspace at a specific instant of time is a function of the number of aircraft using that airport and its proximity to one or more adjacent airports that share or abut that airspace. As air traffic activity at an airport increases, the need for increasingly precise control of aircraft and protection of airspace from unknown aircraft becomes essential for continued safe operations. The FAA has developed a spectrum of air traffic procedures which, when coupled with precision navigational aids, airport surveillance radar facilities, automated radar data processing capability, and a highly skilled work force, forms a comprehensive system to provide safe and efficient flight operations at all controlled airports.

The scope of services range from simple suggested airport traffic flows at lowest density airports, to terminal control areas at the busiest airports which provide positive controlled airspace. Within the latter, all aircraft are subject to specific operating rules and avionics equipment requirements.

The FAA is proposing to take action to extend or enhance the application of these proven control techniques and hardware subsystems to more airports to assure greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

An analysis of the need for extending the ability of ATC to separate visual flight rules (VFR) aircraft and instrument flight rules (IFR) aircraft in terminal airspace is contained in the Administrator's Plan for Enhanced Safety which announced FAA's intent to propose, for public comment, establishment of 44 new Group II TCAs, and the vertical and lateral enlargement of the 21 previously established TCAs. This proposal to establish a Group II TCA at the San Diego International Airport is in accordance with that plan.

Near Midair Collisions in Terminal Airspace

The FAA experience since the establishment of mandatory TCAs and voluntary Terminal Radar Service Areas indicates that, in terminal airspace, ATC control of VFR aircraft reduces the potential for hazardous traffic conflicts. A comparison of periods before and after the establishment of terminal control areas and terminal radar service areas is instructive. In 1968, the FAA conducted an extensive study of near midair collision hazard in the U.S. airspace. The results of this study were published in the "Near Midair Collision Report of 1968," July, 1968. A major portion of the report was devoted to the collision potential in terminal airspace. For the year 1968 (which preceded the establishment of terminal control areas), the report concluded that, for the airports now served by terminal control areas, there were 271 incidents reported as "hazardous" to flight. In response to that study, since 1970, 21 terminal control areas were established. For the fiscal years 1975, 1976, and 1977, there were a total of 64 reported near midair collisions (NMACs) in these terminal control areas. For comparison purposes, this translates into an average of approximately 20 reported incidents per year, under TCA requirements, in contrast with the 271 incidents for the year 1968. These figures are not conclusive indicators of the absolute

numbers of incidents, but are viewed as pointing toward the critical relationship between the absence of control of all aircraft and the likelihood of hazardous traffic conflicts in terminal airspace. As a result of public comments, in response to Notice No. 78–19 (44 FR 1322, January 4, 1979), questioning the adequacy of FAA's near midair collision information, a comprehensive review of that information has been undertaken.

In the San Diego terminal area, the mix of aircraft is obvious. Within 15 nautical miles of San Diego International Airport, three general aviation and three military airports are located, and in calendar year 1978, for example, these seven airports generated in excess of 1.2 million aircraft operations. Because of the proximity of these airports, the collision potential between controlled and uncontrolled aircraft in the San Diego terminal airspace exists. To date in 1979, there have been several near midair collisions reported in the San Diego terminal area. In all instances, general aviation and either air carrier or military aircraft have been involved. The high passenger loads discussed below and the mix of various type aircraft using the airspace in and around San Diego International Airport make it highly desirable to add the assurance that the flight paths of air carrier aircraft using this airport are contained within airspace regulated to be free of uncontrolled flights.

The "Highest Degree" of Air Transportation Safety

The near midair collision statistics cited above indicate that, for all classes of users of terminal airspace, the furnishing of separation service by ATC, in addition to the duty of pilots to see and avoid each other, can result in a higher level of air traffic safety. For the millions of air carrier passengers who enter and leave the major air terminals each year, the Congress has directed that the highest feasible degree of safety be achieved. The FAA believes that the continued presence of a "mix" of ATC controlled aircraft and uncontrolled VFR aircraft can interfere unnecessarily with this high safety objective.

The congressional mandate is clear with respect to the high level of safety intended for passengers in air transportation. Section 601 of the Federal Aviation Act of 1958 requires that the FAA give full consideration to the duty resting on air carriers to perform their services with the "highest possible degree of safety in the public interest * * *" This Congressional concern for air transportation, as a distinct class to be protected, was restated in the Airline Deregulation Act of 1978 (Pub. L. 95–504, October 24, 1978) which amended Section 102 of the Federal Aviation Act of 1958 to emphasize the "dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public" (49 U.S.C. 1302(a)). The Airline Deregulation Act of 1978 also directed the Secretary of Transportation ("Secretary") to complete a thorough review of the safety regulations applicable to air carriers in order to ensure that "all classes of air carriers are providing the highest level of safe, reliable air transportation to all the communities served by those air carriers." The Administrator is directed to respond to the Secretary's review by promulgating regulations that may be needed to "maintain the highest standard of safe, reliable air transportation in the United States." The "highest standard of safety in air transportation" is also stressed in relation to annual reports to be submitted to the Congress by the Secretary beginning not later than January 31, 1980, (new Section 107 of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978). The orderly and extensive expansion of positive controlled airspace, including the proposal in this notice, would ensure that the system-wide capability of the FAA to assure separation protection for air carrier passengers remains commensurate with the encouragement and growth of a vigorous, safe and efficient air transportation system under the new Act.

Building on Past Programs

While the TCA action described herein is proposed as part of the Administrator's Plan for Enhanced Safety, it follows, and is a logical extension of, programs that first gained momentum in 1962. That year, initiating many years of pilot participation in terminal radar service programs, such a program was established at Atlanta to solve communications workload problems and assist in aircraft sequencing. This was followed by a similar program at Merced Air Force Base, California, in 1965. This service was gradually extended until 1970, when the National Terminal Radar Program signalled a major expansion of ATC separation service following the 1968 Near Midair Collision Report (discussed below). Beginning with the TRSA at Nashville, a total of 86 nonregulatory Terminal Radar Service Areas (TRSAs) covering 105 airports were established under that program, the last being the Peroria TRSA in 1978. The safety enhancement program includes the proposed addition of 80 new TRSAs in phases ending in 1983.

In addition to these nonregulatory programs, the 1970 National Radar Program initiated the regulatory development of TCAs, also in response to the 1968 Near Midair Collision Report. The TCA concept, as a regulatory means of providing positive control in terminal airspace, was added to the Federal Aviation Regulations in amendments 71–6 and 91–78, which were published in the **Federal Register** (35 FR 7782) on May 21, 1970, to be effective on June 25 of that year. Those amendments, which defined the nature and operational aspects of TCAs, followed extensive public comment in response to Notice No. 69–41, issued on September 30, 1969, (34 FR 15252); 22 public meetings; and a supplemental notice of proposed rulemaking (Notice No. 69–41B) issued on March 11, 1970, (35 FR 4519). That regulatory history led to the issuance of § 71.12 of Part 71 of the Federal Aviation Regulations, under which TCAs are issued, and § 91.90 of Part 91 of the Federal Aviation Regulations, which describes the equipment and operating rules for participating in a TCA. The TCA action proposed in this notice is issued under § 71.12 and incorporates, without changing, the provisions of § 91.90. While the safety enhancement plan identified 44 new locations for possible Group II TCAs, the legal basis for, and description of, the TCA concept was established under these 1970 amendments to Parts 71 and 91. That regulatory concept would not be changed by this notice. It is to be noted that the 44 locations were only proposals. Each site is being evaluated on its own merits. In fact, the FAA's analysis to date has led to dropping the following cites from the original list—Des Moines, Iowa; El Paso, Texas; Jacksonville, Florida; Lihue, Hawaii; Salt Lake City, Utah; and Tucson, Arizona. The evaluation is continuing with the very real possibility that other cites may be dropped, even before the issuance of a notice of proposed rulemaking.

National Benefits

The Plan for Enhanced Safety contains an analysis of the safety increases, in terms of passengers protected, that were expected to result from the establishment of the 44 new TCAs originally under consideration. Six of those proposed sites are no longer under consideration at this time.

However, if all of those TCAs were established the original analysis indicates that the percentage of air carrier enplaned passengers protected by mandatory ATC separation, compared with the 21 TCAs in existence in January 1978, would rise from 62% to 87%. In addition, those TCAs would expand the protected commuter passenger enplanements from 38.5% to 49.7% (in the contiguous 48 states). While those figures have been reduced because of the reduction of the number of candidate sites, the increased protection at the remaining locations is still substantial. This is during a period in which substantial increases in total enplanements are forecast for both classes of air transportation, with annual air carrier and commuter air carrier enplanements expected to exceed 418 million and 14 million, respectively by 1989.

Parallel increases are also expected for general aviation. For this large and expanding class, the numbers of aircraft, and the total operations, are forecast to increase by more than 60% between 1977 and 1989. In addition, manufacturing trends indicate that increasing proportions of the general aviation fleet are being purchased with equipment intended for operation in the busy terminal airspace in which the "mix" of controlled and uncontrolled aircraft has been identified as a common factor in reported near midair collisions.

For all classes of airspace user, therefore, the FAA believes that the extensive expansion of TCAs at the remaining proposed sites would significantly increase the ability of ATC to provide an effective, additional margin of safety to that furnished by the pilot's duty to see and avoid other aircraft.

Local Benefits

The establishment of a Group II TCA, as proposed in this notice, would make a meaningful contribution to the system-wide increase in safety and responds to the conditions that exist in the San Diego area. At Lindbergh Field, enplanements for 1979 are forecast to reach 2.95 million and increase instrument operations 233,000 to 312,000 by 1990. Enplanements at San Diego International Airport for 1979, based on these forecasts, will represent 1.09% of national enplanements while aircraft operations will represent .35% of the national total.

Economic Impacts

The FAA is committed to ensuring that the costs of establishing the San Diego, Calif., TCA are considered before final regulatory decisions are made. Since these costs may affect other TCA proposals announced in the Plan for Enhanced Safety, a comprehensive economic assessment, covering the entire program as described in that plan, was made available to attendees at informal airspace meetings held in San Diego on March 20–22, 1979, and is in the Regional and Washington dockets for public comment. The assessment includes system-wide assumptions concerning the impact of all 44 originally proposed new TCAs, including San Diego, Calif., TCA proposal. Since six of the original sites are no longer under current consideration, the cost impact system-wide is even less but the underlying assumptions are still valid as applied to the remaining candidate sites. In addition, to determine whether these general assumptions are valid for the particular TCA airspace description proposed for San Diego, Calif., the FAA Western Regional Office has prepared a detailed addendum to the broad national study. This Regional economic assessment is appended to the national assesment and is also in the Regional and Washington dockets. Public comment on these economic assessments is invited.

Environmental Impacts

In a manner similar to that described above for the national and local economic assessments, an environmental assessment has been prepared, which addresses the overall national environmental effect of the 44 proposed TCAs. This assessment addresses the aircraft noise, aircraft emissions, and fuel consumption impacts of the program as a whole, and concludes that these impacts would not significantly affect the quality of the human environment. This national assessment is in the Regional and Washington dockets. In addition, like the economic sutdy, this program-wide assessment has been supplemented with an environmental assessment, prepared by the Regional office, responding to the site-specific impacts of the San Diego, Calif., TCA proposal. This local assessment is in both dockets for public comments. The local supplement will assist the Administrator in evaluating local and national environmental impacts before decisions are made concerning the proposed TCA. Public comment on these environmental assessments is invited.

Airspace Outside the United States

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Practices.

Applicablity of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States, is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigational facilities and services necessary to promote safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting State, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting State accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, State aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting State, the United States agreed by Article 3(d) that its State aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Proposed Terminal Control Area

The airspace description for the proposed TCA action in this notice was developed by the FAA Western Region in consultation with affected users to minimize the potential impact of the proposal.

On March 20–22, 1979, informal airspace meetings, open to the public, were held in the San Diego area to obtain public participation in the development of an airspace description responsive to the needs of both transient and local users who might be affected. Approximately 300 persons attended during the three days of meetings. A

report describing these meetings has been placed in the Regional and Washington dockets for public review. Public comment is invited on FAA's proposed disposition of comments and options discussed in the informal airspace meetings.

The San Diego TCA would be multi-tiered and consist of 17 areas designated alphabetically with a VFR corridor. In response to public suggestions, the FAA has incorporated several changes into the proposed TCA configuration. Included in the configuration is a north-south VFR corridor over San Diego International Airport (Area A) from 3,300 to and including 4,700 feet. It has been designed to allow free transit of VFR aircraft through the approximate center of Area A.

Another change was made in the Mission Valley (Area J) after comments were made concerning possible compression of VFR traffic beneath the floor. As a result, it was agreed that raising the floor to 4,800 feet would not derogate safety or ATC service within that Area.

Area G was developed from Areas C and D after it was determined that parachute and glider operators in the Lower Otay Reservoir Area would be unduly penalized if the floors remained at 3,500 and 4,800 feet respectively. The floor was raised to 7,800 feet to permit continued use and is incorporated in this proposal.

The following are proposed responses to these comments and recommendations the FAA proposes not to incorporate in the final action. However, specific public comments providing details and data regarding the proposed dispositions are invited so that the FAA can assess the correctness of its initial perceptions.

a. Many commenters objected strongly to the proposed establishment of any TCA in the San Diego area. The reasons offered varied but generally included such views as:

(1) A dislike for the restrictive nature of TCAs on local traffic and particularly on general aviation aircraft and pilots not willing or able to operate in a TCA environment;

(2) Concern that a TCA is itself inherently unsafe and not capable of providing an efficient use of the limited airspace for all users;

(3) A TCA in the San Diego area is unwarranted; and

(4) The complex nature of the proposed TCA makes it unrealistic, unworkable, unenforceable, and unsafe.

Many of these views are directed at the underlying TCA concept. While those matters have been thoroughly covered in the history of TCAs, they are being reevaluated and the FAA proposes to respond to them as resolved in the preamble to Amendments 71–6 and 91–78 which established the regulatory basis for TCAs, as previously discussed.

As discussed in Notice No. 78–19 and in this notice, the FAA concludes that San Diego is an appropriate candidate for further consideration of the need for establishing a Group II TCA. After a full review of the comments and recommendations submitted in response to the informal airspace meeting and other available data, the FAA is issuing this notice proposing to establish a TCA in order to achieve the benefits that form of air traffic control is designed to provide. The competing interests for use of the affected airspace are being fully considered in this rulemaking process.

b. While the floors in many areas have been adjusted in response to comments, some commenters suggested that the floors were too low in other areas over the water and mountainous terrain, and east and southeast of Lindbergh field.

The proposed TCA floor altitudes have been adjusted where possible to offer the least adverse impact to satellite airports and the potential terrain hazards. The FAA proposes not to make additional adjustments to the TCA floors because the proposed configuration is needed to contain within the TCA airspace the numerous departure and arrival flight profiles in the interest of safety.

c. The present ATC system in San Diego cannot handle the increased traffic anticipated upon the establishment of the proposed TCA.

The FAA does not anticipate any significant increase in traffic handled by the ATC system as a result of a TCA. However, if such an increase does materialize, the FAA would take necessary action to deal with the traffic.

d. Some commenters suggested that the TCA would increase delays and result in increased fuel consumption.

The FAA recognizes there may be some delay as a result of the TCA, particularly in its early phase, but it is anticipated that these delays would be minimal and the FAA will continue to work to minimize the delays while providing an appropriate level of safety. The FAA is continuing its assessment of the fuel consumption impact of the proposed TCA configuration.

e. The proposed TCA depiction is too complicated. More emphasis should be placed on visual points rather than navigation aids, radials and imaginary lines.

In large measure, the complex proposed configuration is the result of an existing complicated airspace usage involving arrival and departure profiles to and from the numerous airports in the area and of the need to provide the desired level of safety without imposing unnecessary burdens on the users. It was necessary to use a multi-tiered configuration. A simpler configuration would not fully achieve the objectives of the proposal and would necessarily result in reduced safety margins or inefficient use of the airspace. The description uses visual ground references for the VFR corridor and other areas where practical, however, it is the responsibility of pilots to become familiar with TCA airspace the same as they identify control zones, restricted areas, and other designated airspace.

f. There is no need for the upper limits of the TCA to be 12,500 feet; other TCAs have lower upper limits.

To provide positive separation for aircraft, the TCA needs to extend to 12,500 feet where a transponder and automatic altitude reporting equipment requirement currently exists. Otherwise, the continuity of the positive separation would not be provided between the TCA and the 12,500 foot level. For the same reason, the FAA is considering raising the upper limits of existing TCAs.

g. The proposed TCA encompasses too much airspace, particularly for the Lindbergh approach and departure courses and areas further away from Lindbergh Field.

The FAA proposes to respond to these suggestions by noting that the size and shape of the San Diego TCA has been carefully evaluated and is considered the minimum needed to efficiently contain the radar vectoring, sequencing, arrival and descent profiles of aircraft within the TCA. Further reductions in the size would diminish the safe and efficient use of that airspace. The presence of airports other than San Diego International Airport and factors affecting operations dictate full consideration of designating only necessary airspace within the proposed TCA. Elimination of several proposed areas to reduce the size and impact of the TCA would permit those areas to continue to pose unacceptable risks for traffic conflict and collision potential.

The proposed TCA would be established as a Group II TCA. Therefore, the requirements of § 91.90(b) would apply to operations within the TCA. This includes ATC authorization to enter the TCA, two-way radio communications within the TCA, and the requirement that large turbine-engine powered airplanes remain at or above the designated floors of the TCA segments while operating to or from a

primary airport within the TCA. Aircraft operating within the TCA would be required to be equipped with a VOR or TACAN receiver (except for helicopters), two-way radio, and a transponder. Section 91.90(b) should be reviewed for the details of these provisions.

The Proposed Amendement

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 660) by adding a new Group II Terminal Control Area to read as follows:

Subpart K—Terminal Control Areas

§ 71.401 Designation.

* * * * *

(b) Group II, Terminal Control Areas:

* * * * *

San Diego, California, Terminal Control Area

Primary Airports

1. San Diego, California, (Lindbergh Field) (Lat. 23°34'22" N., Long. 116°58'47" W.).

2. Miramar NAS, Miramar, California (Lat. 32°52'30" N., Long. 117°08'15" W.).

Boundaries

Based on the Mission Bay VORTAC ("Mission Bay": MZB) (Lat. 32°46'57" N., Long. 117°13'29" W.) arcs, DME distances, and radials and the Miramar NAS TACAN (Lat. 32°52'11" N., Long. 117°09'14" W.).

Southern boundary of the San Diego TCA is 3 nautical miles north of the United States-Mexico border beginning at Lat. 32°33'00" N., Long. 117°31'00" W., and extending to Lat. 32°38'30" N. Long. 116°29'00" W.; the United States-Mexico border is referred to as "the border."

Area A. That airspace extending upward from the surface to and including 12,500 feet MSL within an area bounded on the west by a 5 statute mile radius of the Mission Bay VORTAC, on the east by a 10-mile radius of Mission Bay, on the north by the Mission Bay 325°T(310 M) and 099°T(084 M) radials and on the south by an extension of the Lindbergh Field/NAS North Island Control Zone line, excluding that airspace from 3,300 feet to 4,700 feet MSL in an area beginning at the Mission Bay 099°T(084°M) radial and bounded on the west by Interstate 5 south to Interstate 8 thence direct to Lat. 32°44'15" N., Long. 117°12'30" W., direct to Lat. 32°41'00" N., Long. 117°10'45" W., to intercept and proceed along the Silver Strand Highway to the Mission Bay 10-mile radius, and on the east via Highway 163 south to Interstate 5 thence south via Interstate 5 to the Mission Bay 10-mile radius.

Area B. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL between the Mission Bay 10-mile and 15-mile radii bounded on the north by the Mission Bay 099°T(084°M) radial and on the south by an extension of the Lindbergh Field/NAS North Island Control Zone line.

Area C. That airspace extending upward from 3,500 feet MSL to and including 12,500 feet MSL between the Mission Bay 15-mile and 20-mile radii bounded on the north by a line between the Mission Bay 099°T(084°M) and 090°T(075°M) radials and on the south by the Lindbergh Field/NAS North Island Control Zone line extension to 3-miles north of the border thence via the Mission Bay 17.8-mile arc to the Mission Bay 120°T(105°M) radial thence east to the Mission Bay 115°T(100°M) radial and the 20-mile arc.

Area D. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL between the Mission Bay 20-mile and 23-mile radii bounded on the north by a line between the Mission Bay 090°T(075°M) and 087°T(072°M) radials and on the south from the 23-mile arc intersection at 3-miles north of the border, to the Mission Bay 115°T(100°M) radial at the 20-mile intersection.

Area E. That airspace extending upward from 5,800 feet MSL to and including 12,500 feet MSL between the Mission Bay 23-mile and 28-mile radii bounded on the north by a line between the Mission Bay 081°T(066°M) and 084°T(069°M) radials and on the south by the line 3-mile north of the border.

Area F. That airspace extending upward from 7,800 feet MSL to and including 12,500 feet MSL between the Mission Bay 28-mile radius and by a line 3-miles north of the border to Long. 116°29'00" W., then along Long. 116°29'00" W., to Lat. 32°58'00" N., bounded on the north by a line between the Mission Bay 084°T(069°M) radial and the Mission Bay 068°T(053°M) radial/36.5 DME fix and by a line between the Mission Bay 068°T(053°M) radial/36.5 DME fix and Lat. 32°58'00" N.

Area G. That airspace extending upward from 7,800 feet MSL to and including 12,500 feet MSL bounded on the west by a line from the Mission Bay 17.8-mile arc between Lindbergh Field/NAS North Island Control Zone line extension intersecting 3-miles north of the border and the Mission Bay 120°T(105°M) radial, on the north by a line between the Mission Bay 120°T(105°M) radial/17.8 DME fix and the Mission Bay 115°T(100°M) radial/20 DME fix on the east by a line between the Mission Bay 115°T(100°M) radial/20 DME fix and Mission Bay 23-mile radius at the 3-mile line north of the border and on the south by the 3-mile line north of the border.

Area H. That airspace extending upward from 5,800 feet MSL to and including 12,500 feet MSL bounded on the west by a line between Lat. 32°33'00" N., Long. 117°30'45" W., and Lat. 32°43'33" N., Long. 117°36'32" W., to an extension of the Lindbergh Field/NAS North Island Control Zone line at the Mission Bay 10-mile arc thence counterclockwise to the eastern extension of the Lindbergh Field/NAS North Island Control Zone line thence via that extension to the line 3-mile north of the border thence via that line to the point of beginning.

Area I. That airspace extending upward from 2,800 feet MSL to and including 12,500 feet MSL bounded on the north and east by an extension of the Lindbergh Field/NAS North Island Control Zone line and on the south by the 10-mile arc of Mission Bay, excluding that airspace from 3,300 feet to 4,700 feet MSL in the corridor excluded under the description in Area A.

Area J. That airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL bounded on the south beginning at the Mission Bay VORTAC thence via the Mission Bay 079°T(084°M) radial to the 15-mile DME fix thence via a line to the Mission Bay 087°T(072°M) radial/23 DME fix thence counterclockwise on the 23-mile arc to the Mission Bay 081°T(066°M) radial thence via a line to the Mission Bay 065°T(050°M) radial/10 DME fix extending to the NAS Miramar Control Zone clockwise to the south and along an extension of the NAS Miramar Control Zone line westward to the Mission Bay 325°T(310°M) radial and along the 325°T(310°M) radial to the point of beginning.

Area K. That airspace extending upward from 1,800 feet MSL to and including 12,500 feet MSL between the Mission Bay 5-mile and 13-mile radii bounded on the northwest by the Mission Bay 325°T(310°M) radial and on the south by the Lindbergh Field/NAS North Island Control Zone west extension.

Area L. That airspace extending upward from 2,800 feet MSL to and including 12,500 feet MSL between the Mission Bay 13-mile and 21-mile radii bounded on the northwest by the Mission Bay 325°T(310°M) radial, on the south by the Lindbergh Field/NAS North Island Control Zone west extension to Lat. 32°43'33" N., Long. 117°36'32" W., and on the west to Lat. 32°46'45" N., Long 117°38'22" W., at the intersection of the 21-mile radius of Mission Bay.

Area M. The airspace extending upward from 4,800 feet MSL to and including 12,500 feet MSL from the Mission Bay 21-mile radius beginning at Lat. 32°46'45" N., Long. 117°38'22" W., thence via a line to Lat. 32°53'00" N., Long. 117°41'40" W., thence via a line to Lat. 33°05'00" N., Long. 117°51'55" W., thence via a line to Mission Bay 325°T(310°M) radial/31.5 DME fix thence via 325°T(310°M) radial to the 21-mile DME fix thence via the 21-mile arc counterclockwise to point of beginning.

Area N. That airspace extending upward from 6,800 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 325°T(310°M) radial/16-mile DME fix thence via the 325°T(310°M) radial to the Mission Bay 31.5 DME fix thence direct to the Mission Bay 357°T(342°M) radial/22.5 DME fix thence direct to the Mission Bay 047°T(032°M) radial/10.5 DME fix thence couterclockwise via the Miramar NAS Control Zone to the Miramar TACAN 300°T(285°M) radial thence direct to point of beginning.

Area O. That airspace extending upward from 1,500 feet MSL to and including 2,500 feet MSL and that airspace extending upward from 6,800 feet MSL to and including 12,500 feet MSL beginning at the Mission Bay 325°T(310°M) radial and a line extended from the NAS Miramar Control Zone thence via the Mission Bay 325°T(310°M) radial to the 16-mile DME fix thence direct to the intersection of the Miramar TACAN 300°T(285°M) and the Miramar NAS Control Zone thence south via Interstate 805 to the southern edge of the Miramar NAS Control Zone thence westward via an extension of the Miramar NAS Control Zone line to the point of beginning.

Area P. That airspace extending upward from the surface to and including 3,000 feet MSL and that airspace from 6,800 feet MSL to and including 12,500 feet MSL within a 5-statute-mile radius of NAS Miramar excluding that area south of the NAS Miramar Control Zone and that area west of Interstate 805.

Area Q. That airspace extending upward from the surface to and including 6,000 feet MSL within 2 statute miles on each side of the NAS Miramar TACAN 078°T(063°M) radial extending from the 5-statute-mile radius zone to 10 miles east of the TACAN.

(Secs. 307, 313(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), and 1510); Excutive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

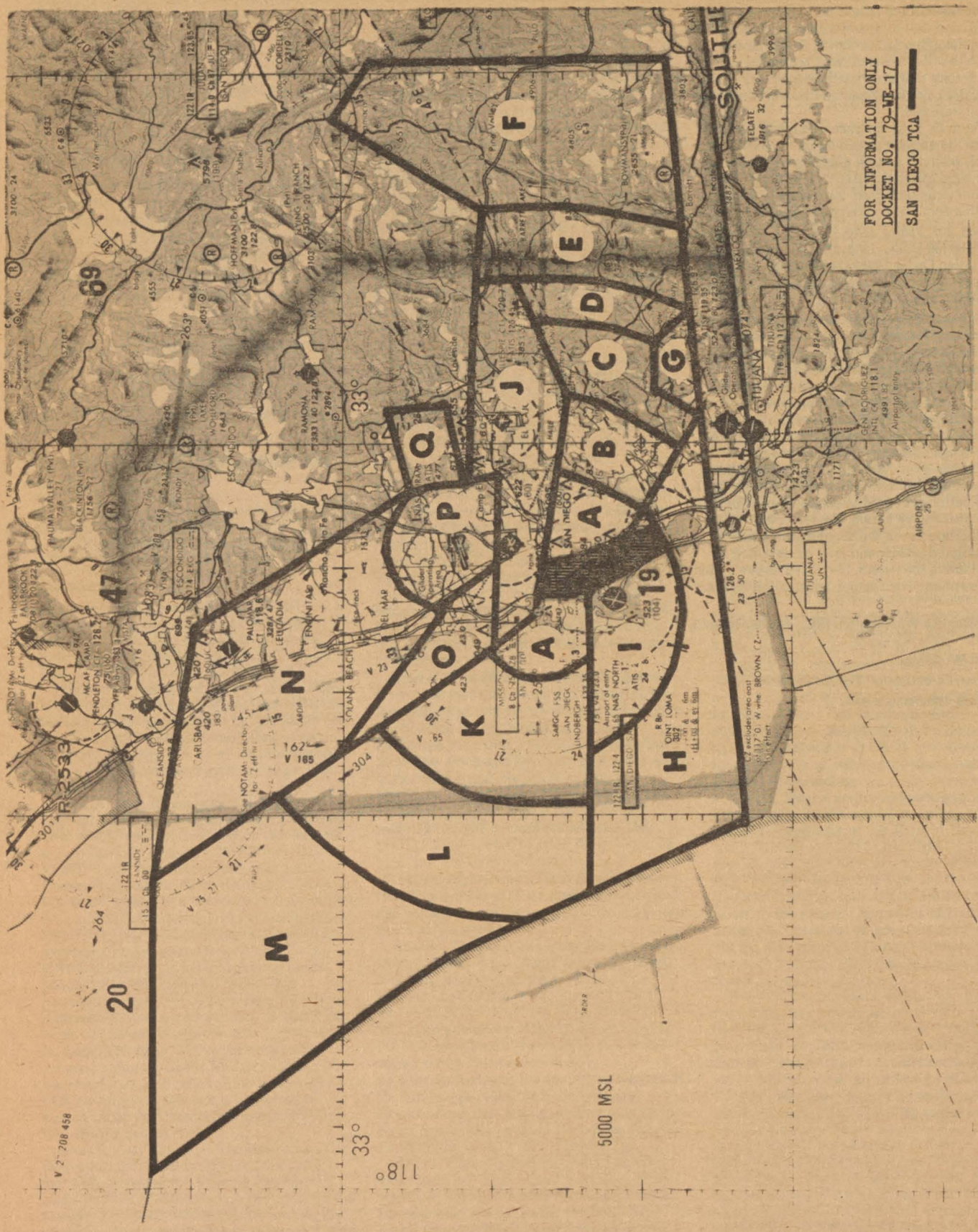
Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). However, establishment of this terminal control area in concert with the proposed establishment or alteration of many other terminal control areas has been determined to be significant. Therefore, this action is included in the draft evaluation prepared in conjunction with that comprehensive action. Copies of the evaluation are in the Washington and Regional dockets, and may be obtained by contacting the person identified above under the caption "For Further Information Contact * * *"

Issued in Washington, D.C., on December 3, 1979.

John W. Baier,

Acting Director, Air Traffic Service.

BILLING CODE 4910-13-M



[FR Doc. 79-37485 Filed 12-5-79; 8:45 am]
BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-16372]

Withdrawal and Deferment of Action on Proposed Amendments to Staff Disclosure Guidelines

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawing and deferring action on proposed amendments to existing disclosure guidelines.

SUMMARY: The Commission is withdrawing two proposals and deferring action on a third proposal to amend certain staff disclosure guidelines. These proposals would have made clear the application of such guidelines to the registration statements and reports filed by foreign private registrants. These proposals were not adopted because of related actions taken today.

EFFECTIVE DATE: December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202/272-3246) or Ronald Adee (202/272-3250), Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 500 N. Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Release No. 34-14128 (November 2, 1977) (42 FR 58684, November 10, 1977) the Commission proposed for comment amendments to Guides 1, 2 and 3 of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Exchange Act[1] (the "Exchange Act Guides") which would have applied the Exchange Act Guides to registration statements and annual reports filed by certain foreign private issuers. The Commission is withdrawing the proposed amendments to Guides 1 and 2 because of related action taken today.[2] The Commission is also deferring action on proposed amendments to Guide 3 pending the reconsideration of that Guide.[3]

[1] Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975)] (the "Exchange Act").

[2] Release No. 34-16371 in this issue.

[3] Release No. 34-16149 (August 30, 1979) [44 FR 52820, September 10, 1979].

DISCUSSION

In conjunction with proposing Form 20-F [17 CFR 249.220f][4], the Commission also published for comment proposals clarifying that the Exchange Act Guides apply to foreign private issuers. These Guides are Guide 1, Summary of Operations; Guide 2, Disclosure of Extractive Reserves and Natural Gas Supplies; and Guide 3, Statistical Disclosure by Bank Holding Companies.

These proposals are not adopted. The application of Guides 1 and 2 is preempted by items in the Form 20-F. Item 2 of the Form 20-F requires a modified version of the Management's Discussion and Analysis. Item 3 and the Appendix specify the required disclosure of reserves and production for registrants in extractive industries. Since comments are being solicited on Guide 3, the Commission believes that it would be inappropriate to apply Guide 3 to foreign issuers at the present time. Therefore, the proposals relating to Guides 1 and 2 are withdrawn but action on Guide 3 is deferred.

By the Commission.

George A. Fitzsimmons,

Secretary.

November 29, 1979.

[FR Doc. 79-37403 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[4] Form 20-F, adopted today in Release No. 34-16371, is the registration and annual report form for certain foreign private issuers filing under the Exchange Act.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. PM80-12]

New, Onshore Production Wells; Proposed Rulemaking Amending Final Regulations Implementing the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission proposes to amend its final regulations implementing section 103 of the Natural Gas Policy Act of 1978 which establishes the maximum lawful price for gas from new, onshore production wells, with regard to collection of the section 103 price for gas from a second well on an existing proration unit.

DATES: Comments by January 23, 1980. Public hearing scheduled for December 17, 1979. Request to participate in the hearing must be received prior to December 12, 1979.

ADDRESSES: Send comments and request to participate to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Reference Docket No. RM80-12). The hearing will be held at the same location.

FOR FURTHER INFORMATION CONTACT:

Thom Hirsch, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8025.

Howard Kilchrist, Director of NGPA Compliance, Office of Pipeline and Producer Rates, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8585.

November 30, 1979.

Background

Section 103 of the Natural Gas Policy Act of 1978 (NGPA)[1] established a maximum lawful price for natural gas from new, onshore production wells. These are new wells, the surface drilling of which began on or after February 19, 1977, which satisfy applicable Federal and State well spacing requirements, and which generally are not second wells on existing proration units.

In Order No. 43,[2] the Commission issued final regulations implementing section 103 of the NGPA. One of the regulations, § 271.305, established a special rule for wells drilled on existing proration units. Under § 271.305, a second well drilled on an existing proration unit may still qualify as a new, onshore production well if the jurisdictional agency finds that the second well is a new well necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well.

The Commission in Order No. 43[3] expressed concern about the situation where the jurisdictional agency finds that both an existing well and the new well are necessary to effectively and efficiently drain the proration unit and a State agency has established an allowable or production level for the unit, but not for each well on the unit. Regarding this situation, the Commission was concerned that the special rule in § 271.305 creates an incentive to produce a disproportionate amount of gas from the new well because it commands the higher section

[1] 15 U.S.C. 3301 *et seq.* (1978).

[2] Final Rule Amending Regulations on Natural Gas From New, Onshore Production Wells * * * Docket No. RM79-72, issued August 20, 1979, 44 FR 49651.

[3] *Id., mimeo.*, pp. 8-9.

103 price. Consequently, the Commission established a new § 271.305(b)(2)(ii) of the final regulations, requiring the appropriate State agency in this situation to set separate allowables for each well in the unit. The allowables or production levels were to be based on the respective ability of the two wells to deliver natural gas.

After considering comments on § 271.305(b)(2)(ii) filed by interested parties in their petitions for rehearing of Order No. 43, the Commission in Order No. 43–A [4] decided to delete the requirement of separate allowables and, instead, issue a notice of proposed rulemaking addressing this issue. In the applications for Rehearing of Order No. 43, several petitioners alleged that the requirement of allowables was an unlawful attempt by the Commission to intrude into the regulatory area or natural gas production which is reserved to the States. Moreover, these petitioners contended that § 271.305(b)(2)(ii) conflicted with existing State procedures. For example, the States of New Mexico and Oklahoma purportedly do not establish allowables for each well in a proration unit; Texas is said to set allowables for each well, but not solely on the basis of the respective ability of the wells to produce.

It was also argued that § 271.305(b)(2)(ii) produced inquitable results, was discriminatory in effect and could not be supported in light of its stated purpose. Finally, the petitioners alleged that § 271.305(b)(2)(ii) was unduly burdensome both administratively and economically to jurisdictional agencies and that the requirements placed in doubt many section 103 determinations which the agencies had already made, but which had not yet become final under § 275.202 of the Commission's regulations.

The Proposed Rule

The Commission herein proposes to issue a new § 271.305(b)(2). As proposed, this regulation would provide that where a second well is drilled in an existing proration unit based upon a finding by the jurisdictional agency that such well is necessary to effectively and efficiently drain the reservoir, and the jurisdictional agency has set allowables for the unit but has not set allowables for each well in the unit, production from such well could still qualify for the section 103 price. However, in such a situation, the producer could not bill the purchaser at the section 103 maximum lawful price for a volume in excess of a volume which bears the same ratio to the total volumes produced from all wells in the unit as the production capability of such new well bears to the aggregate production capability of all wells in such unit. Production capability of the existing and the new wells could be measured by means of a flow test or any other test reasonably designed to calculate the capability of a well to produce natural gas and would not have to be measured more than once per year.

This proposal would allow gas from a second well in a proration unit to qualify for the section 103 price without necessarily requiring a State to set separate allowables for each well in the proration unit. Furthermore, there would not be any limitations on the amount of gas produced from the new well. The producer would have the flexibility to produce any portion of the allowable from either well; however, if he chose to produce a disproportionate volume from the new well, he could not price the new well's entire volume at the section 103 price. Moreover, this new qualification would not apply if the State does set allowables for the unit and has also set allowables for each well consistent with its regulatory policies. Nor would the qualification be applicable if the State does not set allowables for the proration unit. Thus, this regulation would recognize the right of the State to set allowables for each well in the proration unit in accordance with its own regulatory policies.

The Commission proposes to make § 271.305(b)(2) as proposed applicable to deliveries of natural gas made on or after the effective date of any final rule issued in this Rulemaking. The Commission recognizes, however, that its decision to proceed with this rulemaking subsequent to establishment of the fnial rules implementing section 103 may create difficulties for producers which may arise, for example, in the billing of their purchasers for gas affected by the rule. For this reason, the Commission specifically invites comments identifying any problems which may arise because of the proposed effective date of this rule.

Written Comment Procedure

Interested persons are invited to submit written comments, data, views or arguments with respect to this proposal. An original and 14 copies of any filing made in this docket should be filed witha the Secretary of the Commission. All comments received prior to January 23, 1980, will be considered by the Commission prior to promulgation of any final regulation issued as a result of this proceeding. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, NE., Washington, D.C., during regular business hours. Comments should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket No. RM80–12.

Public Hearing Procedures

A public hearing concerning this proposal will be held in Washington, D.C. on December 17, 1979, beginning at 10:00 a.m., and will continue if necessary on the following day. Any person interested in this proceeding or representing a group or class of persons interested in this proceeding may make a presentation at the hearing provied that a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m. on December 12, 1979.

Requests to participate in the hearing should include a reference to Docket Number RM80–12 as well as a concise summary of the proposed oral presentation and a number where the person making the request may be reached by telephone. Prior to the hearing, each person filing a request to participate will be contacted by the presiding officer or his designee for scheduling purposes. At least five copies of the statement shall be submitted to the Secretary of the Commission prior to 4:00 p.m. on December 14, 1979. The presiding officer is authorized to limit oral presentation at athe public hearing both as to length and as to substance. Persons participating in the public hearing should, if possible, bring 30 copies of their testimony to the hearing.

The hearing will not be a judicial or evidentiary-type hearing. There will be no cross-examination of persons presenting statements. However, the panel, composed of members appointed by the Chairman, may question such persons and any interested persons may submit questions to the presiding officer to be asked of persons making statements.

The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. If time permits, at the conclusion of the initial oral statements, persons who have made oral statements will be given the opportunity to make a rebuttal statement. Any further procedural rules will be announced by the presiding officer at the hearing. A transcript of the hearing will be made

[4] Order Granting In Part and Denying In Part Rehearing of Order No. 43 and Amending Regulations, Docket No. RM79–72, issued November 16, 1979, Mimeo., pp. 14–16.

available at the Commission's Office of Public Information.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Exec. Order No. 12,009, 42 FR 46267; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*)

In consideration of the foregoing, the Commission proposes to amend Subpart C of Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 271.305 is amended by inserting paragraph (b)(2) to read as follows:

§ 271.305 Special rule applicable to existing proration units. * * *

(b) *Wells spudded on or after February 19, 1977. * * **

(2) Where the explicit finding of subparagraph (1) of this paragraph is that both an existing well and a new well are necessary to effectively and efficiently drain the reservoir covered by the proration unit and the appropriate State agency having regulatory authority has established an allowable or production level for the unit but not for each well on the unit, the producer may not bill the purchaser at the maximum lawful price under this subpart for a volume in excess of a volume which bears the same ratio to the total volumes produced from all wells in the unit as the production capability of such new well bears to the aggregate production capability of all wells in such unit.

[FR Doc. 79-37491 Filed 12-5-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 79-36]

Project Agreements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration is issuing this advance notice to request comments on existing project agreement procedures and suggestions for their improvement. A Project Agreement (PA) is a legal agreement between a State and the Federal Government. It is required for each Federal aid highway project. The FHWA believes that the PA process, as well as the PA's, can be simplified, and thus seeks public comments on the alternatives outlined in this document.

DATES: Comments must be received on or before February 4, 1980.

ADDRESS: FHWA Docket No. 79-36, Federal Highway Administration, HCC-10, Room 4205, 400 Seventh Street SW., Washington, D.C. 20590. It would be appreciated if comments were sent in triplicate. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford R. Green, Federal-Aid Division, Office of Engineering (202-426-0334), or Ms. Ruth R. Johnson, Office of the Chief Counsel (202-426-0781), 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: A project agreement (PA) is a written agreement and legal instrument between a State and the Federal Government, wherein (1) the State highway agency (SHA) agrees to undertake and accomplish a Federal-aid highway project, and (2) the Federal Highway Administration (FHWA) agrees to have the State reimbursed for the Federal share of the cost of work performed on the project, under conditions specified in the PA. A PA is required by 23 U.S.C. 110 and is referred to in 23 U.S.C. 108(a), 111 and 121(c). A PA must be executed before a State can be reimbursed for project costs incurred. A standard form, called a "PR-2," is prescribed by FHWA for the PA on each project. This form is included as Appendix A of the existing regulation (23 CFR Part 630, Subpart C) and includes certain standard provisions and space for special provisions to be added on individual projects. Another form, called a "PR-2A," is prescribed for modifying the PA and is included as Appendix B of the existing regulation.

The FHWA desires to reduce the existing regulation to the essential minimum and eliminate unnecessary paperwork as a part of its ongoing regulations reduction and management improvement efforts. In the past, the FHWA has tried to improve the PA process, which occurs on some 9,000-17,000 project actions nationwide each year, while meeting the statutory requirement for a PA.

About 10 years ago, considerable work was put into the development of a "Master Project Agreement," whereby one agreement would be executed in a given State for all projects over a period of time. The Master PA drafted at that time would have been lengthy and detailed, referring to numerous Federal laws and regulations. The Master PA concept was later abandoned and 23 CFR 630, Subpart C, continued the procedure of a separate PA for each Federal-aid highway project. The present regulation and prescribed PA form (PR-2) are lengthy and may contain unnecessary, misplaced or outdated materials.

In the past, the FHWA has considered three major procedural alternatives for meeting the statutory requirements for a PA: (1) the Master PA, (2) combining the PA with the "Letter of Authorization" which is required for each project action under 23 CFR 630.114, or (3) continuing the present practice of executing a PA for each project. A general discussion of these three alternatives follows:

(1) A Master PA would eliminate 9,000-17,000 separate documents each year, speeding reimbursement for project costs incurred. This alternative has the disadvantages of (a) not being consistent with the existing language of 23 U.S.C. 110: ". . . *after* the plans . . . have been approved, the Secretary shall enter into a formal project agreement . . ." (emphasis added), and (b) making it difficult to stipulate, file and later locate special PA provisions on individual projects.

(2) A combined PA and Letter of Authorization would also eliminate 9,000-17,000 separate documents each year and facilitate both State submission and Federal reimbursement of claims. The disadvantages are (a) the combined PA and authorization would probably require changes or modification in SHA procedures, since the existing method normally requires two approvals: an engineering approval of project plans, specifications and estimates and an administrative approval of a PA, and (b) the combination would require about the same total amount of wording as the individual documents would.

(3) A continuation of the present practice of executing an individual PA for each project would have the advantage of continuing a well-established and understood practice between the States and FHWA. The disadvantages appear to be that it would not reduce the number of documents nor signatures and would not permit the SHA to start claiming reimbursement for project costs any earlier.

With any of the three alternatives, FHWA believes that some parts of the

existing PA regulation could be eliminated (e.g., section 630.305 concerning overruns in contract time). Similarly, some of the agreement provisions on the form PR–2 could be eliminated (e.g., item 10 on parking regulation and traffic control, item 13 on liquidated damagaes and item 15 on nondiscrimination). Any requirement eliminated from the PR–2 would be considered for inclusion in some FHWA regulation other than Part 630, Subpart C. Some of the existing standard PA provisions should be revised to be consistent with other current or proposed FHWA regulations (e.g., item 4 on repayment for preliminary engineering costs when a project is not constructed).

The FHWA would be particularly interested in SHA estimates of the reimbursement time being lost and the dollar amounts involved under the present procedure. Would a State be able to realize substantial timesavings on claiming sizable sums of money if the regulations permitted the SHA to start claiming reimbursement when FHWA authorizes the work? If alternative (1) above is eliminated, should the regulation afford each SHA the choice of alternative (2) or (3) above, and should different forms be provided for each choice? Are there any other suggestions for improving the PA process?

Copies of this advance notice are being sent directly to State highway agencies.

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the U.S. Department of Transportation pursuant to Executive Order 12044. Due to the preliminary nature of this inquiry, a full regulatory evaluataion has not been prepared at this time.

(23 U.S.C. 110, 315; 49 CFR 1.48(b))

Issued on: November 27, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FR Doc. 79-37419 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1251

[Docket No. 79–10; Notice 2]

State Highway Safety Agency

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA).

ACTION: Proposed rule

SUMMARY: The proposed rule would establish new requirements for the authority and function of State highway safety agencies. The goal of the proposed requirements is to improve highway safety programs on a statewide basis by upgrading the role of the central highway safety agencies.

DATES: Comments must be received on or before January 21, 1980. The effective date proposed for the rule is October 1, 1980.

ADDRESSED: Comments should be addressed to Docket No. 79–10, Notice 2, Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Five copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: NHTSA: John Tartaglino, Office of State Program Assistance, 202–426–1760, or John Womack, Office of Chief Counsel, 202–426–1834. FHWA: James Rummel, Office of Highway Safety, 202–426–2131, or Thomas Holian, Office of the Chief Counsel, 202–426–0761.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is the second to be issued in an effort to carry out the intent of section 207(b) of the Highway Safety Act of 1978 (sec. 207(b), Pub. L. 95–599, 92 Stat. 2689) relating to the status of State highway safety agencies. The first notice, issued on June 21, 1979 (44 FR 36204), drew a number of adverse comments. A review of these comments suggested the need to issue a second proposal rather than to move directly to a final rule.

As explained in the preamble to the June 21 notice, the impetus for a regulation to improve the State safety agencies has two sources. The first is a study conducted by NHTSA and FHWA during 1976 and 1977 at Congress's direction, which revealed a general dissatisfaction within the highway safety community about the inability of the safety agencies in many States to bring about a truly State-wide highway safety program. The report to Congress on July 1, 1977, highlighted this problem.

The second source is the reaffirmation by Congress of the need for an effective highway safety agency at the State level. In the report accompanying the Highway Safety Act of 1978, the House Committee on Public Works and Transportation strongly affirmed that a central authority on highway safety was "essential to the administrative workability and success of the highway safety program." H.R. Rep. No. 95–1485, at 49. To that end, the Committee's bill redesignated the "State agency" in 23 U.S.C. 402(b)(1)(A) as the "State highway safety agency," with the express purpose being to:

> Insure that program responsibilities presently fragmented and diffused among several different State agencies are brought together and coordinated by a single State agency with explicit authority for highway safety programs. *Ibid.*

It is clear from the history of the program, as reaffirmed by the Congress, that the State agency designated as the State Highway Safety Agency must have information about other highway safety activities in the State and the ability to assist such activities if it is to exercise its powers effectively. NHTSA and FHWA have had an administrative order in effect for a number of years on the role of State highway safety agencies (NHTSA/FHWA Order 900–4/7–5). (Available for inspection and copying as prescribed in 49 CFR Part 7 Apendix D.) The June 21 notice built on the old order in an effort to secure an effective role for these agencies.

The June 21 notice had therefore proposed that "each State" establish a State highway safety agency and authorize the agency to "coordinate the planning, development, implementation, and evaluation of highway safety programs in the State." 44 FR at 32605. The agency was to perform this coordination by "reviewing and commenting on highway safety programs prior to implementation of the programs by the operating State agencies, regardless of funding source." *Ibid.* The notice concluded with an enumeration of the functions the agency was to perform, including the planning, programing, monitoring, and evaluation of highway safety projects, as well as the collection of statistics as required by NHTSA and FHWA.

Those who objected to the June 21 proposal generally expressed one or more of the following views: that the proposal intruded on the rights of the States to organize their internal affairs; that it disregarded the role of the Governors; that it would interfere with the operation of other agencies, notably the Highway Patrols and Highway Departments; that establishing a central authority to "coordinate" highway safety would simply impose another bureaucratic delay; that exercising the proposed functions effectively would require a massive increase in the size of the safety agencies; and that the collection of statistics at the behest of NHTSA and FHWA would be both burdensome and unnecessary.

The revised proposal has been developed with each of these objections in mind, in an effort to achieve the basic

purpose of the Highway Safety Act without untoward effects on the States. The sections of the revised proposal are discussed below in order.

The *Purpose* section of the proposal has been revised by including an express reference to the Governor's authority under the Highway Safety Act and by deleting the former reference to the State highway safety agency's authority to "manage" the State's highway safety program. Although the preamble to the June 21 proposal had emphasized the Governor's role, the proposed rule had referred only to the "State" as the entity responsible for establishing the highway safety agency. To remove any doubt about the Governor's role, a reference to the Governor is included in the *Purpose* section and in other sections as appropriate.

The word "manage" as used in the *Purpose* section implied to several commenters that more authority was intended to be given to the safety agency than was described in the sections on authority and functions. To avoid this implication, the phrase referring to the agency's management role has been deleted.

The *Policy* section of the June 21 proposal directed each State to establish a State highway safety agency, either by law or by excutive order. In addition to being criticized for omitting reference to the Governor, the section was cited for its disregard of the States' prerogatives to order their own affairs. The revised section describes the Governor's responsibilities, and elaborates on the basic role of the agency under the Highway Safety Act to act for or represent the Governor. The proposal does not specify which agency would be the safety agency, leaving that decision to the discretion of the Governor. But in keeping with the requirement of 23 U.S.C. 402(b)(1)(A) that a State must have a highway safety agency to be eligible for funding under the Highway Safety Act, the *Policy* section would make funding contingent on compliance with the minimum authorities and functions specified in sections 3 and 4 of the proposed rule.

The *Authority* section in the June 21 proposal gave rise to a number of strong protests, particularly from those State agencies, such as the Highway Patrol, State Police, and State Highway departments, that have traditionally played an independent role in highway safety matters. Of particular concern was the authority of the safety agency to "coordinate" highway safety programs in the State by reviewing and commenting on highway safety programs of other State agencies prior to implementation of such programs. Many expressed doubts about the capability of the existing highway safety agencies to undertake such a coordinating role. Several comments predicted that requiring review before program implementation would either be an impossibility (because many programs are ongoing and have no beginning point) or a barrier to timely implementation of the program. No one supported the increased staff for the safety agencies that would be necessary if the proposed authority were to be effectively exercised.

In response to these objections, the revised proposal prescribes a more limited role for the safety agencies. The revised section is based largely on the alternative proposal submitted by the National Association of Governors Highway Safety Representatives. As revised, the section proposes that the safety agencies be authorized to keep themselves informed about highway safety programs administered by other State and local agencies and to assist the other agencies in developing and carrying out highway safety programs. The "coordinating" role would be carried out by having the safety agency report to the Governor periodically on the effectiveness of highway safety activities in the State, including State and locally-funded activities as well as those that are federally-funded. The oversight thus exercised would therefore resemble that of a staff agency rather than that of an operating agency, and would not involve either the expanded staff (the review would be on a selective basis) or the delays (the review would not precede implementation) that could have resulted from the first proposal.

The *Functions* section has been shortened and simplified. As revised, the list of functions closely resembles those suggested by the National Association of Governors Highway Safety Representatives. The "management" functions are confined to the Section 402 funded aspects of the safety agencies' responsibility. With respect to other State and local agencies, the State agency would act in a supportive, not a managerial, capacity. The collection of statistics, which met with objections in the first proposal, would be retained as a function, but for the agencies' own purposes, not for the benefit of NHTSA and FHWA. The reference in the first proposal to the safety agency's "operating the program" caused confusion as to which "program" was intended—the Federally-assisted section 402 program, or the entire State highway safety program. The section 402 program had been intended, but to avoid further confusion, the phrase has been dropped from the revised proposal.

The time allowed for implementation of the regulation has been revised to October 1, 1980. With the scope of safety agency authority proposed in this notice, it is likely that most States could conform without additional legislation. To the extent that timing problems may be disclosed in the comments to this notice, additional time could be allowed for legislative consideration of administrative changes.

A number of comments called into question the determination that the first proposal was a "nonsignificant" regulation. If controversy is any measure of significance, the determination was wrong as to that proposal. However, with the revisions proposed in this notice, based as they are on the comments to the first notice, NHTSA and FHWA are of the view that the regulation has been reduced to the level of a nonsignificant regulation under the regulatory policies and procedures established by the Department of Transportation (44 FR 11034). It has been determind that the proposal will have a minimal impact on the States because of their compliance with the existing order, and that a draft Regulatory Evaluation is therefore unecessary.

Issued on December 3, 1979.

Joan Claybrook,

Administrator, National Highway Traffic Safety Administration.

John S. Hassell,

Deputy Administrator, Federal Highway Administration.

It is proposed to amend 23 CFR by adding Part 1251 to read as follows:

PART 1251—STATE HIGHWAY SAFETY AGENCY

Sec.

1251.1 Purpose.
1251.2 Policy.
1251.3 Authority.
1251.4 Functions

Authority: 23 U.S.C. 402; 49 CFR 1.48 and 1.50.

§ 1251.1 Purpose.

The purpose of this Part is to prescribe the minimum authority and functions of the State Highway Safety Agency established in each State by the Governor under the authority of the Highway Safety Act (23 U.S.C. 402).

§ 1251.2 Policy.

For a State to receive funds under 23 U.S.C. 402, the Highway Safety Act provides that the Governor is to exercise his or her responsibilities through a State Highway Safety Agency that has

"adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary." 23 U.S.C. 402(b)(1)(A). Accordingly, it is the policy of this Part that approval of a State's Highway Safety Plan will depend upon the State's compliance with sections 1251.3 and 1251.4 of this Part.

§ 1251.3 Authority.

Each State Highway Safety Agency shall be authorized to:

(a) Develop and implement a process for obtaining information about the highway safety programs administered by other State and local agencies.

(b) Periodically review and comment to the Governor on the effectiveness of highway safety plans and activities in the State regardless of funding source.

(c) Provide technical assistance to other State agencies and political subdivisions to develop highway safety programs.

(d) Provide financial and technical assistance to other State agencies and political subdivisions in carrying out highway safety programs.

§ 1251.4 Functions.

Each State Highway Safety Agency shall:

(a) Develop and prepare the Highway Safety Plan prescribed by 23 CFR 1204.4, Supplement B, based on evaluation of highway accidents and safety problems within the State.

(b) Establish priorities for highway safety programs funded under 23 U.S.C. 402 within the State.

(c) Provide information and assistance to prospective aid recipients on program benefits, procedures for participation, and development of plans.

(d) Encourage and assist local units of government to improve their highway safety planning and administration efforts.

(e) Review the implementation of State and local highway safety plans and programs, regardless of funding source, and evaluate the implementation of those plans and programs funded under 23 U.S.C. 402.

(f) Monitor progress and audit expenditures of section 402 funds by State and local agencies.

(g) Coordinate the States' Highway Safety Plan with other Federally and non-Federally supported programs relating to or having impact on highway safety.

(h) Collect statistics and other data relevant to highway safety planning and assess program performance.

[FR Doc. 37554 Filed 12-5-79; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 234

[Docket No. R-79-750]

Condominium Ownership Mortgage Insurance; Transmittal of Proposed Rule To Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review. The proposed rule was listed on the significant rule agendas which were published on February 1, 1979 and August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

Proposed Rule—24 CFR Part 234—Condominium Ownership Mortgage Insurance

This proposed rule would amend 24 CFR Part 234 to provide for HUD-FHA mortgage insurance of condominium units in previously uninsured or conventionally financed projects that have twelve or more units if the construction of the project was completed more than one year prior to the application for HUD-FHA mortgage insurance.

(Sec. 7(o), Department of HUD Act, (42 U.S.C. 3535(o)), sec. 324, Housing and Community Development Amendments of 1978).

Issued at Washington, D.C., November 30, 1979.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 79-37449 Filed 12-5-79; 8:45 am]
BILLING CODE 4210-01-M

24 CFR Parts, 803, 888

[Docket No. R-79-749]

Section 8 and Section 23, Housing Assistance Payments Programs—Fair Market Rents for Existing Housing; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202)755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Parts 803 and 888—Section 8 and Section 23 Housing Assistance Payments Programs—Fair Market Rents for Existing Housing

This proposed rule would revise the schedules of Fair Market Rents for all market areas under the Section 8 and Section 23 Housing Assistance Payments Programs for Existing Housing and for Mobile Home Spaces. These revisions would reflect current changes in median rent levels projected forward to October 1, 1980. HUD's intention is to issue a final rule which will become effective on March 29, 1980.

(Sec. 7(o) Department of HUD Act, (42 U.S.C. 3535(o), sec. 324, Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., November 30, 1979.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 79-37450 Filed 12-5-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 3282

[Docket No. R-79-748]

Mobile Home Procedural and Enforcement Regulations; Transmittal of Proposed Rule to Congress

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing, and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 3282—Mobile Home Procedural and Enforcement Regulations, Subpart D—Formal Investigations and Adjudicative Hearings

This proposed rule would amend those sections of the Mobile Home Procedural and Enforcement regulations, which govern formal investigations and adjudicative proceedings, to provide for uniform and fair proceedings with sufficient detail so that the parties involved would be adequately informed of the procedures to be followed. The hearing procedures would apply uniformly to all proceedings where a party is aggrieved by a preliminary determination issued by the Office of Mobile Home Standards.

This proposed rule was listed on the Department's Agenda of Significant Regulations, which was published in the Federal Register on August 1, 1979.

(Sec. 7(o), Department of HUD Act (42 U.S.C. 3535(o)), sec. 324, Housing and Community Development Amendments of 1978))

Issued at Washington, D.C., November 28, 1979.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 79-37448 Filed 12-5-79; 8:45 am]

BILLING CODE 4210-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Prehearing Conference Calendars

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Proposed rule.

SUMMARY: The proposal would provide for the establishment in one or more locations of special calendars that would permit encouragement of the settlement of cases under the Occupational Safety and Health Act of 1970 that come before the Review Commission. The proposal would also provide for prehearing conferences on cases that are not settled for the possible simplification of issues and other purposes that may aid in the disposition of cases. The proposal would be expected to reduce the burden of any paperwork on the parties when settlements are reached. The opportunity for a conference is also intended to afford affected employees an opportunity to participate meaningfully in settlement conferences.

DATES: Comments by interested persons on the proposed rule may be submitted on or before January 25, 1980.

ADDRESSES: Written comments should be submitted to the address below: Occupational Safety and Health Review Commission, 1825 K Street, NW., Washington, D.C. 20006, Attn: General Counsel.

FOR FURTHER INFORMATION CONTACT: Robert C. Gombar, (202) 634-4015.

SUPPLEMENTARY INFORMATION: In the event the proposal, or a modification thereof, is adopted it is anticipated that the first calendar will be in metropolitan New York. The high volume of cases and settlements in that region suggest it would be an excellent place to begin. If the procedure proves successful in New York, it would gradually be extended to other major cities where Review Commission offices are located; viz. Boston, Washington, Atlanta, Chicago, St. Louis, Dallas, Denver and San Francisco; and to other major cities.

Under the authority of Section 12(g) of the Occupational Safety and Health Act, Pub. L. 91-596 (29 U.S.C. 661(f)), the Commission proposes that 29 CFR Part 2200 be amended to add the new rule set forth below:

§ 2200.51a Regional prehearing and settlement conference calendars.

(a) The Commission may establish prehearing conference calendars in one or more places for the possible settlement, simplification of issues, and such other matters as may aid in disposition of cases when regional conditions render it practical for the prompt dispatch of business. Any prehearing conference calendar shall be heard at regular times and places. There shall be a transcription of any prehearing conference in order to preserve conditions, rulings, and agreements.

(b) At the outset of any call of the calendar the parties shall be asked to indicate whether settlement of the cases has been reached. The cases in which settlement has been reached shall be called first.

(c) Notice of a calendar call and prehearing shall be served on the parties at least twenty (20) days before the calendar date. Within fifteen (15) days following the notice, the parties shall confer to consider settlement and to seek agreement on discovery procedure and the exchange of exhibits and lists of witnesses' names and addresses.

(d) Whenever a settlement is reached by the parties and is approved by the presiding administrative law judge, an order to this effect shall be entered on a separate document that shall be served upon the parties. Any order approving settlement shall specify the date on which the case was heard. Any settlement approved under this section shall conform to the requirements of § 2200.100. For the purposes of review by the full Commission under 29 U.S.C. 661(i), the report of the presiding judge on any settled case shall be considered to have been made when both the presiding judge's order and the accompanying transcript are filed with the Commission.

(e) Notice of any prehearing conference under this section shall be served upon affected employees in the manner prescribed under paragraph (f) or (g) of § 2200.7. Affected employees electing to participate in the conference specified in the notice shall be admitted as parties by operation of this section.

Signed this 30th day of November 1979, at Washington, D.C.

Timothy F. Cleary,

Chairman.

Frank R. Barnako,

Member.

Bertram R. Cottine,

Member.

[FR Doc. 79-37493 Filed 12-5-79; 8:45 am]

BILLING CODE 7600-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Advance Notice of Intent to Establish Guidelines for Requirements for Marking Equipment.

SUMMARY: Subsection 403(b) of the Outer Continental Shelf Lands Act Amendments of 1978, requires the Secretary of the Interior to establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use. By notice of final rule published October 26, 1979 (44 FR 61885), the Department of the Interior promulgated the requirements of subsection 403(b) as § 250.54 of Title 30 of the Code of Federal Regulations. This notice announces the U.S. Geological Survey's initiation of efforts to implement the requirements of subsection 403(b) of the Act as promulgated in the regulations found in 30 CFR 250.54, "Marking of equipment." The U.S. Geological Survey solicits the submission of comments and recommendations by interested parties for consideration by the U.S. Geological Survey during its development of guidelines for obtaining compliance with the requirements of subsection 403(b) of the Act.

DATES: Comments and recommendations must be received by February 4, 1980.

ADDRESS: Comments and recommendations must be written and submitted on or before the date specified above, should identify the subject matter and be addressed to the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center—Mail Stop 640, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, National Center—Mail Stop 640, Reston, Virginia 22092, (703) 860-7531.

SUPPLEMENTARY INFORMATION: The Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), enacted September 18, 1978, include subsection 403(b) which provides:

> The Secretary of the Interior shall establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.

The regulations governing Oil and Gas and Sulphur Operations in the Outer Continental Shelf (30 CFR Part 250), which were published as final rule October 26, 1979, contain a new § 250.54, "Marking of equipment," which provides:

> Whenever practicable, all materials, equipment, tools, containers, and items used on the OCS are to be properly color coded, stamped, or labeled with the owner's identification, as approved or prescribed by the Director, prior to actual use. For oil and gas operations, this means that the owner's identification is to be placed upon all materials, cable, equipment, tools, containers, and other objects which could be freed and lost overboard from rigs, platforms, or supply vessels, and which are of sufficient size or are of such a nature that they could be expected to interfere with commercial fishing gear if lost overboard.

To assist in the development of the necessary guidelines and directives to fully implement the requirements of this section, comments and recommendations are requested on the nature, scope, and content of the implementing guidelines and directives. Particular attention should be paid to the following questions:

1. How should the U.S. Geological Survey interpret the statutory constraint "wherever practicable"? Can blanket exclusions be established which identify specific materials, equipment, tools, containers, or other items used on the OCS as not practicable to mark? If so, please identify specific items that should be subject to blanket exclusions.

2. How should the U.S. Geological Survey interpret the statutory constraint "prior to actual use"? Should this statutory language be interpreted as effectively limiting the application of subsection 403(b) to new (i.e., never actually used) materials, equipment, tools, containers, and other items used on the OCS? Please discuss views regarding the proper interpretation of "prior to actual use" and provide supporting reasons for the view recommended for consideration.

3. What color coding or other identification system(s) should the U.S. Geological Survey adopt or approve for use? How should the U.S. Geological Survey assign color coding or other forms of identification to individual owners (i.e., lessees, operators, and other owners) of materials, equipment, tools, containers, and other items used on the OCS? Please describe the actual systems recommended for consideration and compare their relative costs of implementation.

Dated: November 27, 1979.

H. William Menard,

Director.

[FR Doc. 79-37293 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 1370-8; Docket No. OAQPS 79-14]

Proposed Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer; Informal Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Amended Notice of Informal Public Hearings.

SUMMARY: On October 10, 1979, the Environmental Protection Agency proposed in the **Federal Register** (44 FR 58642) a policy and procedures for identifying, assessing, and regulating carcinogens emitted into the ambient air from stationary sources. In the same **Federal Register** (44 FR 58662), EPA published an advance notice of proposed rulemaking, soliciting comments on draft generic work practice and operational standards for volatile organic compounds which could be applied quickly to reduce emissions of airborne carcinogens from certain source categories.

On October 26, 1979, EPA published a notice in the **Federal Register** (44 FR 61620) announcing the dates and locations of informal public hearings to receive public comment on the proposed policy and generic standards. This notice amends the dates and locations for the subject hearings and clarifies the previous notice in regard to the deadline for written comments on the generic standards.

DATES: Written comments on the proposed policy and generic standards should be postmarked no later than February 7, 1980. Notice of intent to appear at a public hearing should be postmarked no later than February 22, 1980. Hearings will be held in Washington, D.C. on March 10, 1980; in Boston, Massachusetts on March 12, 1980; and in Houston, Texas on March 13, 1980. Written comments responding to, supplementing, or rebutting written or oral comments received at public hearings must be submitted within 30 days after the hearing date.

ADDRESSES: All written comments should be addressed to: Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460, ATTN: OAQPS 79–14.

Persons wishing to provide oral testimony at the public hearings should contact Mr. Joseph Padgett (MD–12), Director, Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, Telephone 919–541–5204 (FTS 629–5204).

The hearings will be held at the following locations:

Washington Hearing: Environmental Protection Agency, Room 3906, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460.

Boston Hearing: Room 208, J. W. McCormick Building, Post Office Square, Boston, Massachusetts 02109.

Houston Hearing: Shamrock Hilton, Crystal Room, 6900 Main at Holcombe, Houston, Texas.

The public hearings will convene at 9:00 a.m. and adjourn at 4:30 p.m. Depending on the number of requests to speak that are received, the Washington, D.C. hearing may be continued on March 11, 1980 beginning at 9:00 a.m. If there is sufficient interest, the Houston, Texas hearing may be continued in an evening session on March 13, 1980 beginning at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Padgett, Telephone 919–541–5204 (FTS 629–5204).

SUPPLEMENTARY INFORMATION: The public hearings have been postponed in order to provide participants additional time to prepare testimony and an opportunity to inspect the written comment record prior to the hearings. The deadline for written comments on the generic standards advance notice of proposed rulemaking (44 FR 58662) has been extended to February 7, 1980, in order to be consistent with the dates announced for the proposed policy.

Dated: November 29, 1979.

Edward Tuerk,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 79–37489 Filed 12–5–79; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

[Docket No. FEMA–GEN–10]

Environmental Considerations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule

SUMMARY: This rule establishes Federal Emergency Management Agency (FEMA) policies and procedures to supplement the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, November 29, 1978 [40 CFR Parts 1500–1508]. The CEQ regulations provide that Federal agencies shall adopt implementing procedures. This rule provides implementing procedures and guidance to the FEMA Regional Directors and Heads of FEMA offices and administrations, and assigns responsibilities as required by the CEQ regulations.

DATES: Comments must be received on or before February 24, 1980.

ADDRESS: Send comments to Rules Docket Clerk, Office of General Council, Federal Emergency Management Agency, Room 801 1725 Eye Street, NW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Assistant to the General Counsel for Environmental Quality and Hazard Mitigation, 1725 Eye Street, NW., Washington, DC 20472, Telephone: (202) 634–1977.

Accordingly, it is proposed to publish 44 CFR Part 10 reading as follows:

Part 10—Environmental Considerations.

Subpart A—General

Sec.

10.1 Background and Purpose.
10.2 Applicability and Scope.
10.3 Definitions.
10.4 Policy.

Subpart B—Agency Implementing Procedures

10.5 Responsibilities.
10.6 Making or Amending Policy.
10.7 Planning.
10.8 Determination of Requirement for Environmental Review.
10.9 Preparation of Environmental Assessments.
10.10 Preparation of Environmental Impact Statements.
10.11 Environmental Information.
10.12 Pre-Implementation Actions.
10.13 Emergencies.
10.14 Flood Plains and Wetlands.

Authority: 42 U.S.C. 4321 *et seq.*, Executive Order 11514, as amended by E.O. 11991; Reorganization Plan No. 3 or 1978, [43 FR 41943], and Executive Order 12127 April 1, 1979 [44 FR 1936].

§ 10.1 Background and purpose.

(a) This Part implements the Council on Environmental Quality (CEQ) regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) and provides policy and procedures to enable Federal Emergency Management Agency (FEMA) officials to be informed of and take into account environmental considerations when authorizing or approving major FEMA actions that significantly affect the environment in the United States. The Council on Environmental Quality regulations implement the procedural provisions, section 102(2), of the National Environmental Policy Act of 1969, as amended (hereinafter NEPA), (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*)), and Executive Order 11991, 42 FR 26967 (1977).

(b) Section 1507.3, Council on Environmental Quality Regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) directs that Federal agencies shall adopt procedures to supplement the CEQ regulations. This regulation provides detailed FEMA implementing procedures to supplement the CEQ regulations.

(c) The provisions of this part must be read together with those of the CEQ regulations and NEPA as a whole when applying the NEPA process.

§ 10.2 Applicability and scope.

The provisions of this Part apply to the Federal Emergency Management Agency, (hereinafter referred to as FEMA) including any office or administration of FEMA, and the FEMA regional offices.

§ 10.3 Definitions.

(a) Regional Director means the Regional Director of the Federal Emergency Management Agency for the region in which FEMA is acting.

(b) The other terms used in this Part are defined in the CEQ regulations (40 CFR 1508).

§ 10.4 Policy.

(a) FEMA shall act with care to assure that, in carrying out its responsibilities for providing for disaster planning, response and recovery and hazard mitigation, it does so in a manner consistent with national environmental policies. Care shall be taken to assure, consistent with other considerations of national policy, that all practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving use of the environment without degradation, or undesirable and unintended consequences;

(2) Preserving historic, cultural and natural aspects of national heritage and maintaining, wherever possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) FEMA shall:

(1) Assess environmental consequences of FEMA actions in accordance with § 10.9 and § 10.10 of this Part and Parts 1500–1508 of the CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences, and environmental considerations, in planning and decisionmaking where there is a potential for significant environmental impact;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider reasonable alternatives to recommended courses of action in any proposal that involves conflicts concerning alternative uses of resources; and

(5) Make available to States, counties, municipalities, institutions and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

§ 10.5 Responsibilities.

(a) *The Regional Directors* shall, for each action not categorically excluded from this regulation and falling within their respective jurisdictions:

(1) Prepare an environmental assessment and submit such assessment to the Associate Director for Hazard Mitigation (ADHM) and the Office of General Counsel (OGC);

(2) Prepare a finding of no significant impact, or prepare an environmental impact statement;

(3) Coordinate and provide information regarding environmental review with applicants for FEMA assistance;

(4) Prepare and maintain an administrative record for each proposal that is determined to be categorically excluded from this regulation;

(5) Involve environmental agencies, applicants, and the public to the extent practicable in preparing environmental assessments;

(6) Prepare, as required, a supplement to either the draft or final environmental impact statement;

(7) Circulate draft and final environmental impact statements;

(8) Ensure that decisions are made in accordance with the policies and procedures of NEPA and this Part, and prepare a concise public record of such decisions;

(9) Consider mitigating measures to avoid or minimize environmental harm, and, in particular, harm to and within floodplains and wetlands; and

(10) Review and comment upon, as appropriate, environmental assessments and impact statements of other Federal agencies and of State and local entities within their respective regions.

(b) *The Associate Director for Hazard Mitigation shall:*

(1) Determine, on the basis of the environmental assessment whether an environmental impact statement is required, or whether a finding of no significant impact shall be prepared;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact;

(4) Review all proposed draft and final environmental statements;

(5) Publish the required notices in the **Federal Register**;

(6) Provide assistance in the preparation of environmental assessments and impact statements and assign lead agency responsibility when more than one FEMA office or administration is involved;

(7) Direct the preparation of environmental documents for specific actions when required;

(8) Comply with the requirements of this Part when the Director of FEMA promulgates regulations, procedures or other issuances making or amending Agency policy;

(9) Provide, when appropriate, consolidated FEMA comments on draft and final impact statements prepared for the issuance of regulations and procedures of other agencies;

(10) Review FEMA issuances that have environmental implications;

(11) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups, with respect to environmental analysis for FEMA actions affecting the environment.

(c) *The heads of the office and administrations of FEMA* shall:

(1) Assess environmental consequences of proposed and on-going programs within their respective organizational units;

(2) Prepare and process environmental assessments and environmental impact statements for all regulations, procedures and other issuances making or amending program policy;

(3) Integrate environmental considerations into their decisionmaking processes;

(4) Ensure that regulations, procedures and other issuances making or amending program policy are reviewed for consistency with the requirements of this Part;

(5) Designate a single point of contact for matters pertaining to this Part,

(6) Provide applicants for FEMA assistance with technical assistance regarding FEMA's environmental review process.

(d) *The Office of General Counsel of FEMA shall:*

(1) Provide advice and assistance concerning the requirements of this Part;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact; and

(4) Review all proposed draft and final environmental impact statements;

§ 10.6 Making or amending policy.

For all regulations, procedures, or other issuances making or amending policy, the head of the FEMA office or administration establishing such policy shall be responsible for application of this Part to that action. This does not apply to actions categorically excluded. For all policy-making actions not categorically excluded, the head of the office or administration shall comply with the requirements of this Part. Thus, for such actions, the office or administration head shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region. For such policy-making actions taken by the Director of FEMA, the ADHM shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region.

§ 10.7 Planning.

(a) *Early Planning.* The Regional Director shall integrate the NEPA process with other planning at the earliest possible time to ensure that planning decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

(b) *Lead Agency.* To determine the lead agency for policy-making in which more than one FEMA office or administration is involved or any action in which another Federal agency is involved, FEMA offices and administrations shall apply criteria defined in § 1501.5 of the CEQ regulation. If there is disagreement, the FEMA offices and/or administrations shall forward a request for lead agency determination to the Associate Director for Hazard Mitigation (ADHM):

(1) The ADHM will determine lead agency responsibility among FEMA offices and administration.

(2) In those cases involving a FEMA office or administration and another Federal agency, the ADHM will attempt to resolve the differences. If unsuccessful, the ADHM will file the request with the Council on Environmental Quality for determination.

(c) *Technical Assistance to Applicants.* (1) Section 1501.2(d) of the CEQ regulations requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. To implement the requirements of § 1501.2(d),

(i) The heads of the FEMA offices and administration shall prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(ii) The Regional Director shall provide such guidance on a project-by-project basis to applicants seeking assistance from FEMA.

(iii) Upon receipt of an application for agency approval, or notification that an application will be filed, the Regional Director shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(2) To facilitate compliance with the requirements of paragraph (a) of this section, applicants and other non-Federal entities are expected to:

(i) Contact the Regional Director as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(ii) Conduct any studies which are deemed necessary and appropriate by FEMA to determine the impact of the proposed action on the human environment;

(iii) Consult with appropriate Federal, regional, State, and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(iv) Submit applications for all Federal, regional, State, and local approvals as early as possible in the planning process;

(v) Notify the Regional Director as early as possible of all other Federal, regional, State, local, and Indian tribe actions required for project completion so that FEMA may coordinate all Federal environmental reviews; and

(vi) Notify the Regional Director of all known parties potentially affected by or interested in the proposed action.

§ 10.8 Determination of requirement for environmental review.

The first step in applying the NEPA process is to determine whether to prepare an environmental assessment or an environmental impact statement. Early determination will help ensure that necessary environmental documentation is prepared and integrated into the decision-making process. Environmental impact statements will be prepared for all major Agency actions (see 40 CFR § 1508.18) significantly (see 40 CFR § 1508.27) affecting the quality of the human environment.

(a) In determining whether to prepare an environmental impact statement (EIS) the Regional Director will first determine whether the proposal is one which:

(1) Normally requires an environmental impact statement; or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) *Actions that Normally Require an EIS.* (1) In some cases, it will be readily apparent that a proposed action will have significant impact on the environment. In that event, the Regional Director will, pursuant to § 10.9(g) of this Part, submit the notice of preparation of an environmental impact statement to the ADHM.

(2) To assist in determining those actions that normally do require an environmental impact statement, the following criteria apply:

(i) If an action will result in an extensive change in land use or the commitment of a large amount of land;

(ii) If an action will result in a land use change which is incompatible with the existing or planned land use of the surrounding area;

(iii) If many people will be affected;

(iv) If the environmental impact of the project is likely to be controversial;

(v) If an action will affect, in large measure, wildlife populations and their habitats, important natural resources, floodplains, wetlands, estuaries, beaches, dunes, unstable soils, steep slopes, aquifer recharge areas, or delicate or rare ecosystems, including endangered species;

(vi) If an action will result in a major adverse impact upon air or water quality;

(vii) If an action will adversely affect a property listed on the National Register of Historic Places or eligible for listing on the Register, to the extent that it is not possible to execute a Memorandum of Understanding with the Advisory Council on Historic Preservation for the purpose of mitigating the adverse effect;

(viii) If an action is one of several actions underway or planned for an area and the cumulative impact of these projects is considered significant in terms of the above criteria;

(ix) If an action holds potential for threat or hazard to the public; or

(x) If an action is similar to previous actions determined to require an environmental impact statement.

(3) In any case involving an action that normally does require an environmental impact statement, the Regional Director may prepare an environmental assessment to determine if an environmental impact statement is required.

(c) *Categorical Exclusions.* The CEO regulations provide for the categorical exclusion (40 CFR 1508.4) of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA to avoid unnecessary or duplicative effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of Categorical Exclusions.* Categories of actions that have been determined by FEMA to have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments are:

(i) Preparation of regulations, directives, manuals, and other guidance related to actions which qualify for categorical exclusions;

(ii) Training activities and training exercises conducted on FEMA installations in accordance with established procedures and land use designations;

(iii) Procurement activities that provide goods and services for routine installation operations and support;

(iv) Routine installation, maintenance, and grounds-keeping activities;

(v) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes;

(vi) Studies that involve no commitment of resources other than manpower and funding;

(vii) Action taken or assistances provided under Sections 305, 306 or 403 of the Disaster Relief Act of 1974, as amended, (Pub. L. 93–288); and

(viii) Action taken or assistance provided under Section 402 or 419 of the Disaster Relief Act of 1974, as amended, that has the effect of restoring facilities substantially as they existed prior to a major disaster or emergency.

(d) *Changes to the List of Categorical Exclusions.* (1) The FEMA List of Categorical Exclusions will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. An office or administration of FEMA may, at any time, recommend additions or changes to the FEMA List of Categorical Exclusions.

(2) Offices and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(3) If an office or administration of FEMA proposes to change or add to the list of categorical exclusions, it shall first:

(i) Obtain the approval of the ADHM and FEMA's Office of General Counsel; and

(ii) Public notice of such proposed change or addition in the **Federal Register** at least 60 days prior to the effective date of such change or addition.

(e) *Extraordinary Circumstances.* If extraordinary circumstances exist, such that an action that is categorically excluded from NEPA compliance may have a significant environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(1) Greater scope or size than normally experience for a particular category of action.

(2) Actions in highly populated or congested areas.

(3) Potential for degradation, even though slight, of already existing poor environmental conditions.

(4) Employment of unproven technology.

(5) Presence of endangered species, archaeological remains, or other protected resources.

(6) Use of hazardous or toxic substances.

(7) Actions in flood plains or wetlands.

(f) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(g) *Actions that Normally Require an Environmental Assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

§ 10.9 Preparation of environmental assessments.

(a) *When to Prepare.* The Regional Director shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is required. The Regional Director may prepare an environmental assessment at any time to assist planning and decision-making.

(b) *Content and Format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement, aiding in compliance with NEPA when no EIS is necessary, and facilitating preparation of a statement when one is necessary. Preparation of an environmental assessment generally will not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussion of the following:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered.

(4) Environmental impact of the proposed action and alternatives.

(5) Listing of agencies and persons consulted.

(6) Conclusion of whether to prepare an environmental impact statement.

(c) *Public Participation.* The Regional Director shall involve environmental agneices, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," the Regional Director shall consider:

(1) Magnitude of the proposal;

(2) Likelihood of public interest;

(3) Need to act quickly;

(4) Likelihood of meaningful public comment;

(5) National security classification issues;

(6) Need for permits; and

(7) Statutory authority of environmental agency regarding the proposal.

(d) *When to Prepare an EIS.* The Regional Director shall prepare an environmental impact statement for all major Agency actions significantly affecting the quality of the human environment. The test of what is a "significant" enough impact to require an EIS is found in the CEQ regulations at 40 CFR § 1508.27.

(e) *Finding of No Significant Impact.* If the Regional Director determines on the basis of the environmental assessment not to prepare an environmental impact statement, the Regional Director shall prepare a finding of no significant impact in accordance with 40 CFR § 1501.4(e) of the CEQ regulations. The assessment and the finding shall be submitted to the ADHM and the Office of General Counsel (OGC) for approval. If ADHM and OGC approval is obtained, the Regional Director shall then make the finding of no significant impact available to the public as specified in § 1506.6 of the CEQ regulations. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on a categorical exclusion.

(f) *ADHM or OGC Disallowance.* If the ADHM or OGC disagrees with the finding of no significant impact, the Regional Director shall prepare an environmental impact statement. Prior to preparation of an EIS, the Regional Director shall forward a notice of intent to prepare the EIS to the ADHM who shall public such notice in the **Federal Register.**

(g) *EIS Determination of Regional Director.* The Regional Director may decide on his/her own to prepare an environmental impact statement. In such case, the Regional Director shall forward a notice of intent to prepare the EIS to the ADHM who shall publish such notice in the **Federal Register.** The notice of intent shall be published before initiation of the scoping process.

§ 10.10 Preparation of environmental impact statements.

(a) *Scoping.* After determination that an environmental impact statement will be prepared and publication of the notice of intent, the Regional Director will initiate the scoping process in accordance with § 1501.7 of the CEQ regulations.

(b) *Preparation.* Based on the scoping process, the Regional Director will begin preparation of the environmental impact statement. Detailed procedures for preparation of the environmental impact statement are provided in Part 1502 of the CEQ regulations.

(c) *Supplemental Environmental Impact Statements.* The Regional Director may at any time supplement a draft or final environmental impact statement. The Regional Director shall prepare a supplement to either the draft or final environmental impact statement when required under the criteria set forth in § 1502.9(2). The Regional Director will prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft or final statement and will introduce the supplement into their formal administrative record.

(d) *Circulation of Environmental Impact Statements.* The Regional Director shall circulate draft and final environmental impact statements as prescribed in § 1502.19 of CEQ regulations. Prior to signing off on a draft or final impact statement, the Regional Director shall obtain the approval of the ADHM and OGC.

§ 10.11 Environmental information.

Interested persons may contact the ADHM or the Regional Director for information regarding FEMA's compliance with NEPA.

§ 10.12 Pre-implementation actions.

(a) *Decision-Making.* The Regional Director shall ensure that decisions are made in accordance with the policies and procedures of the Act and that the NEPA process is integrated into the decision-making process. Because of the diversity of FEMA, it is not feasible to describe in this Part the decision-making process for each of the various FEMA programs. Proposals and actions may be initiated at any level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, available funding, and statutory authority. FEMA offices and administrations shall provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decision-making process. The Regional Director shall:

(1) Consider all relevant environmental documents in evaluating proposals for Agency action;

(2) Make all relevant environmental documents, comments, and responses part of the record in formal rulemaking or adjudicatory proceedings;

(3) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing Agency review processes;

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for Agency action;

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) *Record of Decision.* In those cases requiring environmental impact statements, the Regional Director at the time of his/her decision, or if appropriate, his/her recommendation to Congress, shall prepare a concise public record of that decision. The record of decision is not intended to be an extensive, detailed document for the purpose of justifying the decision. Rather it is a concise document that sets forth the decision and describes the alternatives and relevant factors considered as specified in 40 CFR § 1505.2. The record of decision will normally be less than three pages in length.

(c) *Mitigation.* Throughout the NEPA process, the Regional Director shall consider mitigating measures to avoid or minimize environmental harm and, in particular, harm to or within flood plains and wetlands. Mitigation measures or programs will be identified in the environmental impact statement and made available to decision-makers. Mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the Regional Director.

(d) *Monitoring.* If a Regional Director determines that monitoring is applicable for established mitigation, a monitoring program will be adopted to assure the mitigation measures are accomplished. The Regional Director shall provide monitoring information, upon request, as specified in 40 CFR § 1505.3. This does not, however, include standing or blanket requests for periodic reporting.

§ 10.13 Emergencies.

In the event of an emergency, the Regional Director may be required to take immediate action with significant environmental impact. The Regional Director shall notify the ADHM of the emergency action at the earliest possible time so that the ADHM may consult with the Council on Environmental Quality. In no event shall any Regional Director delay an emergency action necessary to the preservation of human life for the purpose of complying with the provision of this directive or the CEQ regulations.

§ 10.14 Flood plains and wetlands.

For any action taken by FEMA in a flood plain or wetland, the provisions of this Part are supplemental to, and not instead of, the provisions of the FEMA regulation implementing Executive Order 11988, Flood Plain Management and Executive Order 11990, Protection of Wetlands [44 CFR Part 9].

Dated: November 29, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-37535 Filed 12-5-79; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21323; RM-2836; FCC 79-768]

Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Federal Communications Commission proposes additional rules for use of television aural baseband subcarriers. Petition received from Boston Broadcasters, Inc., and supporting comments prompts Commission to propose standards that will permit the use of subcarriers in the aural baseband of television transmitters for the purposes of cuing and coordinating ENG crews in the field.

DATES: Comments must be received on or before January 7, 1980, and reply comments on or before January 28, 1980.

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

FOR FURTHER INFORMATION CONTACT: Stanley Schmulewitz, Broadcast Bureau, (202) 632–966.

SUPPLEMENTARY INFORMATION: In the matter of The Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters.

Adopted: November 20, 1979.

Released: December 3, 1979.

By the Commission: Commissioner Lee absent.

Background

1. A *Notice of Inquiry* was released in this proceeding on July 15, 1977 (FCC 77–477, 42 FR 38606), as a result of a petition received from Boston Broadcasters, Inc. ("BBI"), licensee of television Station WCVB–TV, Channel 5, Boston, Massachusetts. BBI petitioned the FCC to amend Part 73 of its rules to permit TV broadcast stations to use subcarriers on their aural transmitters for the purposes of cuing and coordinating electronic news gathering ("ENG") crews in the field.

2. In support of its petition, BBI has called attention to the burgeoning utilization of ENG in news programming by television stations. Further, the petitioner states that in connection with ENG it is vital that TV broadcast stations have a means of communicating with the crews in the field for the purposes of cuing, coordinating, etc. In lieu of using auxiliary broadcast facilities for these purposes (and the consequent use of scarce spectrum space), BBI proposes use of subcarriers on the aural transmitters of television stations for accomplishing these one-way communications. Paragraph 73.682(a)(23) of the FCC rules presently permits multiplexing of the aural carrier only for the purpose of transmitting telemetry and alerting signals from the transmitter site to the control point of a television broadcast station authorized to operate by remote control.

3. Recognizing that there are possibly other worthwhile uses for TV subcarriers in addition to that proposed by BBI, the FCC considered the time appropriate and included in the above-mentioned *Notice* questions concerning such possible other uses in order to develop a more comprehensive plan for utilizing the TV aural baseband. Specifically mentioned were TV stereophonic sound, bilingual sound channels and augmented program audio for the visually impaired. Comments were also solicited regarding any other worthwhile subcarrier applications. In addition, questions were included regarding possible degradation of regular audio and visual TV transmissions or interference to adjacent channels or other radio services resulting from use of TV subcarriers. Comments were requested concerning subcarrier specifications, transmitting and receiving equipment, and interest in any of the potential uses of subcarriers.

4. Thirty-five parties filed comments in response to the *Notice of Inquiry*.[1] With few exceptions, the use of TV subcarriers for cuing and coordinating ENG crews received wide endorsement. Some support is given to the use of TV subcarriers for bilingual sound transmission, augmented audio for the visually impaired and other general uses relating to education and communications for the handicapped. In addition, there is interest in utilizing TV subcarriers for a variety of other purposes such as facsimile transmission, storecasting, and the many applications now permitted for subcarriers transmitted over FM broadcast stations.

5. Comments regarding TV stereophonic sound were mixed. CBS, NBC, ABC, the National Association of Broadcasters ("NAB") and the Electronic Industries Association ("EIA") indicate that there is not sufficient public interest in stereophonic sound to justify the development of such service at this time. However, the Public Broadcasting Service ("PBS") and television Station KERA report that public response to "simulcasts" has been enthusiastic.[2] PBS further reported that a brief survey of member stations disclosed a widespread interest in TV stereo by both station operators and the public. It also has come to our attention that some cable television systems have been experimentally providing stereophonic sound for programs originated on the systems by using techniques similar to "simulcasting." Telesonics, Inc. states that it is developing a television stereo system which it has been testing on Chicago public television Station WTTW. Telesonics, Inc. reports that initial results are good and that the system could be easily utilized to provide for bilingual transmissions or augmented audio for the visually impaired.

6. Difficulty usually encountered in the past during intercity network distribution of stereophonic sound for television programs has been the severe technical limitation of the distribution network. However, these problems are rapidly being resolved by improvements to the distribution system. American Telephone and Telegraph Company has begun to distribute the aural portion of TV programs through use of its new diplex system.[3] It is reported that this diplex system has the capability of carrying two high quality sound channels which could accommodate stereo. Additionally, PBS reports that their DATE (Digital Audio for Television) multichannel audio system is being developed for use on satellites.

7. We have, therefore, come to the conclusion that interest is rising in television stereo while, at the same time, distribution and transmission of such programs is becoming more practical. However, since we do not have a specific TV stereo system before us for consideration,[4] we will not propose standards for television stereo at this time. Further, it has come to our attention that a subcommittee has been empaneled by the Electronic Industries Association to study the use of multi-channel TV sound. It is our understanding that this study will include multi-lingual audio channels and other SCA applications as well as television stereophonic broadcasting. Hence, we believe it is premature to develop a comprehensive plan for the use of aural subcarriers. However, pending the development of such a plan, we believe it is appropriate to allow the use of aural subcarriers for cuing and coordinating ENG crews as proposed by BBI. We have deliberately written the current proposal in broad, permissive language with no attempt to anticipate the results of further efforts towards a comprehensive plan. As a result, any rules adopted from this current proceeding may well be changed when we address the question of a comprehensive plan for use of aural subcarriers in a future proceeding.

8. The FCC encourages studies related to multichannel sound such as those now being carried out by the Electronic Industries Association Multichannel Sound Subcommittee. In addition to the possible benefits of TV stereophonic sound, there is expectation that use of TV aural subcarriers for such applications as multilingual transmissions and additional services to specialized groups such as the handicapped may also be beneficial. We

[1] See Appendix A.

[2] Simulcast is the term applied to television programs which also include stereophonic sound simultaneously transmitted over participating FM broadcast stations. If a viewer desires to receive such a television program in stereophonic sound, it is only necessary to receive the participating FM station on an FM stereo receiver and arrange the speakers on each side of the TV set.

[3] This is a multiplex system which, in effect, carries high quality audio channels "piggyback" with their associated video channel.

[4] We have become aware that several systems are under development. However, since none have been submitted to us, it would be inappropriate to propose any one at this time.

encourage experimentation in all of these types of transmission, including experimental broadcasts under Special Temporary Authorization (STA).

Proposal

9. We are herein proposing rules and standards for TV aural subcarriers used for the purpose of cuing and coordinating ENG crews in the field. As in the case of subcarriers used for telemetry, we believe that no application for subsidiary communications authorization should be required for this use since it is very limited in scope.

10. The *Notice of Inquiry* contained questions concerning technical standards for use of subcarriers including recommended frequency limits in the baseband, injection levels, etc. Although many of the parties submitted test data with their responses to these questions, many of the tests were somewhat limited in scope. That is, most of the data were based generally upon tests made using subcarriers operating on 39 kHz and 67 kHz with injection levels of 5% and 10%, respectively. Therefore, in the absence of more definitive data, we are proposing to limit subcarriers to the band 20 kHz to 75 kHz, and we are proposing that the injection level for any subcarrier may not exceed 10% and the arithmetic sum of all subcarriers may not exceed 15% of maximum permitted modulation. The FCC will consider expanding these limits only if definitive measurement data is received showing that such expanded limits will not cause degradation to regular television transmissions or other radio services.

11. As previously indicated, many of the tests conducted were somewhat limited in scope. The Commission, for example, has been unable to identify test data that indicate what, if any, effect subcarrier use may have on cable television system operations or the service received by their subscribers. Accordingly, our ability to determine the overall effect on the public of subcarrier use is limited with respect to the impact on cable systems that are carrying 12, 20, or more, adjacent program channels. The proposed rules may also have an effect on the ability of cable systems to comply with § 76.605(a)(6) of the cable television technical standards in those situations where cable systems carry the audio at a reduced level of between 13 and 17 decibels below the associated visual signal level. Accordingly, specific comments on these issues are requested along with any other cable-related issues, such as possible changes in intermodulation products and possible reductions in signal-to-noise ratio.

12. Section 76.55(b) of the Rules for the Cable Television Service requires that "programs" of broadcast signals carried "shall be carried in full, without deletion or alteration of any portion except as required by this part." Since the service we are proposing is restricted to limited operational communications not intended for use by the public, it is not our intent to require cable television systems to carry such communications.

13. A signficiant percentage of television stations presently transmitting subcarriers (generally for telemetry purposes) have been observed by FCC personnel to be operating with excessive subcarrier injection levels or excessive total modulation or both. The most common explanation for the violations was inability to make accurate modulation measurements. This is due to the fact that modulation monitors presently in use do not necessarily have adequate frequency response for subcarriers which are being transmitted.

14. For these reasons, it is being proposed that some appropriate means of monitoring modulation be used by stations utilizing subcarriers. These means may involve the use of a modulation monitor having appropriate characteristics, a composite method, etc. The procedure should include a means for measuring total modulation of the main carrier including that contributed by all subcarriers and a means for determining the injection level of each subcarrier.

15. It is being proposed to require the injection level of each subcarrier to be measured at least once a month and an entry made in the station maintenance log indicating the results. Since the injection level of a subcarrier is normally a relatively stable parameter, it is our view that measurements of injection level made at monthly intervals will be sufficient to guard against excessive injection. A monthly measurement schedule will also coincide with the routine monthly maintenance schedules followed by many TV broadcast licensees. It should be emphasized, however, that subcarrier injection levels should be measured at intervals of less than a month and as often as necessary in those instances where the injection stability is inadequate for longer measurement intervals.

16. Accordingly, pursuant to authority found in §§ 1, 4(i) and 303(g), (j) and (r) of the Communications Act of 1934, as amended, it is proposed to amend Part 73 of the FCC's Rules and Regulations as set forth in the attached Appendix B.

17. Pursuant to applicable procedures set forth in § 1.415 of the FCC's Rules, interested persons may file comments on or before January 7, 1980, and reply comments on or before January 28, 1980. All relevant and timely comments and reply comments will be considered by the FCC before final action is taken in this proceeding.

18. In accordance with the provisions of § 1.419 of the FCC's Rules and Regulations, an original and 5 copies of all comments, replies or other documents filed in this proceeding shall be furnished to the FCC. Participants filing the required copies who also desire that each Commissioner receive a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informaly in this proceeding may do so by submitting one copy of their comments, without regard to form, provided that the Docket Number 21323 is specified in the heading. Such informal participants who desire that responsible members of the staff receive a personal copy and to have an extra copy available for the Commissioners may file an additional 5 copies. Responses will be available for public inspection during regular business hours in the FCC's Public Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, N.W.)

19. For further informatio concerning this proceeding, contact Stanley Schmulewitz, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts presented to the Commission in proceeding such as this one will be disclosed in the public docket file.

20. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. If a member of the public does wish to comment on the merits of this proceeding in this manner, he or she should follow the Commission's procedures governing *ex parte* contacts in informal rule makings. A summary of these procedures is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202–632–7000).

William J. Tricarico,

Secretary.

Attachment: Appendices A and B

Appendix A

KERA–TV
Public Broadcasting System

Blonder-Tongue
Radio Information Center for the Blind
Herbert A. Terry
William L. Carman
McMartin Industries, Inc.
Lloyd P. Morris
Georgia Division of Vocational Rehabilitation
Texas Education Agency
Seattle University
The University of Texas, Health Science Center at San Antonio
Florida Dept. of Education, Div. of Blind Services
Oklahoma Dept. of Institutions, Social and Rehabilitative Services
Crowder Communications Ltd.
Florida Dept. of Education
Michigan Dept. of Education
Television Technology Corp.
Puerto Rican Broadcasting, Inc.
CBS, Inc.
Joint Comments of 19 TV Licensees
Chronical Broadcasting Co.
Digital Data, Inc.
Multimedia, Inc.
Westinghouse
Capital Broadcasting Co., Inc.
ABC, Inc.
National Cable Television Association
California Instructional TV Consortium
NBC, Inc.
National Association of Broadcasters
Zenith Raido Corp.
Electronic Industries Association
Boston Broadcasters, Inc.
Telesonics, Inc.

Appendix B

It is proposed that Part 73, Chapter 1, Title 47 of the Code of Federal Regulations be amended as follows:

1. In § 73.682, paragraph (a) would be amended to read as follows:

§ 73.682 Transmission standards.

(a) Transmission standards.

* * * * *

(23) Multiplexing of the aural carrier may be employed for the purpose of transmitting telemetry and alerting signals from the transmitter site to the control point of a television broadcast station authorized to operate by remote control; or for the purpose of cuing and coordinating broadcast personnel at remote locations. Multiplex transmission shall be subject to the following conditions:

(i) Frequency modulation of subcarrier shall be used.

(ii) The instantaneous frequency of subcarriers shall at all times be within the range 20 kHz to 75 kHz.

(iii) The arithmetic sum of modulation of the main carrier by subcarriers shall not exceed 15%, with the modulation resulting from any one subcarrier not exceeding 10%.

(iv) The total modulation of the main carrier, including subcarriers, shall not exceed 100%.

(v) Multiplexing of the aural carrier shall not result in transmitting system ouput noise levels exceeding those specified in § 73.687(b)(4) and (5).

(vi) Frequency modulation of the main carrier caused by the subcarrier operation shall, in the frequency range 50 to 15,000 Hz, be at least 55 dB below 100% modulation.

(vii) The logging, announcement and other requirements imposed by §§ 73.1201, 73.1208, 73.1212, 73.1810 and 73.1820 are not applicable to nonprogram material transmitted on subcarrier frequencies.

(viii) The modulation of the main carrier by subcarriers and the frequency of each subcarrier shall be measured as often as necessary to ensure compliance with (ii) and (iii) above. However, in any event, the measurements shall be made at least once each calendar month with not more than 40 days expiring between successive measurements.

* * * * *

2. In § 73.1830, paragraph (a)(4)(iii) is added to read as follows:

§ 73.1830 Maintenance logs.

* * * * *

(a)(4)(iii) The entries for the measurements required by Section 73.682(a)(23)(viii) concerning subcarrier frequency measurements and measurements of main carrier modulation by subcarriers.

* * * * *

3. In § 73.691, paragraph (c) would be added as folows:

§ 73.691 Modulation monitors.

* * * * *

(c) Stations utilizing aural subcarriers should employ appropriate instrumentation for measuring the total percentage modulation of the main carrier including that caused by all subcarriers; and a means for determining the injection level of each subcarrier.

[FR Doc. 79-37538 Filed 12-5-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 79-04; Notice 1]

Federal Motor Vehicle Safety Standards Side Impact Protection

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

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The purpose of this advance notice is to announce that the National Highway Traffic Safety Administration is considering the proposal of an amendment to Safety Standard No. 214, *Side Door Strength*, to upgrade motor vehicle side impact protection and to extend the applicability of the standard to light trucks, vans and multipurpose passenger vehicles. (Standard No. 214 now only applies to passenger cars). The notice also announces that a public meeting will be held to permit all interested persons to present oral and written views concerning the proposed upgrade of the standard.

The standard currently specifies crush-resistance requirements for the side doors of passenger cars under static test conditions. The primary purpose of the contemplated upgrade is to establish performance criteria for occupant protection under dynamic crash tests. The performance criteria that would be established would require a higher level of protection for occupants involved in side impact collisions than presently exists, and under test conditions that more closely approximate real-world crashes.

DATES: Proposed effective date: September 1, 1983–1984. Public meeting: January 31 and February 1, 1980. Comment closing date: March 5, 1980.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108 Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours 7:45 a.m. to 4:15 p.m.)

PUBLIC MEETING: Federal Office Building 10A, Federal Aviation Administration Auditorium, Seventh Street and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. William Brubaker, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. (202–426–2242).

SUPPLEMENTARY INFORMATION: In 1977, the National Highway Traffic Safety Administration's (NHTSA) draft 5-year rulemaking plan listed the improvement of side impact protection as a top priority of the agency. That priority was reaffirmed when the final version of the plan was issued early this year. High priority was given to this endeavor because over 34,000 vehicle occupants lose their lives annually in highway accidents and approximately one-third of these fatalities occur in side impact collisions. Generally the fatalities occur in the more severe side impact collisions at high speeds. Extensive intusion into the occupant compartment and ejection of occupants often accompany these

severe impacts. In fact, at least 28 percent of the occupants that receive life-threatening injuries during side impact accidents are ejected from the vehicle. While it is difficult to determine with certainty the number of severe injuries that occur due to the occupant striking the vehicle interior prior to ejection or the number that occur when the occupant strikes an outside object after ejection, it is obvious that some of these injuries are a direct result of ejection from the vehicle. Therefore, reducing the number of ejections that occur during side impact accidents is one of the primary goals of this proposed rulemaking.

The agency's current standard for side impact protection is Safety Standard No. 214, *Side Door Strength* (49 CFR 571.214), which specifies performance requirements for the side doors of passenger cars to minimize the safety hazards caused by intrusion into the passenger compartment during a side impact crash. The standard specifies three static crush tests to measure the crush resistance of the side doors of automobiles (tests using mechanical devices that apply pressure to the doors of a stationary vehicle). Under the peak crush test, it must not be possible to push a door more than 18 inches into the occupant compartment unless a resistive force of at least 7,000 pound is produced by the door (or a force of two times the curb weight of the vehicle whichever is less).

The NHTSA recently published an Evaluation Report of Safety Standard No. 214 (DOT–HS–804–858), which was prepared in response to Executive Order 12044, "Improving Government Regulation". The conclusions of that report were as follows:

- Standard No. 214 reduces the likelihood of intrusion in side door impact crashes.
- Standard No. 214 prevents a substantial proportion of the deaths and severe injuries in single vehicle side impact accidents (such as when a car skids sideways into a tree).
- Standard No. 214 is significantly less effective in multivehicle crashes (such as intersection collisions) than in single vehicle crashes.
- Standard No. 214 adds approximately $30 to the cost of purchasing an automobile and $26 to the cost of operating an automobile over its lifetime.

(See 44 FR 50878, August 30, 1979.)

This Evaluation Report shows that in spite of the effectiveness of the existing standard there is still a great need for improvement of side impact protection in all passenger carrying vehicles. This advance notice discusses the agency's plans for proposing to upgrade the current requirements of Standard No. 214 and to extend the standard to light trucks, vans and multipurpose passenger vehicles.

Research projects are currently underway to generate data concerning occupant compartment integrity and ways to reduce occupant injuries by changing side door structures and modifying vehicle interiors. Data from these and other studies will be used to upgrade Standard No. 214. The primary thrust of the new standard will be to develop performance requirements based on dynamic crash tests representing real-world accidents, rather than the laboratory type static crush tests of the existing rule. It is anticipated that performance would be determined by measuring the forces (accelerations) to which vehicle passengers, simulated by instrumented test dummies, are subjected when their vehicle is struck in the side by a moving barrier that represents another vehicle. The agency is involved in four major areas of activity to establish such performance requirements:

1. Development of a test procedure, including the development of a moving barrier impactor to simulate the striking vehicle.
2. Development of an instrumented test dummy and the establishment of appropriate injury criteria.
3. Development of vehicles that can be used to demonstrate improved performance in side impact crashes.
4. Analysis of existing accident data in furtherance of the other three activities.

The current progress and future plans for these various activities are discussed below. Since the proposed requirements discussed in this advance notice would provide a greater level of protection for occupants involved in side impact collisions than currently exists, and since a leadtime of several years is anticipated, it is expected that manufacturers will consider early incorporation of changes in their vehicles prior to the effective date of a rule. As an expeditious means of reducing the occurrence of ejections, manufacturers might consider using laminated glass in side windows and strengthening door hinges and latches. These things could be done during the design changes that are currently underway. Other changes that would improve crash safety and that could easily be incorporated include, better welding of A and B pillar assemblies, more overlap of the outer door skin with the outer sill, and improved padding on the roof rail and pillars.

Compliance Test Procedures Conditions

Representing real-world conditions is an important factor that the agency will consider in establishing compliance tests for the Standard 214 upgrade. The best test from this standpoint would be one that imposes a range of conditions similar to the wide range of conditions experienced in real-world accidents. Analysis of accident data in the National Crash Severity Study (NCSS) shows that 84% of side impact accidents are intersection-type collisions where one vehicle is struck by another. The remainder (16%) are single-vehicle accidents. The same analysis shows that multi-vehicle accidents account for 65% of the life-threatening injuries to victims of side impacts.

One approach in the development of compliance test procedures would be to discern the accident conditions which are most likely to result in life-threatening injuries in both single-vehicle and multi-vehicle accidents. Simulations of both the single and multi-vehicle accident conditions would then be imposed as the compliance test conditions.

An alternative approach would be to simulate only multi-vehicle accident conditions or only single-vehicle accident conditions in the compliance test procedures. Under this approach, determination of the likely motions and injuries of occupants in the unsimulated conditions would have to be extrapolated from the test results under the simulated conditions. This approach has the advantage of involving fewer tests, but the disadvantage of necessitating mathematical extrapolations to evaluate a vehicle's performance under some impact conditions.

The basis for selecting one of these two approaches over the other lies in determining the similarities and differences between single- and multi-vehicle accidents. Single-vehicle accidents involve contact between the side of the vehicle and a fixed object that extends from the ground to some point above the sill of the vehicle (the lowest part of the vehicle's side extending from front bumper to rear bumper). This accident configuration has the effect of directly applying forces to not only the door structure but also the sill structure. Multi-vehicle accidents typically involve contact between the side of one vehicle and the front bumper of a striking vehicle. This accident configuration allows the bumber structure to override the sill of the struck vehicle and intrude into the occupant compartment. A side structure that ameliorates the effects of impacts with

vertical fixed objects, such as trees, would not necessarily reduce the propensity of bumper structures of striking vehicles to intrude into the occupant compartment. However, designs that reduce the effect of bumper intrusion would also improve the safety of occupants in vehicles striking a fixed vertical object.

Based on these considerations, the agency believes that the compliance test should reflect conditions associated with multi-vehicle collisions which produce life-threatening injuries. The results of the compliance tests will provide a direct indication of safety improvements for multi-vehicle crashes, but will not provide direct information regarding single-vehicle crashes. Estimates of the effectiveness of safety improvements for single-vehicle crashes would be obtained as part of an analysis by comparing the results of multi-vehicle crashes to single-vehicle crash conditions that produce similar loads on vehicle occupants.

In order to specify crash conditions which are representative of multi-vehicle collisions, several parameters must be identified. These parameters can be used to completely specify the critical conditions (speed, motion, etc.) of the two vehicles just before impact. For cases such as typical intersection collisions, three parameters are needed to define the collision conditions. These are (1) the speed of each vehicle; (2) the location of first contact point, as measured from a convenient reference such as the front door hinge of the struck vehicle; and (3) the angle between the two vehicles, also measured from a convenient reference such as the longitudinal axis of the struck vehicle.

Data from the National Crash Severity Study (NCSS) have been analyzed to form the basis for estimating these parameters. The results of this analysis indicate that the test condition should simulate a collision in which both vehicles are moving. The angle between the vehicles, as measured from the longitudinal axis of the struck vehicle, should be in the range of 40° to 100° (since most serious side impact collisions are within these angles). The impact point should be such that maximum damage occurs adjacent to the front seat occupant. The test procedure envisioned would give the striking vehicle (a moving barrier impactor) a direction of motion and orientation that accounts for all of the motion between the two vehicles in the simulated event. This would result in the struck vehicle being stationary prior to the impact and would improve the repeatability of the test. A typical crash condition simulated under this scheme would be the case in which the striking vehicle is traveling at 30 mph and the struck vehicle at 15 mph, with an angle of 60° between the two vehicles.

If the above example was used as the compliance test condition and a barrier impactor of unvarying weight was used for all vehicles, the impactor would produce a more severe crash condition for small cars than it would for large cars. For example, if the barrier impactor weighed 3,500 pounds, the test would produce a change of velocity (ΔV) of 25 mph on a 2,000-pound vehicle and a ΔV of 20 mph on a 3,500 pound vehicle. Additional work will continue on the analysis of accident data to provide more definitive information on appropriate impactor weights for use in the compliance test, as well as the most appropriate vehicle orientations and traveling speeds.

Questions about the test conditions which are as yet unanswered and for which the agency seeks specific information from commenters include:

(1) Should the compliance test be limited to simulation of multi-vehicle crashes, as the agency has tentatively concluded?

(2) Should the compliance test specify a range of parameters that reflect actual crashes (Examples: an impact point anywhere between the front axle and the B-pillar; and angle between the two vehicles of any value between 40° and 100°) or should the compliance test be specific (Examples; an impact point 3 inches forward of the front door opening reference line, and angle between the two vehicles of 60°)?

Development of a Moving Barrier Impactor

The moving barrier impactor is being developed in phases. Phase I is currently underway.

For Phase I, the preliminary parameters of the impactor were based on the average characteristics of today's U.S. automobile fleet. The present test weight of the impactor is 3,600 pounds, while the weight of a 50th percentile passenger car in today's (sales weighted) fleet is about 3,770 pounds. The other major parameters of the impactor for this phase, such as its force and force distribution, have also been selected to fall within the bounds and near the mean of today's car fleet.

The force-crush characteristics of the impactor have proven to be similar to that of a "striking" medium-sized vehicle. Good correlation has been obtained when vehicles are impacted by the side impactor and by a full-sized 1978 General Motors car (weighing 3,780 pounds). Further refinements of the side impactor will be undertaken during the second phase research to account for differences in the current and future vehicle mix.

The Phase I impactor is constructed of layered and segmented aluminum honeycomb. This design provides the flexibility needed in the research phase to investigate variations in force and force distribution parameters. However, the agency expects the final test device to be a simpler design with fewer layers and fewer segments.

During Phase II of this project, the side impactor will be exposed to a variety of test conditions, including conditions during which the impactor and target vehicle are both moving. A procedure for simulating the motion of both vehicles, but with the struck vehicle actually stationary, similar to the one used in NHTSA project, "Occupant Survivability in Lateral Collisions" (Contract No. DOT–HS–4–00922), will also be investigated.

In the Phase II test series, both baseline vehicles (unaltered) and vehicles with modified interiors and side structures will be tested. The results of these tests will be evaluated and the final design of the impactor will then be completed, after which its ability to achieve repeatable results in different test modes will be verified. Details of the side barrier impactor design are contained in the progress reports on NHTSA contract, DOT–HS–8–01933, (copies of this and all other contracts mentioned in this notice are available for review in the Technical Reference Division, Room 5108, Nassif Building, 400 Seventh Street, SW., Washington, D.C. Hours are 7:45 a.m. to 3:45 p.m.)

Questions about the moving barrier impactor which are as yet unanswered and for which the agency seeks specific information from commenters include:

(1) Is the barrier impactor design described in this notice appropriate for testing trucks, vans, and multipurpose vehicles, as well as passenger cars?

(2) What weight is appropriate for the barrier impactor considering the probable mix of the 1985 vehicle fleet?

(3) Is it necessary to use a barrier impactor that will deform upon impact (i.e., instead of a rigid barrier)?

(4) Is a cost of $2,500 for replacement of the aluminum honeycomb face of the impactor excessive? If so, what are the alternatives?

(5) To ensure repeatability, what sort of specifications and calibration procedure for the impactor are necessary?

Development of an Anthropomorphic Test Device (Dummy)

The test dummy is a key element in the development and application of a new side impact protection regulation. It is an important part of the final regulation because of the need for an objective measuring device.

The dummy selection process included a search for an existing dummy that would be appropriate for use in the upgraded side impact regulation. The investigation began with two existing dummies that have the potential for being used in side impact testing. One of these is the Part 572 anthropomorphic test device that is specified for use in existing occupant protection safety standards. This dummy has the advantage of being a proven piece of equipment with extensive documentation and testing. The second dummy is one developed at the Transport and Road Research Laboratory (TRRL) in the United Kingdom. That dummy has the advantage of having been developed specifically for use in side impact tests.

An initial study was done by the NHTSA in 1975 to evaluate the response of these dummies in lateral impacts. This was followed by a more recent program which included testing under additional side impact conditions. Based on the results of these tests, the agency decided that neither dummy was adequate in all respects and that a new or revised dummy was necessary for use in evaluating side impact protection. Therefore, the NHTSA plans to use the Part 572 as the basic dummy, making those changes that are necessary in the thorax and shoulder to adequately measure injury response in side impact collisions. In addition to the dummy which is being developed by the NHTSA, there are other dummies which have recently been developed for use in side impact work. The NHTSA will conduct a parallel evaluation and test program of these dummy designs to establish the relevancy and quality of their response for use in side impact applications.

Questions on dummy design which are as yet unanswered and for which the agency seeks specific comments include:

(1) Does the test dummy used in side impact protection testing need an arm (impact side) to be acceptable as a human surrogate? Does the presence of an arm create special problems in dummy response?

(2) Is a modified Part 572 dummy the most appropriate test device that can currently be found?

Performance Criteria and Levels

The agency contemplates developing thoracic and head injury criteria and performance requirements to prevent occupant ejection from the vehicle. The primary basis for development of a criteria for limiting chest injuries in side impact accidents consists of human surrogate tests which have been run in the United States and Europe. Comparing the results of these tests with the consequences of real-world accidents has been initiated, but has not progressed to the point of providing adjusted estimates of an appropriate performance criteria. The criteria currently being considered by the agency are estimates of the threshold force level between AIS 3 and AIS 4 injuries to the chest (the AIS scale is an injury severity index). The rationale behind the choice of this level is that injuries which are judged to be AIS 4, 5 or 6 are considered to be life-threatening and have a high probability of resulting in a fatality. Under the proposed criteria, injury levels could not be greater than the forces on the test dummy's chest judged to be equivalent to AIS 3 injuries. Thus, most life-threatening chest injuries to the victims of crashes covered by this regulation would be eliminated.

Based on the work with human surrogates, there are three schools of thought concerning the proper criteria for measuring performance in side impact protection. One school concludes that chest deflection is the best measurement of injury to victims of side impacts. The most recent work in this area has been done at the Peugeot-Renault Association. The results of this work suggest that a limit of 4.5 cm on chest deflection is a proper criterion. A second school of thought concludes that the acceleration signals from spinal accelerometers provide the best source of data for predicting injury. The results of this work suggest two criteria for use in improving occupant protection in side crashes: (1) a limit of 40G (3 msec) on the peak acceleration in the lateral direction; and (2) a limit of 120,000 ft–lb/sec (160 kilowatts) on the peak rate-of-change of energy in the lateral direction. This work is summarized in a paper by Burgett and Hackney given at the 7th ESV Conference in June 1979 (Docket 79–04; General Reference). The third school of thought in this area holds that the change of velocity of the near side rib is a good measure of injury. This work has resulted in several suggested criteria which are based primarily on the lateral change of velocity of the near side rib. One criterion would limit the velocity change to 30 ft/sec. The details of this work are contained in the progress reports on NHTSA contract number DOT–HS–4–00921.

It is anticipated that head injury criteria and the prevention of ejection from the vehicle would be covered with the following specifications:

(1) All portions of the dummy test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

(2) Sections of FMVSS No. 206, *Door Locks and Door Retention Components*, that are applicable to the types and weights of vehicles being covered in this upgrade will be incorporated as a part of the performance criteria. Further, side door locks and side door retention components including latches, hinges, and other supporting means would not be allowed to separate or disengage during testing. To demonstrate that this has not occurred, some appropriate pull test may be incorporated.

(3) The resultant acceleration at the center of gravity of the test dummy head shall be such that the expression:

$$[1/(t_2 - t_1)\int_{t_1}^{t_2} a\,dt]^{2.5}\,(t_2 - t_1)$$

shall not exceed 1,000, where "a" is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t_1 and t_2 are any two points in time during the crash.

Questions about performance criteria which are as yet unanswered and for which the agency specifically seeks comments include:

(1) Is it appropriate to base a perforance criteria solely on the results of cadaver tests? Are there data sources other than those used by NHTSA which are suitable for development of performance criteria?

(2) Are there parameters other than those presented here which would be more appropriate for establishing performance requirements, e.g., chest severity index?

(3) What are the advantages and disadvantages of the various criteria that are set forth here? What methods for evaluating various criteria are available? Can the various criteria provide accurate predictions of injuries and fatalities occurring in real accidents? Are the various criteria sufficiently distinct in the compliance test environment to generate meaningful dummy response?

(4) Are the injury criteria keyed to the most appropriate AIS level (i.e., not greater than AIS 3)?

Vehicle Development for Performance Demonstrations

Several research projects are underway to demonstrate the feasibility and benefits of improved structural

integrity in side impacts and to investigate feasible improvements in vehicle interior padding and load distributing characteristics.

In 1976, a project was initiated to investigate the potential for upgrading the integrity of the side structure of a compact vehicle (1976 Plymouth Volare). A baseline crash test (an unaltered vehicle) was performed to evaluate the existing structural strength. The side structure of the impacted vehicle was examined and minor modifications were made to an identical vehicle. These modifications added approximately 17 pounds per side. Significant reductions in interior intrusion were obtained when the modified vehicle was tested. The modifications made included: increasing the depth of the door beam hat section, closing the door beam section and lowering the beam, improving the door beam-to-door connections, adding continuous welds to the sheet metal door facing, and strengthening the door hinge-to-pillar connections.

During this project, no attempt was made to investigate problems that might be associated with making such modifications on a production basis, or to optimize the introduced structural components. However, a follow-up effort did address the production feasibility of the changes, and the modifications that evolved reduced the weight of the improved structure. This design is now being tested and evaluated.

A similar program was initiated by the agency to improve the side structures of a light weight subcompact vehicle (Volkswagon Rabbit). Two levels of structural modifications have been completed and tested (low and middle weight designs). A third level, the heaviest weight structural modification, is under development.

The modifications to the Rabbit were assessed using a 60° dynamic test configuration (angle between vehicles), while modifications to the Volare were assessed using both a 60° and a 90° test configuration. In both cases, the modified vehicle was initially stationary in the testing.

Details of these programs are contained in the progress reports on NHTSA contract number DOT–HS–7–01588.

Baseline tests are also being conducted on light trucks and vans to determine any problems these vehicles may have in meeting an upgraded side impact protection standard given their current construction. The light weight pick-ups are expected to perform similarly to passenger cars. Modifications being developed for passenger cars are expected to be adaptable to these light weight vehicles.

Details of these programs are contained in the progress reports on NHTSA contract number DOT–HS–8–01942.

Major efforts are also currently underway to develop improved vehicle interiors to aid in reduction of injury levels in side impacts. A series of static and dynamic component tests will be conducted on various energy-absorbing padding configurations. The more promising energy-absorbing configurations will then be investigated in a side impact sled test with a dummy. After the energy absorbing configuration has been optimized, it will be integrated into structurally modified Rabbits and Volares. The completely modified vehicles, having both upgraded side structures and interiors, will be crash tested under the contemplated compliance test conditions and requirements. Vehicle-to-vehicle and impactor-to-vehicle crash tests will be run to evaluate the potential of the upgraded designs to mitigate injuries.

Questions about vehicle design which have not as yet been answered and for which the agency seeks specific comments include:

(1) Can high-strength-low-alloy steel be used in door and door-frame construction without undue corrosion or other problems?

(2) What methods can be used to improve the protection provided by vehicle's interior in addition to padding?

Further details of this program are contained in the progress reports on NHTSA contract number DOT–HS–9–02177.

Benefits, Costs, Weight Implications and Leadtime Studies

Victims of side impact accidents account for approximately one-third of all vehicle occupant fatalities and a similar percentage of the life-threatening injuries that occur. Based on the agency's analysis of accident data, about 65% of these side impact fatalities and life-threatening injuries occur to victims of multi-vehicle collisions. Analysis indicates that about half of those multi-vehicle, life-threatening and fatal injuries can be eliminated by proper choice of barrier impactor design and compliance test conditions that will result in improved vehicle design. This corresponds to approximately one-third of all fatalities and life-threatening injuries caused by side impact accidents. This estimate is probably conservative since it does not include any benefits to victims of single-vehicle accidents. A refined analysis of benefits which includes victims of both multi- and single-vehicle accidents will be done as part of our ongoing development work.

Studies are being initiated to determine any changes in consumer cost and vehicle weight directly related to vehicle modifications that may be necessary to meet the higher performance levels of side impact protection that are being considered in this advance notice of proposed rulemaking. Manufacturing leadtimes are also being considered. These studies will involve.

(1) The development of designs feasible mass production (the designs will be sufficient for estimating cost and leadtime but not actually for fabricating) for the vehicle structural and interior modifications that are used by NHTSA to demonstate side impact improvements. These designs will be used to estimate costs and leadtime requirements when appropriate, for the particular criteria under consideration.

(2) Estimation of changes in average consumer costs and vehicle weights that will result from an upgraded side impact protection standard. These estimates will be adjusted for projected sales weighting, by vehicle weight classes (subcompacts, compacts, intermediate and full size passenger cars; trucks and vans with GVWR's less than 6,000 lbs., 6,000–8,000 lbs, and 8,000–10,000 lbs.) To the extent possible, existing reports on present-production car and light truck tear-down cost will be utilized, as well as existing reports on vehicle weights and leadtime studies.

(3) Consideration of the effects on vehicle fuel economy (cost of additional fuel consumed, cost and leadtime necessary to make offsetting fuel enonomy improvements, etc.) resulting from the weights of structure and padding materials that would be used in production during the mid-1980's to meet the upgraded side impacted standard. Costs will be estimated and reported in terms of both 1980 and projected 1985 economics.

A question about costs and benefits which has not as yet been answered and for which the agency seeks specific comments is:

How much can the costs of the improvements required by an upgrade side impact standard be minimized by making necessary design changes during the normal model-year design cycle?

This advance notice of proposed rulemaking has been evaluated under the criteria of EO 12044, "Improving Govenment Regulations," and under Departmental guidelines implementing that order. A copy of the evaluation may be obtained by writing NHTSA docket section at the address given at the

beginning of this notice. The agency concluded that the indeterminancy of the nature and level of the requirements and test conditions and, therefore, the indeterminancy also of the impacts of the rulemaking precluded anything but the most general evaluation of this notice. Any more precise analysis would be speculative at best. After the agency reviews the comments on this notice and conducts further studies and analyses, it will select and attemp to refine requirements and test conditions to be included in a notice of proposed rulemaking. At that point, the agency may find that the rulemaking is significant. In that event, a regulatory analysis will be prepared and made available for public comment.

Public Meeting

To collect and consolidate as much information as possible on this subject, the NHTSA has determined that a public meeting is desirable to discuss the status of side impact protection technology, vehicle manufacturer experience in developing side impact protection in their vehicle models, and the expected environmental and economic impact of requiring an upgraded side impact protection capability.

The views and presentations of all interested parties, and in particular, component suppliers, vehicle manufacturers, and researchers or other specialists in side impact structures or anthropomorphic test devices, are solicited. The NHTSA especially requests information concerning the questions in this notice.

To assist in the exchange of substantive data at this meeting, an outline is set forth below listing those subject areas of particular interest to the agency.

I. *Accident Data:*

Identification of pertinent side impact collision conditions.

Distribution of life threatening injuries.

Identification of crash modes that describe an appropriate orientation and impact velocity for use in a compliance test.

II. *Design of an Anthropomorphic Test Device (Dummy):*

Review of cadaver testing in side impact crashes.

Status of any dummy development programs that are underway.

Development of performance criteria for side impacts.

III. *Development of a Dynamic Test Procedure Using a Moving Barrier Impactor.*

IV. *Development of Vehicle Improvements for Upgrading Side Impact Protection:*

Exterior structures.

Interior improvements.

V. *Cost, Weight, Leadtime and other Considerations:*

Persons who desire to make an oral presentation at the meeting should contact Mr. William Brubaker, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2242), before January 14, 1980, so that time allocations and the need for any special equipment, such as projectors, can be arranged. A copy of the oral presentation should be submitted to Mr. Brubaker not later than January 21. Any specific questions that interested parties would like to be answered by the NHTSA should also be submitted in writing by that date. These questions will be discussed at the meeting, as time permits. Additionally, there may be time for audience members at the meeting to ask questions of those persons making oral presentations. Persons whose presentations include slides, motion pictures or other visual aids should plan to submit copies for the record at the meeting. A transcript of the meeting will be taken and later submitted to the public docket. An agenda will be available at the meeting. Persons unable to attend the meeting may submit written comments by the date indicated at the beginning of this notice. In addition, persons who wish to supplement their oral comments with written comments may do so by the same date.

The engineer and lawyer primarily responsible for the development of this notice are William Brubaker and Hugh Oates, respectively.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR and 501.8)

Issued on: November 30, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-37350 Filed 11-30-79; 2:30 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Proposed Addition of Pocasse National Wildlife Refuge, South Dakota, to List of Open Areas; Upland Game Hunting, Big Game Hunting, and Sport Fishing.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to add Pocasse National Wildlife Refuge, South Dakota, to the refuge areas open for upland game hunting, big game hunting, and sport fishing. The director has received information that this action would be in accordance with the provisions of all laws applicable to the area, would be compatible with the principles of sound wildlife management, would otherwise be in the public interest and that such uses are compatible with the major purposes for which the refuge was established. Upland game hunting, big game hunting, and sport fishing, subject to annual special regulations, will provide additional public recreational opportunity.

DATES: Comments must be received on or before January 7, 1980.

ADDRESS: Comments may be addressed to the Director, (FWS/RF), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Telephone 202–343–4305.

SUPPLEMENTARY INFORMATION: Ronald L. Fowler is the primary author of this proposed rulemaking. Areas within the National Wildlife Refuge System are closed to hunting or sport fishing until officially opened by rulemaking. the director may open refuge areas to hunting or sport fishing upon a determination that such uses are compatible with the major purposes for which such areas were established and that funds are available for the development, operation, and maintenance of the permitted forms of recreation. This action will be in accordance with provisions of all laws applicable to the area, will be compatible with the principles of sound wildlife management, and will otherwise be in the public interest. It is the purpose of this proposed rulemaking to seek public input regarding the opening of the above cited refuge to the hunting of upland game, big game, and sport fishing.

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), an environmental assessment has been prepared and is available for public inspection and copying at room 2341, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail, addressing the director at the address above. The policy of the Department of Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, sugestions, or objections regarding the proposal. All relevant comments will be considered by the Department prior to the issuance of a final rule.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 10244 and 43 CFR Part 14.

Accordingly, it is proposed to amend 50 CFR Parts 32 and 33 by the addition of Pocasse National Wildlife Refuge in §§ 32.21, 32.31, and 33.4 as follows:

§ 32.21 List of open areas; upland game.

* * * * *

South Dakota

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Pocasse National Wildlife Refuge

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§ 32.31 List of open areas; big game.

* * * * *

South Dakota

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Pocasse National Wildlife Refuge

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§ 33.4 List of open areas; Sport fishing.

* * * * *

South Dakota

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Pocasse National Wildlife Refuge

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Dated: November 16, 1979.

Lynn A. Greenwalt,

Director, U.S. fish and Wildlife Service.

[FR Doc. 79–37505 Filed 12–5–79; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 44, No. 236
Thursday, December 6, 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

Ratemaking and Economic Regulation Committee; Remedial Order Procedures of the Department of Energy; Treatment of Confidential Business Information; Meeting

AGENCY: Administrative Conference of the United States; Committee on Ratemaking and Economic Regulation.

ACTION: Committee meeting.

AGENDA FOR MEETING: The Committee will consider the comments it has received relating to the Committee's tentative recommendations on remedial order procedures of the Department of Energy. The Committee will also discuss a new project on agency treatment of confidential business information under exemption 4 of the Freedom of Information Act.

DATE: TIME: PLACE: December 13, 1979; 10 a.m.; Hearing Room A, Interstate Commerce Commission Building, 12th Street and Constitution Avenue NW., Washington, DC.

PUBLIC PARTICIPATION: Attendance at the Committee's meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The Committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of the meeting will be available on request to the contact person.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone (202) 254–7065.

SUPPLEMENTARY INFORMATION:

Remedial Order Procedures. On September 19, 1979, the Administrative Conference Committee on Ratemaking and Economic Regulation met to consider a draft report and proposed recommendations, submitted by Conference consultant Professor Alfred C. Aman, Jr. of Cornell Law School, on remedial order procedures of the Department of Energy.

The Committee agreed with the consultant that both the administrative and the judicial procedures for handling remedial orders include unnecessary duplication of decisionmaking actions. The Committee agreed in principle on tentative recommendations proposing that review of remedial orders by the Federal Energy Regulatory Commission and by district courts be abolished. The Committee also agreed that the procedural standards for handling remedial orders by the Office of Hearings and Appeals should be specified by statute, and that these standards should be similar to the present requirements of section 503 of the Department of Energy Organization Act.

By **Federal Register** notice of October 3, 1979 (44 FR 56972) the Committee requested comments on its tentative recommendations. On October 25, 1979, the Committee extended the comment deadline to November 19, 1979. (44 FR 61398.) On November 8, 1979, the Committee invited interested persons to address the Committee at a public hearing on November 28, 1979. (44 FR 64852.) The Committee has received several written comments. At the public hearing, the Committee heard presentations on behalf of the regulated industry and on behalf of the Department of Energy.

At the upcoming meeting on December 13, the Committee will consider all comments received, and will discuss the future of the remedial orders project.

Confidential Business Information. The Administrative Conference recently contracted with Professor Russel Stevenson of the National Law Center, George Washington University, to study the practices and procedures used by federal agencies in resolving issues arising under exemption 4 of the Freedom of Information Act (5 U.S.C. § 552(b)(4). Professor Stevenson will meet with the Committee on December 13 to discus the scope of his work. Any recommendations which may result from this project will be considered by the Administrative Conference in plenary session during December of 1980.

Dated: December 4, 1979.

Richard K. Berg,
Executive Secretary.

[FR Doc. 79-37673 Filed 12-5-79; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest Grazing Advisory Board; Meeting

The Payette National Forest Grazing Advisory Board will meet at 1 p.m., January 8, 1980, at the District Forest Ranger's Office, Council, Idaho. The purpose of this meeting is for the Board to make recommendations on the utilization of Range Betterment funds for fiscal year 1980.

The meeting will be open to the public. Persons who wish to attend should notify M. S. Wright, Payette National Forest, McCall, Idaho, 634–2255. Written statements may be filed with the Board before or after the meeting.

Dated: November 27, 1979.

William B. Sendt,
Forest Supervisor.

[FR Doc. 79-37434 Filed 12-5-79; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Five Creeks Watershed, Mississippi

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of deauthorization of Federal funding.

FOR FURTHER INFORMATION CONTACT: James W. Mitchell, Director, Watersheds Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, D.C. 20013 (202–447–3527).

Notice.—Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Five Creeks Watershed project, Yazoo County, Mississippi, effective on November 13, 1979.

Dated: November 28, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L 83–566, 16 U.S.C. 1001–1008)

Edward E. Thomas,

Assistant Administrator for Land Resources.

[FR Doc. 79-37435 Filed 12-5-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 36792]

Air North, Inc., Fitness Investigation; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on December 13, 1979, at 10:00 a.m. (local time), in Room 1003, Hearing Room B, Universal Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Information concerning the issues involved, other details in this proceeding, as well as other documents, may be found by consulting the docket in this proceeding.

Dated at Washington, D.C., November 29, 1979.

Richard M. Hartsock,

Administrative Law Judge.

[FR Doc. 79-37514 Filed 12-5-79; 8:45 am]

BILLING CODE 6320-01-M

[Dockets 33361 and 32412]

Former Large Irregular Air Service Investigation (Application of Pearson Alaska Airlines); Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on March 4, 1980, at 9:30 a.m. (local time), in Hearing Room 1003 D, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before me.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served November 9, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., December 3, 1979.

Marvin H. Morse,

Administrative Law Judge.

[FR Doc. 79-37515 Filed 12-5-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Die Mesh Corporation, 629 Fifth Avenue, Pelham, New York 10803, producer of nickel plated steel strip (accepted October 19, 1979); (2) Sen-Wel Industries, Inc., 1395 Clinton Street, Buffalo, New York 14240, producer of fabricated steel (accepted November 23, 1979); (3) Roslyn Screen Print, Inc., 410 Morgan Avenue, Brooklyn, New York 11211, producer of printed fabrics (accepted November 26, 1979); (4) A.R.F. Products, Inc., Gardner Road, Raton, New Mexico 87740, producer of CB radios, communications and security systems, and other electronic products (accepted November 26, 1979); (5) Duti-Duds, Inc., 300 Monticello, Lynchburg, Virginia 24501, producer of women's dresses, pantsuits, tops and uniforms (accepted November 26, 1979); (6) Vulcanized Rubber and Plastics Company, 5 South Pennsylvania Avenue, Morrisville, Pennsylvania 19067, producer of rubber and plastic molded products (accepted November 27, 1979); (7) Artspeak, Inc., 120 East 23rd Street, New York, New York 10010, producer of interior design materials including prints and art objects (accepted November 27, 1979); (8) Bee Em Manufacturing Company, Inc., 1421 Wallace Street, Philadelphia, Pennsylvania 19130, producer of boys' coats, suits and sportcoats (accepted November 27, 1979); (9) Utica Duxbak Corporation, 815 Noyes Street, Utica, New York 13502, producer of men's sports apparel, including coats, shirts, vests and pants (accepted November 27, 1979); (10) Rockingham Shoe Company, Spring and Elm Streets, Newmarket, New Hampshire 03857, producer of women's and children's shoes (accepted November 27, 1979); (11) Brokaw Industries, Inc., 292 Overlook Park, Cleveland, Ohio 44110, producer of fishing tackle (accepted November 27, 1979); (12) Jerold Rayne Corporation, 512 Seventh Avenue, New York, New York 10018, producer of men's and women's coats (accepted November 29, 1979); (13) Piedmont Industries, Inc., 1250 Broadway, New York, New York 10001, producer of men's and boys' shirts and pants (accepted November 29, 1979); (14) Mar-Pearl Company, 823 Polo Road, Oregon, Illinois 61061, producer of shell and plastic parts and accessories for musical instruments (accepted November 30, 1979); (15) J. C. Sportswear Company, Inc., 260 West 35th Street, New York, New York 10001, producer of women's pants, vests, skirts and jackets (accepted December 3, 1979); and (16) East Coast Steel, Inc., Box 276, Eastover, South Carolina 29044, producer of steel joists (accepted November 30, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

Charles L. Smith,

Acting Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-37513 Filed 12-5-79; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 28, 1979.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will hold meetings on February 14, 1980 from 8:30 a.m. to 5:00 p.m. and from 8:30 a.m. to 12:00 p.m. on February 15, 1980, at Hanscom Air Force Base, Massachusetts in the Command Management Center, Building 1606.

The Group will receive classified briefings and hold classified discussions on selected Air Force Command, Control, and Communications Programs. The meetings will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 79-37437 Filed 12-5-79; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

November 29, 1979.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group will hold meetings on January 17, 1980 from 8:00 a.m. to 5:00 p.m. and on January 18 from 8:00 a.m. to 1:00 p.m. at Wright-Patterson AFB, Ohio.

The Group will receive classified briefings and participate in classified discussions related to assessments of foreign ground based radars, laser applications, infra-red techniques and mathematical programming. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1).

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 79-37436 Filed 12-5-79; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Texas City Channel, Tex.

AGENCY: Galveston District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

Summary:

1. The DEIS covers the possible alternatives for deepening the existing Texas City Channel, a Federally constructed deep draft navigation channel. The project is primarily concerned with improving the navigational efficiency of the port facilities of Texas City. Texas City and the adjacent City of LaMarque are located approximately 40 miles southeast of Houston and 15 miles northwest, and across Galveston Bay, from the City of Galveston. The cities of Texas City and LaMarque had an estimated combined population of 63,000 in 1977. There are eight separate petroleum or chemical industries in Texas City and the economy of the area is based on this petroleum/chemical industry. Our neighboring communities within Galveston County also depend on the industries of Texas City as a source of employment and economic base.

2. The alternatives to be considered in this DEIS include channel depths of 45, 50, 53, and 55 feet; several disposal schemes including wetlands creation, dike enhancement, and offshore disposal; alternate methods of transporting petroleum; and no action.

3.a. Coordination of the project has included a public meeting, individual consultation with local governing bodies, and a planning aid document from U.S. Fish and Wildlife Service. The public meeting was held in April 1977 to present information and to obtain views and public preferences on alternative plans developed.

b. Important environmental considerations to be analyzed as a result of past coordination and participation include: (1) replenishment of the environmental quality of Galveston Bay, (2) safe transportation, (3) access roads on the Texas City Dike, (4) dredge material disposal, (5) Galveston Bay salinity.

c. Coordination and consultation will continue with appropriate local, State, and Federal agencies and the interested public.

d. Other environmental consultation and review will be conducted in accordance with various laws and regulations.

4. A public meeting specifically to determine the scope of the DEIS will not be held. However, all previous and future input to studies for the project will be considered in the scoping process.

5. The DEIS is scheduled to be available to the public in July 1980.

Address: Questions about the proposed action and DEIS can be answered by Mr. C. R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, (713) 763–1211, extension 492.

Dated: November 23, 1979.

James M. Sigler,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-37438 Filed 12-5-79; 8:45 am]

BILLING CODE 3710-GK-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement; United States and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden.

The subsequent arrangement to be carried out under the above mentioned agreements involves the approval of the following retransfer:

RTD/SW(EU)–108, retransfer from West Germany to Sweden of 13,697.403 kilograms uranium, containing 340.743 kilograms U–235 (2.49%) in the form of fuel elements for the Oskarshamn–1 power reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than December 21, 1979.

For the Department of Energy.

Dated: December 4, 1979.

Frederick McGoldrick,

Acting Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 79-37649 Filed 12-5-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Case No. 50256-3325-04-77]

Ben French No. 4; Black Hills Power & Light Co.; Classification as an Existing Facility

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the Black Hills Power and Light Company Ben French No. 4 as an Existing Facility.

SUMMARY: On June 4, 1979, Black Hills Power and Light Company (Black Hills) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Ben French No. 4 as an existing facility pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain

Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA).

ERA has completed its analysis of Black Hills' request and has determined that Black Hills has satisfactorily demonstrated that it would suffer a substantial financial penalty. Black Hills had expended, in nonrecoverable outlays, more than 25 percent of the total projected project cost as of November 9, 1978, for Ben French No. 4 within the meaning of Section 515.6 of the Revised Interim Rule.

ERA has classified Black Hills' Ben French No. 4 an "existing" facility and it is therefore subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461, Phone: (202) 634–2170.

James W. Workman, Acting Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128, Washington, D.C. 20461, Phone: (202) 254–7442.

Marx M. Elmer, Office of the General Counsel, Department of Energy, 1000 Independence Ave., SW., Rm. 6G–087, Washington, D.C. 20585, Phone: (202) 252–2967.

Robert L. Davies, Acting Assistant Adminstrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, N.W., Room 3128L, Washington, D.C. 20461, Phone: (202) 634–6557.

SUPPLEMENTARY INFORMATION: (1) On June 4, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilties (Revised Interim Rule) issued by ERA on March 15, 1979, Black Hills requested that ERA classify Black Hills' Ben French No. 4 as an "existing" facility. On September 28, 1979. ERA published at 44 FR 55925 a summary of Black Hills' request for classification and requested comments by interested persons on or before October 19, 1979. ERA has received comments in support of Black Hills' request from the South Dakota Public Utilities Commission.

(2) ERA has analyzed the material submitted by Black Hills applicable to Ben French No. 4 and has classified the unit an existing facility on the basis that Black Hills has satisfactorily demonstrated that it would suffer a substantial financial penalty because it had expended, in nonrecoverable outlays, more than 25% of the total projected project cost as of November 9, 1978, for Ben French No. 4 within the meaning of Section 515.6 of the Revised Interim Rule. A copy of ERA's Summary of Analysis dated October 24, 1979, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., November 29, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79–37543 Filed 12–5–79; 8:45 am]

BILLING CODE 6450–01–M

[ERA Case No. 50868–9005–21–77]

Copper Station No. 1; El Paso Electric Co.; Classification as an Existing Facility

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the El Paso Electric Company Copper Station No. 1 as an Existing Facility.

SUMMARY: On June 4, 1979, El Paso Electric Company (El Paso) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Copper Station No. 1 as an existing facility pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA).

ERA has completed its analysis of El Paso's request and has determined that El Paso has satisfactorily demonstrated that it would suffer substantial financial penalty. El Paso had expended, in nonrecoverable outlays, more than 25 percent of the total projected project cost as of November 9, 1978, for Copper Station No. 1 within the meaning of Section 515.6 of the Revised Interim Rule. ERA has classified El Paso's Copper Station No. 1 an "existing" facility and it is therefore subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B–110, Washington, D.C. 20461, Phone: (202) 634–2170.

James W. Workman, Acting Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128, Washington, D.C. 20461, Phone: (202) 254–7442.

Marx Elmer, Office of the General Counsel, Department of Energy, 1000 Independence Ave., SW., Rm. 6G–087, Washington, D.C. 20585, Phone: (202) 252–2967.

Robert L. Davies, Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, N.W., Room 3128L, Washington, D.C. 20461, Phone: (202) 634–6557.

SUPPLEMENTARY INFORMATION: (1) On June 4, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, El Paso requested that ERA classify El Paso's Copper Station No. 1 as an "existing" facility. On September 28, 1979, ERA published, at 44 FR 55926, a summary of El Paso's request for classification and requested comments by interested persons on or before October 19, 1979. The published summary of El Paso's request contained a typographical error. The figure of $7,042,309 was incorrectly identified as "Total projected project costs" and should have been identified as "Total project expenditures." However, ERA does not believe that the error is significant since no comments have been received.

(2) ERA has analyzed the material submitted by El Paso applicable to Copper Station No. 1 and has classified the unit an existing facility on the basis that El Paso has satisfactorily demonstrated that it would suffer a substantial financial penalty because it has expended, in nonrecoverable outlays, more than 25% of the total projected project cost as of November 9, 1978, within the meaning in Section 515.6 of the Revised Interim Rule. A copy of ERA's Summary of Analysis dated October 24, 1979, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., November 30, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79–37544 Filed 12–5–79; 8:45 am]

BILLING CODE 6450–01–M

[ERA Case No. 51913–2176–21–77]

Glendive Combustion Turbine Unit No. 1; Classification as an Existing Facility

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the Montana-Dakota Utilities Company Glendive Combustion Turbine Unit No. 1 as an Existing Facility.

SUMMARY: On May 31, 1979, Montana-Dakota Utilities Company (MDU) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Glendive Combustion Turbine Unit No. 1 as an existing facility pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA).

ERA has completed its analysis of MDU's request and has determined that MDU has satisfactorily demonstrated that it would suffer a substantial financial penalty. MDU had expended, in nonrecoverable outlays, more than 25 percent of the total projected cost as of November 9, 1978, for the Glendive Combustion Turbine Unit No. 1 within the meaning of Section 515.6 of the Revised Interim Rule.

ERA has classified that MDU's Glendive Combustion Turbine No. 1 an "existing" facility and it is therefore subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone: (202) 634-2170.

James W. Workman, Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone: (202) 254-7442.

Edward Jiran, Office of General Counsel, Department of Energy, 1000 Independence Ave., SW., Rm. 6G-087, Washington, D.C. 20585, Phone: (202) 252-2967.

Robert L. Davies, Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128L, Washington, D.C. 20461, Phone: (202) 634-6557.

SUPPLEMENTARY INFORMATION: (1) On May 31, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, MDU requested that ERA classify MDU's Glendive Combustion Turbine Unit No. 1 as an "existing" facility. On October 22, 1979, ERA published at 44 FR 60791, a summary of MDU's request for classification and requested comments by interested persons on or before November 13, 1979. ERA has not received any comments in response to the notice.

(2) ERA has analyzed the material submitted by MDU applicable to the Glendive Combustion Turbine Unit No. 1 and has classified the unit as existing facility on the basis that MDU has satisfactorily demonstrated that it would suffer a substantial financial penalty because it had expended, in nonrecoverable outlays, more than 25% of the total projected project cost as of November 9, 1978, for the Glendive Combustion Turbine Unit No. 1 within the meaning of Section 515.6 of the Revised Interim Rule. A copy of ERA's Summary of Analysis dated November 19, 1979, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., November 29, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-37545 Filed 12-5-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 51892-6074-04-77]

Greenwood Unit No. 4, Missouri Public Service Co.; Classification as an Existing Facility

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Determination to Classify the Missouri Public Service Company Greenwood Unit No. 4 as an Existing Facility.

SUMMARY: On June 5, 1979, Missouri Public Service Company (Mo Pub) requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Greenwood Unit No. 4 as an existing facility pursuant to Section 515.6 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979 (44 FR 17464), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA).

ERA has completed its analysis of Mo Pub's request and has determined that Mo Pub has satisfactorily demonstrated that it would suffer a substantial financial penalty. Mo Pub had expended, in nonrecoverable outlays, more than 25 percent of the total projected project cost as of November 9, 1978, for the Greenwood Unit No. 4 within the meaning of Section 515.6 of the Revised Interim Rule.

ERA has classified Mo Pub's Greenwood Unit No. 4 an "existing" facility and it is therefore subject to the provisions of Title III of FUA.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room B-110, Washington, D.C. 20461, Phone: (202) 634-2170.

James W. Workman, Director, Division of Existing Facilities Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 3128, Washington, D.C. 20461, Phone: (202) 254-7442.

James Renjilian, Office of the General Counsel, Department of Energy, 1000 Independence Ave. SW., Rm. 6G-087, Washington, D.C. 20585, Phone: (202) 252-2967.

Robert L. Davies, Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128L, Washington, D.C. 20461, Phone: (202) 634-6557.

SUPPLEMENTARY INFORMATION: (1) On June 5, 1979, pursuant to ERA's Revised Interim Rule to Permit Classification of Certain Powerplants and installations as Existing Facilities (Revised Interim Rule) issued by ERA on March 15, 1979, Mo Pub requested that ERA classify Mo Pub's Greenwood Unit No. 4 as an "existing" facility. On October 15, 1979, ERA published a summary of Mo Pub's request for classification in the **Federal Register** and requested comments by interested persons on or before November 5, 1979. ERA has not received any comments in response to the notice published by ERA in the**Federal Register** on October 15, 1979.

(2) ERA has analyzed the material submitted by Mo Pub applicable to Greenwood Unit No. 4 and has classified the unit an existing facility on the basis that Mo Pub has satisfactorily demonstrated that it would suffer a substantial financial penalty because it had expended in nonrecoverable outlays, more than 25 percent of the total projected project cost as of November 9, 1978, for Greenwood Unit No. 4 within the meaning of Section 515.6 of the Revised Interim Rule. A copy of ERA's Summary of Analysis dated November 19, 1979, is available for examination in the Office of Public Information, at the above address.

Issued in Washington, D.C., November 29, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 79-37546 Filed 12-5-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL137-3; OTS-51009]

Receipt of Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA, or the Agency).

ACTION: Receipt of Premanufacture Notices.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. Section 5(d)(2) requires EPA to publish a summary of each PMN in the **Federal Register**. This Notice announces receipt of two PMNs and provides a summary of each.

DATE: Persons who wish to file written comments on a PMN should submit their comments no later than 30 days before the applicable notice review period ends.

ADDRESS: Written comments should bear the PMN number of the particular chemical substance, and should be submitted in triplicate, to the Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, EPA, 401 M Street, SW., Washington, D.C. 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. Paul Wilson (5AHQ-1179-0007A), telephone: 202/426-3980, and Ann Radosevich (5AHQ-1179-0010A), telephone: 202/426-2601, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, EPA, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979 (44 FR 28559). (Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558).) The requirement to submit a PMN for new chemical substances manufactured or imported for a commercial purpose became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms (44 FR 2242, January 10, 1979). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy (44 FR 28564, May 15, 1979) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see the section entitled "Notice in the **Federal Register**" on p. 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, and the generic use and potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided EPA will develop one and, after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

EPA normally has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may for good cause extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will public a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

(Sec. 5, Toxic Substances Control Act (90 Stat. 2012; (15 U.S.C. 2604))

Dated: November 29, 1979.

Blake A. Biles,

Deputy Assistant Administrator for Chemical Control.

PMN No. 5AHQ-1179-0007A

Close of Review Period: February 13, 1980.

Manufacturer's Identity: Celanese Plastic & Specialties Co., 1495 South 11 St., Louisville, KY 40208.

New Chemical Substance: The generic name of the substance for this PMN is (alkyl hydroxymethyl alkanediol polymer with chloromethyl oxirane) alkenoate. The company claims the specific chemical identity to be confidential.

Uses: The substance is intended primarily to be used as a component of a paper coating and adhesive system designed to be cured by high-energy radiation. As such, it will be used in industrial installations designed to handle highly reactive materials. The substance will also be used as an ink vehicle. The company anticipates that, for the first three calendar years of production, a maximum of 1,000 kg/yr, 20,000 kg/yr, and 50,000 kg/yr, consecutively, will be manufactured for these uses. The company estimates that, during manufacture, a maximum of 4 workers may come in dermal contact with the substance and a maximum of 2 workers may be exposed to it through inhalation. The company believes that, because the manufacturing process is a closed batch process, worker contact with the substance is likely to occur only during filling, sampling, and cleansing operations. The company estimates the total number of workers exposed to the substance during processing to be less than 100 individuals during the first three years of manufacture, and that this exposure would be due to dermal contact and inhalation.

Data Submitted: The substance is defined as an acrylated epoxy resin. The

company submitted the following data concerning the physical and chemical properties of the substance.

Test	Value
Density	1.09.
Viscosity	180–210 poise.
Acid Value	5 Max.
Weight/Epoxide	16,000 Min.
Flash Point	>200 °F.
Color	5 Max.
Solubility:	
Toluene	Sol.
Acetone	Sol.
Water	Insol.

The company stated that, while toxicity data on the specific polymer are not available, related products have been shown to have low acute oral toxicity. The company also said that products of this type can be expected to be potential skin sensitizers and irritants. The company submitted no data on health and environmental effects of the polymer.

PMN No. 5AHQ–1179–00110A

Close of Review Period: February 13, 1980.

Manufacturer's Identity: Stein Hall Company, Inc., Subsidiary of Celane's Corporation, 7351 South 78th Ave., Chicago, Illinois 60502.

New Chemical Substance: The generic name of the substance for this PMN is 2-ethyl hexyl-2-propenoate polymer with alkyl 2-methyl-2 propenoate and alkyl 2-propenoate. The company claims the specific chemical identity of the substance to be confidential.

Uses: The substance is defined as a polymer adhesive. End use application of polymer systems similar to this substance have included paints, textile treatments, adhesives, paper coating, binders for non-woven structures such as diapers, and other miscellaneous applications. The company anticipates that for the first three calendar years a maximum of 125,000 kg/yr, 250,000 ky/yr, and 500,000 kg/yr, consecutively, will be produced for this use. The manufacturer states that direct worker exposure is minimal and is limited to dermal contact during material transfer and clean-up operations. There is some potential for worker exposure due to splashing or aerosol formation in the roller coater operation.

Data Submitted: The company submitted the following data concerning physical and chemical properties of the substance:

Test	Value
Non-Volatile	59–61%.
Viscosity	50 poise.
Acid Number	<10.
Particle Size	<.3 microns.
Free Monomer	<.5%.

The company claimed that other data concerning health and environmental effects are unavailable.

[FR Doc. 79–37476 Filed 12–5–79; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 79–703, BC Docket No. 79–286, File No. BPCT–5089, et al.]

Central Texas Broadcasting Co., et al.

In re applications of Central Texas Broadcasting Co., Ltd., a Limited partnership (Robert A. Mann, General Partner), Waco, Texas (BC Docket No. 79–286, File No. BPCT–5089); Business Communications, Inc., Waco, Texas (BC Docket No. 79–287, File No. BPCT–5126); Blacke-Potash Corp., Waco, Texas (BC Docket No. 79–288, File No. BPCT–5133); and Heart O'Texas Broadcasting, Inc., Waco, Texas (BC Docket No. 79–289, File No. BPCT–5134); For a construction permit for a new television broadcast station; Memorandum opinion and order designating applications for consolidated hearing on stated issues.

Adopted: October 25, 1979.

Released: December 4, 1979.

By the Commission: Commissioners Fogarty and Jones dissenting and issuing a joint statement.

1. The Commission has before it the above-captioned applications of Central Texas Broadcasting Company (CTB), Business Communications, Inc. (BCI), Blake-Potash Corporation (B–P), and Heart O'Texas Broadcasting, Inc. (HOT) for authority to construct a new commercial television broadcast station on channel 25 at Waco, Texas; petitions to specify issues; and related pleadings. The applications are mutually exclusive in that operation of applicants' proposed stations would result in mutually destructive interference.

Procedural Matters

2. On August 11, 1978, applicants filed with the Commission a "Joint Stipulation" in which they waived the right to predesignation deficiency letters and agreed upon dates for filing predesignation amendments to their applications and dates for filing petitions to specify issues and oppositions thereto. The parties' agreement contemplated that amendments after September 18, 1978, the date specified for predesignation amendments, would be accepted upon a showing of good cause.

3. The "Joint Stipulation" described above was entered into with the encouragement of the Commission staff in an attempt to expedite the designation of these applications for hearing. Subsequently, the Commission adopted new procedures [1] for application processing which are designed to eliminate the bottlenecks applicants sought to avoid through their "Joint Stipulation." Accordingly, these applications will be considered under the revised processing procedures with the caveat that any amendment filed after September 18, 1978, will be considered only insofar as it relates to the applicants' basic qualifications, *i.e.*, the comparative status is fixed as of the close of business September 18, 1978. All amendments filed to date will be accepted with this provision. This should effectuate the parties' intention expressed in their "Joint Stipulation." Finally, the petitions to specify issues and the oppositions thereto which the parties have filed will be considered only insofar as they contain information not contained in the applications. Any requested issue not discussed below may be raised before the Administrative Law Judge as contemplated in the revised application processing procedures.

Central Texas Broadcasting Co.

4. CTB's opponents seek to have issues specified inquiring into: (a) CTB's compliance with the disclosure requirements of Section 73.3514 of the Rules; [2] (b) character qualifications; (c) financial qualifications; (d) ascertainment efforts; and (e) the energy efficiency of its technical proposal.

5. CTB is a limited partnership consisting of Robert A. Mann and three trusts, the beneficiaries of which are Mr. Mann's children. Mr. Mann is the applicant's general partner and one percent owner while Walter Rusek, as trustee for Mr. Mann's children, is the limited partner and 99 percent owner of the applicant.

6. Table I, Section II of FCC Form 301 requests of applicants which are limited partnerships the name, address, date, place of birth, partnership interest and percent ownership interest of each general and limited partner. When first responding to this question, CTB omitted all information on Walter Rusek, supplying instead, information on the beneficiaries of each limited partnership interest. The financial and business interests of Mr. Rusek were omitted from Table II, Section II of CTB's application. Finally, the information

[1] *Revised Procedures for the Processing of Contested Broadcast Applications*, 45 RR 2d 1220 (1979).

[2] Rule 73.3514 requires that each application for a construction permit include all information called for by the application form.

originally supplied in Table II, Section II of the application on Mr. Mann's business interest for the past five years omitted information on all business interests which were not held by Mr. Mann at the time CTB filed its application. On the basis of these omissions, CTB's opponents seek an issue inquiring into CTB's compliance with Rule 73.3514.

7. A § 73.3514 issue inquiring into these matters will not be specified. The omissions in the CTB application are not so numerous as to establish a pattern of nondisclosure. In fact, much of the information allegedly omitted is contained in the exhibits submitted in the application. The omitted Section II information concerning Mr. Mann and Mr. Rusek has been supplied. This information raises no question under our policies and rules, and we believe its omission was inadvertent.

8. The character issue is sought against CTB on the following grounds: (a) the omission in Section II of CTB's application discussed previously were made intentionally; (b) past and present civil and criminal litigation involving Mr. Mann raises questions concerning CTB's fitness to be a Commission licensee; and (c) CTB's reporting of litigation involving its principals has been inaccurate. The requested issue concerning Mr. Mann's character is based upon the following: (a) in 1972, Mann was denied specific performance on an option to purchase stock in the Citizens State Bank of Kilgore for failure to exercise his option to purchase that stock in accordance with its terms; (b) the same year the Federal Reserve Board denied Southwest Bancorporation, a bank holding corporation Mann controlled, authority to acquire four banks because minority shareholders were not offered as much for their shares of the bank stock as Mann and his affiliates were and because excessive bank management fees were charged to the banks by a corporation controlled by Mr. Mann; (c) in 1975 the Sabine National Bank of Port Arthur, a bank controlled by Mann, was denied recovery on an installment sale contract and was assessed a penalty for violations of Texas' usury laws; (d) in 1976 Mann was tried and acquitted on charges of conspiring to defraud shareholders of the First National Bank of Waco; and (e) two civil actions were filed in which complainants sought to recover damages and penalties from Mr. Mann and his children's trusts for alleged violations of the Texas usury laws.

9. In examining character, we are basically concerned with the prospective licensee's candor in its dealings with us and its willingness to comply with our rules and policies. Determining whether to specify a character issue against an applicant involves assessing allegations of misconduct in terms of their factual basis and their relevance to the applicant's conduct as a licensee. There does not appear to be a factual basis for CTB's opponents' allegations that it intentionally omitted information from Section II of its application and that it misrepresented the substance of past and present litigation affecting its principals. Much of the information allegedly omitted from Section II was present in the exhibits to the application. Complete Section II information has been supplied by an amendment and none of this data reflects adversely on the applicant. Finally, review of the information on past and pending litigation involving CTB principals originally contained in the application shows this data to be factually accurate, if somewhat brief.

10. The requested character issue concerning Robert Mann's history of litigation will be specified to a limited extent. We do not believe an inquiry into the matters surrounding Mr. Mann's indictment on felony charges is warranted. Mr. Mann was acquitted after trial and the allegations of fact concerning Mr. Mann's alleged criminal misconduct have not been supported by affidavits of individuals with personal knowledge thereof as required by § 73.3584 of our rules. The Federal Reserve Board's refusal to allow a bank holding company controlled by Mr. Mann to acquire four additional banks rested on grounds unrelated to Mr. Mann's candor or his willingness to comply with rules. The Board's holding is, therefore, unenlightening in evaluating Mr. Mann's character for our purposes. The same holds true of civil judgments rendered against Mr. Mann in his attempts to acquire bank stock.

11. Mr. Mann's alleged involvement in usurious transactions in the State of Texas is relevant to his willingness to obey rules and regulations. The petitions to specify issues against CTB show that there have been a number of law suits alleging that Mr. Mann engaged in usury.[3] The facts in one of these cases, *Vaughn* v. *Mann*;, Case No. 31,157 (District Court Anderson County, Tx.) have been supported by an affidavit of the plaintiff as required by § 73.3584 of the rules. Although this case has been settled without adjudication of the facts, we believe that exploration of the conduct givingh rise to Mr. Vaughn's suit could render information relevant to assessing CTB's comparative qualifications and an appropriate issue will be specified inquiring into this matter.

12. It appears from CTB's cost estimates that it will cost $3,797,872 to construct its proposed station and to operate it for three months. This breaks down as follows:

Broadcast Equipment	$3,510,000
Land and Building	24,000
Legal Costs	10,000
Engineering	4,000
Installation	10,000
Other Miscellaneous	45,000
Operating Costs	194,872

To meet these costs, CTB relies on the following funds totalling $5,851,900:

Partnership Assets	$30,000
First National Bank of Waco Loan (net)	3,400,000
Net Deferred Credit from Equipment Supplier (adjusted to account for 3 monthly payments on equipment)	2,421,900

13. CTB's opponents assert that it is not financially qualified for the following reasons: (a) the letter from the equipment supplier does not provide reasonable assurance of the availability of $2,421,900 in deferred credit; (b) pending litigation could subject Mr. Mann and his children's trusts to over $4,000,000 in liability; (c) it is doubtful that the bank would have committed itself to loan CTB $3,400,000 had it known of the potential liability Mr. Mann and the trusts face in pending litigation; and (d) the high debt to equity ratio of the company raises questions of whether the proposed station could operate beyond its first year.

14. The RCA equipment letter CTB relies upon contains no indication that RCA examined and was satisfied with CTB's financial status prior to writing the letter. Absent such a preliminary credit check, there is no reasonable assurance that deferred credit from RCA will be available to CTB. RA–AD of Soddy, 56 FCC 2d 1055 (Review Board 1975). Accordingly, and issue will be specified inquiring into the availability of $2,421,900 in deferred credit from RCA to CTB.

15. No issue will be specified inquiring into the effect on CTB's financial qualifications of potential liability arising from litigation. In a letter dated November 28, 1978 the president of the First National Bank of Waco stated that the bank was aware of pending litigation involving Mr. Mann and the trusts at the time it indicated its willingness to loan CTB funds to finance the proposed station. Further, Mr. Mann and the trust have already made all capital contributions required of them by the limited partnership agreement.

[3] The facts alleged concerning the usury judgment against the Sabine National Bank of Port Arthur do not reflect adversely on Mr. Mann's character, since nothing indicates that he had any connection with the transaction giving rise to the suit.

16. BCI seeks an issue inquiring into CTB's ability to finance its second year of operation on the grounds that the high debt to equity ratio of CTB's capital structure creates a risk that the proposed station will collapse under the weight of debt service during its second year on the air. *Midwest St. Louis, Inc.*, 65 FCC 2d 673 (1977), *Maranatha, Inc.*, 56 FCC 2d 194 (1974), *Greenfield Broadcasting Corp.*, 32 FCC 2d 135 (1971), *A–C Broadcasters*, 10 FCC 2d 256 (1967), and *Ultravision Broadcasting Co.*, 1 FCC 2d 544 (1965), are cited for the proposition that the presumption that a broadcast station surviving its first year will be financially viable thereafter is significantly diminished where there has been substantial debt deferral and the applicant's capital structure is characterized by a high debt to equity ratio.

17. Recently we issued a public notice [4] announcing the modification of our financial qualifications standard for television applicants. Instead of requiring applicants to demonstrate the financial ability to construct and operate their proposed stations for one year, we now require that applicants have sufficient financial resources to construct the station and then operate for 90 days without broadcast revenue. We believe that permitting inquiries into applicants' financial ability to operate for a period longer than 90 days will tend to undo the balance of competing interests we struck in adopting the 90 day standard. Rules concerning time to construct stations and trafficking in construction permits and licenses provide ample incentive for applicants to avoid financial arrangements which could prevent continued operation of their proposed stations. No issue will be specified against CTB inquiring into its ability to operate its proposed station for more than three months after construction. The cases cited in paragraph 16 arose under the financial standard we recently abandoned and are not controlling in this instance.

18. BCI has submitted a newspaper article in which Robert Mann is quoted as saying CTB's proposed station "would serve the needs of Waco and Central Texas minorities and provide a significant voice for local opinions by these minority groups." BCI alleges that this statement was made prior to completion of CTB's ascertainment and this indicates that Robert Mann predetermined the results of CTB's ascertainment. We believe Mr. Mann's expressed desire to serve the needs of minorities with CTB's proposed station is not probative evidence of a "rigged" ascertainment. BCI has not alleged that CTB failed to interview leaders of significant community groups or that it failed to report accurately the problems and needs discussed in ascertainment interviews. Thus, no ascertainment issue will be specified against CTB.

19. BCI requests that an issue be specified inquiring into the energy efficiency of CTB's technical proposal. BCI's argument is as follows: (a) Section 324 of the Communications Act of 1934, as amended, requires broadcasters to use the minimum amount of power necessary to carry out communications desired; (b) energy conservation is a high national priority expressed in Congress's passage of the National Energy Act of 1978; (c) Section 307(b) of the Communications Act requires consideration of efficiency of broadcast stations; (d) by proposing a five megawatt operation, CTB's signal will reach only 1,215 more people than if it were proposing a 2.5 megawatt operation; and, therefore, (e) an energy efficiency issue should be specified against CTB.

20. BCI's arguments ignore the fact that the requirements of Sections 307(b) and 324 of the Communications Act were taken into consideration when we adopted the Television Table of Assignments and our rules concerning maximum power and antenna height. To hold otherwise is to assume that we acted in violation of the Act in adopting our television channel allocations scheme. Accordingly, since CTB's proposal meets the technical requirements of our rules, no energy issue will be specified against CTB.

Business Communications, Inc.

21. BCI's opponents seek to have issues specified against it inquiring into the following: (a) BCI's character qualifications; (b) financial qualifications; (c) ascertainment effort; (d) compliance with § 73.3514 of the rules; (e) compliance with our cross interest policies; (f) the sufficiency of its equipment proposal; and (g) the availability of its proposed transmitter site.

22. In 1976, Texas Steel Company, BCI's 94 percent shareholder, pleaded *nolo contendree* to a 1973 indictment charging that, between mid-1969 and late 1972, it conspired with other producers of steel reinforcing bars to stabilize the price of steel reinforcing bars in the State of Texas, to restrict bidding on contracts for steel reinforcing bars and to divide markets, and that it attempted to monopolize steel reinforcing bars in the State of Texas. A number of civil actions were filed concerning the conduct which gave rise to the indictment.[5] Further, as a result of a court-approved settlement, Texas Steel paid $18,000 in civil penalties for violations of the Texas Clean Air Act and was enjoined to complete its air pollution abatement program. The conduct underlying these civil and criminal actions forms part of the basis for the request of BCI's opponents that a character issue be specified against BCI. B–P submits one further ground for a character issue against BCI. It asserts that BCI's business of providing ascertainment services to broadcasters is "nothing more than a means of subverting the Commission's ascertainment requirements . . . ."

23. Evaluation of BCI's character involves examination of those portions of its principals' past conduct which are relevant to its ability to operate a broadcast station in the public interest. Violations of federal laws are always considered relevant conduct and are evaluated, in part, in terms of the following factors: (a) whether the conduct was inadvertent or intentional; (b) the duration of the conduct; (c) whether the conduct was an isolated incident or part of a pattern of activity; and (d) the recentness of the conduct. *Violation by Applicants of Laws of U.S.*, 42 FCC 2d 399 (1951). Texas Steel's alleged misconduct in this instance took place over seven years ago. It is the only antitrust incident in Texas Steel's 75-year history. The alleged misconduct did not involve broadcasting and it is the subject of several pending suits. Under these circumstances, we believe Texas Steel's alleged antitrust activities are relevant solely to BCI's comparative qualifications. Accordingly an appropriate issue will be specified inquiring into the activity leading to Texas Steel's *nolo contendere* plea to the criminal antitrust charges.

24. The Texas Clean Air Act violation allegedly committed by Texas Steel does not appear to be conduct relevant to evaluating BCI's prospective conduct as a broadcast licensee. BCI has explained that the violations resulted from technical difficulties in controlling fugitive emissions. The director of the

[4] *New Financial Qualifications Standard for Broadcast Television Applicants*, 45 RR 2d 925 (1979).

[5] The following civil suits were filed: (a) *U.S.* v. *Armco Steel Corp.*, Civil Action No. 73–H–336 (S.D. Tex. filed ————, 1973); (b) *Summit Office Park, Inc.* v. *U.S. Steel Corp.*, Civil Action No. 73–H–1512 (S.D. Tex. filed November 2, 1973); (c) *T & T Builders Co.* v. *Armco Steel Corp.*, Civil Action No. 73–H–1551 (S.D. Tex. filed Noyember 13, 1973); (d) *Texas* v. *U.S. Steel Corp.*, Civil Action No. 74–H–533 (S.D. Tex. filed April 18, 1974); (e) *A&R Construction Co.* v. *Armco Steel Corp.*, Civil Action No. H–79–420 (S.D. Tex. filed ————); and (f) *Texas* v. *U.S. Steel Corp.*, Case No. 279190 (District Court Travis County, Tex. filed ————).

Department of Public Health, City of Fort Worth, Texas, has written a letter confirming Texas Steel's compliance with clean air regulations and commending the company for its efforts to control fugitive emissions. No character issue will be specified against BCI on these grounds.

25. B–P's request for a character inquiry based on BCI's ascertainment consulting business will also be denied. B–P alleges no facts tending to establish its assertion that BCI's ascertainment services are a scheme to subvert our ascertainment process. The BCI brochure attached to the "Petition of Blake-Potash Corporation to Specify Issues Against Business Communications, Inc" only demonstrates that BCI is offering to provide broadcast licensees and applicants assistance in conducting ascertainment surveys. B–P cites no instance in which BCI services have been used to circumvent our ascertainment requirements.

26. Examination of BCI's application reveals that it will cost approximately $3,119,186 to construct BCI's proposed station and operate it for three months. This breaks down as follows:

Broadcast Equipment	$2,741,186
Land and Building	25,000
Legal Costs	50,000
Engineering	5,000
Installation	50,000
Other Miscellaneous	35,000
Operating Costs	213,000

To meet these costs, BCI relies upon the following funds totalling $4,217,500:

Texas Steel Loan (net)	$1,300,000
First National Bank of Fort Worth Loan (net)	2,917,500

27. CTB alleges that BCI's claimed financial cushion is illusory and that the applicant's balance sheet shows it to be heavily in debt. CTB argues further that BCI cannot rely on Texas Steel's credit as a source of funds because pending lawsuits subject Texas Steel to a potential liability of $90,000,000 and because Texas Steel has not supplied a balance sheet as required by Section III, Question 4(b) of the application form.

28. The conclusions CTB draws from BCI's balance sheet do not appear to be warranted. A substantial portion of BCI's indebtedness is to Texas Steel Company and Texas Steel has indicated that it would not require payment of interest or principal on this debt until BCI is capable of making these payments without endangering its operations. CTB has also erred in disallowing $37,000 in BCI trade accounts listed on the balance sheet because they had not been shown to be a liquid asset. Under the instructions for evaluating balance sheets contained in Section III, Question 4(b), FCC Form 301, any current asset is available to offset current liabilities. Only that amount of current assets in excess of current liabilities which is required to meet an applicant's station construction and operation costs need be liquid assets.

29. CTB's arguments concerning Texas Steel's alleged inability to keep its commitments to BCI have been partially explained by BCI. BCI asserts that the bank it is relying upon to finance its construction and operation costs is aware of the lawsuits pending against Texas Steel. BCI also explains that Texas Steel's commitment to pay BCI's loan commitment fee is not grounds for requiring a Texas Steel balance sheet because the fee has already been paid and, therefore, Texas Steel's ability to supply the funds is not in question.

30. Review of BCI's financial proposal indicates that it is relying, in part, on a $1,300,000 loan from Texas Steel to meet its financial qualifications. Texas Steel, however, has not submitted a balance sheet demonstrating its ability to make the loan. Instead, Texas Steel relies on a loan commitment letter in this amount from the First National Bank of Fort Worth. Without a Texas Steel balance sheet, we are unable to determine that the company has sufficient net liquid assets [6] to loan BCI $1,300,000. Thus, an appropriate issue will be specified inquiring into the availability of these funds.

31. CTB seeks to have a site availability issue specified against BCI on the grounds that BCI has not made provisions for sufficient land to guy its proposed tower. BCI's reply to CTB's allegations establishes that BCI has obtained permission to place guy wires and anchors on property adjacent to the proposed transmitter site. Therefore, no site availability issue will be specified.

32. CTB seeks to have an issue specified inquiring into BCI's ability to effectuate its proposal to have standby capacity to broadcast from its transmitter site in the event of a failure at its studio. CTB alleges that BCI's equipment proposal does not contain sufficient equipment to operate the proposed station's main studio and maintain standby capability to broadcast live from its transmitter site.

33. BCI's opposition to the requested equipment issue asserts that CTB's evaluation of the equipment proposal is based on the mistaken assumption that BCI was proposing to install an auxiliary studio at its transmitter site. All BCI intends to do is retain sufficient equipment the transmitter site to allow live operation from the transmitter site with mobile equipment in the event of an emergency. We believe BCI has explained the scope of its proposed standby broadcasting capability and that adequate responses have been made to CTB's factual contentions. The requested issue will not be specified against BCI.

34. CTB requests an issue inquiring into BCI's compliance with § 73.3514 of our rules because: (a) Table II, Section II of BCI's application does not identify the nature of BCI's business interests and (b) BCI has not revealed that the consulting engineer it employs is the chief engineer of Station WTVT(TV) in Fort Worth, Texas. We will not specify this issue. Section II of BCI's application and related exhibits contain a complete and accurate description of BCI's business activities. None of these activities raises a question of potential decisional significance in this proceeding. BCI's omission of information on its consulting engineer is hardly surprising since Section II of the application does not require information on a corporate applicant's employees who are not officers, directors, shareholders, stock subscribers or persons voting three percent of the applicant's stock at its last shareholders' meeting. In any event, it appears from BCI's explanation that the engineer in question was not working for Station WTVT at the time BCI filed its application.

35. CTB alleges that BCI's consulting business creates relationships between BCI and its clients in the State of Texas which are potentially conflicts of interest and which are inherently anticompetitive. CTB suggests that "a large Texas broadcasting organization doing a large volume of business with BCI would be able to influence or indirectly control BCI's operation." No issue will be specified against BCI as a result of these allegations. CTB has not alleged facts which tend to show that BCI controls or is controlled by parties having any other broadcast interests. CTB's request appears to be based solely on speculation.

Blake-Potash Corp.

36. CTB and BCI seek to have issues specified against B–P inquiring into the following areas: (a) compliance with § 73.3514 of our rules; (b) financial qualifications; (c) the availability of its proposed transmitter site; (d) compliance with § 1.65 of our rules; (e) the sufficiency of its ascertainment efforts; and (f) the energy efficiency of its technical proposal.

37. The requested § 73.3514 issue is based upon omissions and errors in

[6] By net liquid assets we mean the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

Sections II and III of B–P's application form. The Section II information submitted for E. Blake Byrne, B–P's president, director and 27.5 percent shareholder, indicates that he is a vice-president in Lin Broadcasting (Lin) but omits information on Mr. Byrne's ownership in Lin and information on the company's broadcast holdings. The information submitted for Warren Potash, B–P's vice president, secretary, chairman of the board of directors and 27.5 percent shareholder, indicates that he is a vice president of Capital Cities Communications, Inc., (Cap Cities) but omits information on Mr. Potash's ownership in Cap Cities and on Cap Cities' broadcast interests. As originally filed, B–P's application also contained inconsistent information concerning the amount (17.3 percent or 19.7 percent) of stock a convertible debenture could be converted into. Alleged omissions in Section III of B–P's application involve failure to account completely for interest and land acquisition costs.

38. No issue will be specified inquiring into B–P's compliance with § 73.3514 of the rules. The B–P application has been amended to correct its original ambiguities and omissions and this complete information does not raise questions of potential decisional significance. Mr. Byrne's and Mr. Potash's present broadcast employment will terminate if B–P's application is granted. Their stock ownership in other broadcasting companies is negligible.[7] The discrepancies in the conversion rights accorded the debenture and the omission of interest costs appear to be simple oversights.[8] CTB's allegation that B–P is omitting land acquisition costs is not established by the documents it relies upon.[9]

39. Objections to B–P's financial qualifications are largely mooted by substantial amendments to Section III of B–P's application made in response to the petitions to specify issues. A number of questions remain, however. When B–P's operating costs are adjusted to provide for three months of operation, the total construction and operation costs to be met by applicant are $4,162,400. This breaks downs as follows:

Broadcast Equipment	$3,633,000
Land and Building	126,000
Legal Costs	75,000
Engineering	15,000
Pre-operating Costs	90,000
Three Months Operating Costs	221,400

To meet these expenses B–P relies upon the following funds totalling $5,837,444:

First National Bank of Waco Loan (net)	$2,512,250
Mercantile Texas Capital Corp. Loan (net)	676,375
Net Deferred Credit From Equipment Supplier (adjusted to account for 3 monthly payments on equipment)	2,499,959
Stock Subscriptions	148,860

40. The RCA equipment letter B–P relies upon to establish the availability of credit from the equipment supplier contains no indication that the applicant has been subjected to a preliminary credit examination and has been found to be an acceptable credit risk by RCA. Absent such as examination, no reasonable assurance exists that credit will be available for the purchase of applicant's equipment. Thus, an appropriate issue will be specified inquiring into this matter.

41. It appears that $99,000 of applicant's costs of preparing and prosecuting its application are to be provided by Mr. Byrne and Mr. Potash. The expenditure of these funds is a condition of the loans from financial institutions upon which B–P relies to meet its financial obligations. The balance sheets submitted for Byrne and Potash do not comply with the requirements of Question 4(b), Section III of the application form in that securities are not properly identified. Even if the balance sheets are taken at face value, they demonstrate the availability of only $65,000 in net liquid assets. An issue will be specified exploring the ability of Mr. Byrne and Mr. Potash to meet the costs of preparing and prosecuting the B–P application.

42. When originally filed, B–P's application specified a transmitter site located on land owned by Mr. F. R. Cromwell, Jr. The basis for B–P's original estimate for the cost of acquiring a transmitter site was an option for the sale of the land signed by Mr. Cromwell and submitted as Attachment 4 to Exhibit 7 of B–P's application. B–P subsequently amended its application to specify a new transmitter site and modified its estimate for land acquisition costs. No basis for the new cost estimate has been provided as required by Question 1(b), Section III, FCC Form 301. An issue inquiring into the reasonableness of B–P's land acquisition cost estimate will be specified.

43. B–P's failure to supply a basis for its revised transmitter site cost estimate is the sole ground upon which CTB requests specification of a site availability issue. CTB has not alleged facts tending to establish that the owner of B–P's proposed transmitter site is unwilling or unable to allow B–P to locate its proposed station's facilities on his land and, therefore, no site availability issue will be specified at this time.

44. The requested § 1.65 issue is based upon B–P's failure to report the filing of *Trent* v. *Bowden,* Case No. 7821753 (District Court, McLennan County, Tex.), a lawsuit which subjects John C. Bowden, applicant's director and 4.8 percent shareholder, to $133,800 in potential liability. B–P argues that Mr. Bowden's financial resources are so great that he could satisfy any judgment rendered against him and still meet his commitment to purchase applicant's stock. The omission of information concerning this lawsuit, B–P concludes, is not of potential decisional significance and no Rule 1.65 issue should be specified.

45. Examination of B–P's application reveals that John Bowden's role in B–P's finances goes well beyond his obligation to purchase 4.8 percent of applicant's common stock. Along with the other B–P shareholders, he is jointly and severally guaranteeing a $2,600,000 loan to B–P from the First National Bank of Waco. This loan is conditioned upon the bank's receiving financial statements from B–P's guarantors which do not reflect appreciable changes in their financial condition prior to funding the loan. The financial statement from Mr. Bowden submitted in B–P's application does not comply with the requirements of Question 4(b), Section III of FCC Form 301 and, therefore, we cannot determine the validity of B–P's argument concerning his financial ability to meet his commitment to B–P and satisfy any judgment which may be rendered against him in the pending lawsuit. We believe a question exists as to whether the filing of this lawsuit is a significant change in applicant's circumstances which should have been reported pursuant to Section 1.65 of the Rules, and, therefore, an appropriate issue will be specified.

46. CTB asserts that an issue should be specified against B–P because its ascertainment lacked sufficient demographic information on religious organizations and organizations for the elderly, youth and women. CTB also claims that an ascertainment issue is appropriate because B–P's programming proposal fails to correlate proposed programs with specific community problems they are to treat.

47. Attachment 3 to Exhibit P–1 of B–P's application contains demographic information classifying Waco's

[7] Mr. Byrnes owns less than .005 percent of Lin's common stock and Mr. Potash owns less than .0005 percent of Cap Cities' common stock.

[8] The documents from which interest and conversion rights can be calculated were submitted in the original B–P application.

[9] The basis of CTB's allegation consists of two letters submitted as Attachments 4 and 5 to Exhibit 7 of B–P's application. The letters apparently constitute an option to purchase a transmitter site which was subsequently abandoned to avoid short-spacing problems.

population by age and sex. Although no demographic information is provided on regligious groups, B–P's application contains community leader interviews with leaders from several religious denominations. CTB has not alleged that B–P has omitted any significant community group from its community leader interviews. Thus, no question has been raised concerning the validity of the data B–P gathered on the problems, interests and needs of Waco and its environs.

48. CTB's assertion that B–P has not correlated its proposed programming with specific community problems to be treated does not square with an examination of Exhibit P–3 of B–P's application. In this exhibit B–P describes a number of programs which will be used to treat community problems and illustrates how these programs will be used to treat specific problems. B–P concludes the exhibit stating ". . . particular attention will be paid to problems of economic development, and community growth, crime, the elderly, recreational development and education." We believe B–P's application demonstrates substantial compliance with our ascertainment requirements and no issue will be specified inquiring into the sufficiency of its ascertainment efforts.

49. BCI's request that an energy issue be specified against B–P is essentially the same as its request for an energy issue against CTB. This issue will not be added.

Heart O'Texas Broadcasting, Inc.

50. HOT's opponents seek to have issues specified inquiring into: (a) financial qualifications; (b) ascertainment efforts; (c) compliance with §§ 1.65 and 73.3514 of the rules; (d) character qualifications; and (e) compliance with our multiple ownership rules and cross interest policy.

51. When HOT's cost estimates are adjusted to account for three months of operating costs, it appears that applicant requires $3,019,518 to establish its financial qualifications. This breaks down as follows:

Broadcast Equipment	$2,445,000
Legal Costs	75,000
Engineering	10,000
Installation	15,000
Other Miscellaneous	120,000
Operating Costs	354,518

To meet these costs it relies on the following funds totalling $4,216,226:

Sale of Stock	$685,613
Firstbank Financial Corporation Loan (net)	2,645,000
Loan From Britain, Turner & Whitley	200,000
Shareholder Debentures	685,613

HOT's opponents challenge its financial qualifications on the following grounds: (a) HOT's construction costs are underestimated; (b) HOT does not have a reasonable assurance of the availability of the bank loan it relies upon; and (c) HOT has not provided information required in Question 4(b), Section III, FCC Form 301 for the parties providing its funds. HOT claims that the December 6, 1978, amendment to its application cures the defects noted by its opponents.

52. We agree with HOT that its December 6, 1978, amendment cures any problems which may have existed concerning the basis and reasonableness of its construction cost estimates. Questions remain, however, as to the availability of the funds HOT relies upon to demonstrate its financial qualifications. Several of the investors committed to purchasing the stock and debentures HOT plans to use to fund its proposed station have failed to submit balance sheets complying with the provisions of Question 4(b), Section III, FCC Form 301.[10] We are, therefore, unable to conclude that these individuals possess the financial ability to meet their commitments to the applicant. When allowance is made for the amounts HOT's investors have shown to be available to meet their commitments, it appears that $534,610 of the $1,371,226 in stock and debentures HOT relies upon can be used to demonstrate its financial qualifications. No financial issue will be specified, however. Applicant's financial plan contains a sufficient "cushion" to demonstrate its financial qualifications without the disallowed funds.

53. The parties opposing HOT contend that its ascertainment efforts are defective in the following respects: (a) the demographics supply no information on certain significant groups in Waco; (b) many individuals included in the community leader survey have no identifiable leadership positions; (c) a number of significant community groups are under-represented or omitted from the community leader survey; and (d) the programs proposed to meet community needs and interests are not properly correlated to ascertained problems.

54. Without conceding the veracity of its opponent's allegations, HOT submits that its amended application contains none of the ascertainment defects alleged in its competitors' pleadings. We agree with HOT that its amendments cure the defects in its ascertainment showing. HOT has supplied information on every group allegedly omitted from its original demographic study. Although many of the individuals included in HOT's community leader survey are still not identifiable as community leaders, a sufficient number of individuals are properly identified to conclude that HOT has interviewed leaders of each significant group in Waco, including leaders of youth, the elderly, local government, women and religious organizations. These groups were allegedly omitted from the original community leader survey. Finally, HOT has submitted a list of four illustrative programs designed to meet community needs. These programs are described and identified by name, time segment, duration, frequency of broadcast and problems to be treated. We find that HOT has met all our ascertainment requirements.

55. BCI alleges that HOT has failed to file complete and accurate information in its application and has failed to keep its application up to date regarding developments of potentially decisional significance. BCI asserts that HOT never disclosed that the twin brother of Boyce Box, HOT's vice president, director and 9.9 percent shareholder, is a party to B–P's application in this proceeding.[11] Further, BCI claims that HOT's stock was voted by proxy on two occasions prior to August 1978 and that in August 1978, HOT filed an amended response to Question 10, Section II of its application indicating that no shares of its stock were voted by proxy at its last shareholders' meeting. Finally, BCI submits that HOT has failed to report a lawsuit alleging unfair competition pending against Jack Britain and Robert Whitley, two of its principals.

56. HOT's response to BCI's allegations is that all omissions and errors in its application were inadvertent; that none is of decisional significance; and that a full explanation of these matters is provided in its amended application. HOT explains that its stock was never voted by proxy at its shareholder meetings. Rather, HOT claims that directors cast their votes at two directors meetings through attorneys in fact. The resolutions adopted at these director meetings were captioned "Unanimous Consent of Directors and Shareholders. . ." because all of HOT's principals are both directors and shareholders. HOT asserts that the undisclosed lawsuit against Mr.

[10] No balance sheet has been provided for Mark Deering, Richard Freeman, Jerry Herring, Barbara Palmer, Gary Radford, John J. Vacca, Jr., or Harry Wood, Jr. The balance sheets submitted for Boyce Box, David C. Murdoch, and Robert Allen Whitley do not show net liquid assets sufficient to meet their proposed commitments to HOT.

[11] Cloyce Box is one of thirty directors of the Mercantile National Bank, the parent corporation of Mercantile Texas Capital Corporation. Mercantile Texas Capital Corporation has a right of conversion which can be exercised for 17.3 percent of B–P's stock.

Britain and Mr. Whitley originates from promises allegedly made in connection with a land sale in which they were not involved. The unfair competition count in the complaint is based upon alleged trade name infringement and HOT claims that the maximum exposure to liability from this suit is not sufficient to impair the ability of Mr. Britain and Mr. Whitley to meet their financial commitment to the applicant.

57. We find that HOT has made a full disclosure of the information originally omitted from its application and that the omission of this information has been adequately explained. The Review Board's decision in *Post-Newsweek Stations, Florida, Inc.*, 49 FCC 2d 92 (1974), controls the situation. "Where violations of the reporting requirements of the Commission's rules and regulations had been unintentional and not so numerous as to indicate a pattern of non-disclosure, and information not reported is of questionable significance, the Board has consistently denied requests for issues predicated on the violations." *Post-Newsweek Stations, supra* at 93–4. No § 73.3514 or § 1.65 issue will be specified.[12]

58. The facts alleged to support the requested misrepresentation issue against HOT were found insufficient to justify a §§ 73.3514 or 1.65 issue in paragraphs 54–56 above. We believe these errors in HOT's application were inadvertent and, therefore, no misrepresentation issue is warranted.

59. On October 22, 1979, Heart O'Texas Broadcasting, Inc., amended its application to show that Robert A. Whitley, HOT's vicepresident, director and 17% shareholder, pleaded guilty October 10, 1979, to a criminal information charging him with three counts of violating the Emergency Petroleum Allocation Act of 1973. As the discussion in paragraph 23, *supra*, indicated, violations of federal law by principals of applicants are considered relevant in evaluating character qualifications, HOT's amendment reporting Mr. Whitley's conviction also revealed that he has been disassociated from any participation in HOT's application. Under these circumstances, we believe it inappropriate to evaluate HOT's basic qualifications to be a commission licensee in light of Mr. Whitley's misconduct. Inasmuch as HOT's comparative status is frozen as of September 18, 1978,[13] however, an issue will be specified inquiring into the effect of Mr. Whitley's misconduct on HOT's comparative qualifications to be a commission licensee.

Comparative Programming Issue

60. HOT and CTB seek to have a comparative programming issue specified in this proceeding. HOT asserts the following in support of its request: (a) its ascertainment reveals that inadequate local news coverage is a major problem in the Temple, Texas area; (b) there is presently a media monopoly in this area; [14] (c) HOT is proposing to establish a permanent fully-staffed news studio in Temple; and (d) this commitment of resources to Temple shows a demonstrably superior devotion to public service warranting specification of a comparative programming issue.

61. CTB seeks a comparative programming issue based upon programming devoted to the WACO area's minority population. It alleges: (a) 28 percent of the pupulation in the WACO area is either Black or Spanish; (b) it has established an advisory board composed of minority leaders from the area to insure that its programming will meet the needs of minorities within the service area; (c) it has proposed to broadcast Spanish-language programs; (d) its opponents, with the exception of BCI, do not propose programs addressing the needs of the minority population; and (e) substantial programming differences exist among the applicants which justify specification of a comparative programming issue.

62. One seeking specification of a comparative programming issue must "indicate the relationship between his own ascertainment of community needs and interests and the reflection of those needs and interests in the substantially greater amount of time, effort and resources proposed to be devoted to certain of the categories of programming. In other words, a proponent of the programming issue should be required to make a *prima facie* showing that there are significant differences in the programming proposed and should relate has claimed substantial superiority in program planning to his ascertainment of community needs." *Chapman Radio and Television Co.*, 7 FCC 2d 213, 215 (1967). We believe that HOT and CTB have failed to meet this burden and therefore, no comparative programming issue will be specified.

63. There appears to be only slight quantitative differences between applicants' programming proposals.[15] HOT is proposing to broadcast less news programming than B–P, one of the applicants to whom HOT claims news superiority. HOT also trails all applicants in proposed amounts of local programming to be broadcast, even though its claimed programming superiority is based on local news coverage. CTB's programming proposal contains less local programming than other applicants, yet its claim of superiority is based upon local programming for minorities. We believe a qualitative review of the programming proposals likewise fails to reveal significant differences. CTB is not the only applicant proposing programs to serve the needs of Waco's minority population. BCI proposes three half-hour programs each week specifically treating the needs of the area's minority and female population. While the quality of HOT's proposed news coverage of the Temple area may be somewhat better than that of its opponents, who will have to cover that area with electronic news gathering equipment instead of having a separate studio, we do not believe that the resources HOT has committed to this project will result in its overall programming proposal being significantly different from that of its opponents.

Conclusion and Order

64. Except as indicated in the issues specified below, we find CTB, BCI, B–P and HOT legally, financially, technically and otherwise qualified to operate as proposed. Since these applications are mutually exclusive we are unable to make the statutory finding that grant of these applications will serve the public interest, convenience and necessity. These applications must, therefore, be designated for hearing in a consolidated proceeding on the issues set out below.

65. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of Central Texas Broadcasting Company, Business Communications, Inc., Blake-Potash

[12] The omission of information concerning Boyce Box's involvement in HOT from B–P's application does not, in our opinion, warrant an issue against B–P either. This information raises no questions of potential decisional significance.

[13] See paragraph 3, *supra*.

[14] Station KCEN–TV, Temple-Waco, Texas, the *Temple Daily Telegram and the Killeen Herald* are all commonly owned.

[15] The following table illustrates quantitative programming differences (Figures are given in hours of programming):

	CTB	BCI	B–P	HOT
News	10.08	10.78	15.03	12.6
Public Affairs	9.25	6.43	2.57	4.35
Other	5	5.42	2.57	6.95
Local	17.25	18.25	17.5	16.5

Corporation and Heart O' Texas Broadcasting, Inc., are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Central Texas Broadcasting Company:

(a) Whether applicant has reasonable assurance of the availability of $2,421,900 in net deferred credit from RCA;

(b) Whether, in light of the evidence adduced pursuant to Issue 1(a) above, applicant is financially qualified to construct and operate as proposed.

(c) To determine whether Robert Mann made a loan to Michael A. Vaughn in violation of Texas' usury laws and, if so, the effect thereof on applicant's comparative qualifications.

2. To determine with respect to Business Communications, Inc.:

(a) Whether Texas Steel Company has sufficient net liquid assets to meet its commitment to lend applicant $1,300,000;

(b) Whether, in light of the evidence adduced pursuant to Issue 2 (a) above, applicant is financially qualified to construct and operate as proposed.

(c) To determine whether between mid-1969 and late 1972 Texas Steel Company conspired to stabilize the price of steel reinforcing bars in the State of Texas, conspired to restrict bidding on contracts for steel reinforcing bars, conspired to divide markets or attempted to monopolize steel reinforcing bars in the State of Texas and, if so, the effect thereof on applicant's comparative qualifications.

3. To determine with respect to Blake-Potash Corporation:

(a) Whether applicant has reasonable assurance of the availability of $2,449,959 in net deferred credit from RCA;

(b) Whether Mr. Byrne and Mr. Potash have sufficient net liquid assets to meet their commitment to provide the funds necessary to prepare and prosecute applicant's application;

(c) Whether a reasonable basis exists for applicant's estimated land acquisition costs;

(d) Whether, in light of the evidence adduced pursuant to Issues 3(a), 3(b), and 3(c) above, applicant is financially qualified to construct and operate as proposed;

(e) Whether applicant's failure to report the filing of a lawsuit against Mr. John Bowden constitutes a violation of Rule 1.65, and if so, the effect thereof on applicant's basic and/or comparative qualifications.

4. To determine with respect to Heart O' Texas Broadcasting, Inc: (a) the effect of Robert Whitley's violation of the Emergency Petroleum Allocation Act of 1973 upon applicant's comparative qualifications.

5. To determine which of the applications would best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

66. It is further ordered, That in the event of a grant of the application of Central Texas Broadcasting Company, Blake-Potash Corporation or Heart O' Texas Broadcasting, Inc., the construction permit shall contain the following condition:

Since applicant's transmitter is not type accepted, type acceptance shall be obtained prior to grant of program test authority.

67. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall within twenty days of mailing of this Order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

68. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing 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.[16]

William J. Tricarico,

Secretary.

Dissenting Statement of Commissioners Joseph R. Fogarty and Anne P. Jones

In Re: Applications of Central Texas Broadcasting Company, Business Communications, Inc., Blake-Potash Corporation, and Hart O' Texas Broadcasting, Inc., for a construction permit for a new television broadcast station on Channel 25, Waco, Texas.

We dissent from the Commission's decision to designate these mutually exclusive applications for hearing because the question of whether character issues should be designated against three of the applicants for alleged violations of law, and if so, how such issues should be resolved, should not be determined until the Commission has more clearly articulated its governing policy and standards.

[16] See attached Dissenting Statement of Commissioners Joseph R. Fogarty and Anne P. Jones.

It is clear to us that the Commission's application of its present *Policy as to Violation by Applicants If Laws of U.S.*, 42 FCC 2d 399 (1951), has been uneven at best and affords applicants and the Commission and our staff less than fully adequate guidance for fair and consistent resolution of these issues. In recognition of these inadequacies, the Commission has directed the staff to develop recommendations for any necessary changes or clarification of Commission policy in this area, and it is anticipated that the Commission will have such recommendations for consideration within two or three months.

We believe that until the Commission receives and acts on such recommendations, it should defer action on these and any other pending applications involving character issues presented by violations or alleged violations of law. In our judgment, this course of action is essential if the Commission is to avoid the procedural and substantive pitfalls inherent in its current *ad hoc* treatment of these issues.

[FR Doc. 79-37512 Filed 12-5-79; 8:45 am]

BILLING CODE 6712-01-M

[BC 23853, BC Docket No. 79-316, File No. BPH-10; 378, et al.]

Radio Laredo, et al.

In re applications of Radio Laredo, Inc. Laredo, Texas (BC Docket No. 79-316, File No. BPH-10, 378), Requests: 98.1 MHz, Channel 251 44 kW (H&V), 570 feet; and Laredo Broadcasting Co., Inc. Laredo, Texas (BC Docket No. 79-317, File No. BPH-10, 752) Requests: 98.1 MHz, Channel 251 96 kW (H&V), 810 feet.

For Construction Permits memorandum opinion and order designating applications for consolidated hearing on stated issues.

Adopted: November 23, 1979.

Released: December 3, 1979.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned applications for construction permit for a new commercial FM broadcast station at Laredo, Texas. These applications are mutually exclusive inasmuch as they propose operation on the same channel in the same community.

2. In their ascertainments of community needs, neither Radio Laredo, Inc. (Radio Laredo) nor Laredo Broadcasting Company, Inc. (LBC) interviewed leaders of any groups organized for the purpose of representing a racial or ethnic minority. However, the Commission notes that Hispanic-Americans, the only protected ethnic group in Laredo, comprise approximately 85 percent of the area's population, and that half of the leaders interviewed by each applicant,

representing a broad span of leadership categories, were Hispanic-Americans. In light of Laredo's unique ethnic composition, we find the applicant's efforts sufficient in this respect. Moreover, examination of both ascertainments indicates that, although minor defects may be present, the applicants have substantially complied with Commission requirements.

3. In section VI (Equal Employment Opportunity) of its application, LBC has failed to include an availability survey for the Laredo workforce. Further, the model promotion policy statement appears to have been marked out on the application form, possibly through inadvertence, with no alternative policy proposed. Accordingly, LBC is directed to amend its application to correct these omissions.

4. Radio Laredo proposes general market programming while LBC proposes predominantly Spanish-language programming and has shown that such programming is not currently available in a substantial amount in Laredo from any domestic station. Further, LBC sets forth an estimate by the Laredo Chamber of Commerce that betwen 35 and 40 percent of the city's substantial Hispanic-American community does not speak English. The relative need for these different types of programming will therefore be considered under the standard comparative issue. See *George E. Cameron, Jr. Communications*, 71 FCC 2d 460, 45 RR 2d 689 (1979).

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater strength, together with the availability of other primary aural services in such areas, will also be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to one of the applicants.

6. Each of the applicants is 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.

7. 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 which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

8. It is further ordered, That the Laredo Broadcasting Company, Inc. shall file the amendment specified in paragraph 3 above with the presiding Administrative Law Judge within 20 days of the release of this Order.

9. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing, and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible, jointly) within the time and in the manner precribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 79-37512 Filed 12-5-79; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

[E-79-21]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in a gas rate proceeding before the Federal Energy Regulatory Commission.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Federal Energy Regulatory Commission involving the application of the Colorado Interstate Gas Company for an increase in its gas rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: November 23, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 79-37439 Filed 12-5-79; 8:45 am]

BILLING CODE 6820-AM-M

[E-79-24]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the South Carolina Public Service Commission involving electric and gas utility rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the South Carolina Public Service Commission involving the application of the South Carolina Gas and Electric Company for increases in its electric and gas rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: November 27, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 79-37440 Filed 12-5-79; 8:45 am]

BILLING CODE 6820-AM-M

[E-79-23]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the New Hampshire Public Utilities Commission involving electric utility rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the New Hampshire Public Utilities Commission involving the application of the Public Service Company of New Hampshire for an increase in its electric utility rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: November 23, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 79-37441 Filed 12-5-79; 8:45 am]

BILLING CODE 6820-AM-M

Information Security Oversight Office

Information Security Procedures for Council of Economic Advisers

AGENCY: Information Security Oversight Office, GSA.

ACTION: Publication of Information Security procedures for Council of Economic Advisers

SUMMARY: Since Executive Order 12065 grants classification authority to the Chairman of the Council of Economic Advisers, it was incumbent on the Council to develop information security procedures consistent with the Executive Order. The procedures that follow were developed by the Council and submitted to the Information Security Oversight Office for approval. These procedures meet with our approval. We believe that the public should be aware of these procedures.

EFFECTIVE DATE: December 1, 1979.

FOR FURTHER INFORMATION CONTACT: Susan J. Irving, Special Assistant to the Chairman, Council of Economic Advisers, Old Executive Office Bldg., 17th and Pennsylvania Ave., NW., Washington, D.C. 2056 (202) 395-5084.

Information Security Procedures for Council of Economic Advisers

Introduction

1.1 *References*

(a) Executive Order 12065, "National Security information," dated June 28, 1978

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated October 2, 1978.

1.2 *Purpose*

The purpose of these procedures is to ensure, consistent with the authorities listed in the Order, that national security information originated and/or held by the Council of Economic Advisers (CEA) is protected but only to the extent, and for such period, as is necessary to safeguard the national security.

1.3 *Applicability*

These procedures govern the Council of Economic Advisers. In consonance with the authorities listed in the Order, it establishes policy and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the Council of Economic Advisers. These procedures supplement the Order and Directive referenced in 1.1 above. Copies of these documents are available in the Special Assistant's Office or the Administrative Office.

Original Classification

1.11 *Basic Policy*

It is the Policy of the Council of Economic Advisers to make available to the public as much information concerning its activities is possible, consistent with its responsibilities to protect the national security.

1.12 *Classification Categories*

The three-level classification system, as prescribed by the Order, is: Top Secret for documents the unauthorized disclosure of which would cause exceptionally grave damage to the national security. Secret for serious damage, the Confidential for identifiable damages. Pursuant to notice published in the **Federal Register** on June 29, 1978, pursuant to Section 1-202 of the Order, the Chairman of CEA has authority for original classification up to the level of Secret.

Only the designations listed above shall be used to identify classifed information. Markings such as "For Official Use Only" and "Limited Official Use" may not be used for that purpose. Terms such as "Conference" or "Agency" may not be used in conjuction with the classification designations prescribed by the Order, such as "Agency Confidential" or "Conference Confidential."

1.13 *Classification Requirements*

Information may not be considered for classification unless it concerns:

(a) Military plans, weapons, or operations;

(b) Foreign government information;

(c) Intelligence activities, sources or methods;

(d) Foreign relations or foreign activities of the United States;

(e) Scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities; or

(g) Other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President pursuant to the Order, or by an agency head.

Even though information is determined to concern one or more of the topics listed above in this section, it may not be classified unless an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

1.14 *Level of Original Classification*

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

1.15 *Classification Authority*

The authority to originally classify information under these procedures will be limited to those officials concerned with matters of national security.

The following officials are granted authority by the Chairman to assign originally the classification of Secret and below to information relating to

national security or foreign relations of the United States:

Council Member (2)
Special Assistant to the Chairman

1.16 *Duration of Classification*

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

Pursuant to Section 1–2 of the Order, the Chairman of CEA has authority to classify information for more than six years from the date of the original classification. This authority will be used only when the Chairman determines that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

(a) The information is "foreign government information" as defined by the authorities in section 1.1 of these procedures;

(b) The information reveals intelligence sources and methods;

(c) The information pertains to communications security;

(d) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;

(e) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;

(f) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security or

(g) The continued protection of the information is specifically required by statute.

A date or event for declassification or review shall be set as early as the national security permits and shall be no more than 20 years after origination, except that for foreign government information the date or event may be up to 30 years after classification.

1.17 *Identification and Markings*

At the time of original classification, the following shall be shown on copies of classified documents:

(a) Identity of classifier;

(b) Date or event for declassification or review; and

(c) One of the classification designations.

The overall classification of a document shall be marked, stamped, or affixed permanently at the top and bottom of the outside of the front cover, if any, on the title page, if any, on the first page, and on the outside of the back cover, if any. Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest overall classification of the document.

Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipting and reference.

Under mandatory portion marking, classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification.

Foreign government information shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection equivalent to that required by the entity that furnished the information.

The identity of the CEA Chairman who authorizes a date for declassification or review for declassification that is more than six years beyond the date of a document's classification shall be shown on the document unless the Chairman is also the signer or approver of the document. Documents shall be annotated with the reason the classification is expected to remain necessary despite the passage of time, under the criteria set forth in section 1.16 of these procedures.

1.18 *Prohibitions*

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

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

Classification may not be used to limit dissemination of information that is not classifiable under the provisions of the Order or to prevent or delay its release to the public.

No document originated on or after the date of the Order may be classified subsequent to a formal/written request for the document unless such classification is consistent with the Order and is authorized by the Chairman of CEA or a deputy. A document originated before the effective date of the Order that is subject to a similar request may not be classified unless it is consistent with the Order and is authorized by the Special Assistant to the Chairman of CEA. Classification authority under this provision shall be exercised on a document-by-document basis.

Classification may not be restored to documents already declassified and released to the public under the current or prior Orders.

1.19 *Challenges to Classification*

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the Special Assistant to the Chairman. Action on such challenges shall be taken 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.

Derivative Classification

1.21 *Definition and Application*

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

Persons who apply such derivative classification markings shall respect original classification decisions and shall verify the information's current level of classification so far as practicable before applying the markings.

1.22 *Identification and Markings*

At the time of origination, copies of derivatively classified documents shall be marked as follows:

(a) Identity of classification guide or source of original classification. If the classification is derived from more than one source, the single phrase "multiple sources" may be shown, provided that identification of each source is maintained with the file or record copy of the document.

(b) Identity of the office originating the derivatively classified document shall be shown on the face of the document.

(c) Dates or events for declassification or review shall be carried forward from the source material or declassification guide. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source materials shall be applied to the new information.

(d) The classification marking provisions in section 1.17 of these procedures, excluding the first and last paragraphs, are also applicable to derivatively classified documents.

1.23 *Classification Guides*

Classification guides issued pursuant to the Order shall be used to direct derivative classification and shall identify the information to be protected in specific and uniform terms so that the information involved can be identified readily

Declassification and Downgrading

1.31 *Declassification Policy.*

Information classified under current and prior Orders shall be declassified as early as national security considerations permit. Decisions shall be based on the loss of the sensitivity of the information with the passage of time or on the occurrence of a declassification event.

If the Director of the Information Security Oversight Office determines that information is classified in violation of the Order, the Director may require the information to be declassified. Any such decision by the Director may be appealed to the National Security Council. The information will remain classified until the appeal is decided or until one year from the date of the Director's decision, whichever occurs first.

In some instances, if the need to protect classified information is outweighed by public interest in disclosure, the information should be declassified. The Chairman or the Special Assistant to the Chairman, or the Member acting as Chairman in the absence of the Chairman, will determine whether the public interest in disclosure outweighs any possible damage to national security.

1.32 *Declassification Authority*

Classified information will be declassified or downgraded by the official who authorized the original classification if that official is still serving in the same position, by a successor, or by a supervisory official of either.

The Chairman, the two Members, and the Special Assistant to the Chairman are authorized to declassify CEA documents.

1.33 *Transferred Information*

For classified information transferred in conjunction with a transfer of functions, the receiving office or agency shall be deemed to be the originating office or agency for all purposes under the Order.

For classified information originated in an office or agency which has ceased to exist, each office or agency in possession shall be deemed to be the originating office or agency for all purposes under the Order. Such information may be declassified or downgraded by the office or agency in possession after consultation with any other office or agency having an interest in the subject matter.

Classified information transferred from CEA to the General Services Administration for accession into the Archives of the United States shall be declassified or downgraded by the Archivist of the United States in accordance with the Order, the directives of the Information Security Oversight Office, and CEA guidelines.

1.34 *Systematic Review for Declassification*

Under CEA Systematic Review Guidelines, classified information constituting permanently valuable records of the Government shall be reviewed for declassification as it becomes twenty years old. Under the order, only the Chairman may extend classification beyond twenty years and this authority may not be delegated. When classification is extended beyond twenty years, a date no more than ten years later shall be set for declassification or for the next review, and that date should be marked on the document. Subsequent reviews for declassification shall be set at no more than ten year intervals. The Director of the Information Security Oversight Office may extend the period between subsequent reviews for specific categories of documents or information.

CEA guidelines shall be authorized for use by the the Archivist of the United States and may, upon approval of CEA, be used by any agency having custody of the information. All information not identified in the guidelines as requiring review and for which a prior automatic declassification has not been established shall be declassified automatically at the end of twenty years from the date of original classification.

Foreign government information shall be exempt from automatic declassification and twenty year systematic review. Unless declassified earlier, such information shall be reviewed for declassification thirty years from its date of origin. Such review shall be in accordance with the provisions of the Order and CEA guidelines.

1.35 *Mandatory Review for Declassification*

Classified information will be subject to a mandatory review in response to any request by a member of the public, by a government employee, or by an agency, to declassify and release information.

In response to a formal/written request for a classified document CEA shall confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would be classifiable under the Order.

(a) *Receipt.* (1) Requests for mandatory review for declassification under the Order must be in writing and should be addressed to:

Special Assistant to the Chairman,
Council of Economic Advisers, Old Executive Office Building,
Washington, DC 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in subsection (b) below.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(b) *Review.* (1) The requestor shall be informed of the CEA determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the CEA Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) *Fees.* (1) Fees for the location and reproduction of information that is the

subject of a mandatory review request shall be assessed according to the following schedule:

a. *Search for records:* $5.00 per hour when search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

b. *Reproduction of documents:* Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can be readily estimated. Instances where the estimated fees will greatly exceed $25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the CEA until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Council of Economic Advisers and mailed to the Old Executive Office Building, Washington, DC 20506.

(4) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(5) The Council of Economic Advisers may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the Council of Economic Advisers or of the general public.

1.36 *Downgrading Policy*

Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders.

Classified information that is not marked for automatic downgrading may be assigned a lower classification designation by the originator or by other authorized officials when such downgrading is appropriate. Notice of downgrading shall be provided to holders of the information to the extent practicable.

1.37 Downgrading Authority.

The following officials are authorized to downgrade CEA documents:

Chairman

Council Member (2)

Special Assistant to the Chairman

1.38 *Identification and Markings*

Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be marked on the document on the cover, or first, page to indicate the change, together with the authority for the action, the date of the action, and the identity of the person taking the action

Safeguarding

1.41 *Restriction on Access*

Access to classified information or material will be granted only to individuals who have an official need for such access, who have met CEA security standards and who have been granted an appropriate security clearance.

Any employee who originates or receives classified material or information will see that appropriate control action is taken.

1.42 *Access by Historical Researchers and Former Presidential Appointees*

Persons engaged in historical research projects or who previously have occupied policy-making positions to which they were appointed by the President may be authorized access to classified information or material provided:

(a) CEA makes a written determination that access is clearly consistent with the interests of national security and takes appropriate steps to ensure that access is limited to specific categories of information over which CEA has classification jurisdiction;

(b) The information or material requested is reasonably accessible; and

(c) The researcher agrees in writing to adequately safeguard the information and to authorize a review of his notes and manuscript for the sole purpose of determining that no classified information is contained therein.

Former Presidential appointees may be authorized access to classified information or material which they originated, reviewed, signed or received while serving as a Presidential appointee. Upon request of any such official, such information and material as he may identify will be reviewed for declassification in accordance with CEA procedures.

Requests to CEA for classified information or material will be directed to the Special Assistant to the Chairman.

1.43 *Reproduction Controls*

CEA shall maintain records to show the number and distribution of all Top Secret documents and of all Secret and accountable Confidential ducuments that are marked with special dissemination or reproduction limitations.

1.44 *Storage of Classified Material*

Classified material must be safeguarded against unauthorized disclosure. All classified material will be locked in approved storage containers when not in use.

Top Secret and Secret material will be stored in GSA approved safes or safe-type steel filing containers with a three-position dial type changeable combination lock.

Confidential material shall be stored at a minimum in a steel filing cabinet equipped with an approved lockbar secured by a changeable three-position combination lock.

Knowledge of the combination to a safe or padlock will be limited to those having a continuing need for it. Combinations will be set and changed under the direction of the Security Officer. Changes to combinations will be made at least annually or upon the departure of an employee who has knowledge of the combination. A safe record card will be affixed to the front of each container used for storage of classified material, and will list the date the combination was last changed and the persons having access.

1.45 *Transmitting or Receiving Classified Material or Documents.*

All Top Secret material received in CEA will be delivered at the earliest opportunity to the Top Secret Control Officer for proper control and accounting in accordance with CEA procedures.

Individual offices in CEA will process and maintain accountability records for each item of Secret and accountable Confidential material received, produced, regraded, transmitted or destroyed.

Secret and Confidential material will always be transmitted in a manner that will prevent disclosure to unauthorized persons—delivery by hand or an approved messenger or courier service. An original and one copy of the necessary control form will be attached to the document and one copy of the form will be retained showing distribution and awaiting return of the signed receipt.

1.46 *Destruction and Disposition*

Non-record classified information that has served its intended purpose shall be

destroyed by the custodian by use of a "burn bag." All staples or other metal fasteners shall be removed from the document; a record shall be made of the document being destroyed, with the indication that the document was consigned to a destruction facility.

Implementation and Review

1.51 *Information Security Oversight Program*

The Special Assistant to the Chairman shall be responsible for acting on all suggestions and complaints concerning the administration of the CEA information security program and shall also be responsible for conducting an active oversight program to ensure effective implementation of the Order by:

(1) Apprising current and new employees of security policy and procedures and of their responsibility for the protection of all classified information.

(2) Conducting periodic reviews to assure compliance with procedures.

(3) Maintaining a list of officers who have been designated in writing to have original classification authority, updated as necessary.

(4) Submitting information and reports as required by the Information Security Oversight Office under the Order.

1.52 *Classification Review Committee*

The Classification Review Committee shall be chaired by the Special Assistant to the Chairman. The Committee shall decide appeals from denials of declassification requests submitted pursuant to the Order. The Committee shall consist of the Special Assistant to the Chairman, the Security Officer, and the Staff Assistant.

1.53 *Administrative Sanctions*

Any violations of the Order or implementing directives shall be reported to the Chairman of CEA by the Information Security Oversight Office for corrective action.

All employees of CEA shall be subject to appropriate administrative sanction—reprimand, suspension without pay, removal, termination of classification authority—if they:

(a) knowingly and willfully classify or continue the classification of information in violation of the Order or any implementing directives, or

(b) knowingly, willfully and without authorization disclose information properly classified under the current or prior Orders or compromise properly classified information through negligence, or

(c) knowingly and willfully violate any other provision of the Order or implementing directive.

The Chairman of CEA shall ensure that appropriate and prompt action is taken if a violation occurs and the Director of the Information Security Oversight Office shall be informed of any such violation.

Any violation of Federal criminal law by a CEA employee shall be reported by the Chairman of CEA to the Attorney General.

Michael T. Blouin,

Director, Information Security Oversight Office.

[FR Doc. 79-37492 Filed 12-5-79; 8:45 am]

BILLING CODE 3120-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

Investigation of Neurobehavioral Methods for Toxicity Assessment and Laboratory Investigations of Effects of Styrene Monomer; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health of the Center for Disease Control and will be open to the public for observation and participation, limited only by the space available:

Investigation of Neurobehavioral Methods for Toxicity Assessment

Date: December 17, 1979.
Time: 12 p.m. to 4 p.m.
Place: Room 117, Robert A. Taft Laboratories, 4676 Columbia Parkway Cincinnati, Ohio 45226.
Purpose: To discuss the details of research protocols concerning laboratory investigations designed to evaluate the use of neurobehavioral methods in toxicity testing.
Additional information may be obtained from: Dr. W. Kent Anger, Division of Biomedical and Behavioral Science National Institute for Occupational Safety and Health, Center for Disease Control, 4676 Columbia Parkway Cinicinnati, Ohio 45226, Telephone: 513/684-8383.

Laboratory Investigations of Effects of Styrene Monomer

Date: January 8, 1980.
Time: 9 a.m. to 4 p.m.
Place: Room B-38, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
Purpose: To discuss the details of a research protocol concerning the carcinogenic and teratogenic effects of styrene monomer on laboratory animals.
Additional information may be obtained from: Mr. Bryan Hardin, Division of Biomedical and Behavioral Science National Institute for Occupational Safety and Health, Center for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: 513/684-8394.

Dated: November 29, 1979.

William C. Watson, Jr.,

Acting Director, Center for Disease Control.

[FR Doc. 79-37517 Filed 12-5-79; 8:45 am]

BILLING CODE 4110-87-M

National Institutes of Health

National Cancer Advisory Board Working Group; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board's Working Group on Board Activities and Agenda, National Cancer Institute, December 19, 1979, Building 31C, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 12:00 noon to adjournment to review the role of the National Cancer Advisory Board. Attendance by the public will be limited to space available.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of Board members, upon request.

Dr. Thomas J. King, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5147) will provide substantive program information.

Dated: November 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79-37452 Filed 12-5-79; 8:45 am]

BILLING CODE 4110-08-M

Workshop on Noninvasive Techniques

Notice is hereby given of the Workshop on Noninvasive Techniques in Assessment of Atherosclerosis in Peripheral, Carotid, and Coronary Arteries of the National Heart, Lung, and Blood Institute, January 16-18, 1980 in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The meeting will be open to the public from 7:30 a.m. to 5:00 p.m. The workshop will involve discussions of needs and methodologies for noninvasive

assessment of atherosclersosis as a means of providing advisory information to the Institute. Attendance by the public will be limited to space available.

Registration forms and substantive information can be obtained from Dr. John Watson, Chief, Devices and Technology Branch, Federal Building, Room 312, phone (301) 496–1586, or Dr. Michael Mock, Chief Cardiac Diseases Branch, Federal Building, Room 3C06, Bethesda, Maryland 20205, phone (301) 496–1081.

For the list of participants and meeting summary contact: Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, NIH, Building 31, Room 4A21, 9000 Rockville Pike, Bethedsda, Maryland 20205.

Dated: November 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 79–37451 Filed 12–5–79; 8:45 am]

BILLING CODE 4110–08–M

Office of the Assistant Secretary for Health

Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds; Internal Procedures: Availability of Federal Funds Notwithstanding Health Systems Agency Disapproval

AGENCY: Public Health Service, HEW.

ACTION: Notice of Internal Procedures.

SUMMARY: This notice sets forth the internal procedures the Department will follow in determining whether to make certain Federal health funds available for a proposed use in a Health Service Area when the Health Systems Agency for that Area has disapproved the proposed use.

EFFECTIVE DATE: These procedures are effective December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Jack Markowitz, Acting Director, Office of Management, Public Health Service, Parklawn Building, Rm. 17–25, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3921.

SUPPLEMENTARY INFORMATION: Section 1513(e) of the Public Health Service Act ("Act") provides that each designated Health Systems Agency ("HSA") must review and approve or disapprove certain proposed uses of Federal funds for the development, expansion, or support of health resources in its Health Service Area. The proposed uses must be in the form of grants, contracts, loans or loan guarantees funded from appropriations under the Public Health Service Act, the Community Mental Health Centers Act, sections 409 and 410 of the Drug Abuse Office and Treatment Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970. Each of these enumerated Acts is administered by agencies within the Public Health Service.

Section 1513(e) also provides that if an HSA disapproves a proposed use of Federal funds under one of the four above enumerated Acts, the Secretary of Health, Education, and Welfare may not make these funds available for the proposed use unless the applicant proposing the use requests the Secretary to review the disapproval decision and the Secretary determines as a result of this review that the funds should be made available notwithstanding the HSA disapproval. In reviewing an HSA disapproval decision, the Secretary is required to consult with the State Health Planning and Development Agency ("SHPDA") of the State in which the HSA is located and to give that SHPDA an opportunity to submit its comments.

The regulations implementing section 1513(e) of the Act (42 CFR Part 122 Subpart E) (44 FR 47064, August 10, 1979) set forth, among other things, the time frame in which the applicant must request the Secretary to review an HSA's disapproval decision as well as the criteria to be used by the Secretary in determining whether to make funds available for a proposed use notwithstanding this disapproval. These regulations do not, however, delineate the internal procedures which the Department will follow in responding to the applicant's request. In an effort to assure that these requests are processed in a uniform manner by those Agencies within the Department responsible for the administration of programs subject to the review and approval or disapproval provisions under section 1513(e), the Assistant Secretary for Health, Department of Health, Education, and Welfare, has adopted the procedures set forth below.

In the interest of processing applications as expeditiously as possible, the Secretary has determined that a review will be initiated in each instance where an applicant has requested the Secretary to review an HSA disapproval decision. This procedure will greatly reduce the amount of time necessary to process the request for review and to determine whether the application will be considered for funding notwithstanding the HSA disapproval.

Although proposed uses funded through contracts are subject to review and approval under section 1513(e) of the Act, the internal procedures listed below are inapplicable to an applicant's request for funding these uses notwithstanding HSA disapproval. The Department has not developed internal policy guidance regarding the form in which proposed contracts will be submitted to the HSAs for review.

The Department invites public comment on the procedures set out in this notice on or before January 7, 1980.

Dated: November 23, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Internal Procedures—Section 1513(e) of the Public Health Service Act ("Act")

42 CFR 122.415(b) provides that any applicant whose proposed use of Federal funds has been disapproved by a Health Systems Agency ("HSA") under section 1513(e) of the Public Health Service Act may request that these funds be made available notwithstanding the disapproval. The regulation further requires that to be effective, this request must be provided or mailed to the appropriate Federal Funding Agency ("FFA") no later than 15 days after the HSA provides notification to the applicant of this HSA decision pursuant to 42 CFR 122.414. The request must be in the form prescribed by the FFA and must be accompanied by a detailed justification for the requested action. The procedures set out below apply to requests relating to proposed uses of funds to be provided through grants, loans, and loan guarantees.

1. In advising applicants (either through application materials or other appropriate mechanisms) of the statutory and program requirements for awarding grants, loans, or loan guarantees which are subject to the provisions of section 1513(e) of the Act, each FFA must fully inform the applicant of the requirements of 42 CFR 122.415 and the methods prescribed by that FFA for meeting those requirements. This notification to the applicant must include the following instructions:

(a) The request for funding notwithstanding HSA disapproval must be (1) addressed to the appropriate review official (who may not delegate the authority to perform such reviews), as follows: The Deputy Assistant Secretary for Health Operations (for all programs funded by the Office of the Assistant Secretary for Health); or to the appropriate Public Health Service Agency Head (for all other centralized and decentralized grant programs); and (2) postmarked no later than 15 days after the postmark date of the HSA

disapproval notification. Applicants must also be advised that failure to submit the request in a timely manner will make their requests ineffective.

(b) The request must be accompanied by a statement justifying approval of the proposed use of Federal funds notwithstanding HSA disapproval, including a detailed response to the HSA reasons for disapproval.

(c) Copies of the request and justification must be sent by the applicant to (1) the HSA which disapproved the proposal; (2) the State Health Planning and Development Agency ("SHPDA") of the State in which the proposed use will be conducted; and (3) for decentralized PHS programs, to the PHS Regional Health Administrator ("RHA") for the Region in which the applicant will administer the proposed project, or, for centralized programs, to the appropriate Bureau or Institute Director. In addition, the applicant must submit a copy or summary of the disapproved application to the appropriate SHPDA. The applicant must also be advised that failure to forward the specified materials to the appropriate entities under this paragraph will result in a delay of its consideration.

For purposes of this paragraph, all correspondence to the review official and to non-Federal entities must be sent via certified or registered mail—return receipt requested, or delivered by hand. If the request is delivered by hand to the review official, the applicant will be provided with a written acknowledgement of its receipt by the review official or his or her authorized representative.

2. Within three (3) working days of the receipt of the applicant's request for funding notwithstanding HSA disapproval, the review official will notify the SHPDA of his/her receipt of the request and ask that the SHPDA submit its comments within 15 calendar days from the postmark date of the review official's notification. The SHPDA should also be advised in this notification that its comments will not be considered if it fails to submit them in a timely manner. The review official will forward copies of this SHPDA notification to the applicant and the HSA.

3. Upon receipt of the SHPDA comments, the appropriate review official will forward a copy of those comments to the HSA and, for centralized PHS programs to the appropriate Bureau or Institute Director, or, for decentralized programs, to the RHA.

4. In determining whether to fund a proposed use notwithstanding HSA disapproval, the review official will consider (1) the criteria in 42 CFR 122.415(d), and (2) any comments received from the SHPDA, Bureau or Institute Director or RHA. This decision will be made by the review official within 60 days following the notification to the SHPDA under paragraph 2 of these procedures.

5. Following his or her review under section 1513(e) of the Act, the review official will notify the applicant, the HSA, the SHPDA, and the appropriate PHS awarding office of his or her decision. The applicant, HSA and SHPDA will be notified via certified or registered mail—return receipt requested, or by hand delivery. If the decision is delivered by hand to any of the entities listed in this paragraph, a written acknowledgment of delivery must be obtained.

6. If he or she determines to make the Federal funds available for the proposed use notwithstanding HSA disapproval, the review official will provide the applicant, the HSA, and the SHPDA a detailed statement of reasons for that decision. For purposes of this paragraph, the review official will use the method of mailing and delivery set forth in paragraph 5 above.

7. Upon receipt of any HSA disapproval, each PHS awarding office shall immediately provide a copy of such disapproval to the Administrator, Health Resources Administration, PHS. In those insances where there has been a request for review of the disapproval, the review official, upon making his/her decision on that request, shall send to the Administrator, Health Resources Administration, PHS, a copy of all documents pertaining to that official's final determination.

8. All documentation regarding the request for funds notwithstanding HSA disapproval will be maintained in the applicant's official file by the appropriate PHS grants management or loan officer.

[FR Doc. 79-37446 Filed 12-5-79; 8:45 am]
BILLING CODE 4110-85-M

Proposed Personnel Instruction to Implement the Federal Employees Part-Time Career Employment Act of 1978

AGENCY: Department of Health, Education, and Welfare.

ACTION: Proposed Personnel Instruction to Implement the Federal Employees Part-Time Career Employment Act of 1978

SUMMARY: The Department of Health, Education, and Welfare (hereafter referred to as HEW) is proposing to issue personnel instructions to implement the Federal Employees Part-Time Career Employment Act of 1978, (Pub. L. 95-437) (hereinafter referred to as the "Act") by establishing a continuing program to expand part-time career employment opportunities within HEW. These instructions apply to all component organizations in HEW.

The Act requires agencies to publish their instructions in proposed form and to provide an opportunity for interested parties to comment. After comments have been received and reviewed, the final instructions will be issued as Chapter 340 of the HEW Personnel Manual which is a part of the Department of Staff Manual System.

DATES: Written comments are invited and will be considered if received by the official named below on or before February 4, 1980. The final instructions will be effective on the date of issuance.

ADDRESS: Robert E. Eaglesome, Director, Division of Personnel Policy, Office of Personnel Policy and Communications, Office of the Assistant Secretary for Personnel Administration, Department of Health, Education, and Welfare, Room 3605, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

For Further Information Contact: Gloria W. Harrod, Phone: 202-472-3860.

Dated: November 21, 1979.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

Part-Time Career Employment Program

340-1-00 Purpose.
10 Definition and References.
20 Policy.
30 Responsibilities.
40 Establishing Part-Time Career Employment Goals.
50 Part-Time Employment Practices.
60 Reporting Requirements.
70 Program Review and Evaluation.

340-1-00 Purpose

A. This Instruction implements the Federal Employees Part-Time Career Employment Act of 1978, by establishing a continuing program in the Department of Health, Education, and Welfare to increase part-time career employment opportunities. The provisions of this Instruction apply only to part-time career employment as defined in 340-1-10 below. The Instruction does not relate to part-time temporary employment nor does it apply to persons who began service on a part-time basis before April 8, 1979.

B. Excluded from the Instruction are positions at GS-16 and above (or equivalent) and part-time positions for which the number of hours of

employment per week were established by a collective bargaining agreement.

340–1–10 Definition and References

A. As used in the Instruction, part-time career employment is regularly scheduled work of from 16 to 32 hours per week performed by individuals who are serving under competitive or excepted appointments in tenure group I or II and who became employed on such part-time basis on or after April 8, 1979. See Office of Personnel Management Regulation 340.210 for a definition of these tenure groups.

B. The provisions of this Instruction supplement must be used with the following: Public Law 95–437; 5 CFR Parts 340 and 890; FPM Bulletin 340–1; FPM Letter 890–22.

340–1–20 Policy

It is the policy of this Department to provide part-time career employment opportunities in positions GS–1 through 15 (or equivalent) to the maximum extent consistent with Department resources and mission requirements. HEW recongizes that part-time career employent is an effective management tool which enhances the ability of managers to accomplish the mission of their organizations, and at the same time may improve employee morale by permitting adjustments in work schedules to meet the needs of individuals. Within the Department, regularly scheduled tours of duty for employees who became employed on a part-time career basis on or after April 8, 1979 will be no less than 16 or more than 32 hours per week. Employees who began service on a part-time basis under a career appointment before April 8, 1979, may continue to serve under the earlier arrangement. If such employee had a tour of duty of less than 32 hours, however, the tour may not be increased beyond 32 hours.

340–1–30 Responsibilities

A. The Assistant Secretary for Personnel Administration provides overall program direction and leadership, establishes Department-wide policies and requirements, and designates a part-time career employment program coordinator to give guidance and assistance to Department components in developing part-time career employment programs, and to maintain liaison with the Office of Personnel Management.

B. Heads of Principal Operating Components, the Assistant Secretary for Management and Budget for the Office of the Secretary, the Assistant Secretary for Education, the Commissioner of Education, the Director, National Institute of Education, and the Director, Office of Child Support Enforcement are responsible for the development of part-time career employment programs for their respective organizations. This includes establishing goals and timetables in accordance with 340–1–40, monitoring progress in expanding career part-time employment opportunities, and assuring that program activities are supportive of other special emphasis programs.

C. Principal Regional Officials are responsible for providing guidance and assistance to regional program managers in expanding career part-time employment opportunities, for overseeing and coordinating part-time program activities and practices within the region, and for assisting Principal Operating Component heads in monitoring results.

340–1–40 Establishing Part-Time Career Employment Goals

A. The officials identified in 340–1–30B. are responsible for establishing for their respective organizations annual nationwide goals for increasing part-time career employment opportunities and a timetable setting forth periodic milestones for achieving such goals. Personnel and budget offices will assist managers in determining feasible goals and timetables. The ability to expand part-time employment opportunities will be influenced by such factors as:

1. POC mission and occupational mix; 2. workload fluctuations and overtime usage; 3. size of work force, turnover rate, and employment trends; 4. geographic dispersion; 5. employee and applicant interest in and availability for part-time employment; 6. potential for improving service to the public; 7. plans for affirmative action; and 8. personnel ceiling allowances and fiscal constraints.

B. Goals for FY 1980 must be established by December 1, 1979. Goals and timetables for FY 1981 and subsequent years should be established by the beginning of each fiscal year and reported to the Assistant Secretary for Personnel Administration by November 1 of each year.

340–1–50 Part-Time Employment Practices

A. *Identifying Positions for Part-Time Employment.*

1. Personnel officers in cooperation with management officials must assure that a periodic review is made to identify individual positions or categories of positions which, if they become vacant, could be filled on a part-time career basis.

2. The criteria for determining the feasibility for part-time occupancy of a position include: 1. mission and workload requirements; 2. adaptability of the work to part-time coverage; 3. applicant or employee availability; and 4. affirmative action goals.

B. *Establishing Part-Time Career Positions.*

1. Operating components shall develop procedures and criteria for establishing or converting positions for part-time career employment. Some employees may find it necessary or desirable for personal reasons to work on a part-time basis, and a plan for considering such requests should be included in each component's part-time employment program. Also, many applicants for various reasons are able to work only on a part-time basis, and the feasibility of establishing or converting positions to accommodate these needs should be carefully considered.

2. In deciding whether to establish a new part-time position or to convert an existing position to part-time the request of the employee or applicant must be weighed against management's needs.

C. *Notifying the Public of Part-Time Vacancies.*

Operating Components shall develop procedures for notifying the public of vacant part-time positions. Generally, this will be done through vacancy announcements. As appropriate, vacancy listings, recruiting bulletins, or Federal job information announcements may also be used. In some cases it will be desirable to publicize part-time opportunities by contacting schools and colleges, through professional journals or associations, or by contacting organizations having members who may want to work on a part-time basis.

340–1–60 Reporting Requirements

A. *Office of Personnel Management Reporting Requirements.*

The Department is required to report twice each year to the Office of Personnel Management on progress in meeting part-time career employment goals together with an explanation of impediments experienced in meeting such goals and measures taken to overcome them. These reports will be based on data as of March 31 and September 30 each year, and they must be sent to the Office of Personnel Management by May 15 and November 15 respectively. The report to the Office of Personnel Management will be made by the Assistant Secretary for Personnel Administration, or his designee, and will be based on information provided by the operating components.

B. *HEW Reporting Requirements.*

1. Officials identified in 340–1–30B will send to the Assistant Secretary for Personnel Administration by May 1 and November 1 of each year a statistical and narrative report showing for their respective organizations the following:

a. Goals and timetables that were established.

b. Progress toward meeting the goals.

c. To the extent practicable, information about the extent to which part-time career employment opportunities were extended during the period covered by the report to older individuals, handicapped individuals or others who require a reduced workweek, persons with family responsibilities, or students.

d. An explanation of any impediments in meeting goals or in otherwise carrying out the provisions of this Instruction, together with a statement of the measures taken to overcome such impediments.

2. A Part-Time Career Employment Report will be prepared by the Employee Systems Center/OASPER on a quarterly basis and sent to operating components for use in monitoring progress.

340–1–70 Program Review and Evaluation

Review and evaluation of the part-time career employment program will be included in the periodic personnel management evaluations conducted by the Office of the Assistant Secretary for Personnel Administration. Evaluation will be based on evidence of such factors as (1) review of positions to identify functions suitable for part-time career work (2) issuance of internal policy statements and publications in support of part-time career employment (3) recruitment efforts made to employ part-time workers (4) increase in part-time career employment through conversions from full-time to part-time (5) increase in part-time career employment through new hires and (6) degree of achievement of affirmative action goals through part-time career employment.

[FR Doc. 37487 Filed 12–5–79; 8:45 am]
BILLING CODE 4110–12–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Juan Basin Regional Uranium Study; Second Draft

November 28, 1979.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Availability of the Second Draft of the San Juan Basin Regional Uranium Study.

SUMMARY: The Department of the Interior has prepared a second draft of a regional study of the potential environmental and socio-economic impacts of projected uranium development in northwest New Mexico through the year 2000, and requests comments from governmental agencies and the public.

DATE: Written comments on the study from governmental agencies and interested citizens will be accepted until January 4, 1980.

ADDRESS: Comments should be sent to the Project Leader, San Juan Basin Regional Uranium Study, P.O. Box 1590, Albuquerque, New Mexico 87103. Comments will be available for public review at the San Juan Basin Regional Uranium Study office during regular business hours, 8 a.m. to 4:30 p.m. on regular work days.

SUPPLEMENTARY INFORMATION: The Department of the Interior has prepared a second draft of the San Juan Basin Regional Uranium Study to address the potential environmental and socio-economic impacts in the San Juan Basin Region of projected uranium mining and milling from now through the year 2000. The regional study is intended to provide an overview of environmental and socio-economic issues that are involved in projected uranium development in the region. It is not an environmental impact statement such as described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The report and accompanying technical working papers do, however, provide information and analysis that may be utilized in connection with the preparation of environmental impact statements in the future.

All written comments submitted to the Department of the Interior by federal, state, and local agencies, and interested members of the public, will be reviewed and considered. If, upon consideration, changes in the text of the draft study are deemed necessary or desirable, such changes will be made prior to publication of the final study.

Public meetings will be held by the Department in the San Juan Basin area to obtain the views of interested parties regarding matters addressed in the draft study. Dates and locations for these meetings have not yet been selected.

Copies of the draft study are available for inspection at the following locations: Project Office, 123 4th St., S.W., Albuquerque, New Mexico; Office of the Assistant Secretary—Energy and Minerals, Washington, D.C.; University of New Mexico Library, Albuquerque, New Mexico; Albuquerque City Library, Albuquerque, New Mexico. Copies may also be requested by mail from the following location: San Juan Basin Regional Uranium Study, P.O. Box 1590, Albuquerque, New Mexico 87103. Telephone (505) 766–3325.

Forrest J. Gerard,

Assistant Secretary—Indian Affairs.

[FR Doc. 79–37501 Filed 12–5–79; 8:45 am]
BILLING CODE 4310–02–M

Availability of Results of the Application of Coal Unsuitability Criteria in the Alton, Kaiparowits, and Eastern Kolob Fields, Utah

As part of the comprehensive land use plans for the Excalante, Paria and Zion Planning units, the criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining (coal unsuitability criteria) and exceptions have been applied for coal lands under the jurisdiction of the Cedar District, Bureau of Land Management. A notice of intent to apply this criteria and a request for data was published in the **Federal Register** on August 9, 1979. A notice of a meeting for public input and comment was published in the **Federal Register** on September 24, 1979. A meeting was held on October 17, 1979 at the Bureau of Land Management Area Office, Kanab, Utah.

Data used to apply the criteria and exceptions were provided by State and Federal agencies and BLM inventories. There is insufficient data at this time to determine the existence or nonexistent of alluvial valley floors and special (100 year) floodplains. The data to make these assessments will be generated by September 30, 1980. This application of coal unsuitability criteria does not constitute formal designation under CFR Part 769.

A Management Framework Plan Supplement with the results of the application of each of the unsuitability criteria based on the data compiled to date and maps displaying the criteria will be available, upon request, after January 1, 1980 from: District Manager, BLM Cedar City District Office, P.O. Box 724, Cedar City, Utah 84720.

In addition to coal unsuitability criteria, the supplement also addresses multiple use planning decisions involving coal, conditions or stipulations which may be imposed on future coal leases in certain areas, landowner

consent information, and a review of public participation.

J. Kent Giles,

Acting District Manager.

[FR Doc. 79-37526 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

Caballo Mountain Communications Site Access Road; Proposed Closure

November 23, 1979.

AGENCY: Department of the Interior.

ACTION: Notice of Proposed Road Closure.

SUMMARY: Notice is hereby given that the Bureau of Land Management proposes to close the Caballo Mountain Communications Site access road in accordance with the provisions of 43 CFT Subpart 8364—Closures and Section 505 of the Federal Land Policy and Management Act of 1976—Public Law 94-579, Title V—Rights-of-Way. The proposed closure is to promote public safety and to prevent vandalism to the radio site by controlling public access. This proposed closure does not apply to authorized users, to use by hunters during big game hunting seasons as published annually by the New Mexico Department of Game and Fish, or to Federal, State or governmental agencies during law enforcement or emergency operations. On request, a permit may be obtained by anyone wishing to use this road at the Bureau of Land Management, District Office, 1705 North Valley drive, Las Cruces, New Mexico 88001. Any person who knowingly and willfully violates this closure order shall be fined not more than $1,000 or imprisoned not more than 12 months, or both.

The area of closure is the road contained within T. 15 S, R. 4W., Section 26, NE¼SW¼NW¼. For exact location of the proposed closure, see maps at the Las Cruces District Office.

DATES: Publication of this notice initiates a 90-day comment period. This public comment periods ends March 5, 1980.

ADDRESSES: Send comments to: Daniel C. B. Rathbun, District Manager, Bureau of Land Management, 1705 North Valley Drive, P.O. Box 1420, Las Cruces, New Mexico.

FOR FURTHER INFORMATION CONTACT: John E. Provine at the above address or call 505-523-5571.

Daniel C. B. Rathbun,

District Manager, Las Cruces District Office.

[FR Doc. 79-37525 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[ES 15502]

Minnesota and Wisconsin; Republication of Notice of Proposed Withdrawal and Transfer of Jurisdiction of Lands

The U.S. Department of the Interior, National Park Service, on February 4, 1977, filed application, Serial No. ES 15502, for the withdrawal of the following described lands from settlement, sale, location, or entry, under all of the general land laws, including the mining and mineral leasing laws, for transfer to the National Park Service, subject to valid existing rights:

Fourth Principal Meridian

T. 30 N., R. 19 W.,
Sec. 6, Unsurveyed island in W½W½, Wisconsin.
T. 30 N., R. 20 W.,
Sec. 1, Lots 7, 8 and 16 in Minnesota, Lots 17 and 18 in Wisconsin.
Sec. 11, Lots 5 and 8 in Minnesota, Lots 6 and 7 in Wisconsin.
Sec. 12, Lots 7, 9 and 10 in Minnesota, Lot 6 in Wisconsin.
Sec. 14, Lots 8 and 9 in Minnesota, Lot 10 in Wisconsin.
T. 31 N., R. 19 W.,
Sec. 6, Unsurveyed island in E½SW¼, Minnesota.
Sec. 7, Unsurveyed island in W½, Minnesota.
T. 32 N., R. 19 W.,
Sec. 5, Unsurveyed island in NE¼NW¼, Minnesota, National Park Service Tract 05-101; Unsurveyed island in NW¼NW¼, Minnesota, National Park Service Tract 05-102.
Sec. 31, Unsurveyed island in NE¼NE¼, Minnesota.
T. 33 N., R. 19 W.,
Sec. 27, Unsurveyed island in NW¼, Minnesota, National Park Service Tract 04-101.
Sec. 28, Unsurveyed island in S½, Minnesota, National Park Service Tract 04-105.
T. 34 N., R. 19 W.,
Sec. 36, Unsurveyed island in N½N½, Minnesota, National Park Service Tract 01-101; Unsurveyed island in NW¼SW¼, Minnesota, National Park Service Tract 01-102.

The area contains approximately 82.83 acres in the aggregate.

These lands will become part of the Lower St. Croix National Scenic Riverway and will be administered in accordance with applicable laws and regulations for National Park Lands.

This action is requested in accordance with section 10(c) of the Wild and Scenic Rivers Act of October 2, 1968, 82 Stat. 916, 16 U.S.C. 1281(c), the Lower Saint Croix River Act of 1972, 86 Stat. 1174, as amended, and Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714, for the purpose of administration and preservation of the Lower Saint Croix National Scenic Riverway.

Until (40 days from the date of publication) all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the Director, Eastern States, Bureau of Land Management, 350 South Pickett St., Alexandria, VA 22304, on or before January 14, 1980. Notice of the public hearing will be published in the Federal Register giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16 B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the Federal Register. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October

20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the Director, Eastern States, Bureau of Land Management, Department of the Interior, 350 South Pickett Street, Alexandria, Virginia 22304.

Lowell J. Udy,

Director, Eastern States.

[FR Doc. 79-37549 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38881]

New Mexico; Application

November 28, 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), Gas Company of New Mexico has applied for one 6-inch natural gas pipeline and related facilities right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 18 S., R. 31 E.,
Sec. 35, SE¼NW¼ and E½SW¼.

This pipeline will convey natural gas across .545 of a mile of public land in Lea 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.

Consuelo M. Richardson,

Acting Chief, Lands Section.

[FR Doc. 79-37518 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38998]

New Mexico; Application

November 30, 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), Texas Oil and Gas Corporation has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 16 S., R. 27 E.,
Sec. 33, N½N½;
Sec. 34, N½N½;
Sec. 35, NW¼NW¼.

This pipeline will convey natural gas across 2.253 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.

Consuelo M. Richardson,

Acting Chief, Lands Section.

[FR Doc. 79-37519 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38972]

New Mexico; Application

November 30, 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), Southern Union Gathering Company has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 31 N., R. 12 W.,
Sec. 11, lots 3, 4 and 5.

This pipeline will convey natural gas across .400 of a mile of public land in San Juan 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 6770, Albuquerque, New Mexico 87107.

Consuelo M. Richardson,

Acting Chief, Lands Section.

[FR Doc. 79-37520 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38974, 38975, 38996 and 39179]

New Mexico; Applications

November 30, 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), El Paso Natural Gas Company has applied for four 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 5 W.,
Sec. 26, N½SW¼ and W½SE¼;
Sec. 35, W½NE¼, SE¼NW¼ and E½SW¼.
T. 27 N., R. 8 W.,
Sec. 23, S½NW¼;
Sec. 25, SW¼SE¼;
Sec. 26, NE¼SE¼.

These pipelines will convey natural gas across 1.711 miles of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly sent their name and address to the District Manager, Bureau of Land Management, P.O Box 6770, Albuquerque, New Mexico 87107.

Consuelo M. Richardson,

Acting Chief, Lands Section.

[FR Doc. 79-37521 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38973]

New Mexico; Application

November 28, 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), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 10 W.,
Sec. 14, lot 10;
Sec. 23, E½NW¼.

This pipeline will convey natural gas across .529 of a mile of public land in San Juan 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 6770, Albuquerque, New Mexico 87107.

Consuelo M. Richardson,

Acting Chief, Lands Section.

[FR Doc. 79-37522 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 38976, 38977 and 39178]

New Mexico; Applications

November 30, 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), El Paso Natural Gas Company has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 31 N., R. 11 W.,
Sec. 30, NE¼NW¼.
T. 31 N., R. 12 W.,
Sec. 7, NE¼SE¼.
T. 29 N., R. 13 W.,
Sec. 33, N½SW¼.

These pipelines will convey natural gas across .671 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Consuelo M. Richardson,

Acting Chief, Lands Section.

[FR Doc. 79-37523 Filed 12-5-79; 8:45 am]

BILLINC CODE 4310-84-M

[NM 38906 and 38907]

New Mexico; Applications

November 28, 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). El Paso Natural Gas Company has applied for four 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 22 S., R. 25 E.,
Sec. 19, W½SE¼ and SE¼SE¼;
Sec. 30, E½E½ and SW¼SE¼;
Sec. 31, W½NE¼, E½SW¼ and NW¼SE¼.
T. 18 S., R. 30 E.,
Sec. 33, SW¼SE¼.
T. 19 S., R. 30 E.,
Sec. 4, lots 2, 3, SE¼NW¼ and E½SW¼;
Sec. 9, E½W½.

These pipelines will convey natural gas across 4.912 miles of public lands 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 applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Consuelo M. Richardson,

Acting Chief, Land Section.

[FR Doc. 79-37524 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

[W-69517]

Wyoming; Application

November 27, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Burton/Hawks, Inc., of Casper, Wyoming filed an amendment to their pending application for a right-of-way to include construction of a 70' x 150' compressor plant site and related facilities for the purpose of processing natural gas and will affect the following described public lands:

Sixth Principal Meridian, Wyoming

T. 27 N., R. 93 W.,
Sec. 26, NW¼NE¼.

The proposed compressor plant site and related facilities to be located at a point adjacent to Burton/Hawks, Inc.'s proposed 4" buried pipeline in the NW¼NE¼ of section 26 is an additional facility to be used for processing natural gas transported from a well located in the SE¼SW¼ of section 25, all within T. 27 N., R. 93 W., Fremont County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-37527 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

Area Managers, Coeur D'Alene District; Idaho; Redelegation of Authority

In accordance with Bureau Order No. 701 of July 23, 1964 (FR Doc. 64-7492; 29 FR 10526), as amended, the Area Managers of the Emerald Empire and Cottonwood Resource Area of the Coeur d'Alene District, Idaho, are authorized to perform in their respective areas of responsibility, in accordance with existing policies and regulations of this Department and under the direct supervision of the District Manager, the functions listed below, subject to the limitations set forth in Bureau Order No. 701, as amended, together with any limitations specified below.

Section 3.2—General and Miscellaneous Matters. On matters in which he/she is authorized to act, the Area Manager may take all action on:

(b) Cancellations or surrender of contracts, leases and permits. Make partial or complete cancellation or accept surrenders of contracts, leases and permits.

Section 3.3—Fiscal Affairs. On matters in which he/she is authorized to act, the Area Manager may take action on:

(a) Bonds and Forfeitures.

(1) Take all actions on bonds required in connection with matters pertaining to the lands or the resources thereof under his/her jurisdiction.

(2) Expend funds made available as a result of the forfeiture of a bond or deposit by a timber purchaser or permittee or of a compromise under the Public Land Administration Act (43 U.S.C. 1381).

(d) Trespass. Determine liability for trespass on the public lands when actual damages do not exceed $5,000. Accept payment in full irrespective of amount. Dispose of resources recovered in trespass cases for not less than the appraised value thereof.

Section 3.6—Mineral. The Area Manager may take all actions on:

(m) Oil and gas exploration operations. All actions on oil and gas exploration matters pursuant to 43 CFR Subpart 3045.

(n) Geothermal Resource Leases. Take all actions involving geothermal resource exploration operations as

provided in 43 CFR 3203.6 and Subpart 3209.

Section 3.7—Range Management. The Area Manager may take all listed actions on:

(b) Grazing leases.

(1) Grazing leases of public lands, under Section 15 of the Act of June 28, 1934, as amended (43 U.S.C. 315m), and the permits or cooperative agreements to construct and maintain improvements on lands so leased, and to determine the value of such improvements.

(2) Refunds pursuant to 43 CFR 4130.5–2(a).

(3) The expenditure of funds appropriated by Congress, or contributed by individuals, associations, advisory boards, or others for the construction, purchase, or maintenance of range improvements.

(c) Appropriation of Water. Applications under State laws to appropriate water on lands under the administration of the Bureau of Land Management where required in connection with BLM projects for the development, control, or utilization of water.

(d) Soil and Moisture.

(1) Soil and moisture conservation on the public lands, pursuant to the National Soil Conservation Act of April 27, 1935 (16 U.S.C. 590a et seq.).

(f) Protection and management of wild free-roaming horses and burros, except authorizations to capture and remove excess animals.

Section 3.8—Forest Management. The Area Manager may take all the actions on:

(a) Disposition of forest products sales of timber up to 1,000,000 board feet.

Section 3.9—Land Use. The Area Manager may take all the listed action on:

(g) Material other than forest products not exceeding $2,000 unless authority to make sales in greater amounts is delegated to the District Manager.

(m) Grant rights-of-way over public and acquired land pursuant to 43 CFR Subpart 2811.

(o) Temporary Use Permits.

(3) Issue temporary land-use permits for lands outside established grazing and forest districts when specifically authorized by the District Manager.

Section 3.10—Designation of Acting Officials:

(a) Area Managers may, by written order, designate any qualified employee of the Resource Area to perform the functions of the Area Manager in his/her absence.

(b) Each employee who serves in such capacity (a) above, shall prepare a memorandum to be kept in the District Office showing the date and hour of the commencement and termination of each period of his/her service in that capacity.

This delegation supersedes all previous Bureau Order No. 701 redelegations to Area Managers by the District Manager, Coeur d'Alene, Idaho.

This redelegation will be effective December 6, 1979.

Martin J. Zimmer,

District Manager.

Approved: December 6, 1979.

Robert O. Buffington,

State Director.

[FR Doc. 79-37443 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Beaufort Sea Oil and Gas Lease Sale; Notice to Bidders

AGENCY: Geological Survey.

ACTION: Notice to bidders at proposed Beaufort Sea oil and gas lease sale.

SUMMARY: By **Federal Register** Notice of September 14, 1979, Vol. 44, No. 180, revised rules concerning oil and gas exploration, development, and production activities on the Outer Continental Shelf (OCS) found in 30 CFR 250.34 were published. Section 250.34–1(a)(1) provides that "No exploration activities, except for preliminary activities, may be commenced or conducted on any leased area except in accordance with an exploration plan approved by the director. [For] the purposes of this section, preliminary activities are geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan. Such preliminary activities are those which do not result in any physical penetration of the seabed of greater than 300 feet of unconsolidated formations, or 50 feet of consolidated formations, and which do not result in any significant adverse impact on the natural resources of the OCS."

In order to provide an opportunity to review the potential for adverse impacts on the natural resources from preliminary activities in the area of the proposed Beaufort Sea oil and gas lease sale which was advertised by **Federal Register** Notice of November 7, 1979, Vol. 44, No. 217, lessees will be required to notify the Area Oil and Gas Supervisor prior to conducting geological, geophysical, and other surveys on their leases. Similar activities not conducted on leases owned or operated by the proponent of such activities will continue to be covered by the provisions found in 30 CFR 251.

FOR FURTHER INFORMATION: Richard B. Krahl, Chief, Branch of Marine Oil and Gas Operations, Conservation Division, Mail Stop 640, U.S. Geological Survey, National Center, Reston, Virginia 22092.

Don E. Kash,

Chief, Conservation Division.

[FR Doc. 79-37516 Filed 12-5-79; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining and Reclamation

[Federal Lease No. 1420-0252-4088]

Availability for Public Review of Proposed Major Modification to the Absaloka Mine

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Availability for Public Review of Proposed Major Modification to a Coal Mining and Reclamation Plan.

SUMMARY: Pursuant to § 211.5 of Title 30 and § 1500.2 of Title 40, Code of Federal Regulations, notice is given that the Office of Surface Mining has received a major modification to an existing mining and reclamation plan. The proposed modification is described below:

Location of Lands To Be Affected by Modification

Applicant: Westmoreland Resources, Inc.

Mine Name: Absaloka.

State: Montana.

County: Big Horn, Crow Indian Ceded Area.

Township, Range, Section: T. 1N, R 38 E.: 30; T. 1N, R 37 E.: 24, 25.

Office of Surface Mining Reference Number: MT–0007.

The mine is located approximately 26 miles east of Hardin, Montana, and immediately north of the Crow Indian Reservation. The proposed modification involves mining and associated disturbance on 625 acres of the total lease area of 14,746 acres in Tract III. The mine is proposed to continue as a multiple (two) seam, dragline operation removing Indian-owned coal. The coal is shipped, via railroad, to power stations in the Midwest. The proposed modification would allow the company to continue mining at the current rate of production of 5 million tons per year through 1984. The proposed modification would extend mining activities northward and eastward from the presently mined area. The multiple seam operation would include the extraction of coal from two primary seams, the Rosebud-McKay and Robinson seams. The area scheduled for mining under the

proposed modification is within the boundaries of the 20-year mine plan which was approved by the Department on August 15, 1977. However, the proposed modification would involve a number of changes in the approved 20-year mine plan.

The Absaloka Mine was the subject of site-specific analyses of impacts, mitigation measures, and alternatives in two Environmental Impact Statements. Final Environmental Impact Statement (74–8) was issued by the Bureau of Indian Affairs in 1974, and another Final Environmental Impact Statement (77–17), which addressed the 20-year mining plan approval, was issued by the U.S. Geological Survey on May 31, 1977.

This notice is issued at this time for the convenience of the public. The Office of Surface Mining has not yet determined whether the proposed modification is technically adequate. It is possible that the Office of Surface Mining will request additional information from the company during the forthcoming technical review. Any further information so obtained would also be available for public review.

No action with respect to approval of the proposed coal mining and reclamation plan shall be taken by the Regional Director for a period of 30 days after publication of this Notice of Availability in the **Federal Register** (January 7, 1980). Prior to taking any action on this proposed amendment, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to § 211.5(c)(2) of Title 30, Code of Federal Regulations.

The mine plan modification submitted by Westmoreland Resources, Inc. for the Absaloka Mine is available for public review during normal working hours in the Library, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado. Comments on the proposed modification may be submitted during the 30 days after publication of this notice to the Regional Director, Office of Surface Mining, at the same address.

FOR FURTHER INFORMATION CONTACT: Dan Kimball or John Hardaway, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Federal Coal Lease No. 1420–0252–4088

Donald A. Crane,

Regional Director.

[FR Doc. 79–37528 Filed 12–5–79; 8:45 am]

BILLING CODE 4310–05–M

[Federal Lease No. D–034365]

Availability for Public Review of Proposed Major Modification to the Colowyo Coal Mine ("Wilson Loadout")

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Availability for Public Review of Proposed Major Modification to a Coal Mining and Reclamation Plan.

SUMMARY: Pursuant to § 211.5 of Title 30 and § 1500.2 of Title 40, Code of Federal Regulations, notice is given that the Office of Surface Mining has received a major modification to an existing mining and reclamation plan. The proposed modification is described below:

Location of Lands to be Affected by Modification

Applicant: Colowyo Coal Company.

Mine Name: Colowyo.

State: Colorado.

County: Moffat.

Township, Range, Section: T. 6N, R. 91W: 30 and 29.

Office of Surface Mining Reference No.: CO–0015.

This proposal is for a temporary coal loadout facility "Wilson Loadout" approximately 8 miles southwest of Craig, Colorado and 15 miles northeast of the Colowyo surface coal mine beside State Highway 13 which connects Craig and Meeker, Colorado. Coal has been hauled via 30 ton trucks to this location from the mine, stockpiled, and loaded into railroad cars for shipment. Previous to use of this railroad loadout, coal was trucked from the mine to the rail yard at Craig. Subsequent to use of this temporary loadout facility, coal will be (and is presently) loaded into railroad cars at the mine site. The applicant is proposing to retain a portion of the temporary loadout facility for emergency use in the event of breakdowns at the mine loadout, and to initiate reclamation on the remainder of the area. The total disturbed area is about 14.6 acres.

The proposal was submitted in response to a Notice of Violation issued by the Office of Surface Mining on July 17, 1979.

Coal has been stockpiled at the facility in open piles and loaded into railroad cars with a front end loader and, if the site were reactivated it would be operated in the same manner. The railroad line was constructed for a nearby mine (Empire Energy-Eagle Mines) prior to construction of this temporary loadout facility and would remain for use by that operation.

This notice is issued at this time for the convenience of the public. The Office of Surface Mining has not yet determined whether the proposed modification is technically adequate. It is possible that OSM will request additional information from the company during the forthcoming technical review. Any further information so obtained would also be available for public review.

No action with respect to approval of the proposed coal mining and reclamation plan shall be taken by the Regional Director for a period of 30 days after publication of this Notice of Availability in the **Federal Register** (January 7, 1980). Prior to taking any action on this proposed amendment, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to Section 211.5(c)(2) of title 30, Code of Federal Regulations.

The mine plan modification submitted by Colowyo for the Wilson Loadout is available for public review during normal working hours in the Library, Office of Surface Mining, Region V, second floor, Brooks Towers, 1020 15th Street, Denver, Colorado. Comments on the proposed modification may be submitted during the 30 day period after this notice to the Regional Director, Office of Surface Mining, at the same address.

FOR FURTHER INFORMATION CONTACT: John Hardaway, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado, 80202.

Federal Coal Lease No. D–034365

Donald A. Crane,

Regional Director.

[FR Doc. 79–37529 Filed 12–5–79; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Competitive Research Grant To Study Arson Adjudication; Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant to study arson adjudication in the United States. The purpose is to improve both the process and outcomes of arson adjudication procedures. The sources of data will consist mainly of case files and interviews with persons who have been involved in arson adjudication cases. The grant will be awarded for up to 21 months and not more than $200,000

unless terminated earlier by reason of unsatisfactory performance.

The solicitation requests submission of full proposals and requires that submitting organizations have experience and capabilities in this kind of legal case study research.

To be considered for review and possible funding, all proposals must be postmarked not later than March 7, 1980.

Copies of the solicitation may be obtained by sending a mailing label to: Solicitation Request, Arson Adjudication—No. 80-111, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: November 29, 1979.

Approved:

Harry M. Bratt,

Acting Director.

[FR Doc. 79-37530 Filed 12-5-79; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export/Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.41 "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export/import licenses for the period September 7 through November 14, 1979. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated this 23rd day of November 1979, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Petersen,

Acting Director, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Westinghouse Electric, 09/20/79, 09/24/79, XR085(03).	Amend Export License to add "Other Party to Export" and change address of Ultimate Consignee.				Spain.
Edlow International, 08/31/79, 09/07/79, ISNM79015.	4.05% Enriched Uranium	1,000	40	Pellets for use in one of B&W's commercial nuclear power plants.	From West Germany.
Edlow International, 08/31/79, 09/07/79, ISNM79016.	4.0% Enriched Uranium	1,500	60	UO_2 for use in B&W's U.S. nuclear power plants.	From United Kingdom.
Westinghouse Electric, 09/12/79, 09/17/79, ISNM79017.	3.20% Enriched Uranium	16,644	534	Return damaged fuel rods from Almarez 1 & 2, Lemoniz 1 & 2 and ASCO 1 & 2.	From Spain.
Transnuclear, 09/28/79, 10/1/79, ISNM79018.	1.15% Enriched Uranium	20,000	230	Feed material for UES/EU/39	From France.
Dept. of the Navy, 09/13/79, 10/11/79, XU06475.		25,725 kgs	Depleted Uranium	Penetrators aboard Saudia Arabian Naval vessels.	Saudia Arabia.
Edlow International, 08/31/79, 09/07/79, XSNM01584.	4.05% Enriched Uranium	1,500	60	Fabrication of fuel pellets & r/t to U.S. for use by B&W reactors.	United Kingdom.
Edlow International, 08/31/79, 09/07/79, XSNM01585.	4.05% Enriched Uranium	1,000	40	Excess material r/t to Reaktor Brennelement Union GmBH.	West Germany.
Edlow International, 08/05/79, 09/07/79, XSNM01587.	19.9% Enriched Uranium	50.125	10.17	As fuel for RA-6 Research Reactor	Argentina.
Edlow International, 08/05/79, 09/07/79, XSNM01586.	19.9% Enriched Uranium	31.448	6.384	As fuel for RP-O Research Reactor	Peru.
Westinghouse Electric, 09/07/79, 09/10/79, XSNM00844(3a).	3.20% Enriched Uranium	Add'l 2,774	Add'l 89	For export to cover possible damaged fuel replacements—Almarez I and II.	Spain.
Westinghouse Electric, 09/07/79, 09/10/79, XSNM00861(2a).	3.20% Enriched Uranium	Add'l 2,774	Add'l 89	Lemoniz Units I and II	Spain.
Westinghouse Electric, 09/07/79, 09/10/79, XSNM00865(02).	3.20% Enriched Uranium	Add'l 2,774	Add'l 89	ASCO Unit 2	Spain.
Westinghouse Electric, 09/07/79, 09/10/79, XSNM00866(2).	3.20% Enriched Uranium	Add'l 2,774	Add'l 89	ASCO Units I and II	Spain.
Westinghouse Electric, 09/12/79, 09/14/79, XSNM01045 (lta).	3.4% Enriched Uranium	Add'l 250	Add'l 8	Zorita power fuel increase quantity authorized for export.	Spain.
Union Carbide Corp., 09/05/79, 09/17/79, XSNM01595.	93% Enriched Uranium	10.59	9.85	Fabricate fuel elements & r/t to U.S. for use in Union Carbide.	France.
Mitsubishi Intern'l, 09/21/79, 09/25/79, XSNM01598.	3.33% Enriched Uranium	16,453	548	Reload fuel for Ikata Unit I	Japan.
Edlow International, 09/24/79, 09/26/79, XSNM01601.	3.15% Enriched Uranium	9,298	293	Reload fuel for Genkai Unit I	Japan.
General Electric, 11/1/79, 11/1/79, XSNM01611.	3.1% Enriched Uranium	12,306	336	Reload fuel for Tsuruga	Japan.
Mitsubishi Intern'l, 10/29/79, 11/02/79, XSNM01612.	3.15% Enriched Uranium	9,824	310	Reload fuel for Genkai I, 9	Japan.
Westinghouse Electric, 09/12/79, 09/17/79, XR083(02).	Extend the expiration date from 1/1/80 to 12/31/80				Korea.
Combustion Eng., 11/07/79, 11/08/79, XR134.	Reactor vessel for ATUCHA 2 Reactor Plant				Argentina.
U.S. DOE, 09/28/79, 10/03/79, XSNM01602	22 kgs U-233			Characterizing physics behavior of proliferation-resistant thorium/uranium-233 fuel cycles in converter reactors in the ZED-2 reactor.	Canada.
Transnuclear, 11/08//79, 11/08/79, XSNM01620.	3.35% Enriched Uranium	34,901.0	1,169.1835	Reload fuel for Unterweser I	West Germany.
Transnuclear, 10/03/79, 10/04/79	3.4% Enriched Uranium	10,794	367	Reload fuel for Doel 2	Belgium.
Transnuclear, 10/08/79, 10/09/79, XSNM01621.	3.25% Enriched Uranium	12,714.0	413.0325	Reload fuel for Obrigheim	West Germany.
Transnuclear, 11/06/79, 11/06/79, XSNM01621.	3.35% Enriched Uranium	17,401.0	583.0335	Reload fuel for Stade Reactor	West Germany.
General Electric, 10/15/79, 10/17/79, XSNM00271(06).	4.0% Enriched Uranium	11,500	170	Feel for Nuclenor Reactor	Spain.
Exxon Nuclear Co., 10/29/79, 11/08/79, XSNM01619.	3.35% Enriched Uranium	34,000	1,012	Fuel for Biblis Unit A	West Germany.
U.S. DOE, 10/31/79, 11/06/79, XSNM01615	45% Enriched Uranium 19.75 Enriched Uranium	5.0 20.0	2.25 3.95	DOE's reduced enrichment research and test reactor program.	West Germany and Netherlands.
U.S. DOE, 10/31/79, 11/06/79, XSNM01616	45% Enriched Uranium 19.75% Enriched Uranium	5.0 20.0	2.25 3.95	DOE's reduced enrichment research and test reactor program.	France and Netherlands.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotape		
U.S. DOE, Undated, 11/06/79, ISNM79021	19.75% Enriched Uranium	40.496	8.0	DOE's reduced enrichment research and test reactor program.	From France, West Germany, and Netherlands.
	45% Enriched Uranium	10.0	4.502		
Transnuclear, 9-24-79, XSNM01573.	9-24-79, 4.0% Enriched Uranium	Add'l 12.0	Add'l 0.480	Application amended to increase sample quantities.	West Germany.

[FR Doc. 79-37481 Filed 12-5-79; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-528, etc.]

Arizona Public Service Co. et al.; Request for Action

Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1-3), Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station, Unit 1), Docket Nos. 50-528, -529, -530, 50-275, -323, 50-312.

Notice is hereby given that by petition dated October 24, 1979, the Friends of the Earth requested pursuant to 10 CFR 2.206 that the Nuclear Regulatory Commission prepare supplemental environmental impact statements concerning the impact of Class 9 nuclear accidents at the Diablo Canyon, Palo Verde, and Rancho Seco nuclear plants. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and in the local public document rooms at the phoenix Public Library/Science and Industry Section, 12 E. McDowell Road, Phoenix, Arizona 85004 (for the Palo Verde Station); San Luis Obispo County Free Library, 888 Morro Street, San Luis Obispo, California 93406 (for the Diablo Canyon Plant); and the Sacramento City-County Library/Business & Municipal Department, 828 I Street, Sacramento, California 95814 (for the Rancho Seco Station).

Dated at Bethesda, Md., this 23d day of November, 1979.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Division of Site Safety and Environmental Analysis, NRR.

[FR Doc. 79-37478 Filed 12-5-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.'s H. B. Robinson Steam Electric Plant No. 2; Issuance of Amendment to Facility Operating License; Correction

On November 8, 1979, an "Issuance of Amendment to Facility Operating License" was published on page 44 FR 64928 which listed two amendment numbers 43 and 46. The correct number was Amendment No. 43.

The Amendment related to the Carolina Power and Light Company's H. B. Robinson Steam Electric Plant Unit No. 2, a nuclear plant located in Darlington County, Hartsville, South Carolina.

Dated at Bethesda, Md., this 27th day of November, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 79-37477 Filed 12-5-79; 8:45 am]

BILLING CODE 7590-01-M

Petition to Suspend all operating Licenses for Pressurized Water Reactors; Request for Action

Notice is hereby given that by petition dated March 29, 1979, the Environmental Coalition on Nuclear Power, State College, Pennsylvania, requested that the Commission suspend all operating licenses issued for pressurized water reactors. The petition alleges that the safety evaluations, performed for these licenses are invalid, because the incident which occurred on March 28, 1979, at Three Mile Island Unit 2, a pressurized water reactor, shows that the evaluations of the Emergency Core Cooling System (ECCS) for all pressurized water reactors cannot demonstrate the performance of the ECCS required by 10 CFR 50.46.

The petition is being treated pursuant to the procedures specified in 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time. A copy of the petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Dated at Bethesda, Md., this 23rd day of November, 1979.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-37480 Filed 12-5-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-142]

University of California Argonaut Reactor Los Angeles; Request for Action

Notice is hereby given that by petition dated October 3, 1979, the Committee to Bridge the Gap requested that an Order be issued to shut down the UCLA research reactor, and that other actions be taken to provide for public hearings. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission Public Document Room at 1717 H Street, NW., Washington, DC. 20555.

Dated at Bethesda, Md., this 30th day of November 1979.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

[FR Doc. 79-37479 Filed 12-5-79; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-49]

Safety Recommendation Letters and Responses; Availability

The National Transportation Safety Board on November 28 issued to the Federal Aviation Administration three recommendation letters based on findings in recent investigations:

A-79-88.—The Safety Board has received information from several owners and operators of Cessna 200 series aircraft that engine turbocharger assemblies are being replaced as the result of foreign object damage to the compressor blades. Examinations of

several aircraft indicate a deterioriation of the alternate air door's "piano-type" aluminum hinge. As a result, the hinge pin sleeves are breaking away and are being ingested by the turbocharger. FAA's Maintenance Analysis Center records show that 10 such cases have been reported in the past 5 years. Although the Safety Board has not determined that a failure of the hinge has caused an accident, the Board believes that such a failure does constitute a hazardous condition.

FAA's Engineering and Manufacturing Office at Wichita, Kans., advised the Safety Board that Cessna changed the material specification of the alternate air door hinge from aliminum to steel and that a production line change was initiated in June 1979 to install the steel hinge on all 200-series aircraft in production. Also, Cessna has discarded all spare aluminum hinge assemblies. The Board notes that Cessna has not yet issued any service information regarding the hinge failure problem and its consequence or the corrective action taken to eliminate the problem.

The Safety Board believes that owners and operators of turbocharged 200-series Cessna aircraft should be alerted to the possibility of deteriorated alternate air door hinges. Accordingly, it was recommended that FAA:

Issue an advisory to owners and operators of Cessna 200 series aircraft, through the General Aviation Airworthiness Alerts (AC-43-16), alerting them to the hazards associated with the aluminum hinge failure problem. The Notice should advise owner/operators to inspect the alternate air door hinge and should include information regarding the availability of new steel hinge assembles. (Class II, Priority Action) (A-79-88)

A-79-91.—On September 30, 1979, a West Coast Air Service, Ltd., DeHavilland DHC-6-200 Twin Otter, Canadian Registry C-FWAF, crashed on final approach to Porpoise Bay, British Columbia, Canada. This accident is being investigated by the Aviation Safety Bureau of Transport Canada; a Safety Board representative observed the investigation at the invitation of the Aviation Safety Bureau.

During the investigation, the reversing interconnect linkage from the right propeller was found to be disengaged between the propeller reversing push/pull control wire rope terminal P&WC P/N 3010175 (Pratt & Whitney Aircraft of Canada, Ltd., Illustrated Parts Catalog Part Number) and the clevis P&WC P/N 3012419 interconnect linkage of the right engine. In addition, the reversing interconnect linkage rod and clevis on the aircraft's left engine propeller were found to be attached to the push/pull control wire rope terminal by only one and one-half threads. The engine manufacturer's maximum limit is three threads visible outside the lock nut securing the control rod. This type of propeller reversing interconnect linkage is installed in some models of the Pratt & Whitney PT6-6A, -6B, -6C/20 and -20 series turboprop engines, which are used primarily in a number of models of DeHavilland and Beech aircraft.

According to the Safety Board, failure mode analyses by the aircraft manufacturers have shown that if this linkage should fail or become disengaged, under some flight conditions, the propeller can go into reverse pitch. A relatively low airspeed, typical of approach airspeeds, and a mechanical failure or a nullification by the pilot of the beta backup systems will cause the propeller to reverse pitch. Since this sequence would result in a potentially hazardous situation to the aircraft and its occupants, the Safety Board believes that corrective action is required and therefore recommends that FAA:

Issue an Airworthiness directive to require a special inspection of the propeller reversing interconnect linkage of all aircraft equipped with Pratt & Whitney Aircraft of Canada Ltd., PT6-6A, -6B, -6C/20 and -20 series turboprop to assure that these installations conform to the aircraft manufacturer's propeller reversing linkage rigging specifications. (Class I, Urgent Action) (A-79-91)

A-79-92.—On August 18, 1979, a Boeing 737 owned and operated by Wien Air Alaska was involved in a landing accident at Dillingham, Alaska. During the landing roll, the lower attachment bolt for the right main landing gear upper drag strut failed and the landing gear folded rearward, causing considerable damage to the aircraft. Safety Board investigation revealed that the upper drag strut lower attach bolt, PN69-39473-12, had fractured sometime before this landing. During the landing the drag strut pulled through the two halves of the bolt and the gear folded rearward. Cause of the initial fracture has yet to be determined.

As a result of the accident, the operator inspected the upper drag strut attach bolts on its aircraft. Initially, the operator borescoped the bolts, but later decided to replace them when it determined that the failure may have been initiated by stress corrosion. During the removal of the bolts from one aircraft, the operator noted that a lower attach bolt had been installed in an upper attach bolt location. The Safety Board is concerned that other upper attach bolts may have been incorrectly installed in the lower attach bolt location which, because of design differences in the bolts, could affect the crashworthiness of the airplane.

The Safety Board notes that the upper and lower bolts are both fuse points in the landing gear, have nearly identical exterior dimensions, and appear to be interchangeable. However, they have differing strengths. Upper attach bolt PN69-39476-5,6 is manufactured from 4330M (vacuum hardened) steel with a strength of 220-235 KSI. The bolt is hollow with an inside diameter of 0.75 inch. The lower bolt is made of 4340M steel with a strength of 270-300 KSI and has an inside diameter of 0.50 inch. Both bolts have an approximate outside diameter of 1.5 inches. Selection of these values is significant since the sequence of failure of these bolts when they are overloaded during some accident environments will determine the direction in which the landing gear fails and the subsequent effects on other parts of the aircraft's structure. Use of the higher strength lower attach bolt in the upper "fuse" position may change the breakaway characteristics which were designed into the landing gear to minimize secondary effects of failure, and which were approved in the FAA type certification process. Accordingly, the Safety Board recommended that FAA:

Require an immediate inspection of all Boeing 737 aircraft main landing gear upper drag strut attach bolts to ascertain that the correct bolts are installed in the proper locations. (Class II, Priority Action) (A-79-92)

Responses to Safety Recommendations

Aviation

A-79-23.—On November 11 the Federal Aviation Administation provided additional information in response to this recommendation, issued following investigation of several accidents involving Learjet aircraft equipped with the same type of servo drive unit. FAA initially responded to this recommendation on July 16 (44 FR 45497, August 2, 1979). The recommendation asked FAA to issue immediately an Operations Alert Bulletin to FAA inspectors and notify operators of Learjet aircraft equipped with this type of servo drive unit to advise the pilots of these aircraft of the possible control difficulties which can be encountered as a result of clutch malfunction. The Safety Board acknowledged FAA's initial response on August 14, noting that the Board's recommendation letter had been sent to all FAA Flight Standards Offices and that operations bulletins to deal with the problem are being prepared.

FAA reports on November 13 that Change 17 to Order 8440.5A containing

General Aviation Operations Bulletin No. 79–2, "Servo Drive Unit—Installed on Learjet Aircraft," was issued on June 28, 1979. FAA also issued Change 33 to Order 8430.1A which transmits new Part 135 Operations Bulletin No. 79–3, "Malfunction of Servo Drive Unit Installed on Learjet Aircraft," dated September 10, 1979. FAA provided copies of these changes with its November 13 response.

A–79–62 through 66.—FAA's response of November 23 concerns recommendations developed during investigation of the United Air Lines DC–8 accident at Portland, Oreg., December 28, 1978. (See 44 FR 52061, September 6, 1979.)

Recommendation A–79–62 asked FAA to issue an Air Carrier Maintenance Bulletin clarifying 14 CFR 25.811(d) regarding the conspicuity of passenger emergency exit signs when exits are open and the requirement for exit signs to be relocated in aircraft which have signs affixed on the exist closure. FAA reports that its regions responsible for type certification of air carrier aircraft are currently reviewing compliance with 14 CFR 25.811(d) regarding locations of passenger emergency exit signs. If an Air Carrier Maintenance Bulletin is deemed appropriate, FAA will issue one.

In response to A–79–63, which asked FAA to expedite research with a view toward early rulemaking on a means to most effectively restrain infants and small children during in-flight upsets and survivable crash landings, FAA says that a task force was established early in 1979 to develop the options available regarding agency actions needed to permit the manufacture and use of effective aircraft child restraint systems. The proposed standards covering child restraint systems are scheduled for issuance early in 1980.

With respect to recommendation A–79–54, calling on FAA to expedite the release of Operations Review Program Notice No. 13 containing the Safety Board's 1974 recommendation for a power source for public address systems independent of the main aircraft power supply in passenger-carrying aircraft, FAA reports that the Board's 1974 recommendation is now contained in Operations Review Program Notice No. 11. This notice of proposed rulemaking should be issued during December 1979.

Recommendation A–79–65 asked FAA to include in the anticipated new rule a requirement for domestic and flag air carriers to maintain passenger lists with the proviso that both ticketed and nonticketed passengers' names be provided. FAA reports that a resolution of the issues supporting this recommendation is anticipated as the result of issuance of operations Review Amendment No. 8 in the near future.

Recommendation A–79–66 called for an Air Carrier Operations Bulletin which will provide guidance and criteria to FAA Inspectors in determining the scope, quality, and effectiveness of training programs with respect to communication and coordination among crewmembers. FAA notes that an Air Carrier Operations Bulletin has been prepared and is presently in final coordination. It should be printed and distributed by the end of this year.

A–79–67.—The FAA on November 21 responded to a recommendation resulting from investigation of the Antilles Air Boats, Inc., accident on September 2, 1978, which occurred when a Grumman 21A struck the water while on a passenger flight form St. Croix to St. Thomas, V.I. (See 44 FR 52061, September 6, 1979.) The recommendation asked FAA to amend 14 CFR Part 135 to require all aircraft conducting passenger service under Part 135 in any overwater operation be equipped with approved flotation-type seat cushions, and to require aircraft conducting exended overwater operations to also be equipped with an approved life preserver equipped with an approved survivor locator light.

FAA's response refers to a similar Safety Board recommendation, No. A–79–36, made last June 1 following investigation of the crash of a National Airlines Boeing 727 into Escambia Bay near Pensacola, Fla., on May 8, 1978. Recommendation A–79–36 asked FAA to amend 14 CFR 121.340 to require that all passenger-carrying aircraft be equipped with approved flotation-type seat cushions. FAA's August 29 response to A–79–36 indicated that since the life preserver is superior to a flotation-type seat cushion as a life-saving device, flotation-type cushions are not necessary when life preservers are being carried. (See 44 FR 53319, September 13, 1979.)

In response to A–79–67, the November 13 letter notes that after responding to A–79–36, FAA received a request for reconsideration which reflects the Board's belief that both life preservers, which are acknowledged to be superior, and flotation cushions should be provided under the hypotheses that evacuation time may be critical or that passengers may be thrown clear of the aircraft along with the floating seat cushions. FAA states that the rationale used by the Board would be equally applicable to FAA's response to recommmendation A–79–67.

FAA is continuing to review A–79–67 or alternatives which may satisfy the intent of the recommendation, together with the Board's request in respect to A–79–36. FAA believes that the evaluation upon which its decision will be based will be completed in several months.

A–79–71.—The FAA on November 27 responded to a recommendation issued September 11 following investigation of the emergency water landing of an Antilles Air Boats Grumman G–21A in Charlotte Amalie Harbor, St. Thomas, V.I., on June 4, 1978. The recommendation asked FAA to issue an Airworthiness Directive to (1) define and require a modification of the carburetor heat valves on all Grumman G–21A airplanes to provide positive retention of the valves in the selected position so that the valves will not close if the linkage fails, and (2) define and require a modification of the operating lever on the carburetor hot-air valve operating lever to facilitate installation of the linkage connecting bolt so that it will not fall out if the nut is lost. (See 44 FR 54561, September 20, 1979.)

FAA's response notes that the Grumman G–21A was certificated in 1937 and, to FAA's knowledge, the subject incident cited as the basis for an Airworthiness Directive (AD) is the only such incident involving separation of the linkage connecting the cold air and hot air butterfly valves. Further, as the Board pointed out, the linkage separated because a bolt was improperly installed presumably during maintenance of the airplane. FAA does not believe that this one incident which was the result of improper maintenance is justification for issuing an AD. However, FAA plans to make this an item for inclusion in a forthcoming issue of "General Aviation Airworthiness Alerts," AC No. 43–16.

Highway

H–78–12.—The Federal Highway Administration on November 8 further responded to this recommendation, issued after investigation of the March 8, 1977, collision of a tractor-semitrailer with a schoolbus near Rustburg, Va. The recommendation asked FHWA to revise its enforcement policy, which precludes filing charges against drivers and carriers in violation of the Federal Motor Carrier Safety Regulations (FMCSR) unless they have previously been served with a copy of the regulations, to permit the filing of charges for violations under severe circumstances such as preventable, fatal highway accidents.

FHWA's November 8 letter refers to an earlier response, under date of September 6, 1978, which stated that FHWA does not have a policy which precludes the filing of charges against drivers and carriers in violation of

FMCSR who have not been previously served with a copy of the regulations. FHWA states that it has since learned through staff contacts with the Safety Board that recommendation H–78–12 was based on information gathered in interviews with FHWA field employees who indicated that such a policy does exist. Since there is apparently some confusion on the part of FHWA's field staff, a memorandum, dated October 22, 1979, was sent to all FHWA Regions clearly stating FHWA enforcement policy and seeking to correct any misunderstanding by the field staff. The memorandum, a copy of which was furnished the Safety Board, shows that FHWA's established policy is:

> As a followup to investigations of fatal accidents which reveal violations by a motor carrier, driver or other employee of the motor carrier, and if the violations might have been either the cause or a contributing factor to the accident, a case report documenting the violations and related factors (such as knowledge and willfulness) will be prepared and submitted, through the Officer-In-Charge and Regional Director, to The Regional Counsel who will make the determination as to legal sufficiency and other legal considerations (such as double jeopardy). If the violations involve the Hazardous Materials Regulations, determination will be by the Office of the Chief Counsel.

Further with reference to recommendation H–78–12, the Safety Board on May 2 forwarded comments on FHWA's letters of September 6, 1978, and April 10, 1979. The Board's letter expressed appreciation of FHWA's seeking a change in legislation that will upgrade and improve the present motor carrier safety enforcement sanctions and urged FHWA to act with dispatch in developing and submitting the proposed legislation to Congress. (See also 44 FR 25954, May 3, 1979.)

H–79–41 through 45.—On November 20 the National Highway Traffic Safety Administration responded to five of the recommendations developed following investigation of the van/automobile collision in Willowick, Ohio, last May 6. (See 44 FR 57244, October 4, 1979.)

In response to recommendation H–79–41, which asked NHTSA to expedite the development of a Federal Motor Vehicle Safety Standard (FMVSS) on motor vehicle fuel systems to include a performance standard for non-metallic fuel tanks, NHTSA reports issuance of an advance notice of proposed rulemaking in this area of concern in response to a petition from the Ford Motor Company. NHTSA is now considering the docket comments, and a decision in this area will be made and published in the **Federal Register.** NHTSA states that the basic thrust of its Fuel System Standard (FMVSS No. 301–75) is to prevent fuel leakage from any part of the vehicle incidental to crashes. If this is achieved, the type and design of the fuel tank is of relatively little importance. Although performance orientation of NHTSA standards must be preserved as far as possible, and there is no intention of addressing individual components of the fuel system, NHTSA says the vulnerability of plastic fuel tanks to external fire cannot be ignored.

With respect to H–79–42, which called for inclusion of a definition of a fuel system in the contemplated revision of FMVSS 301–75—Fuel System Integrity, NHTSA notes that the fuel system is considered any part of the vehicle that normally contacts fuel. In *Definitions,* section S4 of the standard, NHTSA defines only fuel spillage, and NHTSA says it has never noted any reason to create other definitions to implement or clarify the standard.

The inclusion of performance requirements for each of the components of the fuel system in revising FMVSS 301–75 was recommended in H–79–43. In response NHTSA notes that fuel systems may contain as a hundred or more separate parts forming perhaps a dozen major components. To evolve separate performance requirements for each of the components would not only be unrealistic but undesirable and unnecessary, according to NHTSA. In compliance testing, the source of a leak is relatively unimportant as related to this "fail-pass" test procedure. NHTSA repeats, ". . . the thrust of the standard is the prevention of fuel leakage from the vehicle incidental to crashes."

In response to H–79–44, which recommended including requirements for rear end impact tests with both vehicles in a braking attitude in the contemplated revision of FMVSS 301–75, NHTSA notes that the 301–75 rear impact tests involves a test vehicle and a standardized moving barrier. NHTSA states, "Car-to-car impact testing at various attitudes would be extremely difficult to standardize to assure repeatability of results from test to test or from facility to facility. It would also be quite expensive." NHTSA states that repeatibility and consistency are vital ingredients of any testing procedure. The various test parameters may then be adjusted to cover the "real world" conditions to the extent proven necessary by a thorough examination of the accident data.

Recommendation H–79–45 asked NHTSA to include in the proposed revision to FMVSS 301–75 the requirement fore rear end collision tests at angles from straight to 90 degrees. NHTSA states that standard 301–75 includes a lateral (90 degrees) impact provision. NHTSA has not ruled out incorporating an angular provision similar to the front end impact (±30 degrees) but is still unable to quantify the need for such a provision.

Further, NHTSA states in its November 20 letter that the recommendations resulting from the subject accident were based upon the following facts:

1. A head-on-type accident in which the contact speed was near 100 mph.
2. None of the vehicles involved were covered by the rear end impact provisions of FMVSS 301–75.
3. The fuel tank rupture due to entanglement of a detached bumper was a rare remote event. It is doubtful if any reasonable current or proposed regulatory countermeasure could have been instrumental in preventing this occurrence.
4. The subsequent ignition of fuel did not (in this case) contribute to the casualties.

NHTSA states, "For these reasons we do not consider the recommendations proposed by the Board to be justified by the single, highspeed accident examined or to be appropriate at this time. However, we are continuing our complete evaluation of FMVSS 301 and will keep the NTSB recommendations based on this particular crash in mind as a part of that effort."

Marine

M–79–100 and 101.—On November 13 the Geological Survey, U.S. Department of the Interior, responded to recommendations developed as a result of the investigation of the R/V DON J. MILLER II collision with the F/V WELCOME in Admiralty Inlet, Puget Sound, October 25, 1978. (See 44 FR 61477, October 25, 1979.)

Recommendation M–79–100 asked the Geological Survey to arrange with the U.S. Coast Guard for an examination of the MILLER to determine whether it conforms to the minimum manning and other regulations required for privately operated vessels of the same type and size engaged in similar oceanographic operations and, if necessary, consider taking action to bring the vessel into reasonable conformance with the standards prescribed by regulations for privately operated research vessels. The Geological Survey reports that this recommendation has been implemented and resulted in establishing duty hour limitations, provision for pilot house relief, and watch responsibility. The Geological Survey says that rarely is the MILLER underway for more than 4 to 6 hours a day and then normally in uncongested, protected waters. The new standing orders provide for special

manning if extended sailing is required and provide for continuous qualified watches in the pilot house. The Geological Survey notes that the captain of the MILLER at the time of the collision did not allow for navigational watch relief, which action was in contradiction to long-standing Geological Survey procedures, and apparently he ignored navigational help that was standing by outside the pilot house.

Recommendation M–79–101 asked the Geological Survey to enter into an agreement with the Coast Guard to have vessels operated by the Geological Survey regularly examined by the Coast Guard to determine if they meet the standards prescribed by regulations for privately operated research vessels of similar type and service and initiate a program to bring the vessels into reasonable conformance with these standards. In response, the Geological Survey reports that this recommendation is essentially in effect. One of the Geological Survey's two oceanographic vessels, the R/V SEA SOUNDER, is routinely inspected by the Coast Guard as a condition of the Geological Survey's lease arrangement with the private owners and the R/V LEE is Navy-owned and, therefore, not subject to Coast Guard inspection.

Pipeline

P–77–38 through 40.—On November 5 the Pennsylvania Gas and Water Company responded to the Safety Board's October 29 comments on the company's previous response of September 19 (44 FR 57246, October 4, 1979) to recommendations developed as a result of investigation and analysis of the house fire and explosion near Williamsport, Pa., January 25, 1977.

The Board found that the company's action to inform the public as to the nature, characteristics, and hazards of natural gas and what to do when it is encountered are acceptable in meeting the requirements of recommendation P–77–38 and accordingly classified the recommendation as "closed—acceptable action." In response to the Board's request, Pen Gas attached to its November 5 letter copies of the news releases, bill inserts, and encapsulated odorant sample used in the 1979 public information campaign which the company conducted to inform the public as to the nature, characteristics, and hazards of natural gas.

Further, the Safety Board's October 29 letter indicated that the Penn Gas response to P–77–40 is encouraging. The Board noted that the identification and location vertification of all valves intended for use as emergency shutoff units is underway, and asked to be notified of the completion of the project. The Board said that the recommendation file will be kept in open status pending receipt of this information. With respect to P–77–39, the Board previously had classified that recommendation as "closed—acceptable action."

The Board believes that involvement with the Pennsylvania One-Call System, Inc., will be profitable in reducing construction related damage to the Pen Gas pipeline system and was pleased to note that Pen Gas had made the effort to become a part of this service.

Railroad

R–79–61.—The Federal Railroad Administration on November 13 responded to a recommendation issued following investigation of the rear-end collision of two Consolidated Rail Corporation freight trains at Muncy, Pa., last January 31. The recommendaton asked FRA to promulgate regulations to require the conductor or other employee in charge of the train to be located and informed so that he can properly supervise the safe operation of the train. (See 44 FR 55674, September 27, 1979.)

FRA assumes from statements made in the Safety Board's September 19 recommendation letter that the recommendation, while not specifically stating, does in fact call for the conductor being in the locomotive cab with the engineer so that he would take action if he observed any inattention on the part of the other crewmembers. FRA states, "In the train operation environment, conditions occur which call for responsible action by crewmen on the rear of the train, as well as the head of the train. Rear brakemen are required to provide flag proteciton, observe their running train for overheated journals, dragging equipment; the safe operation of the rear of the train may not be enhanced by placing him in the cab of the locomotive."

FRA further contends that in most instances the engineer and conductor are the most experienced crewmen onboard the train, and it is advantageous to utilize that experience for the protection of the train from both the front end and the rear end. Also, the ever increasing use of radio to improve communication in the railroad industry will further assist the conductor in supervising the safe operation of the train.

The Safety Board's September 19 letter refers to an earlier recommendation, No. R–73–11, issued as a result of investigation of a head-on collision of two Penn Central freight trains at Herdon, Pa., on March 12, 1973. That recommendation asked FRA to require, where responsibility for safe operation of the train is assigned jointly to the engineer and the conductor, that they be located and informed so that they can make quick effective decisions. In response to R–73–11, FRA informed the Safety Board that adoption of FRA's proposed radio rules (49 CFR Part 220) would provide the conductor with the required information. The Board did not agree and closed out the recommendation after notifying FRA that its action was considered unacceptable. The Board, in issuing recommendaiton R–79–61, noted that the Muncy accident again shows the need for the employee who is in charge of the train's operation to be located and informed so that he can properly supervise the safe operation of the train.

In FRA's November 13 response to R–79–61, the agency states, "(FRA) believes that our previous response to your recommendation (R–73–11) is a valid response to both recommendations. We reiterate that response (copy enclosed) and consider the recommendation closed."

Note: Copies of recommendation letters issued by the Safety Board, response letters, and related correspondence are available free of charge. All requests for copies must be in writing, identified by recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

December 3, 1979.

[FR Doc. 79–37506 Filed 12–5–79; 8:45 am]

BILLING CODE 4910–58–M

En Banc Public Hearing; Commuter Airline Industry

AGENCY: National Transportation Safety Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Independent Safety Board Act of 1974 (49 U.S.C. 1901, et seq.) confers upon the Board the power to conduct public inquiries into matters pertinent to transportation safety. This document announces a public hearing to be held to inquire into the commuter airline industry. This document sets forth areas of inquiry the agency wishes addressed in written and oral submissions.

DATES: Hearing: January 28, 29, and 30, 1980, at 9 a.m.; written statements due on or before January 10, 1980.

ADDRESSES: Hearing Location: Federal Office Building 10–A, 800 Independence

Avenue, S.W., Washington, D.C. 20594. Send written statements to Chief, Aviation Accident Division, AI-30, Bureau of Accident Investigation, National Transportation Safety Board, Washington, D.C. 20594.

FOR FURTHER INFORMATION CONTACT: Mr. David F. Thomas, Project Manager, Bureau of Accident Investigation, National Transportation Safety Board, Washington, D.C. 20594, Phone: 202-472-6075; or Ms. Barbara Dixon, Director, Office of Government Affairs, National Transportation Safety Board, Washington, D.C. 20594, Phone: 202-472-6018.

SUPPLEMENTARY INFORMATION: Under section 304(a)(4) of the Transportation Safety Act of 1974 (Pub. L. 93-633) the Congress specifically authorized the National Transportation Safety Board to "initiate and conduct special studies and special investigations pertaining to safety in transportation." Therefore, the National Transportation Safety Board announces its intent to hold a public hearing to assess current issues of transportation safety in the commuter industry.

This public hearing will examine the development of the commuter industry, the safety record of commuter travel, the effects of anticipated expansion of the industry on safety, and the performance of Federal agencies charged with regulating the commuter industry.

Notice is hereby given that a hearing will be held before an "en banc" sitting of the Board in the Federal Office Building 10-A, 800 Independence Avenue, S.W., Washington, D.C., on January 28-30, 1980. The proceedings will commence at 9 a.m. on subject dates and will consist of presentations of statements in oral and written form and questioning by the Board. Interested persons are invited to submit written comments.

Any person desiring to submit written comments should notify the Project Manager by telephone, 202-472-6075, on or before January 10, 1980. Four copies of the statement must be filed with the Project Manager by January 15, 1980. Copies of all written submissions will be available for public inspection and copying upon request in accordance with the agency's rules regarding availability of information.

James B. King,

Chairman.

November 30, 1979.

FR Doc. 79-37507 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-58-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16363; File No. SR-Amex-79-14]

American Stock Exchange, Inc.; Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29,16 (June 4, 1975), notice is hereby given that on October 31, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. (the "Exchange") proposes to amend Rule 723 regarding Don't Know ("DK") notices. The text of the proposed amendments is attached as Exhibit A.

Statement of Basis and Purpose

The basis and purpose of the foregoing rule change is as follows:

Amex Rule 723 (the "Rule") provides that when a clearing member finds that a stock or bond transaction has not been compared and has been excluded from clearance, the clearing member shall prepare a DK notice, in a form prescribed by the Exchange, and shall send the DK notice, to the executing broker on the Floor in order to attempt to ascertain the name of the contra-party to the transaction and/or to verify the terms of the transaction.

In order to improve the current procedure for handling and processing of DK notices, the Exchange is proposing to adopt certain amendments to the Rule. These amendments would:

1. With certain exceptions, require that all DK notices forwarded to members on the Floor have attached a copy of the Floor Report pertaining to the uncompared transaction.

2. Establish a DK Control Center to process DK notices after they have been resolved by members on the Floor. The Center would edit all DK notices for legibility and completeness, distribute copies to the initiating and contra-parties to the transaction, and control the entry of DK notices into the comparison process.

The proposed amendments to Rule 723 are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) of the Act in particular in that they are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

Comments Received From Members, Participants or Others on Proposed Rule Change

No formal comments were solicited or received with respect to the proposed rule change.

Burden on Competition

The Exchange has determined that no burden on competition will be imposed by the proposed amendments.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 27, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 26, 1979.

Exhibit A—American Stock Exchange, Inc.

Proposed Amendments to Rule 723

(Brackets [ ] indicate words to be deleted and italicizing indicates words to be added.)

Rule 723

* * * Commentary

.01 A 'DK Notice' shall be prepared by a clearing member whenever it *('the initiating firm')* has been unable to compare [('the initiating firm')] and shall be delivered to its executing broker on the Floor ('the executing broker'). [Three] *Four* copies of the Notice *together with Floor report pertaining to*

the uncompared transaction will be sent to the Floor (copy 1 will be designated as the Clearing Corporation copy). The initiating firm may prepare additional copies to be retained in [the] *its* office for control purposes. The upper portion of the Notice should identify the trade, and the name and clearing number of the initiating firm should be stamped in the appropriate buy or sell section. The following information should be supplied:

1. The name of the executing broker.
2. The trade date.
3. Sold—Bot—If the DK'd trade was a purchase, a line should be drawn through the word "Sold". If a sale, a line should be drawn through the word "Bot".
4. The alpha symbol of the firm for whom the executiing broker acted.
5. Sell Clearing Number—The clearing number for the selling firm.

[6. Foreign—The box would be checked to indicate a foreign sale (subject to the Interest Equalization Tax).]

[7.] *6.* Buy Clearing Number—The clearing number for the buying firm.

[8.] *7.* Shares—The number of shares involved in the trade.

[9.] *8.* Symbol—The symbol of the [stock] *security* which was traded.

[10.] *9.* Price—The price at which the trade was effected.

[11.] *10.* Contract Value—(for bonds only)—The value of the trade in dollars and cents.

[12.] *11.* Original Settlement Date—The settlement date of the trade which was DK'd.

[13.] *12.* Other-Side (Executing Broker)—The alpha symbol of the other-side clearing firm and the badge number, in parenthesis, of the other-side executing broker. The badge number is necessary since the executing broker for the initiating firm must pass on the DK Notice to the broker with whom he traded.

[14.] *13.* Total Shares—In cases where there were additional transactions in the same security at the same price with the same other-side broker representing the same other-side firm, the total of all such trades must be indicated. [(] The initiating firm [may] *must* [, if it wishes,] attach and forward copies of the Floor reports relating to such other transactions, [(] *except in the case of a DK initiated by a specialist as a principal or on a PER execution.*

[15.] *14.* Remarks—Any other information which may be of assistance in resolving the transaction.

If the executing broker agrees with the terms of the trade, he shall deliver copies 1 [and 2], *2 and 3* of the Notice to the broker with whom he traded ('the other-side broker'). At the same time, the reverse side of copy [3] *4* shall be time stamped on the other-side broker's clock, (or written in), and the other-side broker shall place his initials opposite the time indication, acknowledging receipt of the notice. The executing broker shall retain copy [3] *4* as his control.When the other-side broker is a specialist or Floor broker acting as agent and he agrees with the terms of the transaction as set forth in the DK Notice, he shall, using a form prescribed by the Exchange, advise the member or member organization from whom the DK Notice was received that he knows the transaction and will supply the name of the clearing member on the other-side of the transaction later. He shall then pass on copies 1 [and 2] , *2 and 3* to the member or member organization for whom he acted ('the other-side firm').

When the terms of a transaction are agreed upon, all copies of the DK Notice shall be signed by both the executing broker and the other-side broker. Where the other-side broker is a specialist or Floor broker acting as agent and the other-side firm agrees with the terms of the transactions, all copies of the Notice shall also be signed by the Floor partner of the other-side firm (or the member representing it under Rule 724).

In the event the DK'd transaction is resolved on any terms other than those originally set forth in the DK Notice by the initiating firm, a line shall be placed through the inapplicable term(s), and the correct term(s) entered [directly above] *in the designated area.* (A specialist or Floor broker taking over a trade shall substitute his clearing number for the inapplicable clearing number.) To indicate his assent, a Floor partner of the initiating firm (or the member representing it under Rule 724) shall place his initials on all copies next to the item(s) changed.

If the transaction has been resolved, [the executing broker for the initiating firm shall be responsbile for filing copy 1 of the DK Notice with the Clearing Corporation and copy 3 with the office of the initiating firm. Copy 2 will be sent by the other-side broker to the office of the clearing member on the other-side of the trade.] *the initiating firm shall be responsbile for forwarding copies 1, 2 and 3 to the DK Control Center.*

Any party who receives a DK Notice and does not know the transaction or does not agree with the terms of the trade and cannot resolve the difference with the party from whom the DK Notice was received, shall circle DK in the appropriate buy or sell section and sign copies 1 [and 2], *2 and 3* of the Notice. [Both] *All three* copies shall be returned to the party from whom the Notice was received. In the event that a specialist or Floor broker, who acted as agent, does not know the trade, he shall return the notice as promptly as possible so as to enable the party from whom the Notice was received to redeliver the Notice directly to the other-side firm within the time limits specified in paragraph (d) of this Rule.

[FR Doc. 79-37417 Filed 12-5-79; 8:45 am]
BILLING CODE 8010-01-M

[File No. 1-7203]

Aydin Corp; Application To Withdraw From Listing and Registration

November 26, 1979.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Aydin Corporation's (the "Company's") common stock became listed and registered on the Amex on April 3, 1975, and, as of October 19, 1979, also became listed and registered on the New York Stock Exchange, Inc. ("NYSE"). On the latter date, Amex suspended trading in the issue pursuant to Rule 12d2-1 of the Act.

2. The Company determined that the direct and indirect costs and the possibility of market fragmentation do not justify maintaining listings of the shares on both the Amex and NYSE.

This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before December 10, 1979 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37407 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21305; 70-6375]

Central Power & Light Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

November 23, 1979.

Notice is hereby given that Central Power & Light Company ("CP&L"), 120 North Chaparral Street, Corpus Christi, Texas 78401, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell at competitive bidding $75,000,000 principal amount of its First Mortgage Bonds, Series Q, Due January 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until September 1, 1985, and will be subject to a 1% sinking fund beginning in 1981. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated January 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred for company obligations, including projects under construction. Approximately $80,000,000 of short-term borrowings are expected to be outstanding as of January 29, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by CP&L for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, CP&L assumes that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceeding in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of the company if it were not part of the Central and South West System.

CP&L's estimated construction and fuel exploration and development expenditures for the years 1979 through 1981 are estimated at $234,900,000, $219,600,000 and $209,300,000, respectively. Approximately $163,000,000 of the 1979 estimated total had been expended as of September 30, 1979.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $85,000, including accountants' fees of $6,500 and legal fees of $16,000. The fee of counsel for the purchasers of the bonds is estimated at $18,500 and is to be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 17, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personnally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37408 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16368; File No. 57-433]

Consolidated Tape Association; Receipt of Amendments To Plan

November 27, 1979.

On September 17, 1979, the Consolidated Tape Association ("CTA") submitted to the Commission a proposed amendment to Section XI(c) of the joint industry plan (the "Plan") filed with and declared effective pursuant to Rule 17a-15 (17 CFR 240.17a-15) under the Securities Exchange Act of 1934 governing the consolidated transaction reporting system. The proposed amendment would effect a decrease in access charges to vendors and other persons for receipt of combined Network A and Network B last sale information.[1] If a vendor or other person receives combined Network A and Network B last sale information via the high speed line, the charge would be reduced from $750 to $500 per month. If a vendor or other person receives combined Network A and Network B last sale information via a vendor's data base, the charge would be reduced from $375 to $250.[2] The reduction in these charges, which reflects decreasing costs to the CTA of disseminating last sale information, was implemented, effective January 1, 1979.

In order to assist the Commission in determining whether to approve the proposed amendment, interested persons are invited to submit their views and comments on the proposal in writing to George A. Fitzsimmons, Secretary, Securities and Exchange

[1] Network A disseminates last sale reports of transactions executed in all reporting markets for securities on the New York Stock Exchange, Inc. Network B disseminates last sale reports of transactions executed in all reporting markets for securities on the American Stock Exchange, Inc.

[2] As a result of the proposed amendment, vendors and other persons would no longer be permitted under the Plan to subscribe to Network A or Network B last sale information separately.

Commission, Washington, D.C. 20549, on or before January 7, 1980. The amendment to the Plan will be available for public inspection in the Commission's public reference room. All such communications should refer to File No. S7–433.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79–37409 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

Gold Equities, Inc.; Order of Suspension of Trading

November 29, 1979.

It appearing to the Securities and Exchange Commission that there is a lack of adequate and accurate public information concerning Gold Equities, Inc.'s financial condition and the total number of shares issued and outstanding, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Gold Equities, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in such securities on a national securities exchange or otherwise is suspended for the period from 11:15 a.m. (EST) on November 29, 1979 through December 8, 1979.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–37410 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 16369; SR–MSRB–79–8]

Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

November 28, 1979.

On July 17, 1979, the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue, NW., Washington, D.C. 20036, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b–4 thereunder, copies of a proposed rule change. The purposes of the proposed rule change are (i) to designate the MSRB Municipal Securities Principal Qualification Examination (the "Examination") as satisfying the MSRB's examination requirements for qualification as a municipal securities principal and (ii) to provide an exemption from the examination requirements for persons who entered the municipal securities business as municipal securities principals between December 1, 1975, and November 28, 1979, who were qualified at the time of entry as general securities principals with a registered securities association or in a general supervisory capacity with a national securities exchange, and who have actively performed the functions of municipal securities principals since such date of entry. The Examination, as filed for Commission review on July 17, 1979, consisted of a question bank of 441 questions, an answer key, and examination specifications, and was accompanied by a request for confidential treatment of such materials.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16086 (August 7, 1979)) and by publication in the **Federal Register** (44 FR 47420 (1979)). No comment were received by the Commission with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15b and the rules and regulations thereunder.[2]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.[3]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79–37411 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission granted the MSRB's request, filed pursuant to Securities Exchange Act Rule 24b–2 (17 CFR 240.24b–2), for confidential treatment of the Examination. Letter from Douglas S. Scarff to Barbara L. Leventhal (July 30, 1979).

[2] The Commission staff, in determining whether to exercise its delegated authority to approve the proposed rule change, reviewed the question bank, the answer key, and the examination specifications submitted by the MSRB.

[3] The examination is approved on the basis of the examination specifications filed with the Commission. Any changes in the examination specifications will be filed with the Commission as proposed rule changes. It is contemplated, however, that the question bank filed with the Commission may from time to time be added to or revised in conformity with the current examination specifications and that such additions and revisions need not be filed with the Commission.

[Rel. No. 21312; 70–6353; 70–576]

New England Electric System and New England Power Service Co.; Supplemental Notice of Proposed Dividend Payment by, Capital Contribution to and Short-Term Borrowing Authorization for Subsidiary Service Company

November 28, 1979.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and its service company subsidiary New England Power Service Company ("NEPSCO"), 25 Research Drive, Westborough, Massachusetts 01581, have filed with this Commission an amendment to their application-declaration previously filed pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12 and 13 of the Act and Rules 42, 45, 50, 90 and 91 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By release dated October 19, 1979 (HCAR No. 21259), notice was given concerning a proposed capital contribution from NEES to NEPSCO and a proposed short-term debt authorization for NEPSCO. Subsequent thereto applicants-declarants filed an amendment revising those proposals. The complete proposal, as revised, is set forth below.

During 1978 NEPSCO billed its customers $50,910,622 for services, an average of approximately $4,250,000 per month, and NEPSCO's monthly working capital needs ranged from a minimum of $1,375,000 to a maximum of $4,500,000. Since it has no authorization to borrow funds to meet its working capital requirements, NEPSCO met such requirements through a combination of open account advances from NEES of $1,100,000 and prepayments of bills by NEPSCO's customers. The open account advances from NEES consisted of $550,000 which had been made between 1936 and 1941 and which bear interest at 4% per annum, together with other advances totaling $550,000 which were made in amounts of $50,000 each, the last such advance having been made in 1965, and which do not bear interest. To provide for NEPSCO's ongoing working capital requirements it is proposed that NEES make a capital contribution to NEPSCO, that NEPSCO be granted its own short-term borrowing authority and that NEPSCO declare and pay to NEES a dividend of $273,436, a sum

representing the full amount of its retained earnings. A portion of NEPSCO's retained earnings include work performed for non-affiliates, including work performed for the United States government during World War II. The disposition of this war income must be approved by this Commission in accordance with the order of August 8, 1942, in File No. 70–576.

NEES proposes to make a capital contribution of $1,350,000 to NEPSCO, from which contribution NEPSCO would repay NEES $1,100,000, the full amount of outstanding open account advances. NEPSCO will credit the capital contribution to "Miscellaneous paid-in capital" and NEES will charge it to "Investment: Common Stock of Subsidiaries, at Equity."

NEPSCO also proposes to issue and sell from time to time through March 31, 1980, its short-term notes up to a maximum amount of $4,000,000 outstanding. Such short-term notes would be issued to banks and/or to NEES, would mature in less than one year from date of issuance and would provide for prepayment in whole or in part without penalty. The notes issued to banks would bear interest at a rate not exceeding the prime rate in effect at the time of issuance (not including any fees in lieu of compensating balances), and those issued to NEES would bear interest at a rate not in excess of the prime rate in effect at the time of issuance. Assuming a prime rate of 15.75% and compensating balance requirements of 20%, or fees equivalent thereto, the effective interest cost of bank borrowings would be 19.69%, and the effective interest cost of borrowings from NEES would be 15.75%.

It is proposed that NEPSCO may prepay its notes to NEES, in whole or in part, with borrowings from banks and that NEPSCO may prepay its notes to banks, in whole or in part, with borrowings from NEES. In the event of borrowings from banks at a higher interest rate than the rate on notes to NEES being prepaid with such bank borrowings, NEES will credit NEPSCO with the interest differential from the date of issuance of the new notes to the normal maturity date of the notes to NEES being prepaid. In the event of borrowings from NEES to prepay notes to banks, the interest rate on the notes to NEES will be the lower of (1) the interest rate on the bank notes being prepaid (but only until the maturity date of the notes so prepaid, and thereafter at the prime rate) or (2) the prime rate.

NEPSCO also seeks authorization to include in its service charges to customers (1) the actual interest on funds borrowed by it, and (2) a rate of return on equity capital (excluding retained earnings) equal to the rate of return on common equity most recently authorized by the Federal Energy Regulatory Commission ("FERC") in rate proceedings involving NEPSCO's affiliate, New England Power Company ("NEP"). The most recent rate of return on common equity authorized NEP in FERC proceedings was 12.75%. NEPSCO further requests that any new rate authorized NEP by FERC become effective for NEPSCO (1) upon filing with this Commission of the FERC order authorizing such new rate for NEP, or (2) upon the effective date of such FERC order, whichever is later.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may not later than December 20, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 79-37412 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release 34-16366; File No. SR-NASD-79-10]

National Association of Securities Dealers, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given on October 22, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of the proposed amendment to the Code of Procedure for Handling Trade Practice Complaints of the National Association of Securities Dealers, Inc. It consists of a new Section 21 with subsequent existing sections of the Code to be renumbered. New language is italicized.

Sec. 21 Service of Complaints, Decisions and Other Notices

Any respondent or aggrieved person shall be deemed to have received notice to which he is entitled under any section of this Code by mailing of the notice to that person at his last known address as reflected on the Association's records. For purposes of computing the time for any such person to take required action under this Code, three days shall be added to the prescribed period if service is effected by mail.

NASD's Statement of Purpose of Proposed Rule Change

The proposal was prompted by Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36401 (July 14, 1977), 12 SEC Docket 1113–1114 (July 26, 1977), which suggested that self-regulatory organizations review their rules to be sure the rules provide that a mailing to an affected person or entity directed to the last address of record for that person constitutes proper service under the Code. The proposed amendment provides that a mailing to any participant, member, or associated person directed to the latest address carried on the records of the Association for that person constitutes proper service within the meaning of the Association's Code of Procedure for Handling Trade Practice Complaints. This will prevent the possibility of an open-ended period for appeals under the code where an aggrieved person has not timely received a copy of any notice

under the Code for whatever reason. It will bring finality to proceedings under the Code with respect to those limited situations.

NASD's Statement of Basis Under the Act for Proposed Rule Change

Section 15A(b)(6) provides that the "rules of a registered securities association are designed to promote just an equitable principles of trade * * * and, in general to protect investors and the public interest * * *" Section 15A(b)(8) provides that the rules of a registered securities association "provide a fair procedure for the disciplining of * * * persons associated with members * * *" Section 15A(h)(1) provides "[I]n any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined * * * the association shall * * * notify such member or person of and give him an opportunity to defend against, such charges, and keep a record." Section 15A(h)(2) provides [I]n any proceeding by a registered securities association to determine whether a person shall be denied membership, barred * * * or prohibited or limited with respect to assess to services offered by the association * * * the association shall notify such person of and give him an opportunity to be heard * * *" Pursuant to these statutory directives the Association has adopted a Code of Procedure for Handling Trade Practice Complaints designed to provide a comprehensive and fair procedure for the disciplining of members and persons associated with members. As part of this procedure, the Code provides that persons subject to its disciplinary process are provided with notice as a matter of due process protection.

Comments Received From Members, Participants or Others of the Proposed Rule Change

No comments have been received by members, participants or others since the Association has not puplished this proposed amendment for comment.

NASD's Statement on Burden on Competition

The proposed amendment has no competitive effect and, therefore, imposes no burden on competition.

On or before January 10, 1980, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so doing or (ii) as to which the Association consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Association at 1735 K Street, N.W., Washington, D.C. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 27, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 27, 1979.

[FR Doc. 79-37418 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21311; 70-6380]

Northeast Utilities, et al.; Proposed Formation of a Non-Utility Subsidiary Which Will Lease Electric and Gas Appliances to Consumers

November 27, 1979.

In the matter of Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089; The Connecticut Light & Power Company, Selden Street, Berlin, Connecticut 06037; the Hartford Electric Light Company, Selden Street, Berlin, Connecticut 06037; Western Massachusetts 06037; Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089.

Notice is hereby given that Northeast Utilities ("NU"), a registered holding company, and The Connecticut Light and Power Company ("CL&P"), the Hartford Electric Light Company ("HELCO") and Western Massachusetts Electric Company ("WMECO") have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10, 11 and 12 of the Act and Rules 43, 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NU, CL&P, HELCO and WMECO propose the following transactions: (a) The establishment of Northeast Utilities Energy Management Company (NUEMCO) as a wholly-owned non-utility subsidiary of NU to acquire and lease to customers electric and gas water heaters and other appliances, (b) the proposed method of financing NUEMCO, (c) the purchase by NUEMCO from CL&P, HELCO, and WMECO of all appliances presently owned by those companies and leased to customers, and (d) the several guarantees by CL&P, HELCO and WMECO of the debt of NUEMCO, if required.

For many years, CL&P, HELCO, and WMECO supported the use of electric and gas water heaters and, to a lesser degree, gas conversion burners, through a program of purchasing the appliances and leasing them for a small monthly rental to their customers. This program was discontinued in November, 1974 due to the discontinuance of all marketing efforts and a major capital expenditure cutback.

After detailed study, the applicants determined that a program should be undertaken to encourage the increased use of gas for water heating and to encourage electric customers to use radio-controlled water heaters, whether the heaters are owned by customers or rented to them. The increased use of gas water heaters will reduce the area's need for oil and will improve NU's position in possible future gas allocation priorities because this will be a residential gas use which is the last category to be affected in the event of reduced aloocations. The increased use of controlled electric water heaters will result in more efficient use of available generating capacity. This is because they can be controlled to insure that their use coincides with the availability of the most efficient generating capacity and that they do not operate during the "peak" hours when the system must rely on generating units with higher operating costs. This is consistent with the objective of controlling loads at the point of use in order to reduce demand during peak periods and increase use in off-peak periods.

It is stated that the organization of a nonutility subsidiary to own and lease appliances rather than have the program carried out by public utility subsidiaries would have the following advantages: (a) With the approval of the Commission, financing through a higher level of debt would contribute to lower

capital cost which would permit a lower rental charge to the customer; (b) NUEMCO will not be a manufacturer or seller of electricity or gas and as such will be exempt from the Connecticut 5% gross earnings tax presently applicable to appliance rental revenues of electric and gas utilities including CL&P and HELCO, with a resulting aggregate savings of approximately $175,000 taxes currently being paid by those companies; (c) greater flexibility in setting both book and tax depreciation rates thus lowering federal income taxes and increasing cash flow; (d) a nonutility subsidiary would not be subject to regulation by any state regulatory commission but rental pricing would be determined by competition; and (e) the sale of existing appliances at net book value would provide cash proceeds of approximately $6,800,000, $3,800,000 and $1,900,000 to CL&P, HELCO and WMECO, respectively, for use in repaying short-term debt incurred to finance their ongoing construction programs.

It is proposed that NUEMCO would be incorporated as a stock company under the Connecticut general statutes with $1,000 stated capital to be provided by NU through the purchase of ten common shares, no par value. The balance of the financing would be provided by (a) a capital contribution of $1,250,000 representing 10% of NUEMCO's total capitalization of $12,500,000; and (b) a term bank loan or loans for the balance. These funds would be used to purchase existing rental appliances from the operating subsidiaries. The bank loans would be unsecured and would be fully amortized over the term of the loan. Preliminary discussions with banks have indicated that such financing would be available.

In view of the fact that the bank loans will be unsecured and that NUEMCO will not have substantial paid-in capital, the lending institution or insitutions may require the several guarantees of CL&P, HELCO and WMECO for the NUEMCO term bank loans.

Appliances that are presently leased by the operating utilities to customers are covered by written leases. The leasing of new appliances will be handled under a new applicance lease agreement. Under both the old and new lease agreements, customers would be billed for rental on the regular monthly bill from the operating utility providing electric and/or gas service. Under appropriate service contracts CL&P, HELCO and WMECO will provide NUEMCO with necessary services for accounting, billing and maintenance in connection with the appliance rental program. All expenses attributable to the program incurred by CL&P, HELCO and WMECO with respect to accounting, billing, maintenance, etc., will be charged to NUEMCO and NUEMCO will reimburse the operating utilities for such expenses from appliance rentals pursuant to the service contracts. CL&P, HELCO and WMECO customers will not be charged with any expense of the appliance rental program.

No fees, commissions or expenses will be paid or incurred by the applicants in connection with the proposed transactions except for requisite filing fees and financial and other services to be performed at cost by Northeast Utilities Service Company, a subsidiary service company of NU.

Certain of the proposed transactions are subject to the jurisdiction of the Connecticut Division of Public Utility Control and the Massachusetts Department of Public Utilities. It is stated that no other state commission or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 20, 1979, request in writing that a hearing he held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37413 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-4736]

Polychrome Corp.; Application to Withdraw from Listing and Registration

November 26, 1979.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. Pursuant to an Indenture dated November 1, 1977, with Morgan Guaranty Trust Company of New York (the "Trustee"), Polychrome Corporation (the "Company") issued $20,000,000 principal amount of the Debentures in 1977.

2. As of October 5, 1979, there were 95 debentureholders of record.

3. Trading in the debentures has been light and the Company perceives no reason for this to change. Reporting requirements under the Act must be met by the Company so long as the debentures remain listed and registered on a national securities exchange. The Company incurs substantial expense in complying with those requirements. Given the small number of holders and the limiting trading activity, the Company believes that the burden of filing such reports is disproportionate to any investor benefit therefrom.

In order to protect the debentureholders, the Company upon approval of its withdrawal application, has agreed to undertake the following:

(a) To provide the Trustee, and each registered debentureholder, a copy of the Company's annual audited financial statements as soon as possible, but in any event, within 120 days after the close of the fiscal year for as long as there are debentures publicly held;

(b) To notify each registered debentureholder and the Trustee, in writing, of any event which affects the rights, interests or priorities of the debentureholders or the Trustee under the Indenture;

(c) To arrange for a registered broker-dealer to advertise a willingness to

purchase the Debentures until there are no longer any Debentures outstanding which are publicly held; and

(d) To forward to the Commission any written comments received from debentureholders regarding the decision to voluntarily delist the Debentures while its application with the Commission is pending.

In light of these investor protection measures, the Amex has agreed not to interpose an objection to this application.

Any interested person may, on or before December 10, 1979 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37414 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21304; 70-5648]

Public Service Co. of Oklahoma and Transok Pipe Line Co.; Post-Effective Amendment Regarding Increase in Amount of Notes Issued by Subsidiary Pipeline Company to Parent Electric Utility Company

November 23, 1979.

Notice is hereby given that Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Transok Pipe Line Company ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101, a subsidiary pipeline company of PSO, have filed with this Commission a further post-effective amendment to their application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the followihg proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By supplemental order issued July 20, 1979 (HCAR No. 21152), Transok was authorized to issue and sell to PSO its short-term notes in an aggregate principal amount outstanding at any one time not to exceed $10,000,000, such notes to mature not later than December 31, 1980.

It is now proposed that the amount of such notes issued and sold by Transok to PSO be increased to $20,000,000. In all other respects the transactions remain unchanged. The notes will bear interest at the rate published in The Wall Street Journal for commercial paper placed directly by a major finance company and having terms most nearly equal to the terms of the loans.

The proceeds of the notes have been and will continue to be used to finance Transok's continuing construction program and for Transok's general working funds. It is stated that the fees and expenses to be incurred in connection with the proposed transactions, other than the Commission's filing fee, are estimated at $300, including legal fees of $250. It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposed transactions.

Notice is further given that any interested person may, not later than December 17, 1979, request in writing that a hearing be held for such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarants at the above-stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37415 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21306; 70-6097]

System Fuels, Inc., et al.; Proposal by Nonutility Subsidiary Relating to Procurement, Storage and Transportation of Fuel for the Benefit of Operating Companies and Financing Such Operations Through Loans From Parent Companies

November 23, 1979.

In the matter of System Fuels, Inc., Noro Plaza, 666 Pondras, New Orleans, Louisiana 70130; Middle South Utilities, Inc., 225 Baronne Street, New Orleans, Louisiana 70112; Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72203; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205; New Orleans Public Service, Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Notice is hereby given that System Fuels, Inc. ("SFI"), a fuel subsidiary of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L") and New Orleans Public Service, Inc. ("NOPSI") (collectively referred to as the "Operating Companies"), all of which are public utility subsidiaries of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a second post-effective amendment to an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 45, 50(a)(3), 90 and 91 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration for a complete statement of the proposed transaction.

By orders dated January 4, 1978 (HCAR No. 20363), March 9, 1978 (HCAR No. 20441), May 4, 1978 (HCAR No. 20530), and December 29, 1978 (HCAR No. 20867), in this matter the Commission approved, through December 31, 1979, certain financing arrangements and other transactions related to the procurement, storage and transportation of fuel by SFI for use by the Operating Companies. SFI was

authorized to borrow up to $109,900,000 from the Operating Companies under a loan agreement ("1979 Loan Agreement"). It is estimated that $56,500,000 will be outstanding under the 1979 Loan Agreement on December 31, 1979 and will be converted into loans under an amended 1978 Loan Agreement ("Loan Agreement") which will provide for additional borrowings by SFI from the Operating Companies in 1980 of up to $117,000,000 to be used to finance, in part, transactions entered into by SFI in the ordinary course of its fuel supply business for the 1979 calendar year. The exact amount of the borrowings proposed to be made under the Loan Agreement will be adjusted to reflect the actual amount of loans outstanding on December 31, 1978; total borrowings by SFI under the Loan Agreement are presently estimated at $173,500,000.

Potential borrowing requirements of SFI during 1979 include up to $61,200,000 for payment of notes and bankers' acceptances and a net amount of $31,700,000 for SFI's fuel supply program, including $28,300,000 for fuel procurement, $2,000,000 for storage facilities and $1,400,000 for transportation ffcilities.

Certain other Commission authorizations are also requested in the instant filing where required, to carry out or continue programs which the initial years of SFI's operation have shown to be essential.

It is presently contemplated that net capital requirements of $52,100,000 will be required for SFI's fuel procurement program during 1980 as follows:

	1980
Gas and Oil Exploration and development	$36,300,000
Uranium Exploration	14,700,000
Nuclear Fuel Procurement	(1)
Coal Procurement	1,100,000
Fuel Oil Procurement	(2)
Net Requirements	52,100,000

[1] Capital requirements for nuclear fuel procurement will be financed as described in the Commissions's order dated October 31, 1978 (HCAR No. 20753).
[2] Capital requirements for fuel oil procurement will be financed as described in the Commission's orders dated August 1, 1979 (HCAR No. 21171) and August 14, 1979 (HCAR No. 21185).

It is presently estimated that $43,800,000 will be required for SFI to continue its gas and oil exploration and development activities in the tri-state area of Arkansas, Louisiana and Mississippi during 1980. Additionally $10,400,000 will be required by SFI to purchase gas and pay royalties on gas produced from prospects in which SFI has an interest. During the same period, SFI estimates that it will generate approximately $17,900,000 from the sale of gas, thereby resulting in a net capital requirement of $36,300,000 during the period.

Pursuant to the Commission's order of March 9, 1978 (HCAR No. 20441), in this matter, SFI has embarked on a uranium exploration program to help assure an adequate supply of uranium to accommodate the increased commitment to nuclear power of the System. SFI is involved, acting individually or together with nonaffiliates, in conducting geological and geophysical studies and explorations for, and acquiring and disposing of leases and other mineral rights with respect to, uranium reserves, and proving such reserves. It is presently contemplated that SFI's net capital requirements for this program during this program during 1980 will be approximately $14,700,000.

SFI contemplates that during 1980 approximately $47,600,000 will be expended for the acquisition of nuclear materials and services offset by $43,800,000 from sales of enriched UF_6 to the Operating Companies and Middle South Energy, Inc. ("MSE"), a generating subsidiary of MSU. SFI's nuclear materials and processing services supply program during 1979 will be financed by the issuance by SFI of short-term notes as authorized in the Commissions' order of October 31, 1978 (HCAR No. 20753).

It is presently contemplated that SFI's coal procurement program during 1980 will involve expenditures of $1,100,000 for carrying costs, including interest charges, storage and certain overhead expenses, to be capitalized primarily in connection with SFI's participation in a coal supply arrangement with Antelope Coal Company ("Antelope") pursuant to a contract entered into between SFI and Antelope as approved by the Commission's order dated March 8, 1977 (HCAR No. 19924).

To assure the availability to the Operating Companies and Arkansas-Missouri Power Company ("Ark-Mo"), another utility subsidiary of MSU, of an adequate supply of fuel oil it will be necessary to have an inventory on hand at January 1, 1980, and December 31, 1980, of 7,000,000 bbls. During the ensuing twelve months, the inventory level will vary because of seasonal factors and other conditions. However, due to an increase in cost, the inventory at December 31, 1980, is expected to be worth approximately $161,800,000 compared to an estimated worth of approximately $125,400,000 at January 1, 1980. Net cash requirements of $36,400,000 are therefore expected during 1980.

SFI anticipates expenditures of $5,800,000 in 1980 to insulate certain of its storage tanks to facilitate storage of heavier fuel oils, to construct an additional storage tank and to make certain improvements to existing docking and unloading facilities. The anticipated expenditures will be funded in part by $2,400,000 in fuel storage depreciation expenses included in oil billing to the Operating Companies and Ark-Mo, thereby resulting in a net requirement of $3,400,000.

It is presently contemplated that SFI's fuel transportation program during 1979 will involve expenditures of $1,000,000 for the provision of gathering systems and/or pipelines to transport gas, which has been discovered pursuant to SFI's exploration program, to certain of the System's power plants, for certain improvements to towboats and barges and for the financing and general costs applicable to the program to be capitalized. The anticipated expenditures will be funded in part by $400,000 in fuel transportation depreciation expenses included in fuel billing to the Operating Companies and Ark-Mo, thereby resulting in a net requirement of $600,000.

SFI's capital requirements during 1980 may involve the following:

To pay SFI's commercial paper notes or The Aetna Casualty and Surety Company ("Aetna") under the arrangement described below	$20,900,000
To pay bankers' acceptances from Citibank due periodically through 1979 as authorized by the Commission's order of November 7, 1977 (HCAR No. 20246)	40,000,000
To cover capital expenditures for activities herein described	56,100,000
Total	117,000,000

Pursuant to the financing program authorized by Commission order dated October 31, 1978 (HCAR No. 20753), SFI will finance its nuclear materials and processing services supply program during 1980 by the issuance of its commercial paper notes backed by Aetna's Bond of Indemnity. SFI has retained the right to cancel this program at any time should it become economically disadvantageous. In addition, the program may be terminated upon the occurrence of certain events. SFI currently estimates that the maximum amount of notes or obligations to Aetna at any one time outstanding during 1979 will total $20,900,000. Authority is herein requested to make borrowings under the Loan Agreement, if necessary, in 1980, in an amount sufficient to effect repayment of its borrowings or reimbursement of Aetna. In addition, SFI will endeavor to extend, renew or otherwise refinance its obligations to Citibank, but in the event that such refinancing is not available, it will need $40,000,000 to pay the notes upon their maturity. SFI also needs the assurance that borrowing capacity is available immediately to meet

contingencies which might arise in connection with leasing and other transactions previously entered into upon authorization from the Commission.

Commission authorization is therefore sought for SFI to enter into the Loan Agreement with the Operating Companies pursuant to which SFI would be authorized to make borrowings, which will mature on December 31, 2005, from the Operating Companies, from time to time through December 31, 1980, in an aggregate amount not to exceed, at any one time, the sum of $117,000,000 and the amount to be outstanding at December 31, 1979, under the 1978 Loan Agreement, currently estimated to be $56,500,000, which amount will be converted into loans under the Loan Agreement as described below. Such borrowings would be in addition to the $26,500,000 of outstanding borrowings authorized by the Commision by order dated December 17, 1971 (HCAR No. 17400) and the $13,000,000 of outstanding borrowings authorized by Commission orders dated December 17, 1973 (HCAR No. 18221), December 24, 1975 (HCAR No. 19314) and December 30, 1976 (HCAR No. 19835).

Under the Loan Agreement, each Operating Company will agree to make loans to SFI until December 31, 1980, in aggregate principal amounts at any one time outstanding up to but not exceeding the amount set opposite its name below (collectively the "Commitments" and individually the "Commitment").

Operating company	Commitment
Arkansas Power & Light Company	$54,520,000
Louisiana Power & Light Company	73,305,000
Mississippi Power & Light Company	29,495,000
New Orleans Public Service Inc	16,180,000
Total	173,500,000

The amount of the Commitments include an assumed $56,500,00 to be outstanding under the 1978 Loan Agreement at December 31, 1979. The amounts will vary to reflect the loans actually outstanding at that time.

Each Operating Company's Commitment to make additional loans in 1980 is equal to an amount in such proportion as its kilowatt-hour sales for the twelve months ended September 30, 1979, bear to the total kilowatt-hour sales of the Operating Companies for that period, computed in both cases by including sales to rural electric cooperatives and municipalities but excluding sales to other public utilities.

The obligation of SFI to repay the loans made by each Operating Company under the Loan Agreement shall be evidenced by the promissory note ("Note") of SFI in the principal amount equal to such Operating Company's Commitment and payabe to the order of such Operating Company on December 31, 2005. SFI will authorize each Operating Company to endorse on the reverse side of the Note payable to such Operating Company an appropriate notation evidencing its pro rata share of the loans made to SFI under the Loan Agreement and each prepayment and payment of principal with respect to such loans. Each loan will be made pro rata according to the Commitments. Simultaneously with the delivery of the Notes and their appropriate notation for borrowings outstanding at December 31, 1979, under the 1978 Loan Agreement, the notes issued under the 1978 Loan Agreement which evidence such borrowings will be returned to SFI and cancelled.

Each Note will bear interest on the unpaid principal balance thereof, adjustable monthly on the first day of each month, at an annual rate for such month equal to the annual rate of interest borne on the last day of the preceding month by the short-term bank borrowings of the Operating Company to which such Note shall have been issued. If on the last day of any month, such Operating Company shall have short-term bank borrowings bearing more than one rate of interest, the highest rate shall apply. If, on the last day of any month, such Operating Company shall not have any short-term bank borrowings, the prime commerical rate generally charged by commercial banks in New York City on such day to responsible and substantial corporate borrowers shall apply. The loans will be prepayable at any time in any amount without premium or penalty. Each prepayment on account of the unpaid principal balance of the Notes will be made by SFI to the Operating Companies pro rata in accordance with their respective percentage shares of the Commitments.

SFI is endeavoring and will endeavor to obtain funds from external sources under arrangements advantageous to SFI and the System to meet SFI's capital expenditure requirements in lieu of borrowings from the Operating Companies. Subject to the receipt of such regulatory approvals from the Commission as may be necessary at the time, it is anticipated that SFI may borrow from banks, insurance companies and other nonaffiliated lenders and enter into specific arrangements for financing.

The rights and obligations of the parties under the Loan Agreement will be subject to certain restrictions set forth in (1) the loan agreement with Hibernia, (2) the acceptance facility line of credit agreement with Citibank, as amended, and (3) the participation agreement with The Aetna Casualty and Surety Company. These restrictions relate principally to the payment or prepayment by SFI of its indebtedness to the Operating Companies during the terms of those agreements.

In carrying out its financing program for 1980 SFI represents that it will at all times, unless the Commission shall otherwise expressly authorize, maintain the aggregate of its capital stock, surplus, and principal amount of its indebtendess to the Operating Companies at an amount equal to at least 35% of SFI's total capitalization.

SFI proposes to file certificates of notification pursuant to Rule 24 promulgated under the Act on a quarterly basis through 1980. Such certificates will include a description of the progress of its fuel supply program for 1980 including any deletions, additions or changes therein, and will furnish the Commission on or before December 1 in 1980 a copy of SFI's budget and projected cash flow statement for the next succeeding calendar year. It is specifically agreed that SFI will make, keep and preserve for such period, such accounts, cost-accounting procedures, correspondence and other records relating to any transaction in which SFI participates as may be required by Section 15 of the Act or any rules, regulations or orders promulgated thereunder and that all of the foregoing shall be subject at any time and from time to time to such reasonable periodic, special and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

SFI and the Operating Companies have found the flexibility resulting from certain authorizations previously granted to SFI in the ordinary course of its fuel supply business to be of great use in the economical and efficient supply of fuel for the System. Accordingly it is requested that authorization be extended during 1980 for the following:

1. The Operating Companies, in connection with a transaction in the ordinary course of SFI's fuel supply business as described above and not involving the issuance of a security, to assure any party contracting with SFI that the Operating Companies will, in accordance with their respective shares of ownership of the Common Stock of SFI, take such action as may be appropriate from time to time to keep SFI in a sound financial condition so

that it may discharge its obligations under the particular contract; and

2. To have personnel employed by the other companies in the System perform services for SFI at cost where it is more economical and efficient for such personnel to perform such services.

It is stated that no state or federal commission, other than this Commission, is required to authorize the proposed transactions. As required, AP&L has filed pertinent information relating to its participation in the proposed transactions with the Arkansas Public Service Commission.

Notice is further given that any interested person may, not later than December 26, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37416 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21315; 70-6388]

Arkansas-Missouri Power Co.; Proposed Issuance and Sale of Short-Term Bank Notes

November 29, 1979.

Notice is hereby given that Arkansas-Missouri Power Company ("Arkansas-Missouri"), 405 West Park Street, Blytheville, Arkansas 72315, a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Arkansas-Missouri proposes to issue and sell to the First National Bank in Little Rock, Arkansas, for the account of participating banks, unsecured promissory notes in an amount not to exceed $5,000,000 at any one time outstanding. The notes will be issued from time to time during a one-year period commencing on the effective date of the Commission's order herein. The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time but will mature not later than one year from the effective date. The notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at a rate per annum equal to the commerical loan rate of Chemical Bank, New York, New York, from time to time in effect on borrowings having a 90-day maturity by responsible and substantial coprorate borrowers. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed transactions. The notes will, at the option of the company, be prepayable in whole or in part at any time without premium or penalty.

The proposed borrowings will be in addition to other bank borrowings by the company from (1) First National Bank in Little Rock, Arkansas, which total $4,000,000 as of the date of this declaration, and may not exceed $5,500,000 at any one time outstanding, and (2) Worthen Bank & Trust Company, Little Rock, Arkansas, which total $5,000,000 as of the date of this declaration, and may not exceed $5,500,000 at any one time outstanding.

It is stated that the net proceeds to be received by Arkansas-Missouri from the issuance and sale of the proposed notes will be applied to its construction program and to other lawful corporate purposes. The company currently intends to repay the $5,000,000 of borrowings proposed herein and the other bank borrowings referred to from the proceeds of permanent financing or with funds that might otherwise become available.

It is further stated that the fees and expenses to be incurred in connection with the proposed notes are estimated not to exceed $4,000 and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given, that any interested person may, not later than December 24, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37462 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-568]

Carrier Corp.; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Carrier Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of Sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. Pursuant to a statutory merger effected on July 6, 1979, a wholly owned subsidiary of United Technologies Corporation ("United") was merged with and into Applicant. As a result of this merger Applicant is now a wholly owned subsidiary of United.

2. In connection with this merger, United, through the execution of supplemental indentures, assumed Applicant's obligations under the indentures governing Applicant's publicly traded debentures, including the obligation to fulfill all reporting requirements under the Exchange Act with respect to Applicant's publicly traded debentures.

3. Applicant has filed a Current Report on Form 8-K indicating the assumption by United of the reporting requirements with respect to such debentures.

4. Audited financial statements for Applicant for its latest fiscal year ended October 31, 1978 were contained in the proxy material sent to Applicant's shareholders in connection with the merger, and the future results of Applicant's operations will be reported on a consolidated basis by United in its periodic reports.

In the absence of an exemption, Applicant is required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act and the rules and regulations thereunder. Applicant believes that the purposes of the Exchange Act would not be furthered by the filing of such additional reports.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than December 21, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37463 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-584]

Corenco Corp.; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Corenco Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of Section 15(d) of the Exchange Act.

The Applicant states, in part:

1. Pursuant to a statutory merger effected on August 8, 1979, a wholly owned subsidiary of Canadian Pacific Investments Limited ("CPI") was merged with and into Applicant. Each share of Applicant's common stock held by the public was converted into and exchanged for $22.50 per share, and as a result of this merger Applicant is now a wholly owned subsidiary of CPI.

2. Audited financial statements for Applicant for its fiscal year ended December 31, 1978, as well as unaudited information for the three month period ended March 31, 1979, were contained in the proxy statement sent to Applicant's shareholders in connection with the merger.

In the absence of an exemption, Applicant is required to file reports pursuant to Section 15(d) of the Exchange Act and the rules and regulations thereunder for its fiscal year ended December 31, 1979. Applicant believes that the filing of such additional reports pursuant to Section 15(d) would not benefit the public and would burden Applicant.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than December 21, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37464 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21314; 70-6311]

General Public Utilities Corp., et al.; Post-Effective Amendment Regarding Issuance and Sale of Additional First Mortgage Bonds, and Request for an Exception From Competitive Bidding

November 28, 1979.

In the matter of General Public Utilities Corporation, 260 Cherry Hill Road, Parsippany, New Jersey 07054; Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960; Metropolitan Edison Company, 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605; Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries Jersey Central Power & Light Company ("Jersey Central"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission a post-effective amendment to their application-declaration in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 6(b), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 44, 45, 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which

is summarized below, for a complete statement of the proposed transaction.

By orders dated June 19, 1979 (HCAR No. 21107) and October 30, 1979 (HCAR No. 21276), the Commission authorized GPU, Jersey Central, Met-Ed and Penelec to issue, sell and renew their respective promissory notes (the "notes") having a maturity of not more than six months from the date of issue from time to time through October 1, 1981 pursuant to a revolving credit agreement with a syndicate of commercial banks (the "Loan Agreement"). Aggregate borrowings under the Loan Agreement are limited to $500,000,000 and Met-Ed's indebtedness thereunder is restricted to $125,000,000. The indebtedness under the Loan Agreement was to be secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of Jersey Central, Met-Ed, Penelec and GPU Service Corporation, and, in the cases of Jersey Central and Met-Ed, certain other collateral.

Met-Ed now proposes to issue and sell for cash to the banks participating in the Loan Agreement and requests an exception from the competitive bidding requirements of Rule 50 under the Act for such issuance and sale, up to $12,000,000 aggregate principal amount of additional first mortgage bonds (the "New Bonds"). The New Bonds would be issued under the Indenture, dated November 1, 1944, between Met-Ed and Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), Trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture.

The New Bonds will mature on or before December 31, 1981. The interest rate on the New Bonds will be computed in accordance with the formula for determining the interest rate on the notes issued by Met-Ed under the Loan Agreement—that is, ranging from 105% to 111% of the higher of (i) Citibank's base rate, as in effect from time to time, or (ii) ½ of 1% above the three-week moving average of offering rates for three-month certificates of deposit of major banks. In other words, the New Bonds will bear interest at a rate equal to the rate that the notes issued by Met-Ed under the Loan Agreement would have borne had they, and not the New Bonds, been issued. The aggregate principal amount of notes issued by Met-Ed under the Loan Agreement and the New Bonds outstanding at any one time shall not exceed $125,000,000. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged.

The fees, commissions and expenses to be incurred in connection with proposed transaction will be filed by amendment. The Pennsylvania Public Utility Commission has jurisdiction with respect to Met-Ed's proposed issuance and sale of the New Bonds. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposed transaction.

Notice is further given that any interested person may, not later than December 24, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37485 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21317; 70-4990]

General Public Utilities Corp. and GPU Service Corp.; Post-Effective Amendment Regarding Proposed Issuance and Sale of Notes by Subsidiary to Holding Company

November 29, 1979.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, and its wholly-owned subsidiary company, GPU Service Corporation ("Service Company"), 100 Interpace Parkway, Parsippany, New Jersey 07054, have filed a further post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, (9a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated April 29, 1971 (HCAR No. 17112), the Commission authorized the organization of, and conduct of business by, Service Company. The Commission's order also authorized GPU to acquire for cash long-term unsecured notes of Service Company not exceeding $5,000,000 aggregate principal amount at any one time outstanding. Each such note would mature 40 years from the date of issuance of the first note, would be prepayable withut premium or penalty by Service Company at any time, and would bear interest at a rate equal to the prime rate for short-term commercial borrowings generally in effect, from time to time, in New York City, plus not more than 20% thereof. It was stated that Service Company would at all time maintain its aggregate capital, including the principal amount of notes outstanding, at an amount approximately equal to the sum of two months' operating expenses, plus the cost of its property, less applicable reserves, prepayments, and petty cash working funds.

Subsequently, by order dated June 3, 1975, and March 7, 1977 (HCAR Nos. 19023 and 19921), authorization was granted for increases from $5,000,000 to $10,000,000 in the maximum aggregate principal amount of Service Company's unsecured notes which could be acquired by GPU. However, all such notes representing borrowings in excess of $5,000,000 were to be notes of a maturity not exceeding two years from the date of issuance and were to bear interest at a rate equal to the actual cost of short-term borrowings by GPU, taking into consideration GPU's compensating balance requirements. At November 19, 1979, the aggregate outstanding amount of Service Company's unsecured notes so acquired by GPU was $8,755,683.

GPU and Service Company now seek authority to increase to $14,000,000 from $10,000,000 the maximum aggregate principal amount of Service Company's unsecured notes which may be acquired

by GPU. All such notes representing borrowings in excess of $5,000,000 will continue to be notes of a maturity not exceeding two years from the date of issuance and will bear interest at a rate equal to the prevailing New York City prime rate, plus 20%. This rate approximates GPU's cost of borrowed funds, taking into account compensating balances and commitment fees. Service Company will, moreover, continue to maintain its aggregate capital, including the principal amount of all such notes outstanding, at all times equal to the sum of approximately two months' operating expenses, plus the cost of its property (to the extent not financed from borrowings from others), less applicable reserves, prepayments, and petty cash working funds. In all other respects the transactions will remain unchanged.

It is stated that GPU and Service Company expect that through the period ending December 31, 1981, it will be necessary for Service Company to obtain through unsecured loans from GPU additional approximate $4 million. Such funds will be required principally for working capital and additional operating expenses, the remaining costs of construction and equipment associated with the Parsippany, New Jersey headquarters office building, and the acquisition of certain additional fixtures and equipment for use by Service Company personnel.

The fees and expenses to be incurred in connection with the proposed notes are to be supplied by amendment.

It is stated that no state or federal commission, other than this Commission, has jurisdiction in connection over the proposed transactions.

Notice is further given that any interested person may, not later than December 24, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Wasington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, be certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37466 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-595]

Great Southern Corp.; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Great Southern Corporation (the "Applicant"), has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Sections 13 and 15(d) of the 1934 Act.

The Applicant states that as a result of a merger on December 6, 1978, it became an indirect wholly-owned subsidiary of NLT Corporation ("NLT"), and all of its outstanding common stock was converted into the right to receive a cash payment or certain securities of NLT.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than December 21, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 1100 L Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37467 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-590]

Home Savings & Loan Association; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Home Savings and Loan Association (the "Applicant"), as originator and servicer under a Pooling and Servicing Agreement providing for the issuance of Mortgage Pass-Through Certificates, Fourth Series, 10% Pass-Through Rate (the "Certificates"), has filed an application for an exemptive order pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for exemption from certain reporting requirements under Section 13 and from the operation of Section 16 of the Act.

The Application states, in part:

In the absence of an exemption, the Applicant would be required to file reports adhering to all the item requirements of Form 10-K, 10-Q and 8-K, as well as reports required pursuant to Section 16 of the 1934 Act.

Applicant believes that the exemptive order requested by it is appropriate in view of the fact that Form 10-Q and certain items of Form 10-K, as well as reports required pursuant to Section 16 of the 1934 Act are inapplicable to the pass-through mortgage pool arrangement.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than December 21, 1979, may submit to the Commission his views or any substantial facts bearing on the application or the desirability of a

hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should briefly state the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37468 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16383; File No. SR-NSCC-79-13]

National Securities Clearing Corp.; Proposed Rule Changes by Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 30, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change.

The proposed Rule change, which shall only be effective for one year from the date of this filing, consists of the addition to Section VIII PASS-THROUGH EXPENSES of the NSCC fee schedule of a new Sub-Section E as follows:

E. For processing cash or stock dividend claims made against the Corporation's NCC & Co. nominee by NSCC participants and others on and after December 1, 1979—$10.00 per record date claim.

The proposed Rule change would replace, effective December 1, 1979, SR-NSCC-79-9 which has previously become effective on August 21, 1979 and had provided only for a "$10.00 processing fee for each cash or stock claim made against the Corporation's NCC & Co. nominee by an NSCC participant for dividends with record dates on or after September 1, 1979."

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed Rule change is as follows:

The proposed Rule change establishes a $10.00 processing fee for each dividend claim made on and after December 1, 1979 against NSCC's NCC & Co. nominee by participants and non-participants alike, which fee will be utilized by NSCC to defray the costs of processing such claims.

The proposed Rule change relates to the equitable allocation of reasonable dues, fees and other charges.

No comments on proposed Rule change have been solicited or received.

NSCC does not perceive that the proposed Rule change would constitute a burden on competition.

The foregoing Rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed Rule change, the Commission may summarily abrogate such Rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 27, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 29, 1979.

[FR Doc. 79-37475 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10956; 812-4552]

Nationwide Life Insurance Co. and MFS Variable Account; Application

November 28, 1979.

Notice is hereby given that Nationwide Life Insurance Company ("Nationwide"), One Nationwide Plaza, Columbus, Ohio 43216, a stock life insurance company organized under the laws of the state of Ohio and MFS Variable Account (the "Variable Account"), a separate account of Nationwide registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on October 15, 1979, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

The Variable Account was established by Nationwide Life's Board of Directors pursuant to Ohio law on March 3, 1976, for the purpose of investing contributions received under certain variable annuity contracts issued in conjunction with plans which may or may not qualify for special tax treatment. These plans include qualified plans under Section 401(a) of the Internal Revenue Code of 1954, as amended (the "Code"), including so called "H.R. 10 plans" or "Keogh plans" or annuity purchase plans adopted pursuant to Sections 403(b) or 408 of the Code.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees an Optional Retirement Program (the "Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new Section

51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System (the "System") requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further stated that the prohibitions of Section 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that notwithstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract otherwise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

Section 27(c)(1), 22(e) and 27(d)

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with Section 51.358 as it pertains to redemption values under Contracts issued to participants in the Program subsequent to the date of such exemptive order.

Applicants assert that if such exemptions are not granted, persons participating in the Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the state's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) the limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the state of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contacts to be issued to them. This disclosure will take the form of an appropriate reference in each prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, Nationwide will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market specifically to bring this restriction to the attention of the potential participants.

Section 6(C) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 24, 1979 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following December 24, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the heaing (if

ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37465 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-554]

Platteville Telephone Co.; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Platteville Telephone Company ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from the provisions of Sections 12(g), 13, 14 and 16 of the 1934 Act.

The Applicant states, in part:

(1) Principally, Applicant furnishes telephone service throughout a rural area of approximately 150 square miles in southwestern Wisconsin;

(2) Applicant is regulated as a public utility by the Public Service Commission of Wisconsin (the "PSC") and is subject to the reporting requirements of the PSC;

(3) Practically all of Applicant's securities are owned by residents of Wisconsin;

(4) Applicant's future offerings of equity securities will be restricted to Wisconsin residents; and

(5) There is no active trading market for Applicant's securities.

Applicant contends that the granting of the exemption would not be inconsistent with the public interest of the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person no later than December 21, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37470 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-593]

Reynolds Metals European Capital Corp.; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Reynolds Metals European Capital Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting Applicant an exemption from the provisions of Section 13 of the 134 Act.

The Applicant states in part:

(1) The Applicant is a wholly-owned subsidiary of Reynolds Metals Company ("Reynolds"), which is subject to the reporting requirements of the 1934 Act.

(2) The Applicant has only one class of securities registered under the 1934 Act, 5% Subordinated Guaranteed Convertible Debentures Due 1988 which are unconditionally guaranteed by Reynolds and convertible into common stock of Reynolds.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, interested persons are referred to said application which is on file in the office of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that not later than December 21, 1979, any interested person may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37471 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10957; 812-4519]

Scott Paper International, Inc.; Application

November 29, 1979.

Notice is hereby given that Scott Paper International, Inc. (the "Applicant"), Scott Plaza, Philadelphia, Pennsylvania 19113, a wholly-owned subsidiary of Scott Paper Company ("Scott"), has filed an application on August 14, 1979, and an amendment thereto on November 20, 1979, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), for an order exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant was organized under the laws of Pennsylvania. All the capital stock that has been issued by the Applicant has been issued to and purchased by Scott for $250,000. The Applicant represents that its primary purposes are: providing unified management of the international assets, primarily shares in foreign affiliates and contracts with those affiliates, that are being transferred to the Applicant by Scott and that may be acquired in the future; technical, marketing, and other management assistance to such affiliates; and financial assistance to such affiliates and to Scott.

Scott is incorporated under the laws of Pennsylvania, and its principal executive office is in Philadelphia, Pennsylvania. It is a publicly held company which has issued a class of securities that has been registered under Section 12 of the Securities Exchange Act of 1934, and it is subject to the rules of the New York Stock Exchange. The application states that Scott is not an investment company as that term is defined in Section 3(a) of the Act. The principal businesses of Scott include the manufacture and marketing of consumer and commercial sanitary paper products and the manufacturing and marketing of printing, publishing, converting, and specialty papers.

The Applicant represents that its assets are expected eventually to include shares in substantially all of approximately 32 affiliates in 23 countries, including the United States. The Applicant asserts that none of these companies is an investment company within the meaning of the Act. The Applicant states its assets will also include various patent, trademark, and other intellectual property rights giving rise to royalty and technical assistance fees from foreign sources. In addition, Scott will transfer to the Applicant Scott's ownership interest in Discott II, Inc., a commission agent for some of Scott's export sales qualified as a Domestic International Sales Corporation. Scott's branch operation in Canada may be transferred to Applicant. The application indicates that these assets encompass most of Scott's investments and operations generating foreign earnings.

The Applicant states that it provides centralized planning and management of its international assets and management assistance to its international affiliates. This assistance includes or will include providing technical and marketing expertise to meet the needs of individual affiliates; providing rights to use patents, trademarks, and other intellectual property under agreements with the affiliates; and managing foreign exchange hedging and currency meeting programs and short-term investments in foreign money markets. The Applicant's current and anticipated activities also include the provision of financial assistance to Scott and to foreign affiliates of the Applicant and of Scott. The Applicant currently comtemplates that it will lend to Scott the largest portion of the Applicant's borrowings, which are described below.

The Applicant represents that it has borrowed $100,000,000 under an arrangement with the Royal Bank of Canada (the "Bank"). In order to satisfy certain Canadian tax requirements that allowed the Applicant to obtain this financing on attractive terms, the financing took the form of an issue of preferred stock to the Bank by a Canadian company, Owikeno Finance, Ltd. ("Owikeno Finance"), all of the common shares of which are wholly owned by Scott; a similar preferred stock issue in like amount to Owikeno Finance by a Liberian company, Scott Finance Liberian, Ltd. ("SFL"), the common stock of which is wholly owned by the Applicant; and a loan to the Applicant of a like amount by SFL.

The application indicates that all of the securities issued under these arrangement, including the Owikeno Finance preferred shares issued to the Bank, are registered with the issuer and legended to preclude any public distribution and any transfer within the United States, its territories or possessions, or to citizens, nationals, or residents thereof. The persons receiving securities were required to covenant that they will not dispose of them in any manner contrary to these restrictions. The application indicates that Owikeno Finance and SFL were organized as financing affiliates to effect the Canadian financing described above. The application states that neither company has engaged in any other activity, and there is no present plan for either company to engage in any other activity.

The Applicant represents that the preferred shares issued by Owikeno Finance to the Bank in effect are guaranteed, with regard to both purchase price and dividends, by Scott. In satisfaction of that part of the purchase price equal to the issue price per share, Scott may issue to the Bank a subordinated promissory note of Scott or cause to be issued to the Bank such a note of a wholly-owned subsidiary guaranteed by Scott. The Applicant and Scott entered into an agreement that any such note will be issued by the Applicant and that Applicant will hold Scott harmless in connection therewith. The Applicant represents that any such note will be restricted as to transfer to the same extent as the preferred shares that it replaced.

The Applicant states that if it makes the loans from the Canadian financing transaction described above, it may constitute an investment company subject to the provisions of the Act in the absence of an order exempting it from the provisions of the Act or the availability of an exemption under a rule of general application. The Applicant's investment securities (consisting of its loans to Scott and minority-owned international affiliates and its equity securities in the latter) may constitute more than 40% of the value of its total assets. In addition, the Applicant's outstanding securities are owned by two parties, Scott and SFL, thereby precluding exemption under Section 3(b)(3) of the Act. Accordingly, the Applicant requests that the Commission issue an order, pursuant to Section 6(c) of the Act, exempting Applicant from the Act on the ground that such an exemption is in the public interest.

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provisions of the Act and the rules and regulations thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Applicant contends that it should be exempted from the Act for, *inter alia*, the following reasons: (1) the Canadian financing arrangements in which the Applicant participated indirectly did not constitute or involve any public offering of securities by the Applicant or others in the United States, and there are no plans for any such future public offering of securities by or through the Applicant; (2) the Applicant's ownership and capital structure and the terms of the Candian financing arrangement are such as to make it reasonably certain that no securities of the Applicant will be held by the United States investing public at any future time; (3) the Applicant's ownership and capital structure and the terms of the Canadian financing arrangement and any future financing arrangements are such as to make it reasonably certain that no securities of the Applicant, apart from Applicant's common stock owned by Scott, will be owned by any United States national or resident; (4) the Applicant's security holders will have the benefit of the information made generally available to the public by Scott as required by the Securities Exchange Act of 1934 and the rules of the New York Stock Exchange; (5) the Applicant's activities will be limited to the management of its foreign and domestic assets and the provision of management and financial assistance to affiliated companies, and financial assistance to Scott, and the Applicant will not deal or trade in securities except to the extent that buying or selling forward exchange contracts or entering into parallel loans (both of which are to be used in the ongoing business operations of the Applicant) are considered to be dealing or trading in securities; and (6) the Canadian financing arrangements will assist in improving the balance of payments position of the United States by providing capital funds from outside the United States for domestic use.

The Applicant seriously questions whether it was the intention of Congress in enacting Section 3(b)(3) to require investment company classification for a corporation such as the Applicant. The Applicant is a member of an affiliated group of companies (the Applicant, SFL and Owikeno Finance), all of the securities of which, except for preferred

shares of one affiliate privately placed with a foreign bank (the Bank) and not available for sale to the investing public or to United States nationals or residents, are held by a company (Scott) which is not itself an investment company. The only security-holder outside the affiliated group, the Bank, will, because of Scott's effective guarantee, be subject to minimal risks in connection with the Canadian financing arrangements and thus will not require the protection of the Act.

The Applicant further argues that although since the expiration of the Interest Equalization Tax no corporation, including the Applicant, can satisfy all of the requirements of Rule 6c-1, which exempts finance subsidiaries of domestic companies from the Act under certain conditions, and although the Applicant's function as an operating company and the size of its intended domestic loan to Scott create certain other variations from the literal terms of Rule 6c-1, the Applicant is in full compliance with the basic policies underlying Rule 6c-1 and thus should be exempted from all provisions of the Act by analogy to that rule.

The Applicant has agreed that an order exempting the Applicant from the Act may be issued subject to the conditions:

(1) Applicant will comply with all the requirements of subparagraphs (1)–(3), (4) (except to the extent that foreign branches of United States banks are considered to be nationals or residents of the United States), (5), and (8) (except to the extent that entering into parallel loans or buying and selling forward exchange contracts are considered to be dealing or tading in securities) of paragraph (b) of Rule 6c-1;

(2) At least 90 per cent of the assets of the Applicant, exclusive of United States Government securities, cash items (including bank certificates of deposit), and short-term investments in foreign government paper, commercial paper, banker's acceptances of domestic and foreign banks, state and municipal general obligations, revenue bonds, and notes, will be invested in or loaned to its parent company, Scott, or to companies at least ten percent of the equity securities of which are or at the completion of the investment will be, owned, directly or indirectly, by Scott or will be invested in assets utilized in the Applicant's function as an operating company (*i.e.*, various patent, trademark, and other intellectual property rights and technical assistance contracts, the branch operation in Canada, forward exchange contracts, parallel loans, and tangible personal property and real estate interests utilized by the Applicant in its operations); and any assets of the Applicant not so invested will only be invested in or loaned to companies which are customers or suppliers of Scott or a subsidiary of Scott; and any of the assets invested in or loaned to investment companies will only be invested in or loaned to SFL or to investment companies which are wholly-owned subsidiaries of Scott; and

(3) That unless and until a tax is enacted providing a deterrent to the purchase of the Applicant's securities by United States persons comparable to that provided by the Interest Equalization Tax, the Applicant will not issue any securities other than (a) common stock issued to Scott, (b) debt securities issued to SFL as part of the Canadian financing arrangements described in the application, (c) a promissory note guaranteed by Scott issued to the Bank upon put of the preferred stock of Owikeno Finance as described in the application, and (d) other debt securities, guaranteed by Scott and publicly sold abroad, issued to foreign purchasers not exceeding $50,000,000 (excluding the Canadian financing described in the application) under arrangements, including legends restricting transfers within the United States or its territories or possessions or to citizens, nationals, or residents thereof and covenants with purchasers or underwriters, precluding transfers contrary to these restrictions, without a further order of the Commission; provided, however, that in the event that the Applicant becomes exempt from each and every provision of the Act or the Commission adopts, amends, or interprets a Rule under the Act which would exempt the Applicant from each and every provision of the Act, nothing contained in this order or the conditions to which it is subject, shall preclude the Applicant from being exempt from the Act by virtue solely of the applicability of said Rule or interpretation.

Notice is further given that any interested person may, not later than December 24, 1979 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37472 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21313; 70-6372]

Seneca Resources Corp.; Issuance and Sale of Short-Term Note to Bank by Subsidiary

November 28, 1979.

Seneca Resources Corporation ("Seneca"), a wholly-owned subsidiary of National Fuel Gas ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration and amendment thereto with this Commission designating Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the amended declaration for a complete statement of the proposed transaction.

Seneca is engaged in the exploration and development of oil and natural gas reserves in the Gulf Coast, Southwest and Rocky Mountain areas and in the processing of liquified petroleum products. Seneca's exploration and development program is characterized by agreements between Seneca and a number of different participants who initiate and develop oil and gas prospects on leaseholds which have been secured by Seneca or others. In most cases the leases were acquired by others not subject to the Act. In those instances where leases or working interests were acquired by Seneca, the acquisition was made pursuant to the exemption provided by Rule 49(d). Typical agreements include a commitment from Seneca to pay a percentage of the expenses involved in

drilling and operating wells in return for a percentage working interest in the production from those wells. Most of the current drilling activity is focused in areas of Louisiana and East Texas where exploration and drilling for oil and gas is being actively pursued by a number of different individuals. During fiscal 1979 Seneca participated in the drilling of 80 wells. On the average, Seneca's participation in each well amounted to a 24 percent working interest. On any individual well Seneca's working interest ranged from 1.5 percent to 50 percent. In most cases Seneca is billed for its proportionate share of expenses on a monthly basis after the well operator has incurred expenses in drilling and operating the well. Due to the lag time between the incurring of the expenses by the well operators and the billing of participants, Seneca's payment for its committed share of expenses usually occurs after substantial progress has been made in the development of individual prospects.

By order dated February 2, 1979 (HCAR No. 20911), the Commission authorized Seneca to issue a note to Houston National Bank ("Bank") pursuant to a Loan Agreement with the Bank which provides a line of credit of up to $20,000,000 through January 31, 1980. Seneca presently has $20,000,000 of short-term borrowings outstanding under this line of credit and is contemplating refunding these loans with long-term borrowings. Such long-term borrowings will be the subject of a future filing which will be independently considered.

Seneca is now seeking authorization to issue and sell a note pursuant to a separate Loan Agreement ("Loan Agreement") with the Bank. The Loan Agreement will provide an additional line of credit through December 31, 1980 not to exceed $10,000,000 or an amount ("Borrowing Base") established by the Bank from time to time based upon the Bank's evaluations of the value of Seneca's producing oil and gas reserves ("Producing Reserves") in Texas, Oklahoma and Louisiana. The Borrowing Base may be increased or decreased from time to time based upon the Bank's evaluation but such redetermined Borrowing Base will not exceed $10,000,000. Seneca will also have the right to reduce any redetermined Borrowing Base by notifying the Bank within a specified period after it has been notified of a redetermination. Borrowings pursuant to the Loan Agreement will be evidenced by a note to be dated as of the date of issue and to mature not more than one year from the date of issue. The note will be prepayable at any time, in whole or in part, without penalty or premium. The note will bear interest at a variable rate not to exceed the Bank's prime rate from time to time and will be secured by a first mortgage on the Producing Reserves.

Seneca has agreed to maintain a balance ("Average Daily Available Balance") after subtracting the amount of uncollected funds and an amount required to support Bank services and reserve requirements which totals 10% of the Bank's total commitment plus 10% of the amount of any loans outstanding. If the Average Daily Available Balances for a specified period is less than such required amounts, Seneca has agreed to pay a fee equal to the Bank's prime rate times the amount by which the Average Daily Available Balances for such period is less than 10% of the Bank's average total commitment for such period plus 10% of the average amount of any loans outstanding for that period. Assuming Seneca borrows the full amount of the commitment and the required balances are not maintained, the effective interest cost would be 18.60% based upon the current 15.5% prime commercial rate.

Seneca expects to initially borrow up to $6,000,000 under the Loan Agreement. Of the proceeds from that loan, $5,000,000 would be used to repay interest-free emergency loans aggregating up to $7,000,000 advanced to Seneca by National Fuel Gas Supply Corporation ("Supply") and National Fuel Gas Distribution Corporation ("Distribution"), wholly-owned subsidiaries of National. These loans were made by Supply and Distribution to provide Seneca with working capital to finance its gas exploration and development program. The balance of the initial borrowing will be used to pay Seneca's portion of expenses for past drilling. Seneca plans to draw down the remaining amount available under the proposed Loan Agreement as funds are needed during 1980 to pay its portion of expenses involved in drilling, completing and operating wells in which Seneca has obtained a working interest. Repayment of borrowings under the Loan Agreement is expected to be made through internally generated funds and by possible external financing arrangements.

Under the terms of the Loan Agreement, Seneca will pay the reasonable fees and expenses of counsel for the Bank in connection with the preparation of the Loan Agreement and all transactions pursuant thereto. A statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transactions. Seneca requests that it be permitted to file the certificates required by Rule 24 relating to the proposed transactions on a quarterly basis.

Notice is further given that any interested person may, not later than December 21, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37473 Filed 12-15-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-567]

Shenandoah Oil Corp.; Application and Opportunity for Hearing

November 27, 1979.

Notice is hereby given that Shenandoah Oil Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of Sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. Applicant has been liquidated pursuant to a plan adopted by Applicant's shareholders, will soon be dissolved pursuant to the laws of its state of incorporation.

2. Only approximately 68 shareholders have not tendered their shares and received the liquidating distribution, and the only remaining right of these shareholders is to receive and participate in such liquidating distribution.

3. The only funds in the hands of Applicant are the amounts to be paid to shareholders upon proper tender of their shares, and such funds will, upon Applicant's dissolution, be transferred to a liquidating trustee, and if not distributed after the prescribed statutory period of time, will escheat to the State of Texas.

4. In view of the above facts, an exemption from the obligation to file additional periodic reports for Applicant's current fiscal year is not inconsistent with the public interest or the protection of investors.

In the absence of an exemption, Applicant is required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act and the rules and regulations thereunder for its fiscal year ended December 31, 1980. Applicant believes an exemption from the obligation to file such additional reports would not be inconsistent with the public interest or the protection of investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person no later than December 21, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-37474 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

The Cincinnati Stock Exchange; Proposed Rule Change by Self-Regulatory Organizations

[Release No. 34-16387; File No. SR-CSE-79-7]

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 20, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Chapter IX of the Rules of the Exchange is proposed to be changed by the deletion of the present Chapter IX in its entirety and the substitution therefor of a new Chapter IX which will conform with the Uniform Arbitration Code which has been drafted by the Securities Industry Conference on Arbitration. The purpose of the proposed rule change is to provide investors with a simple and inexpensive procedure for resolution of controversies with broker-dealers. Further, the proposed rule change is consistent with rule changes requested by other self regulatory organizations in order to provide a uniform system of arbitration throughout the securities industry.

The basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act in that the proposed rule change is designed to provide investors with a simple and inexpensive procedure for resolution of their controversies and thereby to promote just and equitable principles of trade and to protect investors and the public interest.

No comments on the proposed rule change have been solicited or received.

The Exchange believes that the proposed rule change imposes no burden on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 27, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

November 30, 1979.

[FR Doc. 37510 Filed 12-5-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/248]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on January 4, 1980 of the Working Group on UN/OECD Investment Undertakings of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 9:30 a.m. to 12:30 p.m. The meeting will be held in Room 1105 of the State Department, 2201 C Street, NW., Washington, D.C. 20520. The meeting will be open to the public.

The subject of the meeting will be the proposed U.N. Code of Conduct.

Requests for further information on the meeting should be directed to Richard Kauzlarich, Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr.

Kauzlarich's office in order to arrange entrance to the State Department building.

The Chairman of the working group, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: November 28, 1979.

Richard D. Kauzlarich,

Executive Secretary.

[FR Doc. 79-37445 Filed 12-5-79; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 77-087]

New York Vessel Traffic Service—Implementation Schedule

Notice is hereby given of the planned implementation schedule of the New York Vessel Traffic Service (VTS) as presented to and modified by the New York Harbor Vessel Traffic Service Advisory Committee at their meeting of November 21, 1979. A three-part implementation will be carried out.

During the initial phase, after full accpetance of the equipment from the contractor, New York VTS will commence a period of volunatary operation to bring about user familiarization. During this period VTS will be operational and prospective users will be invited to participate. The implementation of this phase will be announced locally.

On January 2, 1980, the New York VTS will begin a period when all vessels and elements of the maritime community are strongly urged to operate in compliance with the Vessel Traffic Service requirements published in the Federal Register on August 2, 1979 (44 FR 45381). Only through the broadest voluntary adherence to these requirements can the VTS program be fully successful from the start. VTS Operating Manuals containing the VTS regulations are available from the U.S. Coast Guard Marine Inspection Office, Battery Park Building, New York, New York 10004, or by writing to Commanding Officer, New York Vessel Traffic Service, Governors Island, New York, New York 10004. This period will extend to March 1, 1980.

Based on this schedule, the Coast Guard plans to make the New York VTS regulations, 33 CFR Part 161.500, effective on March 1, 1980. Mandatory compliance will commence on the effective date and the regulations will be regularly enforced. Formal notification of the effective date of the VTS regulations will be promulgated in the Federal Register at least 30 days in advance.

The public is advised that the above schedule is contingent upon the necessary electronic, video and computer equipment being provided by the contractor. Delays in the installation of similar equipment caused the previous deferral of operations by New York VTS.

Dated: November 29, 1979.

K. G. Wiman,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 37502 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Intent to Prepare an Environment Impact Statement on Proposed Development at Logan International Airport, Boston, Mass., and Notice of Scoping Meeting

The Federal Aviation Administration, New England Region, and the Massachusetts Port Authority, acting as joint lead agencies, intend to prepare a federal Environmental Impact Statement/State Environmental Impact Report for development of approximately 65 acres of vacant land (Bird Island Flats) at Boston-Logan International Airport.

Alternative development schemes will consider air cargo, general aviation and aviation support activities such as freight forwarders, aircraft maintenance, and food service preparation. Proposed development will include paved apron areas, buildings and hangars, access roads, and associated infrastructure.

Area of primary environmental significance include the potential impact on adjacent residential neighborhoods from aircraft noise, aircraft air pollutant emissions and ground access.

A state environmental scoping meeting was held on October 22, 1979. A federal scoping meeting will be held on Thursday, December 13, 1979, at 10:00 a.m. at New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. The meeting will be held to consider the scope of issues to be addressed in the DEIS/EIR and to identify significant issues related to the proposed development. Interested agencies, organizations and persons are invited to attend.

Inquiries about the proposed action should be directed to: John Silva, Environmental Planner, Airports Division, FAA, 12 New England Executive Park, Burlington, Mass 01803 (Tel: (617) 273-7233).

Dated: November 23, 1979.

Gerald Curtin,

Chief, Airports Division, New England Region, Federal Aviation Administration.

[FR Doc. 79-37537 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 79-32]

Study of Urban Blight; Request for Public Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 159 of the Surface Transportation Assistance Act of 1978 requires the Department of Transportation to conduct a study of urban blight and the actions which can be taken to mitigate adverse impacts associated with existing highways in the blighted areas of central business districts. The purpose of this notice is to advise the public of this study and to invite comments from interested parties for consideration in conducting the study and reporting to Congress.

DATE: Comments must be received by September 30, 1980, to ensure consideration in the report to Congress.

ADDRESS: FHWA Docket No. 79-32, Federal Highway Administration HCC-10, Room 4205, 400 Seventh Street, S.W., Washington, D.C. 20590. All responses to this notice will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., eastern time, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James March, Office of Program and Policy Planning, 202-426-0262, or Mr. Stan Abramson, Office of the Chief Counsel, 202-426-0761; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are Monday through Friday, 7:30 a.m. to 4:00 p.m., eastern time.

SUPPLEMENTARY INFORMATION: Section 159 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2718) reads as follows:

> The Secretary shall conduct a study of the potential for reducing urban blight adjacent to Federal-aid primary and interstate highways located in central business districts, which shall include but not be limited to the following—
>
> (a) a catalogue and evaluation of adverse impacts on adjacent land use;

(b) development of a list of potential ways that these adverse impacts could be eliminated or reduced;

(c) estimates of potential increases in value of adjacent land and air rights resulting from reduction of adverse highway impacts together with estimates of potential costs of highway improvements and related measures needed to reduce adverse impacts;

(d) an assessment of the feasibility of using air rights and adjacent land after the improvements are completed to contribute to urban employment, recreational opportunities, low and moderate income housing, and commerical, retail, institutional and higher income residential development;

(e) the development of financing proposals, including legislative proposals, involving all appropriate levels of government and private capital where appropriate, which would finance improvements identified as desirable;

(f) such other matters as the Secretary shall deem appropriate. Such study shall be conducted in cooperation with appropriate State and local govenments and shall be submitted to Congress two years after the date of enactment.

The report on the study findings is due in November 1980. Preliminary work on the study has already begun and a list of study cities has been compiled. The cities are:

Seattle, Washington; San Francisco, California; Ft. Worth, Texas; Boston, Massachusetts; Washington, D.C.; Charleston, West Virginia; Detroit, Michigan; and Portland, Oregon.

An interagency study committee with representatives from the Department of Housing and Urban Development, the Economic Development Administration, the Urban Mass Transportation, Administration, the Office of the Secretary of Transportation, and the Federal Highway Administration has been formed to coordinate the study. Representatives from the cities to be studied will be invited to participate with the committee in evaluating work on the study and in formulating appropriate financial or legislative proposals which may be needed to enhance the contribution of the Federal-aid highway program to comprehensive urban revitalization programs.

The purpose of this notice is to advise the public of this study and to invite comments from all interested groups and individuals. All responses to this notice will be available for examination by any interested person at the above address both before and after the closing date for comments.

Issued on: November 27, 1979.

Karl S. Bowers,

Federal Highway Administrator.

[FR Doc. 79-37375 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket HS-79-23]

Morristown and Erie Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the Morristown and Erie Railroad (ME) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. (64a(e)). That petition requests that the ME be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The ME seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS-79-23, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before January 18, 1979, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary. 49 CFR 1.49(d).)

Issued in Washington, D.C. on November 26, 1979.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 79-37223 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP78-11; Notice 2]

American Honda Motor Co., Inc.; Action on Petition for Inconsequential Noncompliance

This notice grants in part and denies in part the petition by American Honda Motor Co., Inc. of Gardena, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act for a noncompliance with 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems.* The basis of the petition was that the noncompliance is inconsequential as it related to motor vehicle safety.

Notice of the petition was published on December 7, 1978, (43 FR 57366) and an opportunity afforded for comment.

Paragraph S5.3.2. of Standard No. 105 requires that all brake system indicator lamps shall be activated as a check of lamp function when the ignition switch is turned to the "on" position when the engine is not running. Honda has informed NHTSA that this will not occur in Honda passenger cars manufactured between January 1, 1976, and the end of the 1978 model year unless the hand brake is applied when the ignition switch is turned "on". The total number of vehicles involved is 600,000. NHTSA had initially discovered this failure in compliance tests of the 1978 Honda Accord (CIR File 1985). For several reasons Honda argued that the noncompliance was inconsequential as it relates to motor vehicle safety. It has never received any complaint relating to the warning system. Its operator manuals recommend starting the car with the hand brake applied and if this procedure is followed, the lights would be checked. Finally, in order to constitute a hazard, several events would have to occur in sequence—failure of the driver to apply the hand brake during parking and starting, followed by failure of the lamp, followed by failure of the brake system.

Three comments were received on the petition, from private individuals, all of whom supported it.

NHTSA has decided to grant Honda's petition with respect to vehicles with manual transmissions, and to deny it

with respect to those equipped with automatic transmissions. Lacking the parking pawl provided by the automatic transmission, a vehicle with a manual transmission is likely to be parked with the hand brake applied which, under normal driving practice, is not released until after the ignition is on and the engine started. With this sequence of events the warning function will be provided. But many drivers of cars with automatic transmissions do not apply the hand brake when the vehicle is at rest. The transmission is usually placed in "Park" before the ignition key is removed. When this is done, the transmission and driveline are automatically locked and this holds the vehicle in a stationary position. NHTSA believes that the hand brake is rarely applied in this instance. Thus, under the Honda noncompliance, few drivers of cars with automatic transmissions would ever experience the warning light check.

Accordingly, petitioner has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety with respect to vehicles equipped with automatic transmissions, and its petition with respect to this class of vehicle is hereby denied. Insofar as the petition relates to vehicles equipped with manual transmissions, it is hereby found that the noncompliance is inconsequential as it related to motor vehicle safety, and the petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on November 26, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-37225 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP79-14; Notice 1]

B. F. Goodrich Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

The B. F. Goodrich Co. of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt to a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.3(d) requires that the sidewalls of each passenger car tire be labeled with the generic name of each cord material used in the plies. Goodrich manufactured approximately 7000 tires FR78–15 Lifesaver Radial XLIII with sidewall marking indicating that they contained glass plies when in fact the plies were of steel. The tires are said to conform to all other requirements of Standard No. 109. They were manufactured between the 32d week of 1979 and the 40th. The majority of the tires, 4000, remain under Goodrich's control and it has offered to apply a paper label to the tread of each explaining the correct composition of the tire. Because the tires otherwise conform Goodrich argues that its noncompliance is inconsequential as it relates to motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of B. F. Goodrich Co. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 7, 1980.

(Sec. 102, Pub. L. 93–492, 99 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 29, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-37503 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP79-15; Notice 1]

B. F. Goodrich Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

The B. F. Goodrich Co. of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt to a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S3.4(c) requires that the sidewalls of each passenger car tire be labeled with the maximum permissible load rating. Goodrich has produced 3512 snow tires in which the maximum load was incorrectly expressed in pounds on the white wall side (though correctly expressed in kilograms, and in both forms on the black wall side). The correct maximum load is 1742 pounds but the figure supplied on the white wall side, 1790 pounds, exceed this maximum by 48 pounds. The tires are known as "P 215/75R15 BF Goodrich Trailmaker Radial Steel Belted Mud and Snow" tires, and were manufactured from the 27th week of 1979 to the 37th week.

Goodrich believes that its "audit test data" proves that the mislabeled tires will comply with the performance requirements of Standard No. 109 when tested at the higher load figure. Its audit testing consists of extensions of the standard's high speed and endurance testing. The 1700 miles of the endurance test is extended until the tire fails or the test's termination at 2800 miles. In these tests the tires are run for 2 hours at an equivalent of 50 mph at loads that increase in increments of five percent. Goodrich tested four of the incorrectly labeled tires, three of which completed the 2800 miles without failure. The fourth tire failed at 2240 miles "at 120% of its correct maximum load rating, which is well above the 1790 lb. branded on the white wall side". It then tested two additional tires using the 1790 lbs. load rating, both of which completed the 2800 miles without failure.

In its high speed testing, tires are run at increasing increments of 5 mph beyond the 85 mph for 30 minutes until the tire fails or the 120 mph step is completed. One tire failed at 95 mph, two at 100 mph and the fourth at 105 mph. In a retest of two tires at the higher load, failures occurred at 100 mph and 105 mph. On the basis of these tests Goodrich argues that its noncompliance is inconsequential.

Interested persons are invited to submit written data, views and arguments on the petition of B. F. Goodrich Co. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 7, 1980.

(Sec. 102, Pub. L. 93-492, 99 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 29, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-37504 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

Privacy Act of 1974; Additions to General Routine Uses and Additions and Changes to Notices of Systems of Records

The Department of Transportation herewith publishes three new notices of systems of records, and republishes one system notice which has been slightly changed. In addition, two general routine uses are published which apply to the systems in the inventory.

Any person or agency may submit written comments on the proposed systems or on the proposed general routine uses to the Privacy Act Officer (M-30), Room 10319, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments must be received by January 6, 1980 to be considered.

If no comments are received, the proposed new systems and general routine uses will become effective on January 7, 1980. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, D.C. on November 29, 1979.

Robert L. Fairman,

Deputy Asst. Secretary for Administration.

* * * * *

Additional General Routine Uses

The following two general routine uses will apply where appropriate to all Systems of Records published by the Department of Transportation to date or subsequent to this date. Number 8 and 9 are to be added to the 7 general routine uses already in the **Federal Register.** Volume 42, No. 181 published in "Privacy Act Issuance, Annual Publication, September 19, 1977." (The "Prefatory Statement of General Routine Uses" appears on page 47038.)

Prefatory Statement of General Routine Uses

8. Access to Systems of Records of the Department is authorized to member(s) of the Office of Inspector General where the records are considered ". . . pertinent to the DOT programs or operations being reviewed. Existing orders or (internal) directives contrary to this provision are hereby superseded." The Secretary of Transportation by the foregoing has clarified the role of Inspector General personnel "who have need for the record(s) in the performance of their duties."

9. The Department may make available to another agency or instrumentality of any governmental jurisdiction, including State and local governments, listings of names from any System of Records in the Department for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the Stated purpose for the collection of the information in the System of Records. These enforcement activities are generally referred to as "matching" programs because two lists of names are checked for match using automated assistance.

This routine use is advisory in nature and does not offer unrestricted access to Systems of Records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using "Guidelines for the Conduct of Matching Programs" published by the Director, Office of Management and Budget, dated March 30, 1979.

New Systems of Records

DOT/FHWA 222

SYSTEM NAME:

Survey Assessing the Long-Term Effects of Relocation on Low-Income Groups.

SYSTEM LOCATION:

Associate Consultants, Inc., 624 E Street, NW., Washington, D.C. 20004.

For the Federal Highway Administration, Socio-Economic Studies Division, HPP-40

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected heads of low-income households displaced by highway construction. Fifty to seventy-five respondents will be interviewed from each of the following highway relocation sites: Baltimore, Maryland; Wheeling, West Virginia; St. Petersburg, Florida; and Los Angeles, California.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning the physical characteristics of the respondents' residences prior to and after relocation, payments for mortgages or rents and utilities, adequacy of community services, respondents' opinions of the relocation program, and sociodemographic information (e.g., age, race, income, sex, number of workers in household, transportation utilized, number of children).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Relocation Assistance Division of the Federal Highway Administration will use the conclusions drawn from the survey to:

(1) Analyze the longer term effects of relocation on low-income families who were relocated due to highway projects under provisions of the 1970 Relocation Assistance Act;

(2) Evaluate the long-term effectiveness of the Highway Relocation Programs in relocating displaced low-income families with the minimum of harm to their social and economic well-being; and

(3) Recommend changes in the relocation program to minimize long-term transition problems of low income families due to relocation. State highway agencies may also use conclusions drawn from this study to modify the administration of their relocation programs.

See also prefatory statement of general routine uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Magnetic Tape

RETRIEVABILITY:

Serial number assigned to individual respondent.

SAFEGUARDS:

(a) Interviewers will keep respondent identifiers and information collected completely confidential.

(b) Survey instruments containing respondent identifiers will be stored in locked cabinets or a locked room.

(c) Respondent identifiers will not be on the magnetic tape containing responses from the interviews.

(d) Upon completion of the pilot study, the list of respondent identifiers will be destroyed.

RETENTION AND DISPOSAL:

The list of respondent identifiers (names, addresses, and telephone numbers) will be retained until Phase II interviewing and coding is completed. The survey instruments and list of respondent identifiers will be destroyed upon completion of Phase II of the study. Statistical records of the questionnaire responses will be kept on tape and after completion of the main survey will be turned over to the Contract Technical Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Sociologist (Contract Technical Manager) Office of Program and Policy Planning Federal Highway Administration Room 3327, 400 7th Street, SW., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Contact System Manager.

RECORD SOURCE CATEGORIES:

All of the information in the survey will be supplied by the individual respondents.

DOT/TSC 716

SYSTEM NAME:

UMTA/Technology Sharing Mailing List. DOT/TSC.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of Plans and Programs, Technology Sharing Office, DTS–151, Kendall Square, Cambridge, MA 02142

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government officials and transportation professionals who have requested reports or have been selected by UMTA or TSC to receive reports and conference notifications.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain names, job titles, organizations, suborganizations and addresses. In addition, there are special categories which allow for entering the following information for each record in the data base: Organization Affiliation, Modal Information Need/Type of Document, and Subject Information Need.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To identify target audiences who have a need for specific project results or who have expressed an interest in receiving copies of project documentation; and to disseminate programmatic results in an efficient and effective manner. Uses of special codes—organizational affiliation, modal informational need, and subject informational need—will allow for a more efficient selection of audiences for specific types of reports, will permit analyses of information needs, and estimates of report quantities needed.

To communicate plans for scheduled conferences to likely participants and disseminate conference proceedings if applicable.

To prepare mailing labels.

Records are subject to examination by federal officials concerned with the dissemination of programmatic results or conference notification, but are not disclosed to members of the public (except through publication in conference proceedings of names of individuals who actually participated in each conference).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a computerized data base. Disc and tape records, paper copies of coding forms, and listings of specific target groups identified to receive a publication are maintained at the U.S. Department of Transportation's Transportation Systems Center (TSC). Upon request, a listing of the target audience for a specific publication may be forwarded to the appropriate federal official responsible for the dissemination of the report.

RETRIEVABILITY:

By any attribute contained in the data base—alphabetically by name, address or special attribute codes.

SAFEGUARDS:

Access is restricted to UMTA and TSC officials who are involved in the dissemination of programmatic results and/or notification of planned conferences. Terminal operators or contractors, if designated by TSC, may access the system to enter data, generate edit checks to assure data has been entered correctly, and generate paper copies of specific audiences for examination by a federal official. Access to the electronic data base is controlled by the computer telephone number, and name of individual responsible for the data base. Internally, the system is software protected so that people without these combinations of codes cannot even examine the data, let alone use it or modify it. Names are removed when the Postal Service reports an incorrect address with no forwarding address or when individuals request removal.

RETENTION AND DISPOSAL:

Records are kept on tape and disc. Deleted names and addresses are discarded completely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Technology Sharing Office, dTS–151, Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

NOTIFICATION PROCEDURE:

Individuals may contact system manager to confirm whether or not their name and address is contained in the system.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Contest of this data will be made to the System Manager. If administrative resolvement is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Names of individuals who attended conferences and individuals who have requested conference proceedings. Names of individuals who have requested copies of publications pertaining to specific projects. Various Departmental mailing lists such as:

Transit Properties, Planning Agencies, Transportation and Planning Associations.

DOT/OST 101

SYSTEM NAME:

Office of Inspector General Management Information System (OIG/MIS).

SYSTEM LOCATION:

Office of Inspector General, Management Information Staff, Room 9200, 400 7th Street, Washington, D.C., using the Computer Sciences Corporation Infonet Timesharing System, Beltsville, Maryland.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

All active employees of the OIG, with history data on previous employees maintained for two years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's current position and employment status, assignments, travel, experience, training, with the following personal data: Name, social security account number, date of birth, service computation date, career status, address, assigned station, job series, clearance, education, grade and evaluation due date.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There will be no external uses. Internally, information will be used as follows:

(1) Security clearance notification alerts may be provided to an examined activity in advance of visits by OIG personnel if information to be examined requires a secret clearance or above;

(2) Time and attendance reports will be used to track temporary duty travel frequency and duration, to categorize indirect time for periodic reports, to accrue staff hour data on assigned projects, and to provide time and attendance data to the centralized payroll system;

(3) Planned annual leave reporting will be used by various managers for workload planning and travel scheduling;

(4) Assignment information and workload status information will be used by managers to control audits and investigations, and to maximize effectiveness of staff resources.

(5) Miscellaneous personnel information will be used by staff managers to determine training needs, promotional eligibility, education and background, and professional organization participation.

(6) Travel information will be used by managers to control temporary duty travel, travel costs and issuances of travel orders.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records on magnetic disk, with backup active records and inactive records maintained on magnetic tape.

RETRIEVABILITY:

All records will be retrievable through employee social security number, with selected records having certain secondary keys consisting of certain other data elements, listed in the "Categories of records in the system".

SAFEGUARDS:

(1) Records will be maintained in a private library not accessible by any unauthorized user.

(2) Authorized user identification codes will be tied to multiple password system to afford additional protection.

(3) Any attempt to bypass the password protection system will result in an immediate "Log-Off" from the system.

(4) Physical access to system documentation, hard copy printouts, personal data files, and terminals will be restricted to authorized personnel by maintaining a secure environment in the headquarters office.

(4) Access to data will be restricted to those who require it in the performance of their official duties and to the individual who is the subject of the record (or authorized representative).

(5) Tape files will be maintained in an environmentally secure vault area when not in use.

RETENTION AND DISPOSAL:

Records will be maintained for two years after they become inactive. All inactive records will be maintained on magnetic tape within the computer center and will be afforded the same safeguards as active records. Machine-resident records will be destroyed at the end of the two year period. Hard-copy records will be retained until the records are replaced or become obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management Information Staff, Office of Resources and Management, JP-20, Office of the Inspector General, Room 9200, 400 7th Street, S.W., Washington, D.C. 20590.

NOTIFICATION PROCEDURES:

Department of Transportation, Office of Inspector General, Room 9200, 400 7th Street, S.W., Washington, D.C. 20590, Attn: Asst. Inspector General for Resources and Management.

RECORD ACCESS PROCEDURES:

Contact system manager.

RECORD SOURCE CATEGORIES:

(1) Official personnel folder.
(2) Other personnel documents.
(3) Activity supervisors.
(4) Individual applications and forms.

Changed System of Records

DOT/OST 100

SYSTEM NAME:

Investigative Record System. DOT/OST

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Office of the Inspector General, 400 7th Street, S.W., Washington, D.C. 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOT employees, DOT contractors and employees as well as all grantees, subgrantees, contractors, subcontractors and their employees and recipients of DOT monies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by Inspector General (OST); reports of investigations conducted by other departmental, Federal, state and local investigative agencies which relate to the mission and function of the Inspector General and investigative case index card files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the Investigative Records System is collected and maintained in the administration of the DOT Act, Federal Criminal Statutes, Uniform Code of Military Justice, Executive Orders, and the Code of Federal Regulations to oversee and enforce Federal laws and regulations. Material gathered is used in the enforcement of the aforementioned laws and regulations.

These records may be disseminated, depending on jurisdiction, to:

DOT Officials in the administration of their responsibilities.

Other Federal, state, local or foreign agencies or administrations having interest or jurisdiction in the matter.

Any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, to inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in case folders in manual filing system and on index cards.

RETRIEVABILITY:

By name or incident title.

SAFEGUARDS:

Investigative files and case index files are maintained in several spaces with appropriate access controls. Access to investigative files is restricted to authorized investigative personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Investigative material held for ten years, then destroyed by secure means used for classified materials.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General (J-1), Department of Transportation, Office of the Secretary, 400 7th Street, S.W., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager".

RECORD ACCESS PROCEDURES:

Same as "System Manager". Investigative data compiled for law enforcement may be exempt from the access provisions pursuant to 5 USC 552a (k)(1), (k)(2), or (j)(2).

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure".

RECORD SOURCE CATEGORIES:

These records contain information obtained from interviews, review of records and other authorized investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 USC 552a (j)(2), (k)(1) or (k)(2).

[FR Doc. 79-37396 Filed 12-5-79; 8:45 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241; Seventy-Fourth Revised Exemption No. 90

To All Railroads:

It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC RER 6410-C, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation, "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules, 1, 2(a) and 2(b).

Aberdeen and Rockfish Railroad Company
Reporting Marks: AR
Ann Arbor Railroad System, Michigan Interstate Railway Company, Operator
Reporting Marks: AA
Apalachicola Northern Railroad Company
Reporting Marks: AN
Atlanta & Saint Andrews Bay Railway Company
Reporting Marks: ASAB
Bath and Hammondsport Railroad Company
Reporting Marks: BH
Cadiz Railroad Company
Reporting Marks: CAD
Camino, Placerville & Lake Tahoe Railroad Company
Reporting Marks: CPLT
City of Prineville
Reporting Marks: COP
The Clarendon and Pittsford Railroad Company
Reporting Marks: CLP
Columbus and Greenville Railway Company
Reporting Marks: CAGY
Delta Valley & Southern Railway Company
Reporting Marks: DVS
Detroit, Toledo and Ironton Railroad Company
Reporting Marks: DT&I-DTI
Duluth, Missabe and Iron Range Railway Company
Reporting Marks: DMIR
East Camden & Highland Railroad Company
Reporting Marks: EACH
East St. Louis Junction Railroad Company
Reporting Marks: ESLJ
Galveston Wharves
Reporting Marks: GWF
Genessee and Wyoming Railway Company
Reporting Marks: GNWR
Greenville and Northern Railway Company
Reporting Marks: GRN
The Hutchinson and Northern Railway Company
Reporting Marks: HN
Helena Southwestern Railroad Company
Reporting Marks: HSW
Illinois Terminal Railroad Company
Reporting Marks: ITC
Indiana Eastern Railroad and Transportation, Inc., D/B/A The Hoosier Connection
Reporting Marks: HOSC
Lake Erie, Franklin & Clarion Railroad Company
Reporting Marks: LEF
Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI
Lenawee County Railroad Company, Inc.
Reporting Marks: LCRC
Longview, Portland & Northern Railway Company
Reporting Marks: LPN
Louisiana Midland Railway Company
Reporting Marks: LOAM
Louisville and Wadley Railway Company
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Manufacturers Railway Company
Reporting Marks: MRS
Maryland and Delaware Railroad Company
Reporting Marks: MDDE
McCloud River Railroad Company
Reporting Marks: MR
Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Company
Reporting Marks: MKT-BKTY
Moscow, Camden & San Augustine Railroad
Reporting Marks: MCSA
New Hope and Ivyland Railroad Company
Reporting Marks: NHIR
New Orleans Public Belt Railroad
Reporting Marks: NOPB
New York, Susquehanna and Western Railroad Company
Reporting Marks: NYSW
Octararo Railway, Inc.
Reporting Marks: OCTR
Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
Pearl River Valley Railroad Company
Reporting Marks: PRV
Peninsula Terminal Company
Reporting Marks: PT
Port Huron and Detroit Railroad Company
Reporting Marks: PHD
Port of Tillamook Bay Railroad
Reporting Marks: POTB
Providence and Worcester Company
Reporting Marks: PW
Raritan River Rail Road Company
Reporting Marks: RR
St. Lawrence Railroad
Reporting Marks: NSL
St. Louis Southwestern Railway Company
Reporting Marks: SSW
St. Marys Railroad Company
Reporting Marks: SM
*Sandersville Railroad Company
Reporting Marks: SAN
Savannah State Docks Railroad Company
Reporting Marks: SSDK
Sierra Railroad Company
Reporting Marks: SERA
Southern Pacific Transportation Company
Reporting Marks: SP
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TM

Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Union Railroad of Oregon
Reporting Marks: UO
Vermont Railway, Inc.
Reporting Marks: VTR
Virginia Central Railway
Reporting Marks: VC
Wabash Valley Railroad Company
Reporting Marks: WVRC
WCTU Railway Company
Reporting Marks: WCTR
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

Effective November 15, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., November 14, 1979.

Robert S. Turkington,

Agent, Interstate Commerce Commission.

[FR Doc. 79-37454 Filed 12-5-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

December 3, 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. on or before January 7, 1980.

FSA No. 43775, Central Gulf Lines, Inc. No. 1, intermodal rates on general commodities in containers from rail terminals on the United States Atlantic and Pacific Coasts to ports on the Mediterranean and Red Sea and the Persian Gulf, by way of rail-water interchange points on the United States Atlantic and Gulf Coasts, in its Tariff ICC CGIU 700, effective December 9, 1979.

The effective date is to be postponed to December 28, 1979. Grounds for relief—water competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37456 Filed 12-5-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29142 (Sub-No. 1)]

Providence & Worcester Co.—Control—Warwick Railway Co.

Providence and Worcester Company (P&W), One Depot Square, Woonsocket, Providence County, RI 02895, represented by John L. Richardson, Esquire and Lawrence Rudolph, Esquire, 1660 L Street, N.W., Suite 1100, Washington, D.C. 20036, hereby give notice that on the 9th day of November, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application for authority under 49 U.S.C. 11343 to exercise control of Warwick Railway Company (Warwick). The proposed transaction involves the acquisition by P&W of the outstanding capital stock of the Warwick, thereby creating a control relationship between P&W and Warwick. The line proposed to be controlled by P&W consists of 0.9 miles of main track and is located between Cranston and Bellefonte, RI. P&W has been operating the system tracks of the Warwick pursuant to the Commission's Service Order No. 1394, served August 14, 1979.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—Nat'l Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—Nat'l Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in the proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 29142 (Sub-No. 1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than January 21, 1980. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation, and the Attorney General.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37455 Filed 12-5-79; 8:45]

BILLING CODE 7035-01-M

[Finance Docket No. 29171]

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

AGENCY: Interstate Commerce Commission.

ACTION: Notice to the parties.

SUMMARY: The Milwaukee Railroad Restructuring Act, Public Law No. 96-101, provides, *inter alia,* an opportunity for certain organizations to to convert all or a substantial part of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) into an employee or employee-shipper owned company. Pursuant to section 6 of Public Law No. 96-101, New Milwaukee Lines (New Mil), a non-profit corporation, filed with the Commission on December 1, 1979, a plan for the reorganization of the MILW as a transcontinental railroad.

DATES: Initial statements in support of or in opposition to the plan shall be filed no later than December 14, 1979. Replies to initial statements shall be filed no later than December 20, 1979.

FOR FURTHER INFORMATION CONTACT: Alexander L. Morton, (202) 275-7684, or Michael Erenberg, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

December 3, 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 MILW into an employee or employee-shipper owned company, and a method for implementing the plan. The plan must include a comprehensive evaluation of the MILW's prospects for financial self-sustainability. The legislation further provides that within 30 days of submission of such a plan the Commission must approve the proposal if it finds the plan feasible. The Commission finding respecting feasibility must be made pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. 8554.

NewMil is a non-profit corporation formed under the laws of the state of Washington in June 1979. NewMil, 119 South Main Street, Seattle, Washington, 98104, is made up of representatives of the government, shippers and past and present MILW employees. NewMil was formed for the purpose of forming, obtaining funding for, and acquiring

necessary licenses and agency certifications for a new company to purchase and operate a substantial portion of the present MILW system. If the proposals in its plan are approved and implemented, it is contemplated that NewMil will cease to exist. The system proposed in the plan will be acquired, owned, and operated by the New Railroad described in the plan.

The NewMil employee-shipper ownership plan calls for the establishment of a new company to acquire and operate a transcontinental railroad system of main and secondary main lines from Louisville, KY to Chicago, IL, and from Chicago to Portland, OR, and Seattle and Tacoma, WA. An additional number of contingent lines will be included in the system if it can be determined that the line will make a positive contribution to the system (whether from operating revenues, surcharges, or external subsidy), if any required rehabilitation is borne by a third party such a state agency or shippers, and if the inclusion of such lines in aggregate does not adversely affect system performance or requirements. At the time of submission of this plan, these lines are still being analyzed.

The point of departure for analysis and development of rehabilitation requirements, equipment requirements, employee requirements, financial projections, and other matters was the "Louisville-Transcon" configuration studied in depth by Booz, Allen & Hamilton Inc. (BAH). The Consulting Center, Inc. (CCI), revised and refined the BAH analysis in various specific ways discussed more fully below. In each case CCI refinements were based on actual data coupled with a conservative probability discounting procedure.

The base system proposed by NewMil consists of approximately 2900 main line route miles and 650 miles of lighter density or branch lines, as compared with the 9,000 miles plus system operated by the MILW in 1978. The plan contemplates the conveyance to the New Railroad of all equipment presently owned by the MILW. An aggressive equipment leasing and rebuilding program is contemplated to augment and restore the current fleet.

Rehabilitation requirements for the New Railroad were based on BAH and MILW data for each line segment in question. The projected rehabilitation level was based on a specific analysis of the competitive requirements of each line segment. The fundamental rehabilitation strategy is to institute immediately a program of normalized maintenance on all line segments coupled with rehabilitation expenditures over and above a normalized level where required to restore major line segments to 25 mph. The total rehabilitation expenditures necessary to achieve long term market opportunities and economic growth is estimated at $211.3 million (in 1977 dollars).

The total labor force required for the New Railroad is estimated at 7,905 for 1980 and 9,035 by 1982. These estimates were based on the MILW's 1977 employee mix and various BAH data.

The assets to be acquired by the New Railroad include land, rights of way, tract, ballast, trackage rights, equipment, leaseholds, inventory material, and supplies, and a motor transportation subsidiary. These assets are valued on the basis of net liquidation value essentially established in the Ford, Bacon, and Davis report.

The financial projections developed by the New Railroad's base system indicate that the railroad will realize positive income from operations beginning in 1982 and generate positive cash flow from operations beginning in 1983 and in each year thereafter. Expenses were analyzed and significant unit cost improvements were projected from the aggregate effect of specifically analysed factors, including improved equipment utilization, productivity gains, use of higer capacity equipment and benefits accruing from rehabilitated physical plant.

Operating revenues are projected to increase, in constant dollar terms, from $344.9 million in 1980 to $853.2 million in 1986. The increases in revenue are attributable to the aggregate effect of various factors including the restoration of traffic to "normalized" 1977 levels, the achievement of specifically analysed market opportunities, long term projected economic growth and authorized selective rate increases.

The projected effects of inflation are addressed in the plan. These effects will be mitigated for the New Railroad because of a relatively strong projected operating ratio and the performance of major rehabilitation work in the early years and the benefits are achieved in the later years when expenses are higher.

The capital needs of the new company are projected to be met through a combination of private and public financing. Sources of private money include an equity contribution through an employee stock ownership plan (ESOP), and a modest amount of shipper-contributed venture capital. Sources of public money include federal funds available under sections 505 and 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, state and local funds available for support of the light density lines, and a joint Economic Development Administration and Farmers Home Administration loan to the ESOP to finance its equity contribution.

Initial statements in support of or in opposition to the plan shall be filed no later than December 14, 1979. Replies to initial statements shall be filed no later than December 20, 1979. All statements and replies shall bear the notation "MILW-ESOP" in boldface on the lower left-hand corner of the outer envelope.

The original and two copies of each filing shall be addressed to: Agatha L. Mergenovich, Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423.

Ten copies of each filing also be addressed to: Section of Finance, Room 5417, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37533 Filed 12-5-79; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon,

including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 210

Decided: November 8, 1979.

By the Commission, Review Board Number 2, Members Boyle, Eaton and Liberman.

MC 2605 (Sub-5F), filed May 24, 1979. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 East Adams St., Philadelphia, PA 19124. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting (1) *petroleum and petroleum products* (except commodities in bulk), from Edison, Carteret, Bayonne, and Mt. Laurel, NJ, to Ferndale, MI, and points in OH, (2) *petroleum products,* from Marcus Hook and Philadelphia, PA, to Chicago, IL, Detroit, MI, and points in OH, and (3) *automotive supplies and automotive accessories* (except commodities in bulk), from the facilities used by Union Carbide Corp., at or near Camden and Paulsboro, NJ, to Chicago, IL, and points in OH. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 2605 (Sub-9F), filed May 24, 1979. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 East Adams Street, Philadelphia, PA 19124. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *paper and paper products* (except commodities in bulk), from Philadelphia, PA, to Chicago, IL, Detroit, MI, and points in OH. (Hearing site: Washington, DC or Philadelphia, PA.)

MC 2605 (Sub-10F), filed May 24, 1979. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 East Adams Street, Philadelphia, PA 19124. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting (1)(a) *chemicals, chemical products, and drugs,* (except commodities in bulk), and (b) *dried roots, bark, flowers, herbs* and *leaves,* which are otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) when moving in mixed loads with the commodities in (1) above, from Newark, Lyndhurst, Metuchen, Gibbstown, Carteret and Hackensack, NJ, and Chester PA, to Chicago and Utica, IL, Detroit, MI, and points in OH, (2) *plastic and plastic products* (Except commodities in bulk), from Philadelphia, PA, and Windsor, NJ, to Chicago, IL, Detroit, MI, and points in OH. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 2605 (Sub-11F), filed May 24, 1979. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 East Adams St., Philadelphia, PA 19124. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting *adhesives, floor coverings,* and *materials, equipment, and supplies* used in the installation of floor coverings (Except commodities in bulk), from Philadelphia, PA, and Camden and Trenton, NJ, to Chicago, IL, Detroit, MI, and points in OH. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 4405 (Sub-609F), filed June 11, 1979. Applicant: DEALERS TRANSIT, INC. P.O. Box 236, Tulsa, OK 74101. Representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, ND 58126. Transporting *Trailers* and *trailer chassis* (except those designed to be drawn by passenger automobiles), in

initial movements, in truckaway service, from points in Ector and Midland Counties, TX, to points in the United States (except AK and HI). (Hearing site: Dallas, TX.)

MC 4405 (Sub-616F), filed March 16, 1979. Applicant: DEALERS TRANSIT, INC., P.O. Box 236, Tulsa, OK 74101. Representative: Michael E. Miller, 502 First National Bank Building, Fargo, ND 58126. Transporting (1) *incinerators* and *smoke stacks*, and (2) *parts*, for the commodities in (1) above, from the facilities of Consumat Systems, Inc., at or near Mechanicsville, VA, to points in the United States (except AK and HI). (Hearing site: Richmond, VA or Washington, DC)

MC 10875 (Sub-57F), filed June 11, 1979. Applicant: BRANCH MOTOR EXPRESS CO., a corporation, 114 Fifth Avenue, New York, NY 10011. Representative: G. G. Heller, 114 Fifth Avenue, New York, NY 10011. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of The Torrington Company, at Dahlonega, Sylvania, and Cairo, GA as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: New York, NY, or Washington, DC)

MC 14215 (Sub-43F), filed June 7, 1979. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1329, Steubenville, OH 43952. Representative: John L. Alden, 1396 West Fifth Avenue, P.O. Box 12241, Columbus, OH 43212. Transporting *ferro nickel*, from Baltimore, MD, to points in OH, PA and the Lower Peninsula of MI. (Hearing site: Columbus, OH, or Washington, DC)

MC 20824 (Sub-42F), filed June 8, 1979. Applicant: COMMERCIAL MOTOR FREIGHT, INC. OF INDIANA, 2141 S. High School Road, Indianapolis, IN 46241. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Bedford and Vincennes, IN, Over U.S. Hwy 50, serving all intermediate points and the off-route point of Crane United States Naval Ammunition Depot, in Martin County, IN; (2) between junction U.S. Hwys 50 and 231, near Loogootee, IN, and Owensboro, KY, over U.S. Hwy 231, serving all intermediate points; (3) between junction IN Hwys 37 and 60, near Mitchell, IN, and junction IN Hwy 60 and Interstate Hwy 65, over IN Hwy 60, serving all intermediate points; and (4) between Paoli and French Lick, IN, over IN Hwy 56, serving all intermediate points. (Hearing site: Indianapolis, IN, or Chicago, IL)

MC 30844 (Sub-641F), filed April 4, 1979. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 5000, Waterloo, IA 50704. Representative: John P. Rhodes (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: St. Paul, MN)

MC 52464 (Sub-12F), filed June 7, 1979. Applicant: EVANS TRUCKING CO., 2773 Darlington Road, Beaver Falls, PA. Representatie: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Transporting *iron and steel articles*, from the facilities of Republic Steel Corporation, at Cleveland, Warren, and Youngstown, OH, to Buffalo and Rocheter, NY. (Hearing site: Washington, DC.)

MC 52704 (Sub-231F), filed June 7, 1979. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFaette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2209 Century Parkway, Atlanta, GA 30345. Transporting (1) *door jambs and wooden moldings*, from Roanoke, AL to points in AR, FL, GA, IL, IN, KY, LA, MA, MS, MO, NC, OH, OK, PA, SC, TN, TX, VA, and WV, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Atlanta, GA.)

MC 60014 (Sub-125F), filed June 7, 1979. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Transporting: (1) *Pipe, casting, valves, hydrants, and fittings, and* (2) *parts and accessories for* the commodities named in (1) above, from the facilities of Central Foundry Co., at or near Holt, AL, to those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: Washington, DC.)

MC 85934 (Sub-102F), filed June 7, 1979. Applicant: MICHIGAN TRANSPORTATION CO., a corporation, 3601 Wyoming, P.O. Box 248, Dearborn, MI 48121. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *cement*, from Petoskey, MI, and Chicago, IL, to points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

MC 94265 (Sub-304F), filed June 11, 1979. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting *foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities used by Vlasic Foods, Inc., at or near (1) Millsboro, DE, to points in WV, VA, NC, SC, and KY, (2) Greenville, MS, to points in AL, GA, and FL, and (3) Memphis, Imlay City, and Bridgeport, MI, to the facilities used by Vlasic Foods, Inc., at or near (a) Greenville, MS, and (b) Millsboro, DE. (Hearing site: Chicago, IL, or Washington, DC.)

MC 96324 (Sub-33F), filed April 16, 1979. Applicant: GENERAL DELIVERY, INC., P.O. Box 206, Fairmont, WV 26554. Representative: Harold G. Hernly, Jr., 110 South Columbus Street, Alexandria, VA 22314. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers, (except commodities in bulk, in tank vehicles), between those points in the United States in and the east of MN, IA, MO, AR, and LA, restricted to the transportation of traffic originating at or destined to the facilities of Brockway Glass Company, Inc. (Hearing site: Pittsburgh, PA, or Washington, DC)

MC 105045 (Sub-107F), filed May 14, 1979, previously published in the Federal Register of October 23, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. Transporting *tanks* and *tank accessories*, between points in AR, DE, IL, AL, GA, LA, MS, NC, SC, IN, IA, KY, MD, MI, MN, MO, NE, NJ, NY, ND, OH, OK, PA, SD, TN, TX, WV, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Northern Propane Gas Company. (Hearing site: Chicago, IL)

Note.—This republication includes the States of AL, GA, LA, MS, NC, AND SC.

MC 105045 (Sub-109F), filed June 8, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington

Building, Washington, DC 20005. Transporting (1)(a) *air and water pollution control equipment,* and (b) *parts* for the commodities in (1)(a) above, from the facilities of Pell City Fabricating Co., Inc., at Pell City, AL, to points in the United States (except AK and HI); and (2) *materials, equipment and supplies* used in the manufacture of the commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Birmingham, AL)

MC 106644 (Sub-280F), filed June 7, 1979. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same address as applicant). Transporting (1) *contractors', industrial, and mining equipment,* and *self-propelled articles,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), between the facilities of Joy Manufacturing Company, at or near (a) Franklin, PA, (b) Birmingham, AL, (c) Claremont, NH, (d) Buffalo, NY, (e) Michigan City, IN, (f) Wilson, NC, (g) New Philadelphia, OH, (h) Colorado Springs and Denver, CO, and (i) Wheeling, WV, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Pittsburgh, PA, or Washington, DC)

MC 106674 (Sub-397F), filed June 6, 1979. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *gypsum and gypsum products,* and *building materials,* and (2) *materials, equipment, and supplies* used in the manufacture, installation, and distribution of the commodities named in (1) above, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Georgia-Pacific Corporation, Gypsum Division. (Hearing site: Chicago, IL, or Indianapolis, IN)

MC 107515 (Sub-1243F), filed June 7, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, between Chicago, IL and St. Louis, MO. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1244F), filed June 7, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Holsum Foods, (a) at or near Albany, GA, Waukesha, WI, and Navasota, TX, and (b) in Johnson County, KS, to points in the United States (except AK and HI). (Hearing site: Madison, WI.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1245), filed June 11, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *confectionery products,* between Hershey, PA, and Oakdale, CA, restricted to the transportation of traffic originating at and destined to the facilities used by Hershey Foods Corporation. (Hearing site: Philadelphia, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1246F), filed June 11, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *Canned and preserved foodstuffs,* from the facilities of Heinz, USA, Division of H. J. Heinz Company, at or near Greenville, SC to points in AL, GA, and TN, restricted to the transportation of traffic originating at the named facilities and destined to the named destinations. (Hearing site: Pittsburgh, PA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1248F), filed June 11, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *intravenous solutions* and *materials and supplies* used in the application of intravenous solutions, in vehicles equipped with mechanical refrigeration, from the facilities of Travenol Laboratories, Inc., at or near Memphis, TN, to points in GA, NC, and SC. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 107615 (Sub-16F), filed June 8, 1979. Applicant: UNTCO, INC., 850 E. Luzerne Street, Philadelphia, PA 19124. Representative: Richard A. Mehley, 1000 16th Street NW., Washington, DC 20036. Transporting *printed matter, materials and supplies used in the manufacture and distribution of printed matter,* (except commodities in bulk), between Lancaster, PA, on the one hand, and, on the other, points in NY, NJ, PA, WV, MD, DE, VA, NC, SC, GA, FL, and DC. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 109124 (Sub-83F), filed June 7, 1979. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad Street, Suite 1800, Columbus, OH 43215. Transporting *lime, limestone,* and *limestone products,* from the facilities of Edward Kraemer & Sons, Inc., at or near Clay Center, OH, to points in PA, WV, IN, IL, MI, and KY. (Hearing site: Columbus, OH.)

MC 110325 (Sub-103F), filed May 29, 1979. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Lincoln NE, and Sacramento, CA, over Interstate Hwy 80, serving all intermediate points, and serving Alda, Aurora, Doniphan, Grand Island, and York, NE, Carson City, NV, Tooele, UT, and Green River, WY, points in Morgan, Utah, Lyon, Salt Lake, Davis, and Weber Counties, UT, Lyon, Douglas, and Storey Counties, NV, and those in Washoe County, NV, south of Interstate Hwy 80, as off-route points. (Hearing site: Reno, NV, Salt Lake City, UT, Omaha, NE, Birmingham, AL, Washington, DC, and Philadelphia, PA.)

MC 113165 (Sub-10F), filed June 6, 1979. Applicant: PENINSULA TRUCK LINES, INC., P.O. Box 80038, Seattle, WA 98108. Representative: Carl A. Jonson, 300 Central Building, Seattle, WA 98104. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between Seattle and Tacoma, WA, on the one hand, and, on the other, points in Grays Harbor, Kitsap, and Mason Counties, WA, and (2) between points in Grays Harbor, Kitsap, and Mason Counties, WA. (Hearing site: Seattle or Tacoma, WA.)

MC 113855 (Sub-490F), filed June 6, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901.

Representative: Michael E. Miller, 502 First National Bank Building, Fargo, ND 58126. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of (a) agricultural equipment and (b) industrial equipment (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Allis Chalmers Corporation. (Hearing site: Chicago, IL.)

MC 113855 (Sub-491F), filed June 6, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Representative: Michael E. Miller, 502 First National Bank Building, Fargo, ND 58126. Transporting (1) *contractors, industrial, and mining equipment,* (2) *self-propelled articles,* and (3) *materials, parts, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, (except commodities in bulk), between the facilities of Joy Manufacturing Company, at or near (a) Franklin, PA, (b) Birmingham, AL, (c) Claremont, NH, (d) Buffalo, NY, (e) Michigan City, IN, (f) Wilson, NC, (g) New Philadelphia, OH, (h) Colorado Springs and Denver, CO, and (i) Wheeling, WV, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Washington, DC.)

MC 114004 (Sub-174F), filed June 11, 1979. Applicant: CHANDLER TRAILER CONVOY, INC., 8828 New Benton Highway, Little Rock, AR 72209. Representative: W. G. Chandler (same address as applicant). Transporting *trailers* designed to be drawn by passenger automobiles, in initial movements, and *buildings,* in sections, from points in WA and ID, to points in the United States (including AK, but excluding HI). (Hearing site: Boise, ID.)

MC 114274 (Sub-65F), filed June 11, 1979. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St. Place, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *coffee* and *coffee products* (except commodities in bulk), from the facilities of Procter & Gamble Distributing Co., at or near Sherman, TX, to points in the United States (except AK and HI). (Hearing site: Cincinnati, OH.)

MC 116325 (Sub-81F), filed June 11, 1979. Applicant: JENNINGS BOND, d.b.a. BOND ENTERPRISES, P.O. Box 8, Lutesville, MO 63762. Representative: Jennings Bond (same address as applicant). Transporting (1) *building materials* (except in bulk), from points in Henry County, TN, to points in MO, AR, IL, IN, and KY; and (2) *materials and supplies* used in the manufacture and distribution of building materials; in the reverse direction. (Hearing site: St. Louis, MO, or Tampa, FL.)

MC 116915 (Sub-86F), filed June 6, 1979. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 S. Plate Street, Kokomo, IN 46901. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting *aluminum articles,* between the facilities of Aluminum Company of America, at Alcoa, TN, on the one hand, and, on the other, points in KY, IL, IN, MI, MO, and OH. (Hearing site: Nashville, TN, or Pittsburgh, PA.)

MC 116915 (Sub-87F), filed June 6, 1979. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 S. Plate St., Kokomo, IN 46901. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of (a) buildings, (b) building sections and panels, and (c) iron and steel articles, (except commodities in bulk), between the facilities of Inryco, Inc., at or near (i) Milwaukee, WI, and (ii) Cullman, AL, on the one hand, and, on the other, those points in the United States in and east of WI, IA, NE, KS, OK, and TX. (Hearing site: Milwaukee, WI.)

MC 116915 (Sub-88F), filed June 6, 1979. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 S. Plate St., Kokomo, IN 46901. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting (1) *bituminous fiber pipe,* and (2) *accessories* for bituminous fiber pipe, between the facilities of Bermico Company, at or near West Bend, WI, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Milwaukee, WI.)

MC 116915 (Sub-89F), filed June 6, 1979. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 S. Plate Street, Kokomo, IN 46901. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Transporting *iron and steel articles,* between the facilities of Maverick Tube Corporation, at Union, MO, on the one hand, and, on the other, points in AR, TX, LA, OK, NC, SC, FL, TN, IL, OH, MI, and PA, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: St. Louis, MO.)

MC 121654 (Sub-19F), filed June 11, 1979. Applicant: COASTAL TRANSPORT & TRADING CO., a corporation, P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *lumber products, wood products, paneling, and composition board,* from the facilities of Holly Hill Lumber Company, at or near Holly Hill and Walterboro, SC, to points in NC, SC, GA, AL, FL, and TN. (Hearing site: Atlanta, GA, or Jacksonville, FL.)

Note.—Dual operations may be involved.

MC 121654 (Sub-20F), filed June 11, 1979. Applicant: COASTAL TRANSPORT & TRADING CO., a corporation, P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *lumber* and *lumber products,* (except commodities in bulk), from the facilities of Lamb Brothers Lumber Co., at or near Midville and Wrens, GA, to points in NC, SC, and FL. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 121654 (Sub-21F), filed June 11, 1979. Applicant: COASTAL TRANSPORT & TRADING CO., a corporation, P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., NE, 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *machinery,* and *parts* for machinery, between Mableton, GA, on the one hand, and, on the other, points in AL, AR, FL, KY, LA, MS, NC, SC, TN, and VA. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 124964 (Sub-39F), filed June 11, 1979. Applicant: JOSEPH M. BOOTH d.b.a. J. M. BOOTH TRUCKING, P.O. Box 907, Eustis, FL 32726. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier,* by motor vehicle, in interstate of foreign commerce over irregular routes, transporting *canned and preserved foodstuffs,* from the facilities of Heinz USA, Division of H. J. Heinz Co., at or near Greenville, SC, to New Orleans, LA, and points in AL, FL, GA, MS, and TN, under continuing contract(s) with Heinz USA, Division of H. J. Heinz Co, of Pittsburgh, PA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 125335 (Sub-68F), filed June 8, 1979. Applicant: GOODWAY TRANSPORT, INC., P O Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *paper and paper products, plastic and plastic products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named

in (1) above, (a) from Millville, NJ, to Norcross, GA, and (b) from Norcross, GA, and NJ, to points in NC, SC, AL, and FL. (Hearing site: Chicago, IL, or Harrisburg, PA.)

MC 126844 (Sub-60F), filed November 2, 1978, previously noticed in the Federal Register of February 1, 1979 as MC 126884 Sub-60F. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. Transporting *canned food products*, from the facilities of Campbell Soup Co., at or near Napoleon, OH, to points in CO, IL, IN, IA, KS, KY, MI, MN, MO, NE, NJ, NY, PA, and WI. (Hearing site: Columbus, OH, or Chicago, IL.)

Note.—This republication indicates the correct docket number.

MC 128205 (Sub-83F), filed June 11, 1979. Applicant: BULKMATIC TRANSPORT COMPANY, a corporation, 12000 South Doty Ave., Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *corn sugar* and *corn starch*, in bulk, from Argo, IL, to points in MI, OH, IN, WI, NY, CO, KY, VA, MO, IA, PA, and WV. (Hearing site: Washington, DC.)

MC 128304 (Sub-4F), filed June 11, 1979. Applicant: I.T.L., INC., P.O. Box 280, 2155 North 10th St. Gering, NE 69341. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery business houses (except commodities in bulk), from points in AR, IN, MI, NM, and OK, to the facilities of Associated Grocers of Nebraska Cooperative, Inc., at Gering, NE, under continuing contract(s) with Associated Grocers of Nebraska Cooperative, Inc., of Gering, NE. (Hearing site: Denver, CO, or Lincoln, NE.)

MC 128964 (Sub-11F), filed June 4, 1979. Applicant: REES TRUCKING CO. INC., P.O. Box G, Houston, MO 65483. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO. Transporting *iron and steel articles*, from the facilities of Jones & Laughlin Steel Corp., in Putnam County, IL, to points in MO, AR, and OK. (Hearing site: St. Louis or Jefferson City, MO.)

MC 129645 (Sub-75F), filed June 8, 1979. Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER, d.b.a. SMEESTER BROTHERS TRUCKING, 1330 South Jackson St., Iron Mountain, MI 49801. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *iron and steel articles*, between the facilities of Crucible Inc., Division of Colt Industries, at or near Midland, PA, on the one hand, and, on the other, points in IA, MN, and WI. (Hearing site: Pittsburgh, PA, or Chicago IL.)

MC 133655 (Sub-161F), filed June 6, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Transporting (1) *cellulose materials and cellulose products*, and *paper and paper products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Anderson, Pomona, and Ripon, CA, Corsicana, TX, and Weleetka, OK, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 134105 (Sub-52F), filed June 11, 1979. Applicant: CELERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Transporting *such commodities* as are dealt in or used by producers and distributors of alcoholic beverages (except commodities in bulk in tank vehicles), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: New York, NY, or Washington, D.C.)

MC 134235 (Sub-21F), filed June 7, 1979. Applicant: KUHNLE BROTHERS, INC., P.O. Box No. 375, Newbury, OH 44065. Representative: Kenneth T. Johnson, Bankers Trust Building, Jamestown, NY 14701. Transporting *salt and salt products*, from Fairport Harbor, OH, to points in IN, KY, WV, and the Lower Peninsula of MI. (Hearing site: Buffalo, NY.)

Note.—Dual operations may be involved.

MC 134335 (Sub-5F), filed June 4, 1979. Applicant: ALL FREIGHT, INC., 238 Sheldon Rd., Berea, OH 44017. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge St., Dublin, OH 43017. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foundry supplies, refractories, exo-thermics, and steel mill supplies*, between the facilities of Foseco, Inc., at or near Berea and Brookpark, OH, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Foseco, Inc., of Brookpark, OH. (Hearing site: Columbus, OH.)

MC 134405 (Sub-77F), filed June 6, 1979. Applicant: BACON TRANSPORT COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *anhydrous ammonia*, in bulk, in tank vehicles, from Lake Charles, LA, to points in AR, OK, and TX. (Hearing site: Oklahoma City, OK.)

MC 134755 (Sub-190F), filed June 4, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *foodstuffs* (except commodities in bulk), between the facilities of Ragú Foods, Inc., at Rochester, NY, on the one hand, and, on the other, the facilities of Ragú Foods, Inc., at Owensboro and Henderson, KY. (Hearing site: Rochester, NY.)

Note.—Dual operations may be involved.

MC 134755 (Sub-192F), filed June 7, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *such commodities* as are dealt in or used by chain grocery and food business houses, (except commodities in bulk), between Indianapolis, IN, and Columbus and Cincinnati, OH, on the one hand, and, on the other, points in AR, GA, MO, TN, and TX. (Hearing site: Indianapolis, IN.)

Note.—Dual operations may be involved.

MC 135154 (Sub-4F), filed March 23, 1979. Applicant: BADGER LINES, INC., 3109 West Lisbon Ave., Milwaukee, WI 53208. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting *glass containers, and materials and supplies* used in the distribution of glass containers, (except commodities in bulk), from the facilities of Thatcher Glass Co., Division of Dart Industries, at Streator, IL, to St. Louis, MO, and points in WI, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Milwaukee, WI, or Chicago, IL.)

Note.—Dual operations may be involved.

MC 135154 (Sub-6F), filed March 28, 1979. Applicant: BADGER LINES, INC., 3109 West Lisbon Ave., Milwaukee, WI 53208. Representative: William C. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting (1) *malt beverages*, (a) from Milwaukee, WI, to Davenport and Dubuque, IA, St.

Louis, MO, and points in IL, and (b) from St. Louis, MO, to Milwaukee, WI; (2) *malt beverage containers* and *carbonated beverage containers*, (a) from Davenport and Dubuque, IA, and points in IL, to Milwaukee, WI, and (b) between Milwaukee, WI, and St. Louis, MO; (3) *fermented malt beverages*, in containers, from Columbus, OH, to Milwaukee, WI; and (4) *malt beverages*, in containers, from the facilities of Miller Brewing Co., at Milwaukee, WI, to St. Charles, MO.

Condition: Issuance of a certificate in the proceeding is subject to the prior or coincidental cancellation of permits in Nos.

MC 29990 and MC 29990 (Subs 1, 9, and 11). (Hearing site: Milwaukee, WI, to Chicago, IL.)

Note.—Dual operations may be involved. The purpose of this application is to convert the above noted motor contract carrier permits to a motor common carrier certificate.

MC 135874 (Sub-174F), filed June 11, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th St. So., So. St. Paul, MN 55075. Representative: Paul Nelson (same address as applicant). Transporting *chemicals* (except in bulk), from Bradford, Eightyfour, Petrolia, and Pittsburgh, PA, to points in IA, IL, IN, KS, KY, MI, MN, MO, NE, ND, SD, TN, and WI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Pittsburgh, PA, or St. Paul, MN.)

MC 135924 (Sub-13F), filed May 18, 1979, previously noticed in the FR issue of October, 1979. Applicant: SIMONS TRUCKING CO., INC. 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Transporting *tires and tire products*, from Bryan and Akron, OH, to Hibbings, MN. (Hearing site: Minneapolis, MN.)

Note.—This republication indicates the correct origin points.

MC 136605 (Sub-118F), filed June 3, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). Transporting *building materials, cement pipe*, and *plastic pipe*, from the facilities of Johns-Manville Sales Corp., at (a) Waukegan, IL, and (b) Wilton, IA, and (2) Johns-Manville Perlite Corp., at Rockdale, IL, to points in AZ, CA, ID, and NV. (Hearing site: Chicago, IL.)

MC 136605 (Sub-119F), filed June 4, 1979. Applicant: DAVIS BROS. DIST., INC., Post Office Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). Transporting *roofing materials*, (1) from the facilities of Johns-Manville Sales Corporation at or near Pittsburg, CA, to points in OR, WA, ID, UT, and MT, and (2) from the facilities of Johns-Manville Sales Corporation, in Los Angeles County, CA, to points in OR, WA, ID, and UT. (Hearing site: San Francisco, CA.)

MC 136605 (Sub-120F), filed June 7, 1979. Applicant: DAVIS BROS. DIST., INC., Post Office Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). Transporting *iron and steel articles*, from the facilities of HyAlloy Steel Company, at or near Chicago, IL, to points in CA, AZ, UT, and ID. (Hearing site: Chicago, IL.)

MC 138875 (Sub-203F), filed June 8, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). Transporting *brick* from Fairbury, NE, to points in ID, MT, NV, OR, UT, WA, and WY. (Hearing site: Boise, ID, or Washington, DC.)

MC 139495 (Sub-456F), filed June 6, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting (1) *glassware, ceramic ware*, and *electrical appliances*, and (2) *parts and accessories* for the commodities in (1) above, from the facilities of Corning Glass Works, at or near Greencastle, PA, to points in AZ, CA, CO, ID, KS, MT, NV, NM, OK, OR, TX, UT, WA, and WY. (Hearing site: Washington, DC.)

MC 139495 (Sub-457F), filed June 5, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *such commodities* as are dealt in by grocery and food business houses, in vehicles equipped with mechanical refrigeration, (1) from the facilities of Inland Cold Storage Corp., at or near Kansas City, KS, to those points in the United States in and west of ND, SD, WY, CO, and NM (except AK and HI), and (2) from points in the United States (except AK and HI), to the facilities of Inland Cold Storage Corp., at or near Kansas City, KS, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Washington, DC.)

MC 139495 (Sub-458F), filed June 7, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *such commodities* as are dealt in or used by department and hardware stores, from Boston, MA, Charlotte, NC, Dalton, GA, and Jersey City, NJ, to the facilities of Kansas City Shippers Association, at or near Kansas City, MO, restricted to the transportation of traffic destined to the named destination. (Hearing site: Washington, DC.)

MC 139495 (Sub-459F), filed June 8, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *such commodities* as are dealt in by grocery houses, from the facilities of Port Terminals Company, Inc., Bowker Storage & Distribution, Inc., and Foxboro Terminals Company, Inc., at or near Boston, MA, to those points in the United States in and east of WI, IL, MO, AR, and LA. (Hearing site: Washington, DC.)

MC 140265 (Sub-7F), filed June 6, 1979. Applicant: LARRY E. HICKOX, d.b.a. LARRY E. HICKOX TRUCKING, Box 95, Casey, IL 62420. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *asphaltic admixtures* in containers, from Solon and Cleveland, OH, to Richmond, CA, Des Moines, IA, and Woodbridge, NJ, under continuing contract(s) with Revere Chemical Co., and Monroe Company, of Solon, OH. (Hearing site: Chicago, IL.)

MC 140484 (Sub-44F), filed June 1, 1979. Applicant: LESTER COGGINS TRUCKING, INC., 2671 E. Edison Avenue, P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant). Transporting *malt beverages* (except in bulk, in tank vehicles), from Albany, GA, Eden, NC, and Fort Worth, TX, to Fort Myers, FL. (Hearing site: Tampa, FL, or Atlanta, GA.)

MC 141245 (Sub-10F), filed June 1, 1979. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: BRIAN L. TROIANO, 918–16th Street, N.W., Washington, DC 20006. Transporting *malt beverages*, from Latrobe, PA, to points in VT. (Hearing site: Burlington, VT, or Washington, DC.)

MC 141804 (Sub–225F), filed June 7, 1979. Applicant: Western Express, Division, of Interstate Rental, Inc., P.O.

Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *surgical products, health products,* and *medical care products,* between the facilities of Johnson & Johnson, in (a) Middlesex County, NJ, (b) Will and Cook Counties IL, (c) Grayson County, TX, (d) San Mateo County, CA, and (e) Los Angeles County, CA. (Hearing site: Los Angeles or San Francisco, CA.)

MC 142205 (Sub-10F), filed June 7, 1979. Applicant: Loudoun Transfer, Inc., P.O. Box 703, Leesburg, VA 22075. Representative: James E. Savitz, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *prepared animal and poultry feed (except in bulk),* from the facilities of Doane Products Company, at or near Manassas, VA., to those points in the United States in and east of WI, IL, KY, TN, and MS, under continuing contract(s) with Doane Products Company, of Joplin, MO. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 142765 (Sub-8F), filed June 6, 1979. Applicant: AMERICAN TRANSPORTATION, INC., 797 Amity Rd., Bethany, CT 06525. Representative: Mel P. Booker, Jr., 110 South Columbus Street, Alexandria, VA 22314. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by door-to-door sales, catalog sales, and mail order businesses (except commodities in bulk), between the facilities of Shaklee Corporation, at or near Dayton, NJ, on the one hand, and, on the other, points in ME, NH, VT, NY, MA, RI, CT, PA, NJ, DE, MD, VA, WV, and DC, under continuing contract(s) with the Shaklee Corporation, of Oakland, CA.

MC 143754 (Sub-8F), filed June 11, 1979. Applicant: MACZUK INDUSTRIES, INC., Route 2, New Haven, MO 63068. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. Transporting *liquid feed,* in bulk, in tank vehicles, from the facilities of Farmland Industries, Inc., at or near Kansas City, KS, to points in MO. (Hearing site: St. Louis, MO.)

MC 143775 (Sub-100F), filed June 11, 1979. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), from the facilities of New England Shipping Association, Cooperative, in MA and VT, to points in CA, CO, FL, GA, IL, IN, IA, KS, MN, MI, MO, NE, OH, TX, and WI. (Hearing site: Los Angeles, CA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 143794 (Sub-12F), filed June 11, 1979. Applicant: EAST–WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., NE., Atlanta, GA 30326. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are used by (a) hospitals, (b) nursing homes, (c) health care centers, and (d) laboratories, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of the commodities in (1) above, between the facilities of McGaw Laboratories, Division of American Hospital Supply Corporation, at (a) Irvine, CA, and (b) Atlanta and Milledgeville, GA, on the one hand, and, on the other, those points in the United States on and east of U.S. Hwy 85, under continuing contracts(s) with McGaw Laboratories, Division of American Hospital Supply Corporation, of Atlanta, GA. (Hearing site: Los Angeles, CA.)

Note.—Dual operations may be involved.

MC 143995 (Sub-18F), filed June 8, 1979. Applicant: SLOAN TRANSPORTATION, INC., 6522 West River Dr., Davenport, IA 52802. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by (a) chain grocery food business houses and agricultural feed business houses, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of the commodities named in (1) and (2) above, (except commodities in bulk), between points in AL, AR, GA, IA, IL, IN, KY, LA, MI, MN, MO, MS, NJ, NY, OH, PA, TN, and WI, under continuing contract(s) with Ralston Purina Company, of St. Louis, MO. (Hearing site: St. Louis, MO, or Davenport, IA.)

MC 143995 (Sub-19F), filed June 11, 1979. Applicant: SLOAN TRANSPORTATION, INC., 6522 West River Drive, Davenport, IA 52802. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and preserved foodstuffs,* from the facilities of Heinz USA, Division of H. J. Heinz Company, at or near Muscatine and Iowa City, IA, to points in MO, and those in IL on and south of Interstate Hwy 70, under continuing contract(s) with Heinz USA, division of H. J. Heinz Company. (Hearing site: St. Louis, MO, or Davenport, IA.)

MC 144695 (Sub-2F), filed June 1, 1979. Applicant: N. & S. TRUCKING, INC., Route 1, Francisco, IN 47649. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., Indianapolis, IN 46204. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals* (except in bulk), from those points in the United States in and east of ND, SD, NE, KS, OK, and TX, to (a) the facilities of Ulrich Chemical, Inc., at Evansville, Fort Wayne, Indianapolis, and Terre Haute, IN, and (b) the facilities of Mead-Johnson and Company, at or near Mount Vernon, IN, under continuing contract(s) with Ulrich Chemical, Inc., of Evansville, IN. Condition for issuance of permit: Prior or coincidental cancellation, at applicant's written request, of Permit No. MC–144695.

MC 145054 (Sub-18F), filed June 1, 1979. Applicant: COORS TRANSPORTATION COMPANY, a corporation, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *canned and preserved foodstuffs,* from the facilities of Heinz USA, Division of H. J. Heinz company, at or near Muscatine and Iowa City, IA, to points in CO, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Denver, CO.)

Note.—Dual operations may be involved.

MC 145054 (Sub-20F), filed June 7, 1979. Applicant: COORS TRANSPORTATION COMPANY, a corporation, 5101 York St., Denver CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *meats, meat products and meat byproducts,* and *articles distributed by meat-packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Wilson Foods Corporation, at Cedar Rapids, Cherokee, and Des Moines, IA, to points in CO,

restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Denver CO.)

Note.—Dual operations may be involved.

MC 145204 (Sub-1F), filed June 8, 1979. Applicant: TVF SECURITY CO., INC., P.O. Box 815, Warsaw, IN 46580. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *printed matter*, from the facilities of R. R. Donnelley & Sons Company, at Warsaw, IN, to Ft. Wayne, Elkhart, Indianapolis, and Lafayette, IN, Chicago, IL, and Cincinnati, OH, under continuing contracts(s) with R. R. Donnelley & Sons Company. (Hearing site: Indianapolis, IN.)

MC 145274 (Sub-4F), filed June 8, 1979. Applicant: SERVICEWAY MOTOR FREIGHT, INC., P.O. Box 243, Alcoa, TN 37701. Representative: John G. Hardeman, 618 United American Bank Bldg., Nashville, TN 37219. Transporting (1) *iron containers* and *containers* and *metal can ends*, and (2) *machinery and supplies* used in the manufacture and distribution of the commodities named in (1) above, between Bishopville, SC, on the one hand, and, on the other, points in TX, OK, MO, IA IN, KY, AR, VA, NC, TN, MS, AL, GA, and FL. (Hearing site: Nashville, TN, or Baltimore, MD.)

MC 145664 (Sub-9F), filed June 7, 1979. Applicant: STALBERGER, INC., 223 South 50th Ave., West, Duluth, MN 55806. Representative: John M. LeFevre, 4610 IDS Center, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *timbers* and *lumber*, from the ports of entry on the international boundary line between the United States and Canada, at or near Grand Portage and International Falls, MN, to points in MN, WI, and the Upper Peninsula of MI. (Hearing site: Minneapolis or Duluth, MN.)

MC 145735 (Sub-2F), filed June 8, 1979. Applicant: KENNETH BASS, 916 Lakewood Drive, Milton, FL 32570. Representative: Ronald L. Stichweh, 727 Frank Nelson Building, Birmingham, AL 35203. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *crushed limestone, crushed slag, and crushed rock*, from points in Shelby, Escambia, Montgomery, and Monroe Counties, AL, to Milton and Bagdad, FL, under continuing contract(s) with Blackwater Prestressed Concrete, Inc., of Milton, FL. (Hearing site: Birmingham, AL, or Pensacola, FL.)

MC 146044 (Sub-2F), filed June 11, 1979. Applicant: JOE COSTA TRUCKING, a corporation, Highway 299—West End Road, P.O. Box 748, Arcata, CA 95521. Representative: Marvin Handler, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *lumber and baled wood pulp*, from points in Humboldt County, CA, to points in Shasta, Sonoma, and Mendocino Counties, CA, restricted to the transportation of traffic having a subsequent movement by rail. (Hearing site: San Francisco or Eureka, CA.)

MC 146484 (Sub-3F), filed June 6, 1979. Applicant: F. J. CRIKOS TRUCKING, INC., 141 Helman Lane, Cotati, CA 94928. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum and aluminum products*, and (2) *materials* used in the manufacture of (a) highway trailers, (b) spring brakes, and (c) fifth wheels, from points in CA, to the facilities of Comet Corporation, and Alloy Trailers, Inc., at Spokane, WA, under continuing contract(s) with Comet Corporation and Alloy Trailers, Inc., of Spokane, WA. (Hearing site: San Francisco, CA, or Spokane, WA.)

MC 146564 (Sub-2F), filed June 1, 1979. Applicant: BENNIE MILLER, d.b.a. M & L TRUCK SERVICE, 6730 Larry Lane, Berkeley, MO 63134. Representative: Lawrence O. Willbrand, Suite 873, 818 Olive Street, St. Louis, MO 63101. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry fertilizer*, in bags, between points in MO and IL, under continuing contract(s) with Mangelsdorf Seed Co., of St. Louis, MO. (Hearing site: St. Louis or Jefferson City, MO.)

MC 146604 (Sub-2F), filed June 6, 1979. Applicant: SILVER TRUCKING, INC., 355 West Deloney, P.O. Box 2663, Jackson, WY 83001. Representative: Don C. Henderson (same address as applicant). Transport *malt beverages*, from Fairfield, CA, to Victor, ID, and Jackson, WY.Casper, WY. (Hearing site:) or Salt Lake City, UT.

MC 146724 (Sub-3F), filed June 1, 1979. Applicant: DEAN RAPPLEYE, INC., P.O. Box 204, West Jordan, UT 84084. Representative: Jack H. Blanshan, Suite 200, 205 Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *foodstuffs, table decorations, and books* (except commodities in bulk), and (2) *plants*, which are otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) when moving in mixed loads with the commodities in (1) above, from points in CA to the ports of entry on the international boundary line between the United States and Canada located in ID, MT, and WA, restricted to the transportation of traffic originating at the indicated origins. (Hearing site: Salt Lake City, UT, or San Francisco, CA.)

MC 146755 (Sub-2F), filed June 6, 1979. Applicant: APACHE TRUCK LINES, INC., 901 South Main Street, Eureka, IL 61530. Representative: Douglas G. Brown, The INB Center, Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *precast concrete slats*, from Roanoke and Casey, IL, to points in IN, IA, KY, MO, and WI, under continuing contract(s) with Brim Slats, Inc., of Roanoke, IL. (Hearing site: St. Louis, MO.)

MC 146895 (Sub-2F), filed June 6, 1979. Applicant: JOHNNY FOWLKES, d.b.a. J. J. FOWLKES TRUCKING COMPANY, Route 2, Box 90, Selma, AL 36701. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. Transporting *malt beverages*, in containers, (a) from Jacksonville, FL, to Selma, AL, (b) from Memphis, TN, to Linden, Selma, and Troy, AL. (Hearing site: Montgomery or Mobile, AL.)

MC 147035 (Sub-2F), filed May 30, 1979. Applicant: J. HOWARD LEASING, INC., 253 S.W. Cutoff, Worcester, MA 01604. Representative: James F. Martin, Jr., 8 W. Morse Road, Bellingham, MA 02019. Transporting *meats, and meat products and meat byproducts*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and (2) *materials and supplies* used in the packaging of the commodities named in (1) above, between the facilities of Snider Bros. Inc., and Portion Control Meat Processing Co., Inc., at Wilkinsonville, MA, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, FL, GA, IL, ID, IA, IN, KY, KS, LA, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC. (Hearing site: Boston, MA.)

MC 147434 (Sub-1F), filed May 25, 1979. Applicant: NEW JERSEY DELIVERY SERVICE, INC., P.O. Box 341, Clifton, NJ 07011. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier*, by motor vehicle, in

interstate or foreign commerce, over irregular routes, transporting *commercial documents*, between Paterson, NJ, on the one hand, and, on the other, Myack, Haverstraw, New City, Monroe, Newburgh, Montgomery, Middletown, and Port Jervis, NY, and Sussex, NJ, under continuing contract(s) with A & P Tea Co., of Paterson, NJ. (Hearing site: New York, NY, or Washington, DC.)

MC 147574F, filed June 5, 1979. Applicant: MARINE TRUCKING, INC., 47595 North Gratiot Avenue, Mt. Clemens, MI 48045. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. Transporting *boats*, between points in Bay, Charlevoix, Emmet, Macomb, Ottawa, St. Clair, and Wayne Counties, MI, on the one hand, and, on the other, points in FL, GA, KY, OH and TN. (Hearing site: Detroit, MI.)

MC 147585F, filed June 11, 1979. Applicant: DICK WELLER, INC., Shoham Road, P.O. Box 313, Warehouse Point, CT 06088. Representative: Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117. Transporting *electrical supplies, and flexible air duct tubing*, from the facilities of the Wiremold Co., at or near West Hartford and Rocky Hill, CT, to Atlanta, GA, Los Angeles, CA, Detroit, MI, and the ports of entry on the international boundary line between the United States and Canada, in Erie and Niagara Counties, NY. (Hearing site: Hartford, CT.)

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Decided: October 19, 1979

By the Commission, Review Board Number 2, members Boyle, Eaton, and Liberman. Board Member Liberman not participating.

MC 45893 (Sub-16F), filed June 7, 1979. Applicant: ROSS TRUCK LINES, INC., 1010 North Pearl Street, Paola, KS 66071. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Transporting *agricultural implements and grain dryers*, from the facilities of Berico Industries, at or near Waverly, KS, to points in AL, IL, IN, KY, LA, MS, and OH. (Hearing site: Kansas City, MO, or Topeka, KS.)

MC 73533 (Sub-3F), filed June 5, 1979. Applicant: KEY WAY TRANSPORT, INC., 820 S. Oldham Street, Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring the use of special equipment), in containers or in trailers, having a prior or subsequent movement by water, and (2) *empty containers or trailers*, between Baltimore, MD, Philadelphia, PA, and New York, NY. (Hearing site: Baltimore, MD, or Washington, DC.)

Note.—Dual operations may be involved.

MC 82093 (Sub-4F), filed May 29, 1979. Applicant: PORTAGE TRANSFER COMPANY, INC., P.O. Box 86, Hiram, OH 44234. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *contract* carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, and (2) *equipment, materials and supplies*, used in the manufacture and distribution of the commodities in (1) above, (a) between Middletown and Zanesville, OH, on the one hand, and, on the other, Ashland, KY, points in IN, points in PA on the west of U.S. Hwy 15, and those in NY on and west of U.S. Hwy 62, (b) between Butler, PA, on the one hand, and, on the other, Ashland, KY, points in IN, OH, and those in NY on and west of U.S. Hwy 62, and (c) between Ashland, KY, on the one hand, and, on the other, points in IN, OH, those in PA on and west of U.S. Hwy 15, and those in NY on and west of U.S. Hwy 62, under continuing contract(s) with Armco, Inc., of Middletown, OH. Condition: Issuance of this Permit is subject to prior or coincidental cancellation, at the request of applicant, of Permit MC–82093 issued May 28, 1942, and MC–82093 Sub 2 issued May 27, 1946. (Hearing site: Columbus, OH.)

MC 103602 (Sub-12F), filed June 4, 1979. Applicant: SKJONSBY TRUCK LINE, INC., 2831 1st Ave., N., Box 362, Fargo, ND 58102. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. Transporting *such commodities* as are dealt in, or used by, (a) agricultural equipment, (b) industrial equipment, and (c) lawn and leisure product dealers and manufacturers, (except commodities in bulk, in tank vehicles), from points in ND and SD to points in ND, SD, MN, MT, and WY, restricted to the transportation of traffic having a prior movement by rail. (Hearing site: Chicago, IL.)

MC 110563 (Sub-266F), filed March 20, 1979, and previously published in the **Federal Register** on July 3, 1979. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 NW, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. Transporting *bananas*, from Norfolk, Portsmouth, and Hampton Roads, VA, to points in IL, IN, MD, MA, MI, MO, NJ, NY, NC, OH, PA, SC, TN, VA, WV, and DC, restricted to the transportation of traffic having a prior movement by water. (Hearing site: Washington, DC.)

Note.—The purpose of this republication is to delete the ports of entry on the international boundary line between the United States and Canada.

MC 115092 (Sub-85F), filed June 5, 1979. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box O, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, IL 60174. Transporting *cedar shakes and shingles*, from points in WA, to points in AR, AZ, CA, KS, MO, NE, NM, and WY. (Hearing site: Los Angeles, CA, or Salt Lake City, UT.)

MC 129282 (Sub-43F), filed March 23, 1979. Applicant: BERRY TRANSPORTATION, INC., P.O. Box 2147, Longview, TX 75601. Representative: Fred S. Berry, (same address as applicant). Transporting *malt beverages, non-alcoholic beverages, and materials and supplies* used in the manufacture and distribution of malt beverages and non-alcoholic beverages, between Houston, TX, on the one hand, and, on the other, points in LA (except Covington). (Hearing site: Houston, TX, or New Orleans, LA.)

MC 129712 (Sub-22F), filed June 4, 1979. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Road, N.E., Atlanta, GA 30326. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and wholesalers of lumber, between points in Henry County, GA, on the one hand, and, on the other, points in AL, FL, KY, LA, MS, NC, SC, TN, TX, VA, and WV, under continuing contract(s) with Shockley Forest Industries, Inc., of McDonough, GA. (Hearing site: Atlanta, GA or Washington, DC.)

MC 134472 (Sub-13F), filed June 4, 1979. Applicant: RICHARD KUSTERMANN, d.b.a. KUSTERMANN TRUCK SERVICE, R.R. #2, Highland, IL 62249. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *fruit and drink concentrates, ice cream flavorings, frozen fruits, chocolate products*, and *flavor concentrates*, in vehicles equipped with mechanical refrigeration, from Bridgeton, MO, to points in IA, IN, KS, MI, NE, and WI, under continuing contract(s) with Consolidated Flavor

Corporation, of Bridgeton, MO. (Hearing site: St. Louis, MO.)

MC 135133 (Sub-3F), filed May 21, 1979. Applicant: ALBERT L. RING, ANDREW C. RING, BERNARD J. RING, AND RONALD J. RING, A Partnership, d.b.a. FRANK RICHARD RING, P.O Box 96, Neola, IA 51559. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *computing machines*, and (2) *materials and supplies* used in the manufacture and distribution of computing machines, (except commodities in bulk), between points in CO, IL, IA, KS, MN, MO, OK, and NE, under continuing contract(s) with Control Data Corporation, of Minneapolis, MN. (Hearing site: Minneapolis, MN, or Omaha, NE.)

MC 145673 (Sub-6F), filed August 6, 1979. Applicant: ROAD RAIL SERVICES, INC., 860 Skokie Hwy, Lake Bluff, IL 60044. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *general commodities*, (except commodities in bulk, classes A and B explosives, and household goods, as defined by the Commission), in containers or in trailers, having a prior or subsequent movement by rail or water, and (2) *empty containers or trailers*, between points in IL, IN, IA, KY, MI, MN, MO, OH, and WI. (Hearing site: Chicago, IL.)

MC 146953 (Sub-1F), filed May 23, 1979. Applicant: MONROE FUGATE, d.b.a. H & M CARTAGE, 17151 South Overhill, Tinley Park, IL 60477. Representative: William D. Brejcha, Esq., 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Transporting (1) *plastic articles* (except commodities in bulk), from the facilities of Arco-Polymers, Inc., at Chicago, IL to points in AR, IA, IN, KY, MI, MO, OH, PA, TX and WI, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), in the reverse direction, restricted in (1) and (2) above, to the transportation of traffic originating at or destined to the facilities of Arco-Polymers, Inc., at Chicago, IL. (Hearing site: Chicago, IL.)

Volume No. 213

Decided: November 6, 1979.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 114897 (Sub-131F), filed May 17, 1979, and previously noticed in the **Federal Register** issue of October 25, 1979. Applicant: WHITFIELD TANK LINES, INC., 124 West Thomas, P.O. Box 7676, Phoenix, AZ 85011. Representative: B. Seth Green (same address as applicant). Transporting *petroleum and petroleum products*, in bulk, in tank vehicles, from points in OK, to El Paso and Lubbock, TX, and points in AZ and NM. (Hearing site: El Paso, TX or Santa Fe, NM.)

Note.—This republication is to correctly reflect the territorial description.

MC 133566 (Sub-138F), filed May 14, 1979. Applicant: GANGLOFF & DOWNHAM TRUCKING COMPANY, INC., P.O. Box 479, Logansport, IN 46947. Representative: Thomas J. Beener, Suite 4959, One World Trade Center, New York, NY 10048. Transporting *foodstuffs* (except in bulk), from the facilities of Quality Brands, Inc., at or near (1) Paw Paw, MI, to points in AR, CO, CT, DE, GA, IA, IN, KS, KY, MA, MD, IL, ME, MO, MN, NH, NE, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, VT, WI, WV, and DC, (2) Franklin, ME, to points in AR, DE, CO, CT, GA, IA, IN, IL, KS, KY, MA, MD, MO, MN, NH, NE, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, VT, WI, WV, and DC, and (3) Middleport, NY, to points in AR, DE, CO, CT, GA, IA, IN, IL, KS, KY, MA, MD, MO, MN, NH, NE, NJ, NC, OH, OK, PA, SC, TN, TX, VA, VT, WI, and DC, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: New York, NY.)

MC 134477 (Sub-339F), filed April 20, 1979, and previously noticed in the **Federal Register** issue of October 4, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *footwear and materials, supplies and equipment used in the manufacture and distribution of footwear*, (except commodities in bulk), (1) from points in ME, MA, NH, NJ, NY, PA, and VA to Red Wing, MN, and (2) from points in MA to Chicago, IL, and Beloit, Milwaukee, and Sheboygan, WI. (Hearing site: St. Paul, MN.)

Note.—The purpose of this republication is to correct the territorial description in (2) above.

MC 134477 (Sub-348F), filed May 14, 1979. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *such commodities* as are dealt in by retail department stores (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Gamble-Skogmo, Inc. (Hearing site: St. Paul, MN.)

MC 143267 (Sub-62F), filed March 30, 1979, previously published in the **Federal Register** issue of September 11, 1979. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, P.O. Box 520, Mantua, OH 44255. Representative: Neal A. Jackson, 1155 15th Street, NW., Washington, DC 20005. Transporting (1) *roofing, building and insulating materials*, and (2) *equipment and supplies* used in the installation of the commodities named in (1) above, from the facilities of GAF Corporation (1) at or near Joliet, IL, to points in IA, MI, and OH, and (2) at or near Baltimore, MD, to points in WV.

Note.—This republication is to reflect the correct commodity description in (2) above. (Hearing site: Cleveland, OH or Washington, DC.)

MC 144117 (Sub-43F), filed May 17, 1979. Applicant: TLC LINES, INC., 1666 Fabick Dr., P.O. Box 1091, Fenton, MO. 63026. Representative: Warren W. Wallin, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. Transporting *plumbing fixtures and fittings*, from points in (1) Sheboygan County, WI, to points in AZ, CA, CO, ID, MT, NE, MN, OR, TX, WA, and WY, and (2) Brown County, TX, to points in AZ, AR, CA, CO CT, DE, KY, MD, MA, MI, NJ, NM, NY, OH, OR, PA, UT, WA, WV, Sheboygan County, WI, and WY. (Hearing site: Milwaukee, WI, or St. Louis, MO.)

MC 144996 (Sub-3F), filed May 10, 1979. Applicant: D. H. SHARRER & SON, INC., R.D. 2, New Oxford, PA 17350. Representative: Walter K. Swartzkopf, Jr., 407 North Front Street, Harrisburg, PA 17101. Transporting *dry fertilizer*, in bulk, in dump vehicles, from the facilities of Allied Chemical Corporation at Hopewell, VA, to points in DE, MD, NJ, NY, PA, WV, and NC. (Hearing site: Washington, DC, or Harrisburg, PA.)

Volume No. 238

Decided November 29, 1979.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 116947 (Sub-70F), filed March 9, 1979, and previously noticed in the **Federal Register** issue of October 2, 1979. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street SW., Atlanta, GA 30310. Representative: William Addams, P.O. Box 720434, Atlanta, GA 30328. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *adhesives, caulks and specialty chemicals*, in containers, and (b) *empty plastic containers*, in cartons, from the

facilities of Franklin Chemical Industries at or near Columbus, OH, to points in TX, GA, MO, NC, OK, TN and FL; and (2) *materials and supplies* (except commodities in bulk) used in the manufacture and distribution of the commodities described in (1) above, from points in PA, SC, NJ and MA, to the facilities of Franklin Chemical Industries at or near Columbus, OH. (Hearing site: Atlanta, GA.)

Note.—This republication is to show NC as a destination state.

MC 147137F, filed March 29, 1979, and previously noticed in the **Federal Register** of September 11, 1979. Applicant: BARNETS MILL ELEVATOR, INC., 1619 Barnets Mill Road, Camden, OH 45311. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215. Transporting *soybean meal,* in bulk, from the facilities of Cargill, Inc., at or near Sidney, OH, to those points in the United States in, north, and east of WI, IL, KY, TN, and NC. (Hearing site: Columbus, OH, or Washington, DC.)

Note.—This republication is to correctly reflect the territorial description.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-37453 Filed 12-5-79; 8:45 am]

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[Volume No. 43]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate.

November 28, 1979.

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

FF-399 (M1F), petition to modify, filed January 24, 1979. Applicant: INTERSTATE RENTAL OF UTAH, INC., P.O. Box 30277, Salt Lake City, UT 84125. Representative: Michael S. Rubin, 256 Montgomery St., San Francisco, CA 94104. Petitioner holds *freight forwarder* permit FF-399, issued August 30, 1979, authorizing the transportation of *general commodities* (except used household goods, motor vehicles, and commodities in bulk), (1) between points in Marin, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco, Santa Barbara, Ventura, Los Angeles, Kern, San Bernardino, Orange, Riverside, and San Diego Counties, CA, on the one hand, and, on the other, ports of entry located at Los Angeles, Long Beach, San Francisco, and Oakland, CA, restricted to the forwarding of shipments having an immediately prior or subsequent movement by water, and (2) between points in the 14 CA Counties in (1) above, on the one hand, and on the other, points in HI, restricted in (1) and (2) above to the forwarding of shipments, in cargo containers, having a prior or subsequent movement in carrier's non-vessel operating (NVO) water common carrier service. By this petition, petitioner seeks to remove the restriction "having a prior or subsequent movement in carrier's non-vessel operating (NVO) water common carrier service."

MC 104104 and MC 104104 (Sub-9 M1 F), notice of filing of petition to modify certificates, filed June 11, 1979. Petitioner: GEORGE A. FETZER INC., Route 565, Newton-Sussex Rd., Augusta, NJ 07822. Representative: Robert B. Pepper, The Forest Park Bldg., 168 Woodbridge Ave., Highland Park, NJ 08904. Petitioner holds *common carrier* authority in MC 104104, served June 9, 1979, and MC 104104 (Sub-9), served November 3, 1971. MC 104104 authorizes, as pertinent, over irregular routes, the transportation of *plastic articles* and *insulating material,* (1) from Netcong, NJ, to points in CT, points in that part of PA on and east of a line beginning at the PA-MD State line and extending along unnumbered hwy (formerly portion U.S. Hwy 111) through Shrewsbury and Jacobus, PA, to junction Interstate Hwy 83, then along Interstate Hwy 83 through York, PA, to junction unnumbered hwy (formerly portion U.S. Hwy 111), unnumbered hwy to junction PA Hwy 295, then along PA Hwy 295 through Zions View and Shrinestown, PA, to junction Interstate Hwy 83, then along Interstate Hwy 83 to Harrisburg, PA, then along U.S. Hwy 15 to the PA-NY State line, and points in Putnam, Dutchess, Orange, Ulster, and Sullivan Counties, NY, and (2) from Stanhope, NJ, to Washington, DC, and points in DE, KY, ME, MD, MA, NH, NY (except New York, NY, and points in Nassau, Suffolk, Westchester, Rockland, Putnam, Dutchess, Orange, Ulster, and Sullivan Counties, NY), PA (except points in that part of PA on and east of a line extending from the PA-MD State line along unnumbered highway (formerly portion U.S. Hwy 111) through Shrewsbury and Jacobus, PA, to junction Interstate Hwy 83, then along Interstate Hwy 83 through York, PA, to junction unnumbered hwy (formerly portion U.S. Hwy 111), then along unnumbered hwy to junction PA Hwy 295, then along PA Hwy 295 through Zions View and Strinestown, PA, to junction Interstate Hwy 83, then along Interstate Hwy 83 to Harrisburg, PA, then along U.S. Hwy 15 to the PA-NY State line), NC, OH, RI, SC, TN, VT, VA,

and WV. MC 104104 Sub 9 authorizes, as pertinent, over irregular routes, the transportation of *insulators, isolators,* and *insulating materials,* from Netcong, NJ, to New York, NY, and points in Nassau, Suffolk, Westchester and Rockland Counties, NY. By the instant petition, petitioner seeks to modify the above certificates by adding: (1) in MC-104104, *Materials and supplies* used in the manufacture and sale of plastic articles and insulating materials (except commodities in bulk), in the reverse direction; and (2) in MC-104104 Sub 9, *materials and supplies* used in the manufacture and sale of insulators, isolators, and insulating materials, (except commodities in bulk), in the reverse direction.

MC 109098 (M1F) and MC 109098 (Sub-2(M1F)), notice of petition to modify certificates, filed: June 13, 1979. Petitioner: FOGG'S DAILY SERVICE, 145 Roadstown Road, Bridgeton, NJ 98302. Representative: Norman Weiss, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Petitioner holds motor *common carrier* authority in MC–109098 issued September 9, 1970, which authorizes, in part, transportation of *General Commodities,* with the usual exceptions, over irregular routes, between Philadelphia International Airport and Northeast Airport, Philadelphia, PA, on the one hand, and, on the other, points in Salem, Cumberland and Atlantic Counties, NJ, restricted to traffic having a prior or subsequent movement by air, and MC 109098 (Sub-2) issued November 6, 1974, which authorizes the transportation of *General Commodities,* with the usual exceptions, over irregular routes, between Philadelphia International Airport and Northeast Airport, Philadelphia, PA, on the one hand, and, on the other, points in Cape May County, NJ, restricted to traffic having a prior or subsequent movement by air. By the instant petition, petitioner seeks to modify the said authorities by deleting the underscored restrictions and the references to the named airports.

MC 138549 (M1F), petition to modify, filed June 7, 1979. Applicant: SHAY DISTRIBUTING CO., INC., P.O. Box 3557, Orange, CA 92665. Representative: Paul M. Daniell, P.O. Box 56387, Atlanta, GA 30343. Petitioner holds motor *contract carrier* permit in MC–138549, issued August 12, 1977, authorizing the transportation, over irregular routes, of *foodstuffs, meats, meat products, meat by-products,* and *materials and supplies* used in the manufacture thereof (except hides and commodities in bulk), between the facilities of California Convenience Foods, Inc., at Vernon, Montebello, and Compton, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with California Convenience Foods, Inc., at Los Angeles, CA. By this petition, petitioner seeks to change the shipper to Butcher Boy Food Products, Inc., and substitute Riverside, CA, in lieu of Montebello, CA, as an authorized point.

MC 141599 (M2F), notice of petition to modify, filed June 18, 1979. Applicant: MOUNTAIN PACIFIC TRANSPORT (EDMONTON), LTD., d.b.a. SHADOW LINES, 241 Schoolhouse St., Coquitlan, British Columbia, Canada, V3K 4x9. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Petitioner holds motor *common carrier* certificate in MC–141599, issued August 23, 1977, authorizing the transportation, over irregular routes, of *lumber and wood products,* from points in ID and MT to the ports of entry on the United States-Canada Boundary line located at or near Eastport, ID, and Oroville, WA, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are restricted to traffic moving in foreign commerce to the provinces of Alberta and British Columbia, Canada. By this petition, petitioner seeks to use any gateway in ID or MT for the movement of traffic from points in ID and MT to points in Alberta and British Columbia, Canada.

Broker, Water Carrier and Freight Forwarder Operating Rights Applications

Notice

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such an authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues of allegations phrased generally, protests not in reasonable compliance with the requirements of the rules may be rejected.

Permanent Authority Decisions; Decision-Notice

Decided: November 27, 1979.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR §1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below), and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not*

be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Hill, and Fortier.

Broker

MC-130654F, filed November 14, 1979. Applicant: PACIFIC RELOCATING SERVICES, INC., 1415 West Torrance Boulevard, Torrance, CA 90501. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. To engage in operations, in interstate or foreign commerce, as a *broker*, at Torrance, CA, in arranging for the transportation by motor vehicle, of *used household goods* as defined by the Commission, recreational vehicles, automobiles, and trailers, beginning and ending at points in CA, and extending to points in the United States (including AK but excluding HI). (Hearing site: Washington, D.C.)

Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices

Date

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before December 17, 1979. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 87103 (Sub-No. E2), filed June 4, 1974. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 6077, Akron, OH 44312. Representative: Edward P. Borko (same as above). (I) *Machinery*, (A) between Greenville and Ebensburg, PA, and points in Chester County, PA, and Tuscarawas County, OH, on the one hand, and, on the other, points in MI east and south of a line beginning at the MI–OH State line extending along US Hwy 23 to Flint, then along MI Hwy 21 to Port Huron; (B) between points in MD, on the one hand, and, on the other, points in Cuyahoga County, OH; and (C) between points in NY on the west of US Hwy 62, on the one hand, and, on the other, points in Cuyahoga County, OH. (II) *Hydraulic pressure and shearing machinery* which because of size or weight requires the use of special equipment, from points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, PA, RI, VT, VA and DC. (III) *Hydraulic pressure and shearing machinery* used in the drilling of water wells or used in the construction, development, operation and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, from points in IN on and south of US Hwy 40, points in IL on and south of US Hwy 24, and points in KY on north and west of a line beginning at the KY–IN State line extending along US Hwy 31W to junction US Hwy 68, then along US Hwy 68 to junction US Hwy 60, then along US Hwy 60 to the KY–MO State line, to points in CT, DE, ME, MD, MA, MN, NH, NJ, NY, NC, PA, RI, VT, VA and DC. (Gateways eliminated: Greenville, PA, Ebensburg, PA, points in Tuscarawas County, OH and points in Chester County, PA, in (I) above; Mt. Carmel, IL in (II) and (III) above.)

Note.—This letter notice was originally filed by Engel Trucking Inc., under No. MC–128918 and was purchased by Miller Transfer and Rigging Co., pursuant to No. MC–F–11545.

MC 117574 (Sub-No. E–83, filed June 29, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). (A) *Sewage, water, and refuse treatment systems*, the transportation of which because of size or weight requires the use of special equipment, which is also industrial or processing machinery, and (b) *tools, materials and supplies* used in connection with the erection and construction of sewage, water, and refuse systems (except commodities in bulk), which are also attachments, accessories and parts of industrial or processing machinery (1) between Cleveland, OH, on the one hand, and, on the other, points in CA, CT, DE, ME, NH, NJ, RI and Washington, DC, points in that portion of AZ on and west of a line beginning at the AZ–NV State line extending along U.S. Hwy 93 to junction U.S. Hwy 89, then along U.S. Hwy 89 to the points on the US–MX International Boundary line on and east of a line beginning at the GA–FL State line and extending along U.S. Hwy 319 to Turkey Point and then along U.S. Hwy 319 to Gulf of Mexico; points in that portion of GA on and east of a line beginning at the SC–GA State line and extending along U.S. Hwy 1 to junction U.S. Hwy 319, thence along U.S. Hwy 319 to the GA–FL State line; points in that portion of MD on and east of I Hwy 81; points in that portion of MA on and east of a line beginning at the VT–MA State line and extending along I Hwy 91 to junction MA Hwy 9, then along MA Hwy 9 to junction U.S. Hwy 20, then along U.S. Hwy 20 to the NY–MA State line; points in that porton ot NV on and west of a line beginning at the CA–NV State line and extending along U.S. Hwy 395 to

junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 95, then along U.S. Hwy 95 to junction U.S. Hwy 93, then along U.S. Hwy 93 to the AZ–NV State line; points in that portion of NY on and south of a line beginning at the NY–MA State line and extending along U.S. Hwy 20 to junction I Hwy 87, then along I Hwy 87 to junction U.S. Hwy 209, then along U.S. Hwy 209 to junction NY Hwy 52, then along NY Hwy 52 to the PA–NY State line; points in that portion of NC on and east of the line beginning at the VA–NC State line and extending along U.S. Hwy 220 to junction U.S Hwy 1, then along U.S. Hwy 1 to the NC–SC State line; points in that portion of OR on and west of a line beginning at the OR–WA State line and extending along U.S. Hwy 395 to the CA–OR State line, thence along the CA–OR State line, to the CA–NV State line, then along the CA–NV State line to junction U.S. Hwy 395; points in that portion of PA on and east of a line beginning at the PA–NY State line and extending along PA Hwy 652 to junction U.S. Hwy 6, then along U.S. Hwy 6 to its junction U.S. Hwy 11, then along U.S. Hwy 11 to junction PA Hwy 34, then along PA Hwy 34 to junction PA Hwy 274, then along PA Hwy 274 to junction PA Hwy 233, then along PA Hwy 233 to junction PA Hwy 997, then along PA Hwy 997 to junction U.S. Hwy 11, then along U.S. Hwy 11 to junction I Hwy 81 then along I Hwy 81 to the PA–MD State line; points in that portion of SC on and east of U.S. Hwy 1; points in that portion of VT on and east of I Hwy 91; points in that portion of VA on and east of a line commencing at the MD–VA State line and extending along I Hwy 81 to junction U.S. Hwy 220, thence along U.S. Hwy 220 to the VA–NC State line; points in that portion of WA on and west of a line commencing at the US–CD International Boundary line and extending along U.S. Hwy 97 to junction WA Hwy 24, thence along WA Hwy 24 to junction WA Hwy 240, then along WA Hwy 240 to junction U.S. Hwy 395, then along U.S. Hwy 395 to the OR–WA State line; points in that portion of WV on and east of I Hwy 81; and (2) between points in Franklin County, OH, on the one hand, and, on the other, points in CT, DE, ME, MA, NH, NJ, RI, VT, Washington, DC, Eureka, CA, Key West, FL; points in that portion of MD on and east of I Hwy 81; points in that portion of NY, on and east of a line beginning at the US–CD International Boundary line and extending along I Hwy 87 to junction NY Hwy 7, then along NY Hwy 7 to junction NY Hwy 17, then along NY Hwy 17 to junction U.S. Hwy 220, thence along U.S. Hwy 220 to the PA–NY State line; points in that portion of NC on and east of a line beginning at the VA–NC State line and extending along U.S. Hwy 258 to junction NC Hwy 24, thence along NC Hwy 24 to the Atlantic Ocean; Astoria and Coquille, OR; points in the portion of PA on and east of a line beginning at the PA–NY State line and extending along U.S. Hwy 220 to junction U.S. Hwy 15, thence along U.S. Hwy 15 to junction I Hwy 81, thence along I Hwy 81 to the MD–PA State line; points on and east of a line beginning at the MD–VA State line and extending along I Hwy 81 to junction U.S. Hwy 17, thence along U.S. Hwy 17 to junction I Hwy 95, thence along Hwy 460, thence along U.S. Hwy 460 to junction U.S. Hwy 258, thence along U.S. Hwy 460 to junction U.S. Hwy 258, thence along U.S. Hwy 258 to the VA–NC State line; points in that portion of WV on and east of I Hwy 81; and (3) between points in Cuyahoga, Geauga and Lake Counties, OH, on the one hand, and, on the other, points in DE, points in that portion of AZ on and west of a line beginning at the CA–AZ State line and extending along I Hwy 10 to junction U.S. Hwy 95, thence along U.S. Hwy 95 to the US–CD International Boundary line; points in that portion of CA on and west of a line and extending along U.S. Hwy 97 to junction with I Hwy 5, thence along I Hwy 5 to junction CA Hwy 58, thence along CA Hwy 58 to junction U.S. Hwy 66, thence along U.S. Hwy 66 to junction I Hwy 10, thence along I Hwy 10 to the CA–AZ State line; points in that porton of FL on and east of a line beginning at Keaton Beach and extending along FL Hwy 361 to junction U.S. Hwy 221, thence along U.S. Hwy 221 to the FL–GA State line; points in that portion of GA on and east of a line beginning at the FL–GA State line and extending along U.S. Hwy 221 to junction U.S. Hwy 84, thence along U.S. Hwy 84 to junction U.S. Hwy 301, thence along U.S. Hwy 301 to the GA–SC State line; points in that portion of MD on and east of I Hwy 81; points in that portion of NC on and east of a line beginning at the NC–SC State line and extending along U.S. Hwy 501 to junction U.S. Hwy 64, thence along U.S. Hwy 64 to junction U.S. Hwy 220, thence along U.S. Hwy 220 to the VA–NC State line; points in that portion of OR on and west of a line beginning at the WA–OR State line and extending along I Hwy 5 to junction OR Hwy 58, thence along OR Hwy 58 to junction U.S. Hwy 97, thence along U.S. Hwy 97 to the OR–CA State line; points in that portion of SC extending along U.S. Hwy 221 to junction U.S. Hwy 84, thence along U.S. Hwy 84 to junction U.S. Hwy 301, thence along U.S. Hwy 301 to the GA–SC State line; points in that portion of MD on and east of I Hwy 81; points in that portion of NC on and east of a line beginning at the NC–SC State line and extending along U.S. Hwy 501 to junction U.S. Hwy 64, thence along U.S. Hwy 64 to junction U.S. Hwy 220, thence along U.S. Hwy 220 to the VA–NC State line; points in that portion of OR on and west of a line beginning at the WA–OR State line and extending along I Hwy 5 to junction OR Hwy 58, thence along OR Hwy 58 to junction U.S. Hwy 97, thence along U.S. Hwy 97 to the OR–CA State line; points in that portion of SC on, south and east of a line beginning at the GA–SC State line and extending along U.S. Hwy 301 to junction U.S Hwy 78, thence along U.S. Hwy 78 to junction U.S. Hwy 15, thence along U.S. Hwy 15 to junction U.S. Hwy 76, thence along U.S. Hwy 76 to junction I Hwy 95, thence along I Hwy 95 to the State line; points in that portion of VA on and east of a line beginning at the VA–NC State line and extending along U.S. Hwy 220 to junction I Hwy 81, thence along I Hwy 81 to the MD–VA State line; points in that portion of WA on and west of a line beginning at the US–CD International Boundary line and extending along WA Hwy 13 to junction I Hwy 5, thence along I Hwy 5 to the WA–OR State line; points in that portion of WV on and east of I Hwy 81, and (4) between points in Fairfield and Perry Counties, OH, on the one hand, and, on the other, points in DE, points in that portion of CA on and west of a line beginning at the OR–CA State line and extending along I Hwy 5 to junction I Hwy 580, thence along I Hwy 580 to its termination at San Lorenzo; Key West, FL; points in that portion of MD on and east of I Hwy 81; a line beginning at the WV–MD State line and extending along I Hwy 81 to the MD–PA State line; points in that portion of OR on and west of a line beginning at the WA–OR State line and extending along I Hwy 5 to the OR–CA State line; points in that portion of NC on and east of a line beginning at Cherry Point and extending along U.S. Hwy 70 to junction U.S. Hwy 29, thence along U.S. Hwy 29 to the NC–VA State line; points in that portion of VA on and east of a line beginning at the NC–VA State line and extending along U.S. Hwy 29 to junction U.S. Hwy 522, thence along U.S. Hwy 522 to junction I Hwy 81, thence along I Hwy 81 to the VA–WV State line; points in that portion of WA on and west of a line beginning at the US–CD International Boundary line and extending along I Hwy 5 to the WA–OR State line; points in that portion of WV on and east of I Hwy 81. (Gateway

eliminated: Carlisle, Shady Grove and Waynesboro, PA.)

No. MC 117574 (Sub-E135), filed January 9, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: William A. Chestnut, P.O. Box 1166, Harrisburg, PA 17108. *Commodities,* the transportation of which because of size or weight, require the use of special equipment, and *related material, supplies and parts of such* commodities when their transportation is incidental thereto, and, *self-propelled articles each weighing* 15,000 pounds or more, and related machinery, tools, parts, and *supplies* moving in connection therewith, restricted to self-propelled articles transported on trailers, (1) between points in Adair, Schuyler, and Scotland Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the KY–IN State line extending along IN Hwy 250 to junction IN Hwy 129, then along IN Hwy 129 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction IN Hwy 3, then along IN Hwy 3 to junction IN Hwy 32, then along IN Hwy 32 to the IN–OH State line; points in KY on and east of a line commencing at the TN–KY State extending along KY Hwy 55 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 127, then along U.S. Hwy 127 to the IN–KY State line; and points in MI on and east of a line commencing at the OH–MI State line extending along U.S. Hwy 23 to junction U.S. Hwy 10, then along U.S. Hwy 10 to junction with MI Road 247 to its termination at Saginaw Bay; (2) between points in Putman and Sullivan Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in IN on and east of a line commencing at the KY–IN State line extending along U.S. Hwy 421 in a northerly direction to its junction with IN Hwy 3, then along IN Hwy 3 to junction I Hwy 69 to the MI–IN State line; points in KY on and west of a line commencing at the TN–KY State line extending along U.S. Hwy 27 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the KY–IN State line; and points in MI on and west of a line commencing at the MI–IN State line extending along U.S. Hwy 27 to junction 75, then along I Hwy 75 to Mackinaw, MI; (3) between points in Buchanan and Clinton Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the KY–IN State line extending along U.S. Hwy 421 to its junction with IN Hwy 3, then along IN Hwy 3 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 37, then along IN Hwy 37 to junction U.S. Hwy 27, then along U.S. Hwy 27 to the IN–MI State line; points in KY on and east of a line commencing at the TN–KY Kentucky State line extending along KY Hwy 55 to its junction with U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 217, then along U.S. Hwy 217 to junction U.S. Hwy 421, then along U.S. Hwy 421 to the KY–IN State line; and points in MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 27 to junction I Hwy 75, then along I Hwy 75 to Mackinaw City, MI; (4) between points in Atchison, Holt, and Nodaway Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the KY–IN State line extending along U.S. Hwy 421 in a northerly direction to junction IN Hwy 9, then along IN Hwy 9 to the MI–IN State line; points in that part of KY on and east of a line commencing at the KY–TN State line extending along KY Hwy 61 to junction KY Hwy 55, then along KY Hwy 55 to junction with U.S. Hwy 421, then along U.S. Hwy 421 to IN–KY State line; and points in that part MI on and east of a line commencing at the MI–IN State line along MI Hwy 66 in a northerly direction to junction MI Hwy 115, then along MI Hwy 115 to junction MI Hwy 37, then along MI Hwy 37 to its termination at Traverse City and continuing along MI Hwy 77 to its termination at Grand Marais, MI; (5) between points in Marion and Shelby Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the OH–IN State line extending along IN Hwy 1 to the MI–IN State line; points in that part of KY on and east of a line commencing at the MI–IN State line extending along U.S. Hwy 27 to junction I Hwy 75, then along I Hwy 75 to Mackinaw County, MI; (6) between points in Coldwell and Livingston Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the KY–IN State line extending along I Hwy 65 to junction I Hwy 69, then along I Hwy 69 to the IN–MI State line; and points in that part of KY on and east of U.S. Hwy 31; (7) between points in Jackson County, MO, on the one hand, and, on the other, points in PA, WV, and points in IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 250 to junction IN Hwy 129, then along IN Hwy 129 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction with IN Hwy 9, then along IN Hwy 9 to junction IN Hwy 15, then along IN Hwy 15 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction IN Hwy 13, then along IN Hwy 13 to the IN–MI State line; points in the part of KY on and east of a line commencing at the TN–KY State line extending along U.S. Hwy 27 to junction U.S. Hwy 150 to junction U.S. Hwy 127, then along U.S. Hwy 127 to the IN–KY State line; and points in MI on and east of a line commencing at the IN–MI State line extending along MI, Hwy 131 to junction with Hwy 37, then along MI Hwy 37 to Lake Michigan, and points on and east of MI Hwy 77; (8) between points in Pettis and Saline Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at Lawrenceburg extending along IN Hwy 1 in to junction U.S. Hwy 36, then along U.S. Hwy 36 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction IN Hwy 13, then along IN Hwy 13 to the MI–IN State line; points in that part of KY on and east of U.S. Hwy 127; and points in MI on and east of a line commencing at the MI–IN State line extending along U.S. Hwy 131 to junction MI Hwy 37, along MI Hwy 37 to Traverse City, MI; (9) between points in Cooper and Howard Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the OH–IN State line extending along I Hwy 74 to junction IN Hwy 3, then along IN Hwy 3 to junction I Hwy 69, then I Hwy 69 to the IN–MI State line; points in that part of KY on and east of I Hwy 75; and points in that part of MI on and east of a line commencing at IN–MI State line extending along U.S. Hwy 27 to I Hwy 27 to I Hwy 75, then I Hwy 75 to Sault Saint Marie, MI; (10) between points in Boone and Callaway Counties, MO, on the one hand, and, on the other, points in PA and WV and points in that part of IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 262 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction IN Hwy 13, then along IN Hwy 13 to the IN–MI State line; points in that part of KY on and east of a line commencing at the KY–IN State line extending along U.S. Hwy 27 to junction I Hwy 75, then along I Hwy 75 to junction KY Hwy 14, then along KY Hwy 14 to the IN–KY State line; and points in that part of MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 37 to its termination along Lake Michigan; and

points on and east of MI Hwy 77; (11) between points in Andrew and DeKalb Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 7 to IN Hwy 9, then along IN Hwy 9 to junction I Hwy 69, then I Hwy 69 to the IN–MI State line; points in that part of KY on and east of a line commencing at the TN–KY State line along U.S. Hwy 27; in a northerly direction to U.S. Hwy 421, then along U.S. 421 to the KY–IN State line; and points in MI on and east of a line commencing the IN–MI State line extending along U.S. Hwy 27 to U.S. Hwy 12, then along U.S. Hwy 12 to junction U.S. Hwy 23, then along U.S. Hwy 23 to junction with I Hwy 75, then along I Hwy 75 to its termination at Bay City, MI; (12) between points in Saint Charles County, MO, on the one hand, and, on the other, points in IN on and east of a line commencing at Lawrenceburg extending along IN Hwy 1 to junction U.S. Hwy 35, then along U.S. Hwy 35 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IN Hwy 13, then along IN Hwy 13 to the MI–IN State line; points in KY on and east of I Hwy 75; and points in that part of MI on and east of a line commencing at the MI–IN State line extending along U.S. Hwy 131 to junction MI Hwy 37, thence along MI Hwy 37 to Traverse City, MI; (13) between points in Audrian County, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the OH–IN State line extending along U.S. Hwy 50 to junction IN Hwy 3, then along IN Hwy 3 to junction I Hwy 69, then along I Hwy 69 to the IN–MI State line; points in of KY on and east of I Hwy 75; and points in MI on and east of a line commencing at the MI–IN State line extending along U.S. Hwy 27 to U.S. Hwy 12, then along U.S. Hwy 12 to junction U.S. Hwy 13, then along U.S. Hwy 23 to junction MI Hwy 76, then along MI Hwy 76 to junction I Hwy 75, then along I Hwy 75 to Sault Saint Marie; MI.

(14) Between points in Henry and Saint Claire Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 250 to junction IN Hwy 129, then along IN Hwy 129 to junction U.S. Hwy 421 to junction IN Hwy 9, then along I Hwy 9 to junction IN Hwy 5, then along IN Hwy 5 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction IN Hwy 13, to the IN–MI State line; points in KY on and east of a line commencing at the TN–KY State line extending along U.S. Hwy 27 to junction U.S. Hwy 150, then along U.S. Hwy 150 to junction U.S. Hwy 127, then along U.S. Hwy 127 to the IN–KY State line; points in MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 131 to junction MI Hwy 37, then along MI Hwy 37 to Lake Michigan and points on and east of MI Hwy 77; (15) between points in Camden and Mortan Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in IN on and east of a line commencing at the IN–OH State line extending along U.S. Hwy 50 to IN Hwy 101, then IN Hwy 101 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction I Hwy 69, then along I Hwy 69 to the IN–MI State line; points in KY on and east of I Hwy 75; points in that part of MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 27 to I Hwy 75, then along I Hwy 75 to Sault Saint Marie, MI; (16) between points in Miller and Pulaski County, MO, on the one hand, and, on the other, points in PA, WV, and points in IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 262 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 6, then along U.S. Hwy 6 to its junction with IN Hwy 13, then along IN Hwy 13 to the IN–MI State line; points in that part of KY on and east of a line commencing at the TN–KY State line extending along I Hwy 75 to junction KY Hwy 627, then along KY Hwy 627 to junction KY Hwy 227, then along KY Hwy 227 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction KY Hwy 17, then along KY Hwy 17 to junction KY Hwy 14, then along KY Hwy 14 to the IN–KY State line; points in that part of MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 131 to junction MI Hwy 37, then along MI Hwy 37 to its termination at Lake Michigan and points in that part of MI on and east of MI Hwy 77; (17) between points in Maries and Phelps Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 262 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction IN Hwy 13, then along IN Hwy 13 to the IN–MI State line; points in KY on and east of a line commencing at the TN–KY State line extending along U.S. Hwy 25 to its junction with KY Hwy 490 to junction KY Hwy 89, then along KY Hwy 89 to junction KY Hwy 227, then along KY Hwy 227 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction KY Hwy 17, then along KY Hwy 17 to junction KY Hwy 14, then along KY Hwy 14 to the IN–KY State line; and points in MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 131 to junction MI Hwy 37 to its termination at Lake Michigan, and points in MI on and east of MI Hwy 77; (18) between points in Saint Francois and Saint Genevieve Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 56 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 1, then along IN Hwy 1 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction IN Hwy 13, then along IN Hwy 13 to the IN–MI State line; points in KY on and east of a line commencing at the KY–VA State line extending along U.S. Hwy 23 to junction KY Hwy 201, then along KY Hwy 201 to junction KY Hwy 32, then along KY Hwy 32 to junction KY Hwy 11, then along KY Hwy 11 to junction KY Hwy 10, then along KY Hwy 10 to junction KY Hwy 22, then along KY Hwy 22 to junction KY Hwy 17, then along KY Hwy 17 to junction KY Hwy 14, then along KY Hwy 14 to the IN–KY State line; and points in that part of MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 131 to junction MI Hwy 37, then along MI Hwy 37 to its termination at Lake Michigan, and points in and east of MI Hwy 77; (19) between points in Perry County, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 56 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 1, then along IN Hwy 1 to junction IN Hwy 3, then along Hwy 3 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction IN Hwy 13, then along IN Hwy 13 to the IN–MI State line; points in that part of KY on and east of a line commencing at the KY–VA State line extending along U.S. Hwy 23 to junction KY Hwy 32, then along KY Hwy 32 to junction KY Hwy 11, then along KY Hwy 11 to junction KY Hwy 10, then along KY Hwy 10 to junction KY Hwy 22, then along KY Hwy 22 to junction KY Hwy 17, then along KY Hwy 17 to junction KY Hwy 14, then along KY Hwy 14 to the IN–KY State line; and points in MI on and east of a line commencing at

the IN–MI State line extending along U.S. Hwy 131 to junction MI Hwy 37, then along MI Hwy 37 to termination at Lake Michigan and points on and east of MI Hwy 77; (20) between points in Barry, McDonald and Newton Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the KY–IN State line extending along the IN line to Richmond, IN to junction U.S. Hwy 27, then along U.S. Hwy 27 to the IN–MI State line; points in that part of KY on and east of I Hwy 75; and points in that part of MI on and east of a line commencing at the IN–MI State line along I Hwy 75, then along I Hwy 75 to Sault Saint Marie MI; (21) between points in Carter and Ripley Counties, MO, on the one hand, and, on the other, points in IN on and east of a line commencing at the IN–KY State line extending along IN Hwy 262 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 421, then along U.S. Hwy 421 to junction IN Hwy 3, then along IN Hwy 3 to junction IN Hwy 5, then IN Hwy 5 to junction U.S. Hwy 31, then along U.S. Hwy 31 to the IN–MI State line; and points in MI on and east of a line commencing at the IN–MI State line extending along U.S. Hwy 31 to junction MI Hwy 140, then along MI Hwy 140 to junction U.S. Hwy 31, then along U.S. Hwy 31 to junction MI Hwy 46, then along MI Hwy 46 to its termination at Lake Michigan, and points on and east of MI Hwy 77; (22) between points in Christian, Stone, and Taney Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in that part of IN on and east of a line commencing at the KY–IN State line extending along the IN State line to Richmond, IN then along U.S. Hwy 27 to the IN–MI State line; points in KY on and east of I Hwy 75; and points in MI on and east of I Hwy 75; (23) between points in Douglas and Ozark Counties, MO, on the one hand, and, on the other, points in PA, WV, and points in IN on and east of a line commencing at OH–IN State line extending along U.S. Hwy 50 to IN Hwy 3, then IN Hwy 3 to junction I Hwy 69, then along I Hwy 69 to the IN–MI State line; points in KY on and east of a line commencing at the KY–VA State line along KY Hwy 7 to KY Hwy 15, then along KY Hwy 15 to junction I Hwy 75, then along I Hwy 75 to the KY–OH State line; and points in MI on and east of a line commencing at MI–IN State line extending along U.S. Hwy 27 to MI Hwy 115, then along MI Hwy 115 to junction U.S. Hwy 131, then along U.S. Hwy 131 to Sault Marie, MI. (Gateway eliminated: Columbus, OH.)

MC 117574 (Sub-E149), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). (1) *Commodities,* the transportation of which because of size or weight, require the use of special equipment, and related materials, supplies, and parts of such commodities when their transportation is incidental thereto, and, (2) *self-propelled articles* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted to the transportation of self-propelled articles on trailers, (A) between points in Hardin County, KY, on the one hand, and, on the other, points in PA; points in IN on and east of a line beginning at Richmond extending along U.S. Hwy 27 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction IN Hwy 9, then along IN Hwy 9 to the MI–IN State line; points in MI on and east of a line beginning at the IN–MI State line extending along U.S. Hwy 12 to junction U.S. Hwy 131, then along U.S. Hwy 131 to junction I Hwy 96, then along I Hwy 96 to Muskegon; and points in WV on and east of a line extending along WV Hwy 80 to junction WV Hwy 10, then along WV Hwy 10 to the WV–KY State line; (B) between poitns in Hart and Larue Counties, KY, on the one hand, and, on the other, points in PA; points in IN on, north and east of a line beginning at the IN–OH State line extending along U.S. Hwy 40 to junction I Hwy 1, then along I Hwy 1 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction IN Hwy 5, then along IN Hwy 5 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction IN Hwy 19, then along IN Hwy 19 to the IN–MI State line; points in MI on, north and west of a line beginning at the MI–IN State line extending along MI Hwy 19 to junction U.S. Hwy 12, then along U.S. Hwy 12 to junction MI Hwy 40, then along MI Hwy 40 to junction MI Hwy 43, then along MI Hwy 43 to junction U.S. Hwy 131, then along U.S. Hwy 131 to junction I Hwy 96, then along I Hwy 96 to Lake Michigan; points in WV on and east of a line beginning at the WV–VA State line extending along WV Hwy 83 to junction WV Hwy 80, then along WV Hwy 80 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction U.S. Hwy 119, then along U.S. Hwy 119 to junction WV Hwy 10, then along WV Hwy 10 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the KY–WV State line; (C) between points in Allen and Barren Counties, KY, on the one hand, and, on the other, points in PA; points in IN on, north and east of a line beginning at the IN–OH State line extending along U.S. Hwy 40 to junction IN Hwy 1, then along IN Hwy 1 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction IN Hwy 5, then along IN Hwy 5 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction IN Hwy 19, then along IN Hwy 19 to the IN–MI State line; points in MI on, north and west of a line beginning at the MI–IN State line extending along MI Hwy 19 to junction U.S. Hwy 12, then along U.S. Hwy 12 to junction MI Hwy 40, then along MI Hwy 40 to junction MI Hwy 43, then along MI Hwy 43 to junction U.S. Hwy 131, then along U.S. Hwy 131 to junction I Hwy 96 then along I Hwy 96 to Lake Michigan; points in WV on and east of a line beginning at the WV–VA State line extending along WV Hwy 83 to junction WV Hwy 80, then along WV Hwy 80 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction U.S. Hwy 119, then along U.S. Hwy 119 to junction WV Hwy 10, then along WV Hwy 10 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the KY–WV State line; (D) between points in Oldham and Trimble Counties, KY, on the one hand, and, on the other, points in PA; points in IN on and northeast of a line beginning at IN–OH State line extending along U.S. Hwy 33 to junction IN Hwy 19, then along IN Hwy 19 to the IN–MI State line; points in MI on, north and west of a line beginning at the MI–IN State line extending along MI Hwy 205 to junction U.S. Hwy 12, then along U.S. Hwy 12 to junction U.S. Hwy 33, then along U.S. Hwy 33 to St. Joseph; and points in WV on and east of a line beginning at the WV–VA state line extending along U.S. Hwy 19 to junction I Hwy 77, then along I Hwy 77 to the WV–OH State line; (E) between points in Bullitt and Jefferson Counties, KY, on the one hand, and, on the other, points in PA; points in IN on, north and east of a line beginning at the IN–OH State line extending along U.S. Hwy 24 to junction U.S. Hwy 33, then along U.S. Hwy 33 to the MI–IN State line; points in MI on and north of U.S. Hwy 33; points in WV on and east of a line beginning at the WV–VA State line extending along WV Hwy 83 to junction WV Hwy 80, then along WV Hwy 80 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction U.S. Hwy 119, then along U.S. Hwy 119 to junction WV Hwy 10, then along WV Hwy 10 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the KY–WV State line; and, Ashland, KY. (Gateway eliminated: Columbus, OH, and points within 80 miles thereof.)

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79–37457 Filed 12–5–79; 8:45 am]

BILLING CODE 7035–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 236
Thursday, December 6, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: Commission Meeting, 10:30 a.m., Tuesday, December 4, 1979.

LOCATION: Eighth Floor Conference Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

Priority Items: The Commission will meet to continue its discussion of several items which it may include on CPSC's list of priority items for Fiscal Year 1980. The Commission began the discussion on November 30 (rescheduled from November 29).

FOR ADDITIONAL INFORMATION: Richard A. Danca, Office of the Secretary, Suite 300, 1111 18th Street, NW., Washington, D.C. 20207, (202) 634-7700.

Agenda approved December 3, 1979. In deciding to consider this matter, the Commission determined that agency business requires consideration without the normal seven-day advance notice.

[S-2368-79 Filed 12-4-79; 11:23 am]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: Commission Meeting, 9:30 a.m., Wednesday, December 5, 1979.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

STATUS: Part Open, Part Closed.

A. Open to the Public

1. N-Hexane Petition, CP 79-10

The Commission will consider a petition in which Robert B. Marcus of New York City asks for a ban of all consumer products containing n-hexane. The staff briefed the Commission on this petition November 29.

B. Closed to the Public

2. Authorization to Seek Section 15 Complaint, OS No. 716

The Commission will consider a staff request to authorize issuance of an administrative complaint in this matter involving a possible substantial product hazard. (Closed under exemption 9 and 10: possible significant frustration of agency action, and possible civil action.)

FOR ADDITIONAL INFORMATION: Richard A. Danca, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, (202) 634-7700.

Agenda approved November 27, 1979.

[S-2366-79 Filed 12-4-79; 11:23 am]

BILLING CODE 6355-01-M

3

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: Commission Meeting, Thursday, December 6, 1979.

LOCATION: Room 456 Westwood Towers; 5401 Westbard Ave., Bethesda, Maryland.

STATUS: Open to the Public.

Briefing on Unvented Gas-Fired Space Heaters

The staff will brief the Commission on issues related to a draft proposed standard for unvented gas-fired space heaters. The Commission plans to consider the draft at a meeting on December 11.

FOR ADDITIONAL INFORMATION: Richard A. Danca, Office of the Secretary, Suite 300, 1111-18th Street, N.W., Washington, D.C. 20207, (202) 634-7700.

Agenda approved November 27, 1979.

[S-2367-79 Filed 12-4-79; 11:23 am]

BILLING CODE 6355-01-M

4

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: Commission Meeting, 1 p.m., Tuesday, December 11, 1979.

LOCATION: Third Floor Hearing Room, 1111 18th Street, N.W., Washington, D.C.

STATUS: Open to the Public.

1. Briefing on Urea-Formaldehyde Foam: Status Report

The staff will present an update of its activities concerning urea-formaldehyde foam insulation. In addition, the Executive Director will review information which the staff has prepared for the upcoming series of public hearings on urea-formaldehyde foam.

2. Unvented Gas-Fired Space Heaters

The Commission will consider a draft proposed standard for unvented gas-fired space heaters. The staff briefed the Commission on this matter December 6.

FOR ADDITIONAL INFORMATION: Richard A. Danca, Office of the Secretary, Suite 300, 1111 18th Street, NW., Washington, D.C. 20207, (202) 634-7700.

Agenda approved November 30, 1979.

[S-2368-79 Filed 12-4-79; 8:45 am]

BILLING CODE 6355-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETINGS: 9:30 a.m., Tuesday, December 4, 1979 and December 6, 1979.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Commission Closed Meeting and Commission Special Open Meeting.

CHANGES IN THE MEETING: Deletions and addition.

The following items have been deleted at the request of the Office of General Counsel from the list of agenda items scheduled for consideration at the December 4, 1979 Closed Meeting:

Agenda, Item No., and Subject

Hearing—2—Decision of the United States Court of Appeals for the District of Columbia Circuit remanding to the Commission a Commission decision denying the renewal application of Cosmopolitan Broadcasting Corporation (WHBI-FM), Newark, New Jersey (Docket No. 19657).

Hearing—3—Petition for extraordinary relief in the Newark, New Jersey FM license renewal proceeding (Docket No. 19657).

The following item has been deleted from the list of agenda items scheduled for consideration at the December 4, 1979 Open Meeting and is rescheduled for consideration at the December 6, 1979 Special Open Meeting, at 9:30 a.m., in Room 856, at 1919 M Street, N.W.

Cable Television—1—"Petition for Special Relief" filed October 17, 1979, by Warner Amex Cable Communications, Inc.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: December 4, 1979.

[S–2373–79 Filed 12–4–79; 2:04 pm]

BILLING CODE 6712–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Monday, December 3, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by John G. Heimann (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum proposing changes in FDIC's regulations to amend delegations of authority, to amend the definition of "phantom" bank merger, and to correct an error in prior publication.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: December 3, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–2369–79 Filed 12–4–79; 12:37 pm] [

BILLING CODE 6714–01–M

7

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 69142.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 5, 1979.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

M–14. RO80–2, Atlantic Richfield, Inc., et al.

M–15. RM79–6, Procedures Governing the Collection and Reporting of Information Associated with the Cost of Providing Electric Service.

M–16. RM80– , Delegation of Authority to the General Counsel.

CP–4. CP79–44, Colorado Interstate Gas Company.

Kenneth F. Plumb,

Secretary.

[S–2374–79 Filed 12–4–79; 3:20 pm]

BILLING CODE 6450–01–M

8

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Thursday, December 13, 1979. [NM–79–43]

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: The first seven items will be open to the public; the eighth item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report.*—Inlet Marine, Inc., Gates Learjet Century III, Model 25C, N77RS, Anchorage International Airport, Anchorage, Alaska, December 4, 1978.
2. *Special Study.*—Light Twin-engine Aircraft Accidents Following Engine Failure, 1972–1976, and *Recommendation* to the Federal Aviation Administration.
3. *Railroad Accident Report.*—Derailment of Union Pacific Freight Train GRX 31 at Granite, Wyoming, on July 31, 1979, and *Recommendation* to Union Pacific Railroad.
4. *Marine Accident Report.*—Collision of M/V *Irene S. Lemos* and M/V *Maritime Justice* near New Orleans, Louisiana, November 9, 1978, and *Recommendations* to U.S. Coast Guard, the Board of River Port Pilots for the Port of New Orleans, and the Crescent City Port Pilots Association.
5. *Letter* to the Federal Aviation Administration re closeout of recommendations A–76–136 and 137, runway friction.
6. *Letter* to the Federal Railroad Administration re NPRM Dkt. RST–3, Track Safety Standards—miscellaneous proposed revisions.
7. *Letter* to Mr. Madole re reconsideration of probable cause, Beech King Air accident, Yazoo City, Mississippi, January 10, 1978.
8. *Opinion and Order.—Administrator* v. *Shelton,* Dkt. SE–4107; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

December 4, 1979.

[S–2375–79 Filed 12–4–79; 3:45 pm]

BILLING CODE 4910–58–M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: December 3 and 10, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Monday, December 3 (Changes)

2:00 p.m. The Affirmation or Discussion and Vote on Use of Shorter Pilings at Bailly (approximately one-half hour) and the Affirmation of UCS Petition (approximately 5 minutes) have been postponed. They are replaced by: Affirmation or Discussion and Vote on Revisions to 10 CFR Part 50; Plans for Coping with Emergencies at Production and Utilization Facilities (continued from 11/29) (approximately one-half hour, public meeting).

Monday, December 10

9:30 a.m. Briefing by I&E on TMI Lessons Learned (approximately 1 hour, public meeting).

10:30 a.m. Briefing on Action Plan (approximately 2 hours, public meeting).

1:30 p.m. Briefing on Action Plan (continued) (approximately 2 hours).

ADDITIONAL INFORMATION: The Discussion of Personnel Matter scheduled for November 29 was cancelled.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

[S–2372–79 Filed 12–4–79; 2:04 pm]

BILLING CODE 7590–01–M

10

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: 9 a.m. to 5:30 p.m., Tuesday, December 4, 1979.

PLACE: Room 135, Pension Building, 440 G Street NW., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: On December 3, 1979, the Commission determined that the place of the above meeting be changed to Room 818, 320 First Street, NW., Washington, D.C. 20537; and that the above change be announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, (202) 724–3095.

[S–2364–79 Filed 12–4–79; 11:23 am]

BILLING CODE 4410–01–M

11

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:00 a.m., December 13, 1979.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois, 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

(1) Interview by industrial psychologist.
(2) Questionnaire on employer status of railroad contractors.
(3) Appeal from referee's denial of annuity application, George A. DeLoach.
(4) Appeal from referee's denial of annuity application, Leonard C. Shuff.

Portion Closed to the Public

(5) Appeal from referee's denial of disability annuity application, Clyde Nickell.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920, FTS No. 387–4920.

[S–2370–79 Filed 12–4–79; 2:04 pm]
BILLING CODE 7905–01–M

12

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 28, 1979.

CHANGES IN THE MEETING: Additional items.

The following additional items will be considered at a closed meeting scheduled for Wednesday, December 5, 1979, immediately following the 9:30 a.m. open meeting:

Regulatory matter regarding financial institution.

Formal order of investigation.

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

December 4, 1979.

[S–2371–79 Filed 12–4–79; 2:04 pm]
BILLING CODE 8010–01–M

13

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 9:30 a.m., EST, Tuesday, December 11, 1979.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS FOR ACTION:

Old Business

1. Final rate review.

New Business

Personnel Actions

1. Resolution relating to pay for certain employees in connection with the arbitrators' decision on the Twenty-Eighth Annual Salary Policy Employee Negotiations.
*2. Status changes for certain Power Operations personnel.
*3. Change of status for certain employees in the Office of the Manger of Power, Chattanooga, Tennessee.
*4. Change of status for Robert C. Steffy from Program Coordinator, Office of the General Manager, to Assistant Director, Division of Energy Conservation and Rates, Chattanooga, Tennesseee.
*5. Change of status for Jerre W. Wilson from Assistant to the Manger, Office of Engineering Design and Construction, to Deputy Manager of Power, Office of Power, Chattanooga, Tennesseee.
*6. Change of status for Dwight R. Patterson from Chief Nuclear Engineer to Assistant to the Manager, Office of Engineering Design and Construction, Knoxville, Tennessee.
*7. Change of status for Joseph E. Wilkins from Construction Engineer, Sequoyah Nuclear Plant, to Project Manager, Watts Bar Nuclear Plant, Division of Construction, Office of Engineering Design and Construction, Spring City, Tennessee.
*8. Change of status for Conley L. Ballinger from Acting Assistant Director of Personnel, Office of Mangement Services, to Assistant to the Director of Health and Safety, Office of Natural Resources, Muscle Shoals, Alabama.

Consulting and personal services contracts

1. Amendment to consulting contract with John T. Boyd Company, Pittsburgh, Pennsylvania, for services in conducting investigations and studies related to TVA's coal supply, requested by the Office of Power.
2. Renewal of consulting contract with National Economic Research Associates, Inc., New York, New York, for services on environmental and economic impacts connected with electric power rates and rate-making policies, requested by the Office of Power.
3. Consulting contract with Separative Work Unit Corporation (SWUCO), Gaithersburg, Maryland, for advice and assistance in evaluating uranium enrichment contract options, requested by the Office of Power.
4. Amendment to personal services contract with Butler Service Group, Inc., Englewood Cliffs, New Jersey, for engineering support services, requested by the Office of Engineering Design and Construction.
5. Amendment to personal services contract with CDI Corporation, Philadelphia, Pennsylvania, for engineering support services, requested by the Office of Engineering Design and Construction.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

Purchase Awards

1. Rejection of bids received in response to Invitation No. 163380 for management services for coal washing plant at Fabius Mine located in Jackson County, Alabama (TVA's Office of Power will operate the plant).
2. Rejection of bids received in response to Invitation No. 825935 for particulate scrubber system including venturi lining installation for Johnsonville Steam Plant.
3. No. 161919—Nuclear power plant simulators for Bellefonte, Hartsville, and Phipps Bend Nuclear Plants.
4. No. 162280—Indefinate quantity term contract for testing services for various nuclear plants.
5. No. 824973—Availability improvement and balanced draft conversion for Colbert Steam Plant Unit 5.
6. No. 826647—Structural steel for control and absorber building and duct suport flue gas desulfurization system for Johnsonville Steam Plant.

Project Authorizations

1. No. 3485—Install transformer switches, capacitors, and relays at the West Point, Mississippi, 500–kV Substation.
2. No. 3486—Replace cyclone furnace tubes in Paradise Steam Plant, Unit 3.
3. No. 3484—Replace superheater outlet elements for Colbert Steam Plant, Units 1–4.
4. No. 3482—Changes in various transmission lines to accommodate construction by the Department of the Army of the Tennessee-Tombigbee Waterway project in Mississippi.
5. No. 3066.1—Amendment to project authorization for characterization of effluents from coal-fired utility boilers (in collaboration with U.S. Environmental Protection Agency).
6. No. 3065.1—Amendment to project authorization for fly ash characterization and disposal (in collaboration with U.S. Environmental Protection Agency).
7. No. 3491—Acquisition of Courtland Air Force Base.
8. No. 3488—Modular solar homes demonstration.
9. No. 3487—Phosphoric acid fuel cell demonstration; Phase I pilot plant construction and operation and preliminary design of a demonstration plant.
10. No. 3425.1—Amendment to project authorization for feasibility studies, site acquisition, construction, and related work to complete a Chattanooga office complex.

Fertilizer Item

1. Supplemental letter agreement between TVA and the International Fertilizer Development Center covering arrangements for library services.

Power Items

1. Acquisition by TVA of real property for a mill site and mill tailings disposal area in connection with operation of the Morton Ranch uranium properties in Wyoming.
2. Bill of sale and quitclaim deed to the Northcentral Mississippi Electric Power Association covering conveyance of 9.13-mile section of TVA's deenergized Slayden Switch-Miller 46–kV line located in Desoto and Marshall Counties, Mississippi.

3. New power contract with Natchez Trace Electric Power Association.

4. New power contract with East Mississippi Electric Power Association.

5. New power contract with Central Electric Power Association.

6. New power contract with city of Louisville, Mississippi.

7. Lease and amendatory agreement with Elizabethton, Tennessee, covering arrangements for 161–kV delivery at TVA's Elizabethton 161–kV Substation.

8. Lease and amendatory agreement with Fort Loudoun Electric Cooperative covering lease arrangements to permit total service at 69–kV.

9. Lease and amendatory agreement with West Kentucky Rural Electric Cooperative Corporation covering lease of TVA's Benton 69–kV Substation.

10. Amendatory agreement among city of Memphis, Memphis Light, Gas and Water Division, and TVA covering release of certain ash disposal rights to accommodate industrial fuel gas demonstration plant adjacent to Allen Steam Plant.

11. Contract with The Resource Authority in Sumner County, Tennessee, covering arrangement for assistance in the construction of a solid waste disposal and resource recovery facility to be located near Gallatin, Tennessee.

Real Property Transactions

1. Agreement with Lyon County, Kentucky, relating to conveyance of county-owned roads within Land Between The Lakes.

2. Filing of condemnation suits.

3. Sale of permanent highway easement to the city of Johnson City, Tennessee, affecting 2.45 acres of the Johnson City Power Service Center property in Washington County, Tennessee—Tract XJCPSC–1H.

4. Abandonment of unused portion of TVA's deenergized Nolichucky Tap 115–kV Transmission Line right of way in Greene County, Tennessee, to owner of underlying fee (John Mitchell).

Unclassified

1. Resolution relating to agreement with the Federal Emergency Management Agency for reimbursable work by TVA on flood insurance studies.

CONTACT PERSON FOR MORE INFORMATION: Lee C. Sheppeard, Acting Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: December 4, 1979.

[S–2376–79 Filed 12–4–79; 4:02 pm]

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Part II

Securities and Exchange Commission

Tender Offers; Final Rules, Proposed Rules and Withdrawal of Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Releases Nos. 33-6158 and 34-16384, IC-10958]

Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of new rules and a related schedule pertaining to tender offers. These provisions implement existing statutory requirements by providing specific filing, delivery and disclosure requirements, optional dissemination provisions and additional substantive regulatory protections with respect to certain tender offers. In addition, certain antifraud rules applicable to any tender offer have been adopted. These actions are necessary and appropriate in the public interest and for the protection of investors because of the increased occurrence of tender offers; their impact on securities markets and on corporate control; the dynamic nature of these transactions and the need to ensure a balance between the interests of the person making a tender offer and the management of the company whose securities are being sought while providing disclosure and substantive protections to shareholders making investment decisions.

EFFECTIVE DATE: January 7, 1980.

FOR FURTHER INFORMATION CONTACT: John Huber or John Granda (202-272-2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of amendments to Regulation 14D, Rule 434b and Schedule 13D as well as the adoption of Regulation 14E pursuant to sections of the Federal securities laws including sections 2, 17 and 19 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 24, 1975)] and sections 3(b), 10(b), 13(d), 14(d), 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 24, 1975)] with respect to tender offers. These actions implement the present statutory requirements by providing specific filing and disclosure requirements, optional dissemination provisions, and additional substantive protections with respect to tender offers subject to section 14(d) of the Exchange Act. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with tender offers, there are also provisions relating to the length of the tender offer and extension thereof, payment of the consideration offered, and disclosure of the subject company's position with respect to the tender offer.

The new and amended provisions are not applicable to any tender offer which has been published, sent or given to security holders prior to their effectiveness.

The Commission is also withdrawing proposed Rules 14d-8 and 14e-2 published for comment in Release No. 34-15548 (February 5, 1979) (44 FR 9956) and concurrently publishing for comment proposals in lieu thereof which, if adopted, would be applicable to any tender offer.[1] These proposals include: a definition of the term "tender offer"; certain antifraud provisions concerning trading by certain persons on the basis of material, non-public information relating to a tender offer; provisions requiring equal treatment of security holders in the context of tender offers; and a prohibition of certain purchases not made by means of a tender offer.

The rules adopted in this release are based primarily on the proposals published for comment by the Commission in February 1979 (the "February proposals" or the "former proposals"),[2] the 105 letters of comment received in response thereto,[3] and the Commission's experience. A discussion of the statutory background and development of the February proposals is included in the release which published the proposals for comment (the "February release").[4]

For the convenience of interested persons, a table setting forth the relationship of the rules and schedules published herein to the February proposals is being furnished. The table consists of three columns: (1) the adopted rules and schedule; (2) the title of the adopted rules and schedule; and (3) the corresponding proposal. The table is as follows:

Adopted rule or schedule	Title	Proposal
14d-1	Scope of and Definitions Applicable to Regulations 14D and 14E.	14d-1.
14d-2	Date of commencement of a tender offer.	14d-6.
14d-3	Filing and transmittal of tender offer statement.	14d-2.
14d-4	Dissemination of certain tender offers.	14d-4.
14d-5	Dissemination of certain tender offers by the use of stockholder lists and security position listings.	14d-5.
14d-6	Disclosure requirements with respect to tender offers.	14d-3.
14d-7	Additional withdrawal rights.	14d-7.
14d-8	Exemption from statutory pro rata requirement.	14d-9.
14d-9	Solicitation/ recommendation statements with respect to certain tender offers.	14d-10.
14D-9	Solicitation/ Recommendation Statement.	14D-10.
14e-1	Unlawful tender offer practices.	14e-1.
14e-2	Position of subject company with respect to a tender offer.	Special Inquiry A.

I. Overview of Application and Operation of Rules and Schedule

The rules are grouped into two regulations. The application of Regulations 14D and 14E depends on whether or not the tender offer is subject to section 14(d)(1) of the Exchange Act. If the tender offer is subject to section 14(d)(1), both regulations apply. If the tender offer is not subject to that subsection, only Regulation 14E is applicable. The following discussion relates only to a tender offer in which both Regulations are applicable.

The rules regulating the person making the tender offer (the "bidder") may be divided into four categories: filing requirements; dissemination provisions; disclosure requirements; and substantive provisions. Before discussing these categories, it should be noted that the operation of these rules is triggered by the date of commencement of he ender offer, which is defined by Rule 14d-2 as essentially equivalent to the date the tender offer is first published or sent or given to security holders.

[1] See Release No. 33-6159 (November 29, 1979), published elsewhere in this issue.

[2] No. 34-15548 (February 5, 1979) (44 FR 9956).

[3] Letters were received from the following categories of commentators: corporations (63); law firms and associations (11); trade organizations and associations (10); state administrative agencies (7); securities industry (6); academicians (1); and other interested persons (7). Copies of these letters are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-770). For the convenience of the public, a copy of the summary of these comment letters, which was prepared by the staff of the Commission, has been placed in File No. S7-770 and is also available for public inspection and copying.

[4] Securities Exchange Act Release No. 34-15548 (February 5, 1979) (44 FR 9956).

The filing of Schedule 14D–1 with the Commission is governed by Rule 14d–3. In addition, a bidder is required to make hand delivery of the initial filing and any amendments to the company whose securities are being sought (the "subject company"), and under certain conditions to give telephonic notice of certain information and to mail copies to national securities exchanges and to the NASD. A competing bidder is also required to hand deliver the initial filing to any previous bidder whose tender offer for the same class of securities has not yet expired.

Rule 14d–4 establishes three alternative methods of disseminating a cash tender offer to security holders: long-form publication; summary publication; and the use of shareholder lists and security position listings ("stockholder lists"). The dissemination process includes both the initial and subsequent soliciting materials published or sent or given to security holders during the tender offer. While tender offers may be disseminated by methods other than those specified in Rule 14d–4, summary publication and the use of stockholder lists and security position listings pursuant to Rule 14d–5 must comply with Rules 14d–4(a)(2) and (a)(3), respectively. The dissemination of an exchange tender offer is governed by the provisions of the Securities Act if the transaction is subject to the registration requirements of that Act.

Rule 14d–5 allows a bidder to disseminate its tender offer materials in a manner substantially similar to that permitted under present Rule 14a–7 [17 CFR 240.14d–7], which relates to proxy contests. The tender offer materials would be disseminated to security holders pursuant to the stockholder lists. The subject company would determine whether to retain the stockholder lists, in which case the subject company would distribute the bidder's tender offer materials, or to furnish the stockholder lists to the bidder, in which case the bidder would distribute them.

While the dissemination provisions of Rule 14d–4 apply only to tender offers in which the consideration consists solely of cash and/or securities exempt from registration under Section 3 of the Securities Act and are not mandatory, the disclosure requirements of Rule 14d–6 apply to any tender offer subject to section 14(d). The specific disclosure requirements generally depend on whether the tender offer is published or sent or given to security holders by means of summary publication pursuant to Rule 14d–4(a)(2) or the use of stockholder lists and security position listings pursuant to Rule 14d–5. The summary advertisement which is required to be published in connection with either of these means of dissemination must contain the disclosure called for by Rule 14d–6(e)(2). Tender offers which are disseminated other than by such means, such as cash tender offers which are published by means of long-form publication, registered exchange offers or unconventional tender offers, are subject to the disclosure requirements prescribed by Rule 14d–6(e)(1).

With respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act, Rules 14d–4, 14d–5 and 14d–6 are designed to operate in concert. This interrelationship may be demonstrated by the following brief description of the chronological operation of a cash tender offer by the use of stockholder lists: (1) the bidder requests the use of the stockholder lists pursuant to Rule 14d–5(a); (2) on or prior to the date of the request the bidder makes adequate publication of either a summary advertisement or long-form publication commencing the tender offer under Rule 14d–2; (3) the subject company makes its election either to disseminate the tender offer materials or to furnish the stockholder lists; (4) if the subject company conducts the dissemination, Rule 14d–5(b) governs the subject company's conduct and Rule 14d–5(f)(3) applies to the bidder; (5) if the subject company furnishes the stockholder lists to the bidder, Rule 14d–5(c) applies to the subject company and Rule 14d–5(f)(4) prescribes the method by which the bidder disseminates its tender offer materials; (6) under either option, the bidder's tender offer materials must include the disclosure required by Rule 14d–6(e)(1); and (7) a similar sequence will be followed with respect to material changes in the bidder's tender offer materials.

Substantive provisions concerning tender offers subject to section 14(d) of the Exchange Act are set forth in Rules 14e–1, 14d–7 and 14d–8. Rule 14e–1 regulates the minimum length of a tender offer. Any tender offer (other than certain issuer tender offers) is required to remain open for a minimum of twenty business days from the date of commencement and for ten business days from the date of any notice of increase in the offered consideration or the dealer's soliciting fee. These time periods are designed to operate concurrently. Thus, if a tender offer commences on business day 1 and the bidder increases the consideration on business day 8, the ten business day period will expire during the minimum twenty business day period.

Rules 14d–7 and 14d–8 relate to the terms under which the tender offer may be conducted. The additional withdrawal rights provided by Rule 14d–7 operate independently of the time period requirements of proposed Rule 14e–1. Under Rule 14d–7, an initial withdrawal period of 15 business days is provided and, if a competing offer is made, an additional ten business day withdrawal period is required under certain conditions. As with the time periods of Rule 14e–1, the additional withdrawal right time periods are computed concurrently, rather than consecutively. Rule 14d–8 enables a bidder, if it wishes, to vary either or both of the pro rata acceptance provisions of section 14(d)(6) on the condition that (1) the minimum ten day periods under the statute are provided; and (2) the bidder's tender offer materials disseminated on the date of commencement of the offer disclose the different pro rata time periods.

Rule 14e–1(c) requires payment for or the return of the deposited securities to security holders promptly after the termination or withdrawal of the tender offer.

The subject company is regulated by three rules. If a bidder has determined to use the subject company's stockholder list, the subject company must comply with Rule 14d–5. Rule 14e–2 requires the subject company to disclose to security holders its position with respect to the tender offer and the reasons therefor within ten business days of the date the tender offer is first published or sent or given to security holders. This communication is, under Rule 14d–9(f), a solicitation/recommendation requiring compliance with Rule 14d–9. Thus, the statement furnished under Rule 14e–2 or any other solicitation or recommendation to security holders with respect to the tender offer would under Rule 14d–9 require the filing of Schedule 14D–9 with the Commission and transmittal thereof to certain designated persons as soon as practicable on the date the solicitation/recommendation is first published or sent or given to security holders. The disclosure in the solicitation-recommendation disseminated to security holders by the subject company would be required to contain certain information, based on the provisions of Schedule 14D–9. Material changes to that Schedule would be filed, delivered and disseminated in a similar manner.

Rule 14d–9 also covers solicitations/recommendations of certain specified persons. Generally, persons who are related to the subject company or the

bidder because of employment, membership on the board of directors, or shareholder or affiliate status are included in the persons required to comply with the rule. To avoid unnecessary regulation, Rule 14d–9 does not include every solicitation/recommendation made with respect to a tender offer subject to section 14(d). It should be noted, however, that communications not covered by Rule 14d–9, as well as those regulated by the rule, are subject to section 14(e) of the Act.

II. Synopsis of Rules and Schedule [5]

A. Rule 14d–1: Scope of and Definitions Applicable to Regulations 14D and 14E

A new paragraph (a) has been added to Rule 14d–1 to clarify the scope of Regulations 14D and 14E. Section 14(d)(1) of the Exchange Act imposes certain requirements upon a bidder who makes a tender offer for a class of equity securities [6] described in that section if upon consummation of such tender offer the bidder would be the beneficial owner of more than five percent of such class. Rule 14d–1(a) limits the application of Regulation 14D to tender offers which are subject to section 14(d)(1). Thus, tender offers by persons for securities of which they are the issuer are not subject to Regulation 14D. However, the rule specifically notes that tender offers by affiliates of such issuers are subject to Regulation 14D. Regulation 14E applies to any tender offer without regard to whether the class of securities being sought is described in section 14(d)(1) or whether the person making the tender offer will upon consummation thereof be the beneficial owner of more than five percent of such class.[7] Therefore, issuer tender offers are subject to Regulation 14E unless a specific rule thereunder provides otherwise. However, Regulation 14E does not apply to any tender offer for "exempted securities" as that term is defined in section 3(a)(12) of the Exchange Act.[8]

Rule 14d–1(b) establishes a definitional framework in order to clarify terms frequently used in Regulations 14D and 14E and to provide guidance concerning the operation of certain terms. Terms defined in the Exchange Act and in Rule 12b–2 [17 CFR 240.12b–2] promulgated thereunder have the same meaning in the Regulations unless the context otherwise requires. In addition, eight specific terms are defined.[9]

While certain technical revisions have been made in response to specific comments, the definitions are for the most part the same as those proposed for comment. The term "beneficial owner" has, however, been revised by bifurcating the meaning of the term depending on the context in which it is employed. For purposes of filing a Schedule 14D–1 or a Schedule 14D–9 as well as stating the number of shares beneficially owned in response to Item 6 of Schedule 14D–1, the term "beneficial owner" has the same meaning as that set forth in Rule 13d–3 [17 CFR 240.13d–3]. Thus, both voting power and investment power with respect to a specified security, or the right to acquire either of those powers, are relevant. However, for other purposes, which relate principally to dissemination of the tender offer, only investment power is operative. This distinction recognizes that in the context of a tender offer only the persons with investment power are being asked to make an investment decision and therefore would benefit from the receipt of tender offer materials.

The definition of "business day" has also been revised in two respects. First, the reference to the time period from 12:01 a.m. through 12:00 midnight has been clarified by specifying that the Eastern time zone is applicable. Second, the application of the definition to the computation of time periods which do not begin on the date of commencement has been clarified. The commentators correctly noted that the standard proposed for comment, which was based on the date of commencement, does not address the computation of time periods which become operative during the tender offer, such as the requirement imposed by Rule 14e–1(b) that a tender offer must remain open for ten business days following notice of a price increase. Accordingly, in computing any time period under section 14(d)(5) or 14(d)(6) of the Act or under Regulation 14D or 14E, the date of the event which begins the running of the time period is included unless the event occurs on a non-business day, in which case the period begins to run on and includes the first business day thereafter. Thus, if a tender offer commences under Rule 14d–2(b) on a non-business day, the Williams Act and the rules thereunder would apply on that date but the statutory and regulatory time periods would begin to run on and would include the first business day after the tender offer is commenced.

Rule 14d–2: Date of Commencement of a Tender Offer

In view of the importance of the concept of "commencement" of a tender offer to the operation of the Williams Act as well as the need to provide content and clarity to the term, the Commission has determined to adopt Rule 14d–2, which follows closely proposed Rule 14d–6. The provisions of Rule 14d–2(a) (1) through (3) are related to the methods by which tender offer

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[5] This synopsis is included in order to assist all interested persons in their understanding of and compliance with the provisions of the rules and schedule which are published herein. However, attention is directed to the text of the rules and schedule for a more complete understanding.

[6] The classes are: any class of equity securities registered pursuant to section 12 of the Exchange Act; any class of equity securities which would have been required to be registered pursuant to section 12 except for the exemption provided in section 12(g)(2)(G) of the Exchange Act; and any class of equity securities issued by a closed-end investment company registered under the Investment Company Act of 1940.

[7] Section 14(e) applies to any tender offer, not only those subject to section 14(d)(1). This position is supported by the language of Section 14(e), a comparison with the other provisions of the Williams Act, the legislative history of the Williams Act, administrative interpretation, legal commentary, and case law; *see* Release No. 34–16385 (November 29, 1979), footnote 15. The structure of sections 14(d) and 14(e) of the Williams Act reflects a Congressional determination to limit the filing mechanisms and attendant requirements of section 14(d) to tender offers for securities described in section 14(d)(1) of the Exchange Act, but not to limit the antifraud provisions of section 14(e). Having so limited the requirements of section 14(d) and the related costs of compliance, there is no valid reason not to follow the Congressional mandate to protect investors against fraud, deceit and manipulation where, from among the various methods of acquiring securities of a company, the tender offer method is utilized.

[8] Commissioner Karmel believes that the rules adopted by the Commission here pursuant to section 14(e) of the Exchange Act should be subject to clearly defined jurisdictional limits. She believes they should be subject to those limits which apply to the rules adopted pursuant to section 14(d) of that Act, unless some other appropriate limits can be devised. For example, the rules adopted here do not apply to exempted securities. In the view of Commissioner Karmel, Rules 14e–1 and 14e–2 impose regulatory requirements, including some affirmative obligations, essentially in order to prevent violations of section 14(d), rather than to prohibit fraudulent conduct in general. She believes that the rules adopted here today are so broad as to apply on their face to the securities of any corporation, without regard to whether such federal regulation is appropriate. The Commissioner notes that section 14(e) is not limited by its language to matters subject to federal jurisdiction, that is, acts or practices committed through the use of the mails or the facilities of interstate commerce. However, such an essential jurisdictional predicate for federal rulemaking has been read into that section. Commissioner Karmel believes that Rules 14e–1 and 14e–2, adopted here pursuant to section 14(e), and lacking any other limits, should likewise reflect the jurisdictional limits of section 14(d), and apply only to tender offers for securities of certain investment or insurance companies or companies with securities registered pursuant to section 12 of the Act. The exercise of the Commission's jurisdiction as fully as has been done here is, in her judgment, doubtful. In cases where the Commission's exercise of jurisdiction is questionable, Commissioner Karmel believes that restraint should be exercised.

[9] The defined terms are: "bidder," "subject company," "security holders," "beneficial owner," "tender offer material," "executive officer," "business day," and "security position listing."

materials may be disseminated under Rule 14d–4. Hence, a tender offer using long-form publication commences on the date of the newspaper publication. A tender offer disseminated by means of summary publication commences on the date the summary advertisement appears in the newspapers. If stockholder lists and security position listings are used pursuant to Rule 14d–5 to disseminate the tender offer, the bidder is also required to make either long-form or summary publication of the tender offer on or prior to the date of the bidder's request pursuant to Rule 14d–5(a). Publication of the long-form publication or the summary advertisement commences the tender offer under Rule 14d–2(a)(3). Tender offers in which the consideration offered consists of securities registered pursuant to the Securities Act commence when the bidder's registration statement becomes effective thereunder. A tender offer which is not disseminated by any of these means commences on the date it is first published or sent or given.

Rule 14d–2(a) has been revised to clarify that a tender offer which is disseminated by a combination of methods commences on the date that the first method is used. It has also been revised to specify that the tender offer commences on 12:01 a.m. on that date. Accordingly, the date of commencement will be included as a full day in computing any applicable time periods.

As discussed more fully in the February release, Rule 14d–2(b) is intended to prevent public announcements by a bidder of the material terms of its tender offer in advance of the offer's formal commencement. The Commission believes that this practice is detrimental to the interests of investors and results in many of the abuses the Williams Act was enacted to prevent. Such pre-commencement public announcements cause security holders to make investment decisions with respect to a tender offer on the basis of incomplete information[10] and trigger market activity normally attendant to a tender offer, such as arbitrageur activity. Since they constitute the practical commencement of a tender offer, such pre-commencement public announcements cause the contest for control of the subject company to occur prior to the application of the Williams Act and therefore deny security holders the protections which that Act was intended by Congress to provide.[11]

Under Rule 14d–2(b) a bidder's public announcement through a press release, newspaper advertisement or public statement of certain material terms of a cash tender offer causes the bidder's tender offer to commence under section 14(d) of the Exchange Act. In order to provide certainty to bidders, the information which will trigger Rule 14d–2(b) is set forth in Rule 14d–2(c). Generally, this information relates to: the identity of the bidder and the subject company; a statement of the class and amount of securities being sought; and disclosure of the price or range of prices being offered therefor. Safe harbor provisions for public announcements which will not trigger the operation of Rule 14d–2(b) are set forth in Rules 14d–2 (d) and (e).

Rule 14d–2(b) contains an exception clause which is designed to prevent the imposition of undue burdens on a bidder and to assure the availability of security holders' rights under sections 14(d)(5) and 14(d)(6) and the rules promulgated thereunder. Under the exception clause, the tender offer would not be deemed to commence on the date of the public announcement if within five business days thereafter the bidder either: (1) issues a subsequent public announcement stating that the bidder has determined not to continue with the offer; or (2) complies with the filing requirements of Rule 14d–3(a) and disseminates the disclosure required by Rule 14d–6(a) to security holders pursuant to Rule 14d–4 or otherwise.[12] An empirical study of 153 cash tender offers during the period from 1974 through 1978 which was conducted by the Commission's Directorate of Economic and Policy Research [13] has confirmed the feasibility of meeting these requirements within a period of five business days.

If the bidder makes the subsequent announcement contemplated by the first option, the initial announcement will not be deemed to commence an offer. If the bidder complies with the filing, disclosure and dissemination requirements of the second option, the tender offer will commence on the date of such compliance, rather than the date of the earlier public announcement, except that section 14(d)(7) will apply from the date of such earlier public announcement. If the bidder exercises neither option, the tender offer commences on the date of the initial announcement, resulting, however, in filing and disclosure violations. As a result, it is not anticipated that a bidder making such a public announcement will select the "do nothing" alternative.

Some commentators noted that there is a direct conflict between rule 14d–2(b) and state anti-takeover statutes [14] with the effect that such statutes are preempted. These statutes typically require a publication of or a public filing which includes the material terms of the tender offer prior to the time the offer may be commenced. These requirements of the state statutes will trigger the commencement [15] of the tender offer under Rule 14d–2(b) despite the fact that the state statutes do not permit the offer to commence until the conclusion of any applicable waiting period and hearing process. Moreover, by deeming commencement to occur on the date of the publication or filing required by these statutes, the minimum periods, best price, and withdrawal and pro rata rights provided under these statutes could not function since they are usually predicated on the effective date of the tender offer which cannot occur until after the conclusion of the waiting period and hearing process.

Thus, the conflict between Rule 14d–2(b) and such state statutes is so direct

[10] As stated in the Senate and House Reports accompanying the Williams Act: "Without knowledge of who the bidder is and what he plans to do, the shareholder cannot reach an informed decision. He is forced to take a chance. For no matter what he does, he does it without adequate information to enable him to decide rationally what is the best possible course of action. This is precisely the kind of dilemma which our security laws are designed to prevent." S. Rep. No. 550, 90th Cong., 1st Sess. 2 (1967) ("1967 Senate Report"); H.R. Rep. No. 1711, 90th Cong. 2nd Sess. 3 (1968) ("1968 House Report").

[11] See Brief for SEC as Amicus Curiae, *Leroy* v. *Great Western United Corp.*, 99 S. Ct. 2710 (1979).

[12] It should be noted that the exception applies only to section 14(d). Thus, a public announcement of the information set forth in Rule 14d–2(c) would trigger the application of Rule 10b–13[17 CFR 240.10b–13]. Bidders are also reminded of the possible applicability of section 14(e) to such purchases.

[13] This study has been included in File No. S7–770 and is available for public inspection and copying.

[14] There are currently over 35 state anti-takeover statutes. However, in 1968, when the Williams Act was enacted, only Virginia had a takeover statute, and that statute had not been enforced. (Virginia's statute, Va. Code § 13.1–528, became effective on March 5, 1968, (Va. Act 1968, c. 119) (amendments to the Virginia statute became effective on July 1, 1979); the Williams Act was enacted several months later, on July 29, 1968. When Congress enacted the Williams Act amendments in 1970, Pub. L. No. 91–567, 84 Stat. 1497, Ohio and Nevada had passed takeover laws, but only the Ohio law had been enforced, and that occurred in the same month the amendments were enacted. Nev. Rev. Stat. § 79.376—78.3778 (1973), 2 CCH Blue Sky L. Rep. ¶31,151—31,169; Ohio Rev. Code Ann. § 1707.04.1 (Page 1977 Supp.), 2 CCH Blue Sky L. Rep. ¶38,104–1. There is no evidence in the legislative history that Congress was aware of these laws.

[15] Subject to the exception clause in Rule 14d–2(b) noted previously, a bidder must file and transmit its Schedule 14D–1 on the date of commencement as well as publish or send or give the information required by Rule 14d–6 to security holders. Thus, by requiring compliance with Regulation 14D at the time such information is first made available to the public, the rule ensures that security holders will have adequate information when they are confronted with the need to make investment decisions with respect to a tender offer.

and substantial as to make it impossible to comply with both sets of requirements as they presently exist. While recognizing its long and beneficial partnership with the states in the regulation of securities transactions, the Commission nevertheless believes that the state takeover statutes presently in effect frustrate the operation and purposes of the Williams Act [16] and that, based upon the abuses in current tender offer practice discussed above, Rule 14d–2(b) is necessary for the protection of investors and to achieve the purposes of the Williams Act.

Concern was also expressed by the commentators regarding the potential for a conflict between Rule 14d–2(b) and statutes requiring regulatory approval to be obtained in connection with certain transactions, such as tender offers involving a subject company engaged in a regulated business. This may occur where the application for such approval is public and includes the information specified in Rule 14d–2(c). The commentators noted that without a provision for the extension of the five day period provided in Rule 14d–2(b), the bidder may have to abandon the tender offer because it cannot comply with conflicting legal requirements.

The Commission's examination of this issue reveals that such conflicts are unlikely at the Federal level. The Federal [17] statutes which are commonly applicable in this context focus on the acquisition of either control or a specified percentage of securities. Thus, if appears that a tender offer which is appropriately conditioned upon obtaining the necessary regulatory approval may be published or sent or given in compliance with Rule 14d–2(b) without conflicting with such statutes. Bidders are, however, reminded of the importance of providing appropriate disclosure with respect to regulatory requirements which must be complied with or regulatory approval which must be obtained in connection with the tender offer.[18]

[16] See brief for SEC as Amicus Curiae *Leroy* v. *Great Western United Corp.*, U.S. 99 S. Ct. 2710 (1979).

[17] See the Banking Holding Company Act, 12 U.S.C.A. § 1842 (West Supp. 1979); the Federal Aviation Act, 49 U.S.C.A. § 1378 (West Supp. 1979); the Federal Communications Act, 47 U.S.C.A. § 310 (West Supp. 1979); the Interstate Commerce Act, 49 U.S.C.A. § 11343 (West Supp. 1979).

[18] See Item 10(b) of Schedule 14D–1. *See also Ronson* v. *Liquifin AG*, 370 F. Supp. 597 (D.N.J.), *aff'd*, 497 F.2d 394 (3rd Cir.), *cert. denied*, 419 U.S. 870 (1974); *Commonwealth Oil Refining Co.* v. *Tesoro Petroleum Corp.*, 394 F. Supp. 267 (S.D.N.Y. 1975); *Texasgulf, Inc.*, v. *Canada Development Corp.*, 366 F. Supp. 374 (S.D. Tex. 1973).

Rule 14d–3: Filing and Transmission of Tender Offer Statement

Rule 14d–3(a) requires the bidder to file a Schedule 14D–1 with the Commission as soon as practicable on the commencement date. This Rule also requires the bidder to hand deliver a copy of the Schedule to the subject company and to any previous bidder which has filed a Schedule 14D–1 with respect to a tender offer for the same class of securities which has not yet terminated. The Commission has determined, however, not to require the bidder to hand deliver a copy of the schedule to securities exchanges or to the National Association of Securities Dealers (the "NASD") as proposed for comment. Instead, each national securities exchange where the class of the subject company's securities being sought in the tender offer is registered and listed for trading and, if the class of securities being sought in the tender offer is quoted in NASDAQ, the NASD, will receive telephonic notice of certain information and a copy of the schedule through the mail. This revision will reduce the compliance burden noted by the commentators while at the same time providing timely notice of the tender offer to securities exchanges and the NASD.

The requirements for filing amendments disclosing material changes to the bidder's Schedule 14d–1 and additional tender offer materials as exhibits to the Schedule, formerly set forth in paragraphs (b) and (c) of proposed Rule 14d–2, have been revised and combined into a single paragraph (b) of Rule 14d–3. Rule 14d–3(b) requires material changes in the information set forth in the bidder's Schedule 14D–1 to be filed as an amendment. In addition, such amendments must be hand delivered to the subject company and sent to any exchange and/or the NASD as required by Rule 14d–3(a). Any additional tender offer, without regard to whether it includes disclosure of a material change in the information previously disseminated to security holders, is required to be filed as an exhibit to the bidder's Schedule 14D–1 and transmitted in the same manner as amendments disclosing material changes.

Rule 14d–3(b) requires additional tender offer material and amendments to the Schedule 14D–1 disclosing a material change to be filed and sent promptly but not later than the date such material or such change is first published or sent or given to security holders. Rule 14d–3(c) creates a limited exception to this requirement by providing that additional tender offer material or an amendment to Schedule 14D–1 which only discloses the number of shares deposited to a certain date and/or announces the extension of the tender offer may be filed and sent promptly after the date such material is first published or sent or given to security holders.

A few commentators advocated the extension of the standard in paragraph (c) to the filing and transmission of all additional tender offer material and amendments to Schedule 14D–1 because of the logistical difficulties which would occasionally arise in meeting the same day standard. The Commission notes, however, that section 14(d)(1) of the Exchange Act specifically provides that additional tender offer materials shall be filed and sent not later than the date the material is first published or sent or given to security holders. Moreover, since 1968 former Rule 14d–1(d) has required the filing of additional tender offer material not later than the time such material is first published or sent or given to security holders. While the Commission believes that the limited exception provided by Rule 14d–3(c) is consistent with the statutory framework of the Williams Act and will facilitate prompt dissemination of such limited disclosure, it does not presently believe that further expansion of the exception is warranted.

Rule 14d–4: Dissemination of Certain Tender Offers

As discussed more fully in the February release,[19] the disclosure process envisioned by the Williams Act is not limited to the items of information which must be disclosed. It also includes the dissemination of material information to shareholders so that security holders have the opportunity to receive, consider and evaluate the disclosure required by Rule 14d–6.

Tender offers in which the consideration consists of securities registered under the Securities Act are disseminated pursuant to that Act. The former tender offer rules, however, did not provide specific guidance as to what constitutes adequate dissemination of a tender offer in which the consideration consists of cash and/or securities exempt from registration under section 3 of the Securities Act. Rule 14d–4 provides such guidance and encourages the prompt and widespread dissemination of such tender offers by establishing standards whereby information disseminated in compliance with its provisions would be deemed "published or sent or given to security holders" for purposes of section 14(d)(1)

[19] 44 FR 9965–66.

of the Exchange Act. This is accomplished by providing three alternative definitions of what constitutes dissemination: long-form publication; summary publication and use of stockholder lists and security position listings. A bidder is able to use more than one method so long as there is full compliance with each method used. Moreover, Rule 14d–4 is not mandatory and a tender offer in which the consideration consists of cash and/or securities exempt from registration under Section 3 of the Securities Act may be disseminated by other methods. It should be noted, however, that a proviso has been added to paragraph (a) to make clear that any bidder who uses summary publication or stockholder lists and security position listings pursuant to Rule 14d–5 must comply fully with paragraphs (a)(2) and (a)(3), respectively.

Long-form publication under Rule 14d–(a)(1) is substantially equivalent to the current practice. It requires adequate publication of the tender offer in a newspaper or newspapers.[20]

Summary publication under Rule 14d–4(a)(2) requires the adequate publication of a summary advertisment of the tender offer in a newspaper or newspapers.[21] Additionally, this method requires a bidder to mail or otherwise furnish with reasonable promptness its tender offer materials [22] to any security holder upon request. In order to comply with this provision, a bidder must have sufficient copies of the tender offer materials available for distribution when the summary advertisment appears. The Commission believes that this method will facilitate rapid communication of a tender offer to security holders and will ensure dissemination of tender offer materials while at the same time decreasing the scheduling problems and escalating costs associated with making long-form publication of tender offers.

Rule 14d–4(a)(3) relates to the use of stockholder lists and security position listings. As proposed for comment, this provision would have required publication of a summary advertisement of the tender offer at the approximate time of the commencement of the mailing and transmittal of the tender offer materials pursuant to proposed Rule 14d–5 as well as specifying certain other requirements which depended on the subject company's election pursuant to proposed Rule 14d–5. Rule 14d–4(a)(3) has been revised in several respects. First, in response to the request by commentators for greater flexibility in the use of this method, either long-form or summary publication may be used with stockholder lists and security position listings. Second, such publication is required on or prior to the date of the request to the subject company, rather than on the date of mailing and transmittal of tender offer materials. This revision is intended to decrease the possibility of leaks between the time of the bidder's request and publication that existed under the proposal. It also allows the bidder to control the time of publication and is thus responsive to the commentator's concern regarding the difficulty of obtaining adequate newspaper space on short notice since the bidder would not have known when the subject company would issue the notice that the mailing had commenced. Third, the specific obligations of the bidder regarding the use of stockholder lists and security position listings have been moved to Rule 14d–5.

The specification of what constitutes adequate publication, formerly contained in paragraph (a) of proposed Rule 14d–4, has been made into a separate paragraph (b). In addition, a proviso has been added which deems publication in all editions of a daily newspaper with a national circulation to constitute adequate publication.

Pursuant to Rule 14d–4(c), material changes in the information published or sent or given to security holders must be disseminated in a manner reasonably designed to inform security holders. This change reflects the simplification sought by the commentators with respect to the requirement proposed for comment that material changes be disseminated by the same method used to disseminate the initial tender offer materials. In order to prevent abuse of the use of stockholder lists and security position listings, however, a bidder who has elected pursuant to Rule 14d–5(f)(1), discussed below, to require the subject company to disseminate amendments disclosing material changes pursuant to Rule 14d–5 must disseminate such changes pursuant to such lists and listings. The bidder is nevertheless free to disseminate material changes by other means as well.

Rule 14d–5: Dissemination of Certain Tender Offers by the Use of Stockholder Lists and Security Position Listings

Rule 14d–5 gives bidders a Federal right to have their tender offer materials disseminated by means of the stockholder lists of the subject company and security position listings of clearing agencies. As described more fully below, the subject company is able to elect whether to retain the stockholder lists, in which case the subject company will mail and transmit the bidder's tender offer materials, or to furnish the stockholder lists to the bidder, in which case the bidder will mail and transmit the tender offer materials. The option feature of Rule 14d–5 is patterned after Rule 14a–7 [17 CFR 240.14a–7]. In light of this option and case law under Rule 14a–7,[23] the Commission believes that Rule 14d–5 does not conflict with state law provisions controlling the right of shareholders to be furnished direct access to the stockholder list. Moreover, the rights created by Rule 14d–5 are intended to be in addition to any rights the bidder may have to stockholder lists under state law.

The Commission has carefully considered the comments questioning its authority to adopt the rule. It continues to believe that the extensive discussion of its rulemaking authority in the February release adequately demonstrates that the rule is within the Commission's authority.

In order to assure the timely receipt of tender offer materials by security holders pursuant to the rule, the rule specifies the time periods for compliance as well as the principal obligations of both the bidder and the subject company. Generally speaking, four of the seven paragraphs in the rule pertain to the subject company and three pertain to the bidder.

The principal paragraph relating to the requirements imposed on the subject company is Rule 14d–5(a). This provision is triggered by the subject company's receipt of a written request from a bidder for the use of stockholder lists and security position listings.[24] Upon receipt, the subject company is required to notify promptly certain persons, including transfer agents, of the receipt of the request and to ascertain promptly whether the current stockholder list was prepared as of a date earlier than ten business days before the date of the bidder's request. If

[20] The disclosure requirements for long-form publication are set forth in Rule 14d–6(a)(1), discussed below.

[21] The limited disclosure requirements for a summary advertisement are set forth in Rule 14d–6(a)(2)(i), discussed below.

[22] The disclosure required by such tender offer materials is set forth in Rule 14d–6(a)(2)(ii), discussed below.

[23] See *Wood, Walker & Co.* v. *Evans*, 300 F. Supp. 171 (D. Colo. 1969), *aff'd.* 461 F.2d 852 (10th Cir. 1972), in which the district court addressed the compatability of the Colorado shareholder inspection statute in effect at the time, Colo. Rev. Stat. § 3–15–17, with Rule 14a–7, and held that the two provisions were not mutually exclusive, that utilization of some of the federal procedures did not consitute a binding election, and that the Federal rule did not preempt the state statute.

[24] The subject company would not be required to comply with the proposal if the written request failed to meet the requirements of paragraph (e) of the proposal, discussed below.

the list was prepared prior to the ten business day period, the subject company is required to prepare a stockholder list as of the most recent practicable date which shall not be earlier than ten business days before the day the bidder's request was received. While Rule 14d–5(a) provides the subject company with an election either to furnish the lists to the bidder or to conduct the mailing/transmittal of the bidder's tender offer materials, this provision also requires the subject company to deliver oral notification of its election, which would be confirmed in writing, to the bidder no later than the second business day after the date the bidder's request is received. If the subject company elects to conduct the mailing/transmittal, the subject company's notification would include the approximate direct cost incidental to the mailing of the bidder's tender offer materials computed in accordance with Rule 14d–5(g)(2). This will apprise the bidder of the amount it will have to advance to the subject company at the time its materials are delivered in the event the subject company elects to conduct the mailing/transmittal on behalf of the bidder.

If the subject company elects to conduct the mailing and transmittal of the bidder's tender offer materials, Rule 14d–5(b) is applicable and requires the subject company to contact each participant named on the security position listings of clearing agencies and to ascertain the approximate number of beneficial owners of the securities held by such participant. No later than three business days after delivery of the bidder's tender offer materials, the subject company would be required to begin to mail a copy of such materials to each record holder named on the stockholder list and to begin to transmit the appropriate number of sets of such materials to the participants on the security position listings for subsequent delivery to beneficial owners of the securities sought by the tender offer. This clarifies an ambiguity in the proposal noted by the commentators as to whether it was intended that the mailing and transmittal be completed within the period specified. It is also responsive to the comments which indicated that the mailing and transmittal could not be completed in that amount of time. In order to prevent the use of dilatory tactics by or on behalf of the subject company, this revision has been accompanied by a requirement that the subject company use its best efforts to complete the mailing and transmittal in a timely manner. Moreover, the provision makes clear that the subject company cannot complete the mailing and transmittal of the bidder's tender offer materials in a substantially greater period of time than it would complete a mailing and transmittal of its own materials relating to the tender offer. It should be noted that the "substantially greater" standard is intended to take into account differences in the time needed to mail and transmit the materials arising solely as a result of the physical characteristics of the materials.

Rule 14d–5(b)(5) provides an updating procedure with respect to the stockholder list under which persons, who become record holders after the date of the stockholder list, are furnished copies of the bidder's tender offer materials. Under Rule 14d–5(b)(6) a similar mailing/transmittal procedure would be followed with respect to amendments disclosing material changes to the bidder's tender offer materials. It should be noted, however, that the subject company's obligation to mail and to transmit such amendments pursuant to Rule 14d–5(b)(6) is qualified by the bidder's election under new paragraph (f)(1). Thus, the obligation will arise only where the bidder has made an irrevocable election to require the subject company to disseminate amendments disclosing material changes.

If the subject company elects to furnish the stockholder list and security position listings to the bidder, Rule 14d–5(c) is applicable and requires the subject company to furnish such list and listings no later than the third business day after the date of the bidder's request. As with the revision to paragraph (b)(6), Rule 14d–5(c)(2) has been revised to require the subject company to update the stockholder list only if the bidder has elected pursuant to paragraph (f)(1) to require the subject company to disseminate amendments disclosing material changes to the tender offer materials.

While the name and address of record holders would be furnished to the bidder, the amount of securities held by such persons would not be disclosed. The commentators disagreed on whether the amount of securities owned of record by each security holder should be shown on the stockholder list. The Commission has determined not to require that disclosure because the purpose of the rule is to facilitate dissemination of the tender offer in the interest of all security holders; not to facilitate the tender offer by permitting the bidder to selectively mail only to large holders. This approach also serves to protect the interest of holders in the confidentiality of their holdings.

Rule 14d–5(d) is designed to clarify the application of other provisions of the Federal securities laws to a subject company under the mailing/transmittal procedure. Sub-paragraphs (1) and (2) have been added in response to the views of the commentators and are self-explanatory. Sub-paragraphs (3) and (4), which are also self-explanatory, have been revised to negate the possible inference that the subject company or its affiliates or agents would be underwriters under section 2(11) of the Securities Act or liable under any provision of the Federal securities laws for the disclosure in the bidder's tender offer materials based solely upon the failure to comply in all respects with Rule 14d–5.

The Commission has determined not to adopt proposed Rule 14d–5(e). That proposal would have prevented the subject company from conducting a shareholder communication relating to the bidder's tender offer, other than a stop-look-and-listen letter, until it had completed certain obligations under the rule. As noted by the commentators, the proposal involved potential abuse by a bidder seeking a tactical advantage. Moreover, the provision is no longer necessary since the revisions to Rule 14d–4 discussed above will require the tender offer to commence on or prior to the date of the bidder's request for the stockholder lists and security position listings.

While Rule 14d–5(e) sets forth the information which a bidder must include in its written request in order to initiate the operation of Rule 14d–5(a), Rule 14d–5(f) would impose certain requirements on the bidder. Rule 14d–5(f)(1) requires the bidder to make a timely election whether to require the subject company to disseminate amendments disclosing material changes to the tender offer materials. In view of the additional burden which the mailing and transmission of such amendments may impose on the subject company, the Commission believes such information should be available to the subject company prior to making its election. Paragraph (f)(2) of Rule 14d–5 requires the bidder to comply with the dissemination requirements of Rule 14d–4(a)(3). If the subject company elects to conduct the mailing/transmittal of the bidder's tender offer materials, Rule 14d–5(f)(3) would require the bidder to deliver its tender offer materials, including amendments, to the subject company and to mail or otherwise to furnish the tender offer materials to any requesting security holder. Another

provision requires the bidder to advance to the subject company an amount equal to the approximate cost of conducting the mailings to security holders computed in accordance with paragraph (g)(2) of Rule 14d–5. This provision alleviates the commentators' concern that the subject company will be required to absorb the expense of compliance with the rule in cases where the bidder is financially irresponsible. If the subject company elects to furnish the lists to the bidder, Rule 14d–5(f)(4) would require the bidder: to use such lists exclusively in the dissemination of tender offer materials to security holders; to return the lists to the subject company promptly after the termination of the bidder's tender offer; to accept, handle and return all lists on a confidential basis; not to retain any list or any information derived from such list after the termination of the tender offer; to mail all the tender offer materials, including amendments, to each person on the stockholder list and updates thereto; to follow a procedure under which all tender offer materials would be transmitted to each participant named on a security position listing for subsequent delivery to the beneficial owners of the securities. Regardless of the subject company's election, the bidder is required to reimburse promptly the subject company for the direct costs of complying with the rule computed in accordance with paragraph (g)(2) incurred by the subject company and its agents in complying with the requirements of the rule which are in excess of the amounts advanced by the bidder under paragraph (f)(3)(iii).

Rule 14d–5(g) adds greater specificity to the obligations imposed on the bidder by paragraph (f). Paragraph (g)(1) specifies the minimum number of sets of tender offer materials which the bidder must deliver and requires envelopes or other containers to be provided therewith. It also provides that delivery of the tender offer materials shall be deemed not to have been made unless the bidder has advanced the approximate cost of conducting the mailing at the time of delivery. Thus, the subject company would not be obligated to mail and transmit the tender offer materials pursuant to Rule 14d–5(b) unless such payment is received with the materials. Paragraph (g)(2) specifies the procedure for calculating the cost of mailing tender offer materials and amendments thereto. It should also be noted that this provision imposes an obligation on the subject company to provide an appropriate accounting to the bidder with its final billing.

Rule 14d–6: Disclosure Requirements With Respect To Tender Offers

Rule 14d–6 establishes specific disclosure requirements for any tender offer which is subject to section 14(d)(1) of the Exchange Act. While the rule substantially follows proposed Rule 14d–3, its structure has been revised. The disclosure requirements continue to depend on the method by which the tender offer is disseminated to security holders but the distinction between the requirements which are applicable to tender offer materials disseminated on the date of commencement and to additional tender offer materials disseminated after the date of commencement has been clarified.

Rule 14d–6(a) provides the disclosure requirements which are applicable to tender offer materials published or sent or given to security holders on the date of commencement. When a bidder uses a method under Rule 14d–4 to disseminate a tender offer on the date of commencement, either sub-paragraphs (a)(1), (a)(2) or (a)(3) of Rule 14d–6 will determine what information specified in paragraph (e) will be required to be disclosed. Exchange tender offers in which the consideration consists of securities registered under the Securities Act or any other tender offer which is disseminated on the date of commencement other than by means of Rule 14d–4 are governed by the disclosure requirements of Rule 14d–6(a)(4).

Rules 14d–6 (a) and (b) specify the information required in additional tender offer materials that are published or sent or given to security holders subsequent to the date of commencement. While based on proposed Rule 14d–3(c)(2), Rule 14d–6(b) has been revised to permit summary advertisements to be used after the date of commencement of the tender offer and to reduce the number of items of information required to be included. Rule 14d–6(c), which is based on proposed Rule 14d–3(c)(1), has been revised in two respects. First, it allows a bidder greater flexibility to omit information from certain tender offer materials disseminated subsequent to the date of commencement if such information has been previously furnished by the bidder in connection with the tender offer. Second, it makes clear that tender offer materials furnished by the bidder upon the request of any security holder or transmitted to security holders pursuant to stockholder lists and security position listings requested under Rule 14d–5 must include all of the information required by Rule 14d–6(e)(1). These revisions are designed to reduce the compliance burden noted by the commentators while assuring the adequacy of the information furnished to security holders.

Rule 14d–6(d) establishes an express obligation to disclose promptly material changes in the information published or sent or given to security holders. This obligation comports with current practice and avoids any possible ambiguity, thus ensuring full disclosure of material information during the course of the tender offer.

Rule 14d–6(e) specifies the items of information to be included pursuant to Rules 14d–6 (a) and (b). Rule 14d–6(e)(1) is applicable to tender offers which are published or sent or given to security holders other than by means of a summary advertisement. Although it closely follows proposed Rule 14d–6(b)(1), revisions have been made with respect to disclosure of the expiration of the tender offer, pro rata periods, and Item 2 of Schedule 14D–1. The commentators noted that it may not be possible or appropriate at the commencement of a tender offer to disclose upon what terms or conditions the offer will be extended, as required by proposed Rule 14d–3(b)(1)(v). The Commission has therefore followed the recommendation of the commentators by requiring disclosure of the procedures for extension. The commentators also pointed out that a bidder cannot know in advance the dates of the period during which securities will be taken up pro rata pursuant to section 14(d)(6) of the Exchange Act in the case of an increase in consideration. Accordingly, Rule 14d–6(e)(1)(vi) has been revised to require the expiration date to be stated only for the pro rata period which begins on the date of commencement. In order to reduce the expense of publication, disclosure will not be required of the residence or business address and five-year employment history of natural persons other than the bidder described in response to Item 2 of Schedule 14D–1.

Rule 14d–6(e)(2) specifies the limited disclosure to be made in a summary advertisement published, sent or given on the date of commencement pursuant to Rule 14d–6(a) (2) or (3). The inclusion of any additional information in a summary advertisement published, sent or given on the date of commencement will make this provision unavailable to the bidder and result in the necessity for publication of the information required by Rule 14d–6(e)(1). A few commentators urged the expansion of the provision to permit the inclusion of additional information. The Commission

is concerned that the expansion of summary advertisements beyond their present limits would erode its intended benefits, *viz.*, rapid notification of the existence of the tender offer and reduction of the scheduling problems and escalating costs associated with making long-form publication of a tender offer. It should also be noted that summary advertisements are only a part of the method of summary publication. Bidders are also required by Rule 14d–4(a)(2)(ii) to furnish tender offer materials containing the information required by Rule 14d–6(e)(1) to any security holder who requests such materials pursuant to the summary advertisement. Security holders are notified of this opportunity in the summary advertisement which is required to include appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials. Moreover, the explanatory note to proposed Rule 14d–3(b)(2) has been made into a separate sub-paragraph of Rule 14d–6(e) which prevents the inclusion of a transmittal letter (whereby securities of the subject company being sought in the tender offer may be transmitted to the bidder or its depository) in the summary advertisement. This is intended to encourage security holders to request the bidder's tender offer materials in making their investment decision with respect to the tender offer.

Several commentators were opposed to the requirement in proposed Rule 14d–3(b)(2)(ii) that the bidder include a brief description of the purpose of the tender offer in its summary advertisement. It was submitted that bidders would be reluctant to summarize the purpose of the tender offer, thereby resulting in a lengthy advertisement containing all of the information required by Item 5 of Schedule 14D–1. As noted previously, extended discussions of this sort are inconsistent with the intended purpose of summary advertisements. The Commission has therefore narrowed the scope of the requirement by requiring disclosure only in those cases where the purpose or one of the purposes is to acquire or influence control and where the tender offer is for less than all securities of the class. The Commission believes that in the context of a summary advertisement the critical item of information with respect to the bidder's purpose in making the tender offer is whether he is seeking to obtain or influence control. Since this purpose is implicit in tender offers for all of the outstanding securities, disclosure of a control purpose is not being required in a summary advertisement with respect to such offers.

Rule 14d–7: Additional Withdrawal Rights

Rule 14d–7 is being adopted substantially as proposed for comment. The rule is intended to enhance the effectiveness of withdrawal by providing withdrawal rights to security holders in addition to those provided by section 14(d)(5) of the Exchange Act. These additional withdrawal rights are set forth in Rule 14d–7(a) which is intended to interrelate with Rule 14e–1(a).[25]

Rule 14d–7(a)(1) extends the statutory seven-day withdrawal right to fifteen business days from the date the tender offer commences. This affords security holders a longer period to reconsider their decision to deposit their shares. It also gives bidders a reasonable time prior to the expiration of the offer to ascertain the number of shares deposited and to determine whether to accept such securities for payment or to change the terms of the offer, such as extending the expiration date.

Certain commentators questioned the Commission's authority to extend the withdrawal period beyond that provided in section 14(d)(5). The Commission notes, however, that section 14(d)(5) expressly grants the authority to vary the statutory periods "as necessary or appropriate in the public interest or for the protection of investors." In the Commission's view, the specific withdrawal rights contemplated by the rule serve the public interest and the protection of investors by providing effective means of withdrawal within the context of the minimum period for tender offers in Rule 14e–1(a).

Rule 14d–7(a)(2) establishes a conditional withdrawal right in competing tender offer situations under which shares can be withdrawn on the date and for ten business days following the commencement date of a competing tender offer by another bidder. It should be noted, however, that commencement for the purpose of this provision is determined solely under Rule 14d–2(a). Thus, a public announcement which is deemed to commence a tender offer under Rule 14d–2(b) would not trigger additional withdrawal rights under Rule 14d–7(a)(2). As proposed for comment, this provision would also have been triggered by a competing tender offer by the subject company. This requirement was deleted because of its potential for abuse. As noted by the commentators, a subject company could obtain an advantage through the extension of the withdrawal period by making a tender offer for a de minimus amount of the securities being sought by the bidder.

Rule 14d–7(b) provides that the withdrawal rights under subparagraphs (a)(1) and (a)(2) of the rule are to be computed on a concurrent rather than a consecutive basis. The following is an example of the concurrent computation of time periods for withdrawal rights pursuant to this section. Bidder X commences a tender offer on Business Day 1 and another bidder, Y, commences a tender offer for securities of the same class of securities on Bussiness Day 7. For X's tender offer, the withdrawal rights under Rule 14d–7(a)(1) of from Business Day 8 through Business Day 15 would be included in the computation of withdrawal rights under Rule 14d–7(a)(2). Thus, withdrawal rights in X's tender offer would begin on Business Day 1 and terminate at the end of Business Day 17.

Rule 14d–7(d) addresses the question of how security holders can properly effect withdrawal of deposited securities. The commentators noted that the limited requirements in the proposal for effecting withdrawal, although reasonable in terms of serving as timely notice of withdrawal, would have unduly hampered the bidder's ability to protect itself against fraud in physically releasing the withdrawn securities. The provision has therefore been revised to specify the requirements for timely notice of withdrawal but to permit the bidder to impose reasonable requirements as conditions precedent to the physical release of withdrawn securities.

Proposed Rule 14d–8: Purchases After Termination of Certain Tender Offers

As a means designed to prevent circumvention of the so-called "best price rule" enbodied in section 14(d)(7) of the Exchange Act, proposed Rule 14d–8 would have integrated, for the purpose of that subsection, certain purchases of subject company securities made by a bidder or its affiliates within forty business days after the termination of the bidder's tender offer. In view of the substantial problems raised by the commentators with respect to both the approach taken in the proposed rule and its operation and impact,[26] the Commission has determined not to adopt it. Nevertheless, the Commission continues to believe there is a need to prevent bidders from taking advantage

[25] As discussed below, Rule 14e–1(a) establishes a minimum period of twenty business days for any tender offer.

[26] See pages 111 to 131 of the summary of comments.

of unsettled market conditions following the termination of a tender offer. It is therefore concurrently publishing for comment proposed Rule 14e–5, described more fully in a companion release, which would prevent purchases of securities sought by the bidder in a tender offer for a period of ten business days following termination of the tender offer.

Rule 14d–8: Exemption From Statutory Pro Rata Requirement

Rule 14d–8 is identical to proposed Rule 14d–9. The rule establishes an exemption from section 14(d)(6) pursuant to Section 14(d)(8)(C) of the Exchange Act for a tender offer for less than all the outstanding equity securities of a class in which the bidder provides pro rata periods in excess of those required by section 14(d)(6). Thus, a bidder is allowed to use any proration period of more than ten days with respect to either the period after commencement or after notice of an increase in the consideration offered or both. The availability of the exemption is conditioned on disclosure of the different pro rata periods in the tender offer materials disseminated by the bidder on the date of commencement of the tender offer. In order to avail itself of this provision, a bidder would be required to notify security holders at the earliest possible time, i.e. the date of commencement, that pro rata time periods in addition to those required by statute will be provided in the tender offer. If no provision is made in the tender offer materials disseminated to security holders on the commencement date, the time requirements of section 14(d)(6) would apply and the bidder would be unable to vary the proration periods during the course of the tender offer. Disclosure at the commencement of a tender offer is intended to avoid confusion and uncertainty among security holders confronted with a tender offer for their shares.

Rule 14d–8 is voluntary and operates in a manner similar to that under section 14(d)(6). The Commission believes that the rule will resolve any doubt among practitioners that a bidder can extend either or both of the pro rata acceptance provisions beyond the ten-day periods without being in violation of section 14(d)(6). Moreover, the rule decreases the likelihood of hasty decision-making by investors and increases the opportunity for equal participation by all security holders in tender offers for less than all securities of a class.

Rule 14d–9: Solicitation/ Recommendation Statements With Respect to Certain Tender Offers

Rule 14d–9 is applicable to any solicitation or recommendation with respect to a tender offer by a person described in Rule 14d–9(d). Rule 14d–9(a) requires the filing of Schedule 14D–9 with the Commission and transmittal of copies to certain persons as soon as practicable on the date the solicitation or recommendation is first published or sent or given to security holders. The procedures applicable to transmittal by the subject company of copies of its Schedule 14D–9 to national securities exchanges and to the NASD have been revised to parallel the changes to Rule 14d–3(a). Thus, in lieu of the hand delivery requirement proposed for comment, the subject company is required to give telephonic notice of certain information in the schedule and to mail a copy of the schedule to each national securities exchange where the security is registered and listed for trading and, if the class of securities is authorized for quotation in the NASDAQ interdealer quotation system, to the NASD.

Under Rule 14d–9(b), material changes in the information contained in the Schedule 14D–9 are required to be filed with the Commission and transmitted to the same persons who received the initial filing under Rules 14d–9 (a)(2) and (a)(3). Such amendments must be filed and transmitted promptly but not later than the date the material change is first published or sent or given to security holders. The proposal required material changes to be disseminated to security holders, thus implicitly requiring disclosure of such changes to be made. Rule 14d–9(b) has been revised to make explicit both the obligation to disclose and to disseminate such changes. It has also been revised to specify that such disclosure and dissemination must be made promptly after the change has occurred.

Rule 14d–9(c) establishes minimum informational requirements for any solicitation or recommendation that is communicated to security holders.[27] In order to reduce the compliance burden, information furnished to security holders will not have to include the information required by Item 5 of Schedule 14D–9 with respect to persons making solicitations or recommendations on behalf of the person filing the Schedule 14D–9.

[27] In addition to the specific disclosure requirements of Rule 14d–10(c), solicitations/ recommendations are also subject to section 14(e) of the Exchange Act.

Rule 14d–9(d) specifies the persons who are required to comply with Rule 14d–9. Paragraph (d)(1) identifies the persons whose solicitations/ recommendations are subject to the rule and paragraph (d)(2) exempts specific persons from the rule. While the two paragraphs operate independently, they also interrelate. Thus, a person may be included within the first paragraph but not be required to comply with the rule because of an exemption provided in the second paragraph. The only significant changes in the provision from that proposed for comment are with respect to Rule 14d–9(d)(2). As proposed for comment, an exemption was available for persons required to file a Schedule 14D–1. This standard would have created a hiatus in the application of the rule to solicitations/recommendations by a person during the five-day period between the commencement of his tender offer under Rule 14d–2(b) and the filing of his Schedule 14D–1. By revising Rule 14d–9(d)(2)(i) to exempt bidders who have actually filed a Schedule 14D–1 pursuant to Rule 14d–3, solicitations/ recommendations made during the five-day period will be covered by the rule. The revision also removes any ambiguity in the coverage of persons who are required to file a Schedule 14D–1 but have not done so. In addition, Rule 14d–9(d)(2)(ii) has been revised to eliminate the coverage of attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity.

A specific exemption is provided for the subject company's initial limited communication regarding a tender offer—the "stop-look-and-listen" letter under Rule 14d–9(e). This provision has been revised to accommodate new Rule 14e–2, described below. A subject company which is sending a "stop-look-and-listen" letter is required to state that on or before a specified date (no later than 10 business days [28] from the date of commencement) it will advise security holders of its position with respect to the tender offer. Thus, in order to avail itself of the exemption the subject company is required to make a subsequent communication which is deemed by Rule 14d–9(e) to constitute a solicitation/recommendation subject to Rule 14d–9.

[28] The time period has been shortened from the fifteen business days proposed for comment to conform with Rule 14e–2 and to ensure that security holders have adequate time to consider the subject company's position in making their investment decision.

Schedule 14D–9: Solicitation/ Recommendation Statement

Schedule 14D–9 is intended to provide more meaningful information to security holders in the context of a tender offer. The Commission believes that the disclosure elicited by the Schedule will assist security holders in making their investment decision and in evaluating the merits of a solicitation/ recommendation. With the exception of amendments to Items 4 and 7, and the Instruction to Item 3(b) the schedule is substantially the same as that proposed for comment.

Item 3(b) requires, if material, a description of any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing the statement or its affiliates and either: (1) the subject company, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates. The instruction to Item 3(b) pertains to a Schedule filed by the subject company and provides that when the materiality standard is applicable it is not necessary under certain circumstances [29] to include in the Schedule a description of any contract, agreement, arrangement or understanding between the subject company or its affiliates and any executive officer or director of the subject company. As proposed for comment, the instruction would have permitted descriptions to be omitted only if they related to present employment by the subject company or its affiliates and the same information had been previously disclosed. The scope of the instruction has been expanded by permitting the omission of such descriptions which are unrelated to employment and by permitting reference to information which does not differ materially from information contained in communications filed with the Commission and disseminated to security holders.

Item 4 pertains to the solicitation or recommendation itself. Paragraph (a) of Item 4 requires the person filing the statement to state the nature of the solicitation/recommendation and to specify whether the person is advising security holders to accept, reject or take other action with respect to the tender offer. In order to accommodate new Rule 14e–2, a new requirement has been added to paragraph (a) which requires a subject company which is not making a recommendation to state whether it is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer. Thus, Item 4 is intended to serve as the vehicle for the subject company to satisfy the disclosure obligation imposed by Rule 14e–2 with respect to a tender offer subject to section 14(d). Item 4(b) has also been revised to account for Rule 14e–2. A subject company will therefore be required under this sub-item to state the reasons for its position with respect to the tender offer. It should be noted that the instruction to Item 4(b) indicates that conclusory statements will not be considered sufficient disclosure of the reasons stated in response thereto.

Item 7 of Schedule 14D–9 requires disclosure with respect to certain negotiations and transactions by the subject company. As proposed for comment, Item 7 would have required disclosure of any negotiation or transaction being undertaken in response to the tender offer by the subject company which related to or would have resulted in any of the following: (1) an extraordinary transaction, such as a merger or reorganization, involving the subject company or any subsidiary of the subject company; (2) a sale or transfer of a material amount of assets of the subject company or any of its subsidiaries; (3) a tender offer for or other acquisition of subject company securities; or (4) any material change in the subject company's present capitalization or dividend policy. The proposal was criticized by commentators who were concerned that it would elicit premature disclosure of negotiations with competing bidders which could dissuade them from making an offer. It was noted that this would be harmful to security holders since they would be prevented from obtaining the highest price for their securities. In addition, concern was expressed that such disclosure may, either innocently or fraudulently, induce security holders to reject a tender offer on the basis of an unjustified inference that a competing bid is imminent.

The Commission recognizes that premature disclosure of the matters contemplated by the proposal may be detrimental to the interests of security holders. The effective representation of the interests of security holders may at times require management to maintain confidentiality during the formative stages of negotiations. On the other hand, the major developments referred to in Item 7 can be one of the most material items of information received by security holders.

The Commission has addressed these competing concerns by approaching disclosure of these matters at two levels. While the proposal would have required the subject company to describe negotiations in response to a tender offer which related to or would result in the specified events, new Item 7(a) requires a statement as to whether negotiations are being undertaken or are underway with respect to such events without requiring detailed disclosure. An instruction has also been added to Item 7(a) which clarifies the extent of the disclosure required with respect to negotiations. The instruction provides that, if an agreement in principle has not been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject company such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient. Thus, security holders will be apprised that such negotiations are being held without the subject company's having to furnish disclosure which would discourage further negotiations. A full description is, however, required under Item 7(b) with respect to the matters referred in Item 7(a)(1), (2), (3) or (4) at the time of any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer. It should be noted, moreover, that Item 7 is not exclusive. Thus, in a particular case, requirements such as those imposed by section 14(e) of the Act may dictate the disclosure comprehended by either paragraphs (a) or (b) of Item 7 at an earlier time or in greater detail than that contemplated by the item.

Rule 14e–1: Unlawful Tender Offer Practices

With one exception Rule 14e–1(a) requires any tender offer to remain open for a minimum of twenty business days from the date it is first published or sent or given to security holders. The exception has been added to remove from the application of the rule tender offers by issuers for their own securities unless such offers are made in anticipation of or in response to another

[29] The conditions for not including such descriptions in the schedule are: (1) the information, or information which does not differ materially from such information, has been disclosed in a proxy statement, report or other communication within one year of the date of filing of the Schedule with the Commission; (2) the proxy statement, report or other communication has been filed with the Commission; (3) the schedule and the solicitation/ recommendation published, sent or given to security holders contain specific reference to the proxy statement, report or communication; and (4) a copy of the pertinent portion(s) of the proxy statement, report or other communication is filed as an exhibit to the schedule.

person's tender offer for securities of the same class. Requiring a minimum period of twenty business days for issuer tender offers that are made in anticipation of or in response to a third party tender offer will preserve the neutrality of the Williams Act. It should be noted, however, that tender offers by certain issuers which are not made in anticipation of or in response to another person's tender offer would be required by Rule 13e–4 [30] [17 CFR 240.13e–4] to remain open for fifteen business days from the date the tender offer is first published or sent or given to security holders. The Commission believes that in the special context of such issuer tender offers the minimum period provided by Rule 13e–4 is adequate.

The commentators expressed divergent views with respect to Rule 14e–1(a). While most of the commentators favored the adoption of a minimum period requirement in excess of the period implicit in the operation of the statute, there was no concensus as to what the length of the period should be.

The Commission finds persuasive the views of the commentators who indicated that a minimum period of thirty business days is unnecessarily long. In the Commission's view the objectives of a minimum period, which are discussed below, can be accomplished with a minimum period of twenty business days. These purposes do not, as suggested by some commentators, include the promotion of competing tender offers which normally result in increasing the consideration paid for the securities being sought. This has been the Commission's view in administering the Williams Act [31] and has also been judicially endorsed.[32] In any event, a study conducted by the Commission's Directorate of Economic and Policy Research of 153 cash tender offers for common stock listed on either the New York Stock Exchange or the American Stock Exchange during the period from 1974 through 1978 reveals that most recent tender offers do not involve offers by competing bidders and do not have offer price revisions.

There are several purposes to be served by Rule 14e–1(a). Tender offers which do not stay open for a reasonable length of time increase the likelihood of hasty, ill-considered decision making on the basis of inadequate or incomplete information as well as the possibility for fraudulent, deceptive or manipulative acts or practices by a bidder and others. The problems engendered by tender offers of excessively short duration also may have provided part of the stimulus for some of the 36 states which have enacted antitakeover statutes since 1968. To the extent this was a purpose of such legislation, the attempt to alleviate the problem was laudable, but has resulted in an inconsistent, overlapping and often counter-productive pattern of regulation and in many instances may have tipped the carefully constructed balance between bidder and subject company envisioned by the Williams Act in favor of subject company. Accordingly, the Commission believes that a uniformly applied federal regulation will better serve the purposes and policies of the Williams Act, including the interests of investors.

Tender offers which do not remain open for a reasonable period may impede the effective operation of Regulation 14D. In particular, Rule 14d–4 contemplates methods of dissemination which require a considerable period of time to accomplish. Two of these methods, summary publication and the use of shareholder lists and security position listings, involve mailings to security holders. The latter method also requires transmittal to beneficial owners of the securities being sought of the bidder's tender offer materials through the facilities of brokers, banks and similar persons. Although these methods will provide improved dissemination of tender offer materials, mailing and transmittal will reduce the amount of time available to security holders to consider the tender offer materials. The Commission therefore believes a minimum period of twenty business days is necessary.

For similar reasons, the Commission is adopting rule 14e–1(b) which requires that any tender offer [33] must remain open for at least ten business days after the date of the notice of an increase in either the offered consideration or the dealer's soliciting fee. The Commission believes that this provision will facilitate communication during tender offers and provide a realistic time frame for security holders to evaluate certain increases before making an investment decision. In the Commission's view, Rule 14e–1(b) will alleviate undue pressure on security holders without unduly hindering the person making a tender offer.

Paragraphs (a) and (b) of Rule 14e–1 operate on a concurrent, rather than a consecutive, basis. For example, if the offeror increases the consideration offered on business day 3 of the tender offer, the ten business day requirement of Rule 14e–1(b) would expire during the twenty business day period of Rule 14e–1(a) and would not result in requiring the offer to be extended.

Rule 14e–1(c) has been revised to require a person making a tender offer to pay the consideration offered or to return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of the tender offer. This standard is also the standard applicable to issuer tender offers under Rule 13e–4(f)(5). Thus, any person making a tender offer is required to use all reasonable efforts to pay promptly for or to return deposited securities. The commission recognizes that the operation of this standard will be affected by the practices of the financial community and the following factors: current settlement, handling and delivery procedures relating to tenders made by guaranteed deliveries by appropriate institutions; procedures to cure technical defects in tenders; and the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 [34] and the rules promulgated thereunder.[35] The Commission believes that this provision will protect investors by ensuring that deposited securities are not tied up for an unreasonable length of time and will not unduly burden either the offeror or its depository in their operations after the termination of a tender offer. [36]

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[30] Rule 13e–4 applies to an issuer which has a class of equity security registered pursuant to section 12 of the Act, or which is required to file periodic reports pursuant to section 15(d) of the Act, or which is a closed-end investment company registered under the Investment Company Act of 1940.

[31] During his testimony at Senate hearings held with respect to the regulation of tender offers, Commissioner Loomis remarked: "[W]e think it reasonable to conclude that the primary objective of the Williams Act was to provide investor protection in takeover situations rather than to regulate tender offers as an economic phenomenon." Testimony of Philip A. Loomis, Commissioner, SEC, Hearings on Regulation Under Federal Banking and Securities Laws of Persons Involved in Corporate Takeovers, Before the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. 87 (1976).

[32] See *Bucher v. Shumway*, 452 F. Supp. 1288, 1294 (S.D.N.Y. 1978).

[33] Rule 14e–1(b) also includes an exception for issuer tender offers which are not made in anticipation of or in response to another person's tender offer for securities of the same class.

[34] 15 U.S.C. 18a et seq.

[35] See Release by Federal Trade Commission announcing promulgation of final rules re: Premerger Notification; Reporting and Waiting Period Requirements (July 31, 1978) (43 FR 33450).

[36] A memorandum from the Division of Corporation Finance which was submitted to the Senate Committee considering the Williams Act amendment pursuant to the request of Senator Williams to then Chairman Budge for examples of how the Commission proposed to implement the grant of rulemaking authority under section 14(e) identified one area to be addressed by the rulemaking authority as the situation in which:

[T]he person who makes a tender offer may fail (a) to pay for securities purchased, or (b) to return to their owner's securities not purchased promptly upon the termination of the tender offer in

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Finally, Rule 14e–1(d) has been revised to require notice of an extension of the tender offer to be issued through a press release or other public announcement no later than the earlier of: (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer; or (ii) if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer. The notice is required to incude a statement of the approximate number of securities deposited up to the date of such notice. As proposed for comment, a notice of extension would have been required to be issued promptly, but not later than one business day before the scheduled expiration date of the tender offer. Since most shares are tendered on the last day of the tender offer, the Commission agrees with the commentators that the proposal was not feasible.

Proposed Rule 14e–2

Proposed Rule 14e–2 included three provisions designed to address the problem of purchases of subject company securities by any person, including a bidder, on the basis of certain material, non-public information, i.e., the undisclosed determination of the bidder to make a tender offer for such securities. For the reasons discussed below, this proposal has been withdrawn and a revised proposed Rule 14e–3, is being published for comment in the companion release.

Proposed Rule 14e–2(a) would have applied to any person, other than the bidder, who purchased subject company securities on the basis of non-public information received directly or indirectly from a bidder that enabled the person to know or reasonably believe that the bidder would make a tender offer for such securities. The proposal would have proscribed any purchase of subject company securities by a person in receipt of such information unless prior to the purchase the person publicly announced the information received and its source. In view of the comments received and its subsequent experience, the Commission believes that a more generic approach to this question is needed. Therefore, the Commission is concurrently proposing for comment proposed Rule 14e–3(a) which pertains to purchases of subject company securities by persons on the basis of any material non-public information relating to a tender offer, including the determination to make a tender offer.

Proposed Rule 14e–2(b) would have required a bidder who knew or had reason to believe that another person had violated, was in the process of violating, or was about to violate proposed Rule 14e–2(a) to promptly make a public announcement of appropriate information with respect to the bidder's tender offer for subject company securities. This proposal was intended to provide a reasonable assurance that in the event of violations of proposed Rule 14e–2(a) the marketplace and investors would be promptly alerted by the bidder. The Commission continues to believe that the bidder's role is critical in preventing the misuse of material non-public information relating to a tender offer. However, in view of the substantial concerns raised by the commentators with respect to the proposal, the Commission has determined that a different approach to the problem is more feasible. Therefore, the Commission is concurrently publishing for comment a proposed Rule 14e–3(b) which addresses the source rather than the effect of the problem. Generally, the proposal would prohibit any tender offeror from communicating material non-public information relating to the tender offer to any other person if the tender offeror knows or has reason to believe such other person is likely to purchase subject company securities on the basis of such information.

Proposed Rule 14e–2(c) would have prohibited the purchase of subject company securities by a bidder which had determined to make a tender offer therefor but had not yet publicly announced its intention to do so unless prior to any such purchase the bidder made a public announcement of certain information. The commentators raised a number of problems with respect to the proposal. They noted that it would prohibit the widely used acquisition technique of making a negotiated block purchase followed by an "any and all" tender offer at the same price to all other stockholders. It was also noted that the increased risk that purchases made to test the market would be construed in hindsight to have violated the proposal would cause many prospective bidders to stay out of the market. In the commentators' view, this problem is exacerbated by the absence of a definition of the term "tender offer." It was submitted that without a definition it would be difficult to know when a determination to make a tender has been reached. Because of these changes and other changes in tender offer practice which would be brought about by the proposal, commentators were of the view that it would shift the balance of regulation and would dissuade bidders from making tender offers. For these as well as other reasons, the Commission has determined not to adopt the proposal at this time. However, the Commission continues to be concerned by purchases by bidders after the determination to make a tender offer has been made and may revisit the issue after final rulemaking action has been taken with respect to the proposed definition of the term "tender offer."

Rule 14e–2: Position of Subject Company With Respect to a Tender Offer

The Commission requested specific comment in the February release with regard to whether a rule should be adopted under the Williams Act which would require subject company management to disclose to security holders that: (1) the subject company recommends acceptance or rejection of a tender offer; (2) the subject company is expressing no opinion and is remaining neutral toward the tender offer; or (3) the subject company is unable to take a position with respect to the tender offer. It was also noted that if the subject company's position changed during the tender offer, timely disclosure of such change would be required. Comment was also requested as to the appropriateness of specifying this obligation by rule under section 14(d)(4) and/or section 14(e) of the Williams Act.

Rule 14e–2 implements this specific inquiry by requiring the subject company to publish or send or give to security holders a statement disclosing its position with respect to the tender offer within ten business days of the commencement of a tender offer by a person other than the issuer. The statement of position would take one of three forms: (1) the subject company recommends acceptance or rejection of a tender offer; (2) the subject company expresses no opinion and will remain neutral toward the tender offer; or (3) the subject company is unable to take a position with respect to the tender offer. In addition, the subject company is required to include the reason(s) for its position with respect to the tender offer, including the inability to take a position. If a subject company changes its position or other material changes occur in the disclosure required by the rule, the subject company is required to promptly publish or send or give to security holders a statement disclosing such material change.

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accordance with the practices of the financial community for settlement of transactions, usually within five days.

1970 Senate Hearings at 11–12.

As noted previously, a statement of position pursuant to Rule 14e–2 with respect to a tender offer which is subject to section 14(d)(1) of the Act is deemed by Rule 14d–9(f) to constitute a solicitation or recommendation within the meaning of Rule 14d–9 and section 14(d)(4) of the Act. In such case, a subject company is required to comply with the requirements of Rule 14d–9. Thus, among other things, a subject company is required to file a Schedule 14D–9 with the Commission and include the information required by certain items thereof in the information disseminated to security holders. Item 4 of the Schedule is among the items of information which is required to be communicated to security holders and is intended to serve as the vehicle by which the subject company will satisfy its disclosure obligation under Rule 14e–2 with respect to tender offers subject to section 14(d)(1).

Rule 14e–2 is predicated primarily on section 14(e) which grants to the Commission authority to define and prescribe means reasonably designed to prevent fraudulent, deceptive or manipulative acts and practices in connection with any tender offer. This rulemaking authority was granted to the Commission by the 1970 Williams Act amendments. During his testimony at the Senate hearings on this legislation, then Chairman Budge was asked by Senator Williams to give the committee "some examples of fraudulent, deceptive or manipulative practices used in tender offers which the proposed Commission rulemaking powers would prevent." [37] In response to this specific request, a memorandum from the Commission's Division of Corporation Finance was submitted for the record. Among the "problem areas" enumerated by this memorandum which the staff proposed to deal with by the rulemaking authority under section 14(e), as amended, was the situation in which:

> Management of the target company in a tender offer may omit to make timely disclosure of its position in favor of or in opposition to such bids or change in such position.[38]

Rule 14e–2 is designed to address the problem identified by the Commission staff memorandum in a manner similar to that described therein. The subject company's position with respect to a tender offer can have a determinative effect on the outcome of a tender offer and thus is material to security holders. The subject company therefore should not be permitted to state its position when it maximizes its tactical advantage and to remain silent when it does not. Such complete discretion increases the likelihood for hasty, ill-considered decision-making by security holders and the possibility for fraudulent, deceptive or manipulative acts or practices by a subject company and others. It is also inconsistent with the neutrality between bidders and subject companies sought to be achieved by the Williams Act.

The Commission believes that the ten business day period will provide the subject company with sufficient time to consider, analyze and formulate a position with respect to the tender offer. Since Rule 14e–1(a) requires a third-party tender offer to remain open for twenty business days, the subject company has an effective opportunity to furnish "any information at its disposal pertinent to the merits of the offer before security holders are required to respond to it." [40] Moreover, since Rule 14d–7(a)(1) allows security holders to withdraw their securities until the expiration of fifteen business days from the date the tender offer commences, security holders will have at least five business days to reconsider their decision to deposit their securities in light of the information provided to them by the subject company. The Commission believes that the statement of the subject company's position within ten business days of commencement together with a twenty business day minimum period will "Avoid tipping the balance of regulation either in favor of [the subject company] or in favor of the person making the takeover bid." [41]

III. Certain Findings

In publishing the February proposals, the Commission specifically invited comments with respect to: (1) whether the costs imposed on bidders, subject companies and/or others by the proposals would outweigh their benefits to investors and the public interest; and (2) whether any proposed rule or the proposed schedule, if adopted, would have an adverse effect on competition or would impose a burden on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

The comment letters did not provide any significant basis for concluding that the implementation of the Commission's statutory mandate in the manner proposed would be outweighed by such possible additional costs. Accordingly, the Commission finds that the costs imposed on bidders, subject companies and others by the rules and schedule published herein are not unreasonable and are far outweighed by the benefits which will accrue to investors.

As required by section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the rules and schedule published herein will have on competition. The Commission finds that compliance with the rules and schedule will not impose any significant burden on competition. In any event, the Commission has determined that any possible competitive burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of the rules and schedule to investors.

IV. Operation of Rules and Schedule, Effective Date

The rules and schedule published herein are not applicable to any tender offer which has been published or sent or given to security holders prior to their effective date. The rules and schedule will become effective January 7, 1980. No person is relieved from such person's present obligations under other provisions of the Federal securities laws pending the effective date of the rules and schedule.

V. Text of Adopted Rules and Schedule

The text of the rules and schedule is set forth below.

Text of Rules

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

I. Section 230.434b of 17 CFR Part 230 is amended to read as follows:

§ 230.434b Additional information required to be included in prospectuses relating to tender offers.

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities which is subject to secton 14(d) of the Securities Exchange Act of 1934 shall include all of the information, not otherwise required to be included therein, required by § 240.14d–6(e)(1) of this chapter to be included in all such tender offers, requests or invitations, published or sent or given to the holders of such securities.

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[37] Hearings on S. 336 and S. 3431 Before the Subcomm. on Securities of the Senate Comm. on Banking 91st Cong., 2d Sess. 11 (1970) [the "1970 Senate Hearings"].

[38] *Id.* at 12.

[39] "By reason of the special relationship between them, shareholders are likely to rely heavily upon the representations of corporate insiders when the shareholders find themselves in the midst of a battle for control." *Chris Craft Industries, Inc.* v. *Piper Aircraft Corp.*, 480 F.2d 341, 364–65 (2d Cir. 1973), *Cert. denied*, 414 U.S. 910 (1973).

[40] Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. 19 (1967).

[41] S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967).

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

II. Section 240.13d–101 of 17 CFR Part 240 is amended by revising Instruction B to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

* * * * *

III. Sections 240.14d–1 through 240.14d–101 (Regulation 14D) of 17 CFR Part 240 are revised as follows:

Regulation 14D

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

(a) *Scope.* Regulation 14D (§§ 240.14d–1 through 240.14d–101) shall apply to any tender offer which is subject to section 14(d)(1) of the Act, including, but not limited to, any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E (§§ 240.14e–1 and 240.14e–2) shall apply to any tender offer for securities (other than exempted securities) unless otherwise noted therein.

(b) *Definitions.* Unless the context otherwise requires, all terms used in Regulation 14D and Regulation 14E have the same meaning as in the Act and in Rule 12b–2 (§ 240.12b–2) promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and Regulations 14D and 14E, the following definitions apply:

(1) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however,* That the term does not include an issuer which makes a tender offer for securities of any class of which it is the issuer;

(2) The term "subject company" means any issuer of securities which are sought by a bidder pursuant to a tender offer;

(3) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

(4) The term "beneficial owner" shall have the same meaning as that set forth in Rule 13d–3: *Provided, however,* That, except with respect to Rule 14d–3, Rule 14d–9(d) and Item 6 of Schedule 14D–1, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of Rule 13d–3(d)(1) (§ 240.13d–3(d)(1));

(5) The term "tender offer material" means:

(i) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depositary) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(6) The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) or any other person who performs similar policy making functions for a corporation;

(7) The term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under Regulation 14D or Regulation 14E, the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter; and

(8) The term "security position listing" means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

§ 240.14d–2 Date of commencement of a tender offer.

(a) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(1) The long form publication of the tender offer is first published by the bidder pursuant to Rule 14d–4 (a)(1) (§ 240.14d–4(a)(1));

(2) The summary advertisement of the tender offer is first published by the bidder pursuant to Rule 14d–4 (a)(2) (§ 240.14d–4(a)(2));

(3) The summary advertisement or the long form publication of the tender offer is first published by the bidder pursuant to Rule 14d–4(a)(3) (§ 240.14d–4(a)(3));

(4) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(5) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in paragraphs (a)(1) through (a)(4) of this section.

(b) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information in paragraph (c) of this section with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under paragraph (a)(5) of this section on the date of such public announcement if within five business days of such public announcement, the bidder either:

(1) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event paragraph (a)(5) of this section shall not apply to the initial public announcement; or

(2) Complies with Rule 14d–3(a) (§ 240.14d–3(a)) and contemporaneously disseminates the disclosure required by Rule 14d–6 (§ 240.14d–6) to security holders pursuant to Rule 14d–4 (§ 240.14d–4) or otherwise in which event:

(i) The date of commencement of such tender offer under paragraph (a) of this section will be determined by the date

the information required by Rule 14d–6 is first published or sent or given to security holders pursuant to Rule 14d–4 or otherwise; and

(ii) Notwithstanding paragraph (b)(2)(i) of this section, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(c) *Information.* The information referred to in paragraph (b) of this section is as follows:

(1) The identity of the bidder;

(2) The identity of the subject company; and

(3) The amount and class of securities being sought and the price or range of prices being offered therefor.

(d) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in paragraphs (d)(1) through (d)(3) of this section concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section.

(1) The identity of the bidder;

(2) The identity of the subject company; and

(3) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject company which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(e) *Announcement made pursuant to Rule 135.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which discloses only the information in Rule 135(a)(4) (§ 230.135(a)(4)) concerning a tender offer in which the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section: *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public announcement.

§ 240.14d–3 Filing and transmission of tender offer statement.

(a) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject company's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(1) Files with the Commission ten copies of a Tender Offer Statement on Schedule 14D–1 (§ 240.14d–100), including all exhibits thereto;

(2) Hand delivers a copy of such Schedule 14D–1, including all exhibits thereto:

(i) To the subject company at its principal executive office; and

(ii) To any other bidder, which has filed a Schedule 14D–1 with the Commission relating to a tender offer which has not yet terminated for the same class of securities of the subject company, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Schedule 14D–1);

(3) Gives telephonic notice of the information required by Rule 14d–6(e)(2) (i) and (ii) (§ 240.14d–6(e)(2) (i) and (ii)) and mails by means of first class mail a copy of such Schedule 14D–1, including all exhibits thereto:

(i) To each national securities exchange where such class of the subject company's securities is registered and listed for trading (which may be based upon information contained in the subject company's most recent Annual Report on Form 10–K (§ 249.310) filed with the Commission unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(ii) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject company's securities is authorized for quotation in the NASDAQ interdealer quotation system.

(b) *Additional materials.* The bidder shall file with the Commission ten copies of any additional tender offer materials as an exhibit to the Schedule 14D–1 required by this section, and if a material change occurs in the information set forth in such Schedule 14D–1, ten copies of an amendment to Schedule 14D–1 (each of which shall include all exhibits other than those required by Item 11(a) of Schedule 14D–1) disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject company and to any exchange and/or the NASD, as required by paragraph (a) of this section, promptly but not later than the date such additional tender offer material or such change is first published or sent or given to security holders.

(c) *Certain announcements.* Notwithstanding the provisions of paragraph (b) of this section, if the additional tender offer material or an amendment to Schedule 14d–1 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject company, any exchange and/or the NASD, as required by paragraph (a) of this section, promptly after the date such tender offer material is first published or sent or given to security holders.

§ 240.14d–4 Dissemination of certain tender offers.

(a) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed "published or sent or given to security holders" within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following sub-paragraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder lists and security position listings pursuant to Rule 14d–5, paragraphs (a)(2) and (a)(3) of this section are exclusive.

(1) *Long-form publication.* The bidder makes adequate publication in a newspaper or newspapers of long-form publication of the tender offer.

(2) *Summary publication.* (i) If the tender offer is not subject to Rule 13e–3 (§ 240.13e–3), the bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(ii) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(3) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to Rule 14d–5 shall comply with paragraphs (a)(1) or (a)(2) of this section on or prior to the date of the bidder's request for such lists or listing pursuant to Rule 14d–5(a).

(b) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require

publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(c) *Publication of changes.* If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in paragraph (a) of this section, a material change in the information published or sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change; *Provided, however,* That if the bidder has elected pursuant to rule 14d–5 (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to Rule 14d–5, the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to Rule 14d–5.

§ 240.14d–5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

(a) *Obligations of the subject company.* Upon receipt by a subject company at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e) of this section, the subject company shall comply with the following sub-paragraphs.

(1) The subject company shall notify promptly transfer agents and any other person who will assist the subject company in complying with the requirements of this section of the receipt by the subject company of a request by a bidder pursuant to this section.

(2) The subject company shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject company was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject company shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(3) The subject company shall make an election to comply and shall comply with all of the provisions of either paragraph (b) or paragraph (c) of this section. The subject company's election once made shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(4) No later than the second business day after the date of the bidder's request, the subject company shall orally notify the bidder, which notification shall be confirmed in writing, of the subject company's election made pursuant to paragraph (a)(3) of this section. Such notification shall indicate (i) the approximate number of security holders of the class of securities being sought by the bidder and, (ii) if the subject company elects to comply with paragraph (b) of this section, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with paragraph (g)(2) of this section.

(b) *Mailing of tender offer materials by the subject company.* A subject company which elects pursuant to paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(1) The subject company shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject company and make inquiry of each such participant as to the approximate number of beneficial owners of the subject company securities being sought in the tender offer held by each such participant.

(2) No later than the third business day after delivery of the bidder's tender offer materials pursuant to paragraph (g)(1) of this section, the subject company shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in paragraph (a)(2) of this section. The subject company shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailing be completed in a substantially greater period of time than the subject company would complete a mailing to security holders of its own materials relating to the tender offer.

(3) No later than the third business day after the delivery of the bidder's tender offer materials pursuant to paragraph (g)(1) of this section, the subject company shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in paragraph (b)(1) of this section. The subject company shall use its best efforts to complete the transmittal in a timely manner but in no event shall such transmittal be completed in a substantially greater period of time than the subject company would complete a transmittal to such participants pursuant to security position listings of clearing agencies of its own material relating to the tender offer.

(4) The subject company shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to paragraph (b)(2) of this section and of the transmittal pursuant to paragraph (b)(3) of this section.

(5) During the tender offer and any extension thereof the subject company shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (i) the date of preparation of the most recent stockholder list referred to in paragraph (a)(2) of this section or (ii) the last preceding update.

(6) If the bidder has elected pursuant to paragraph (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section, the subject company, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in paragraphs (a)(2) and (b)(5) of this section and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to paragraph (b)(3) of this section.

(7) The subject company shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(8) Promptly following the termination of the tender offer, the subject company shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to paragraph (f)(3)(iii) over the direct costs incidental to compliance by the subject company and its agents in

performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(c) *Delivery of stockholder lists and security position listings.* A subject company which elects pursuant to paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(1) No later than the third business day after the date of the bidder's request, the subject company shall furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject company.

(2) If the bidder has elected pursuant to paragraph (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials, the subject company shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject company during the tender offer and any extensions thereof.

(d) *Liability of subject company and others.* Neither the subject company nor any affiliate or agent of the subject company nor any clearing agency shall be:

(1) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more requirements of this section;

(2) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject company or any affiliate or agent of the subject company;

(3) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more of the requirements of this section;

(4) Liable under any provision of the Federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more of the requirements of this section.

(e) *Content of the bidder's request.* The bidder's written request referred to in paragraph (a) of this section shall include the following:

(1) The identity of the bidder;

(2) The title of the class of securities which is the subject of the bidder's tender offer;

(3) A statement that the bidder is making a request to the subject company pursuant to paragraph (a) of this section for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(4) A statement that the bidder is aware of and will comply with the provisions of paragraph (f) of this section;

(5) A statement as to whether or not it has elected pursuant to paragraph (f)(1) of this section to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section; and

(6) The name, address and telephone number of the person whom the subject company shall contact pursuant to paragraph (a)(4) of this section.

(f) *Obligations of the bidder.* Any bidder who requests that a subject company comply with the provisions of paragraph (a) of this section shall comply with the following subparagraphs.

(1) The bidder shall make an election whether or not to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section, which election shall be included in the request referred to in paragraph (a) of this section and shall not be revocable by the bidder during the tender offer and extensions thereof.

(2) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of Rule 14d–4(a)(3).

(3) If the subject company elects to comply with paragraph (b) of this section,

(i) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject company as provided in paragraph (a)(4) of this section;

(ii) The bidder shall promptly notify the subject company of any amendment to the bidder's tender offer materials requiring compliance by the subject company with paragraph (b)(6) of this section and shall promptly deliver such amendment to the subject company pursuant to paragraph (g)(1) of this section;

(iii) The bidder shall advance to the subject company an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with paragraph (g)(2) of this section;

(iv) The bidder shall promptly reimburse the subject company for the direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section which are in excess of the amount advanced pursuant to paragraph (f)(2)(iii) of this section; and

(v) The bidder shall mail be means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(4) If the subject company elects to comply with paragraph (c) of this section,

(i) The bidder shall use the stockholder list and security position listings furnished to the bidder pursuant to paragraph (c) of this section exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(ii) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (c) of this section promptly after the termination of the bidder's tender offer;

(iii) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (c) of this section to the subject company on a confidential basis;

(iv) The bidder shall not retain any stockholder list or security position listing furnished by the subject company pursuant to paragraph (c) of this section, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(v) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each

person whose identity appears on the stockholder list as furnished and updated by the subject company pursuant to paragraphs (c)(1) and (c)(2) of this section;

(vi) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the approximate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(vii) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(viii) The bidder shall promptly reimburse the subject company for direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(g) *Delivery of materials, computation of direct costs.*

(1) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject company at the location specified by the subject company in its notice given pursuant to paragraph (a)(4) of this section a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject company in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with paragraph (f)(3)(iii) of this section at the time the materials or amendments, as the case may be, are delivered.

(2) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (i) the direct cost incidental to the mailing of the subject company's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (ii) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (iii) the estimated direct costs of preparing mailing labels, of updating shareholder lists and of third party handling charges plus (iv) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials and amendments thereto when finally computed may include all reasonable charges paid by the subject company to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject company. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

§ 240.14d–6 Disclosure requirements with respect to tender offers.

(a) *Information required on date of commencement.*

(1) *Long-form publication.* If a tender offer is published or sent or given to security holders on the date of commencement by means of long-form publication pursuant to Rule 14d–4(a)(1) (§ 240.14d–4(a)(1)), such long-form publication shall include the information required by paragraph (e)(1) of this section.

(2) *Summary publication.* If a tender offer is published or sent or given to security holders on the date of commencement by means of summary publication pursuant to Rule 14d–4(a)(2) (§ 240.14d–4(a)(2)),

(i) The summary advertisement shall contain and shall be limited to, the information required by paragraph (e)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

(3) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholders lists and security position listings pursuant to Rule 14d–4(a)(3) (§ 240.14d–4(a)(3)),

(i) Either (A) the summary advertisement shall contain, and shall be limited to the information required by paragraph (e)(2) of this section, or (B) if long form publication of the tender offer is made, such long form publication shall include the information required by paragraph (e)(1) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

(4) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to Rule 14d–4(a) (§ 240.14d–4(a)), the tender offer materials which are published or sent or given to security holders on the date of commencement of such offer shall include the information required by paragraph (e)(1) of this section.

(b) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in paragraphs (e)(1)(i)–(iv) and (e)(2)(iv) of this section.

(c) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in paragraph (b) of this section and tender offer materials described in paragraphs (a)(2)(ii) and (a)(3)(ii) of this section, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by paragraphs (e)(1) and may omit any of the information required by paragraphs (e)(1)(v)–(viii) of this section which has been previously furnished by the bidder in connection with the tender offer.

(d) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(e) *Information to be included.*—(1) *Long-form publication and tender offer materials.* The information required to be disclosed by paragraphs (a)(1), (a)(2)(ii), (a)(3)(i)(B) and (a)(4) of this section shall include the following:

(i) The identity of the bidder,

(ii) The identity of the subject company;

(iii) The amount and class of securities being sought and the type and amount of consideration being offered therefor;

(iv) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(v) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and Rule 14d–7 (§ 240.14d–7) and the manner in which shares will be

accepted for payment and in which withdrawal may be effected;

(vi) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to section 14(d)(6) of the Act or Rule 14d–8 (§ 240.14d–8), and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(vii) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Schedule 14D–1 (§ 240.14d–100) or a fair and adequate summary thereof; *Provided, however,* That negative responses to any such item or sub-item or Schedule 14D–1 (§ 240.14d–100) need not be included; and

(viii) The disclosure required by Item 9 of Schedule 14D–1 or a fair and adequate summary thereof. (Under normal circumstances, summary financial information equivalent to that required by paragraph (e) of Guide 59 of the Guides for Preparation and Filing of Registration Statements for the periods covered by the financial information furnished in response to Item 9 will be a sufficient summary. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained).

(2) *Summary publication.* The information required to be disclosed by paragraphs (a)(2)(i) and (a)(3)(i)(A) of this section in a summary advertisement is as follows:

(i) The information required by paragraphs (e)(1)(i) through (vi) of this section;

(ii) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iii) A statement that the information required by paragraph (e)(1)(vii) of this section is incorporated by reference into the summary advertisement;

(iv) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(v) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to Rule 14d–4(a)(3) (§ 240.14d–4(a)(3)), a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

§ 240.14d–7 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(1) At any time until the expiration of fifteen business days from the date of commencement of such tender offer; and

(2) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to Rule 14d–2(b) for securities of the same class *provided that* the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer and, *Provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(b) *Computation of time periods.* The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(c) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in paragraph (a)(2) of this section, on the date such bidder receives a copy of the Schedule 14D–1 (§ 240.14d–100) pursuant to Rule 14d–3 (§ 240.14d–3) from such other bidder.

(d) *Notice of withdrawal.* Notice of withdrawal pursuant to this section shall be deemed to be timely upon the receipt by the bidder's depositary of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompained by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

§ 240.14d–8 Exemption from statutory pro rata requirement.

The limited pro rata provisions of section 14(d)(6) of the Act shall not apply to any tender offer for less than all the outstanding securities of the class for which the tender offer is made to the extent that the bidder provides in the tender offer materials disseminated to security holders on the date of commencement of the tender offer that in the event more securities are deposited during the period(s) described in paragraphs (a) and/or (b) of this section than the bidder is bound or willing to accept for payment, all securities deposited during such period(s) will be accepted for payment as nearly as practicable on a pro rata basis, disregarding fractions, according to the number of securities deposited by each depositor.

(a) Any period which exceeds ten days from the date of commencement of the tender offer.

(b) Any period which exceeds ten days from the date that notice of an increase in the consideration offered is first published, sent or given to security holders.

§ 240.14d–9 Solicitation/recommendation statements with respect to certain tender offers.

(a) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by any person described in paragraph (d) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following subparagraphs.

(1) Such person shall file with the Commission eight copies of a Tender Offer Solicitation/Recommendation Statement on Schedule 14D–9 (§ 240.14d–101), including all exhibits thereto; and

(2) If such person is either the subject company or an affiliate of the subject company,

(i) Such person shall hand deliver a copy of the Schedule 14D–9 to the bidder

at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Schedule 14D–1 (§ 240.14d–100) filed with the Commission; and

(ii) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Schedule 14D–9 and shall mail a copy of the Schedule to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. ("NASD").

(3) If such person is neither the subject company nor an affiliate of the subject company,

(i) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Schedule 14D–1 (§ 240.14d–100) filed with the Commission); and

(ii) Such person shall mail a copy of the Schedule to the subject company at its principal office.

(b) *Amendments.* If any material change occurs in the informaion set forth in the Schedule 14D–9 (§ 240.14d–101) required by this section, the person who filed such Schedule 14D–9 shall:

(1) File with the Commission eight copies of an amendment on Schedule 14D–9 (§ 240.14d–101) disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(2) Promptly deliver copies and give notice of the amendment in the same manner as that specified in paragraph (a)(2) or paragraph (a)(3) of this section, whichever is applicable; and

(3) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(c) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Schedule 14D–9 (§ 240.14d–101) or a fair and adequate summary thereof: *Provided, however,* That such solicitation or recommendation may omit any of such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(d) *Applicability.* (1) Except as is provided in paragraphs (d)(2) and (e) of this section, this section shall only apply to the following persons:

(i) The subject company, any director, officer, employee, affiliate or subsidiary of the subject company;

(ii) Any record holder or beneficial owner of any security issued by the subject company, by the bidder, or by any affiliate of either the subject company or the bidder; and

(iii) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the Commission pursuant to this section or Rule 14d–3 (§ 240.14d–3).

(2) Notwithstanding paragraph (d)(1) of this section, this section shall not apply to the following persons:

(i) A bidder who has filed a Schedule 14D–1 (§ 240.14d–101) pursuant to Rule 14d–3 (§ 240.14d–3);

(ii) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request of such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(e) *Stop-look-and-listen communication.* This section shall not apply to the subject company with respect to a communication by the subject company to its security holders which only:

(1) Identifies the tender offer by the bidder;

(2) States that such tender offer is under consideration by the subject company's board of directors and/or management;

(3) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject company will advise such security holders of (i) whether the subject company recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (ii) the reason(s) for the position taken by the subject company with respect to the tender offer (including the inability to take a position); and

(4) Requests such security holders to defer making a determination whether to accept or reject such tender offer until they have been advised of the subject company's position with respect thereto pursuant to paragraph (e)(3) of this section.

(f) *Statement of management's position.* A statement by the subject company's of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to Rule 14e–2 shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

* * * * *

General Instructions. A. * * *

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2–7, inclusive, shall be given with respect to: (i) each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

* * * * *

Item 6. Interest in Securities of the Subject Company

* * * * *

Instructions. 1. * * *

2. If the information required by Item 6(b) of this schedule is available to the bidder at the time this statement is initially filed with the Commission pursuant to Rule 14d–3(a)(1) [§ 240.14d–3(a)(1)], such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Commission promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

* * * * *

§ 240.14d–101 Schedule 14D–9.

Securities and Exchange Commission

Washington, D.C. 20549

Schedule 14D–9

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No. —)

(Name of Subject Company)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instructions: Eight copies of this statement, including all exhibits, should be filed with the Commission.

General Instructions: A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

Item 1. Security and Subject Company

State the title of the class of equity securities to which this statement relates and the name and the address of the principal executive offices of the subject company.

Item 2. Tender Offer of the Bidder

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Schedule 14D–1 [§ 240.14d–100] filed with the Commission).

Item 3. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) the subject company, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject company and if the materiality requirement of Item 3(b) is applicable to any contract, agreement, arrangement or understanding between the subject company or any affiliate of the subject company and any executive officer or director of the subject company, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published or sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject company to the then holders of the securities and has been filed with the Commission: *Provided,* That this statement and the solicitation or recommendation published or sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject company and a recommendation is not being made, state whether the subject company is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to Item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recent Transactions and Intent With Respect to Securities

(a) Describe any transaction in the securities referred to in Item 1 which was effected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such persons.

Item 7. Certain Negotiations and Transactions by the Subject Company

(a) If the person filing this statement is the subject company, state whether or not any negotiation is being undertaken or is underway by the subject company in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject company or any subsidiary of the subject company;

(2) A purchase, sale or transfer of a material amount of assets by the subject company or any subsidiary of the subject company;

(3) A tender offer for or other acquisition of securities by or of the subject company; or

(4) Any material change in the present capitalization or dividend policy of the subject company.

Instruction: If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject company such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a)(1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished

Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9. Material To Be Filed as Exhibits

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral soliciation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portions(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

(Name and Title)

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

IV. 17 CFR Part 240 is amended by adding new §§ 240.14e–1 and 240.14e–2 (Regulation 14E) to read as follows:

Regulation 14E

§ 240.14e–1 Unlawful tender offer practices.

As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, no person who makes a tender offer shall:

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent or given to security holders: *Provided, however,* That this paragraph shall not apply to a tender offer by the issuer of the class of securities being sought which is not made in anticipation of or in response to another person's tender offer for securities of the same class.

(b) Increase the offered consideration or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published, or sent or given to security holders: *Provided, however,* That this paragraph shall not apply to a tender offer by the issuer of the class of securities being sought which is not made in anticipation of or in response to another person's tender offer for securities of the same class.

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer;

(d) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

§ 240.14e–2 Position of subject company with respect to a tender offer.

(a) *Position of subject company.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices withing the meaning of section 14(e) of the Act, the subject company, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject company:

(1) Recommends acceptance or rejection of the bidder's tender offer;

(2) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(3) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(b) *Material change.* If any material change occurs in the disclosure required by paragraph (a) of this section, the subject company shall promptly publish or send or give a statement disclosing such material change to security holders.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 9067, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57, secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a)).

Authority

The Commission hereby adopts: amendments to Rule 434(b) (§ 230.434(b)) pursuant to sections 7, 10 and 19(a) of the Securities Act; amendments to Schedule 13D (§ 240.13d–101) pursuant to sections 13(d) and 23(a) of the Exchange Act; Rules 14d–1, 14d–2, 14d–3, 14d–4, 14d–6, 14d–7, 14d–8, 14d–9 Schedule 14D–9 and amendments to Schedule 14D–1 (§ 240.14d–100) pursuant to sections 3(b), 10(b), 13(d), 14(d), 14(e), and 23(a) of the Exchange Act; Rule 14d–5 pursuant to section 19(a) of the Securities Act; sections 3(b), 10(b), 13(d), 14(d), 14(e) and 23(a) of the Exchange Act; section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.); section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.); and section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a et seq.); Rules 14e–1 and 14e–2 pursuant to sections 14(d), 14(e) and 23(a) of the Exchange Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

November 29, 1979.

[FR Doc. 79–37406 Filed 12–5–79; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6159, 34-16385, IC-10959; File No. S7-812]

Proposed Amendments to Tender Offer Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment to rules.

SUMMARY: The Commission is publishing for comment amendments to new Regulations 14D and 14E pertaining to tender offers and is proposing to rescind Rule 10b-13. The proposals include: a definition of the term "tender offer"; provisions requiring equal treatment of security holders in the context of tender offers; certain antifraud provisions concerning trading by certain persons on the basis of material non-public information relating to a tender offer; and a prohibition of certain purchases not made by means of a tender offer. The proposals are applicable to any tender offer and would implement and augment the present statutory requirements. The proposed amendments are necessary to explicate certain consequences of making a tender offer and to enhance the protection of investors against fraudulent, deceptive and manipulative acts or practices.

DATE: Comments must be received on or before February 1, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-812. All comments received will be available for public inspection and coping in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: John Huber or John Granda (202-272-2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment proposed amendments to Regulation 14D (17 CFR 240.14d-1 through 240.14d-101) and to Regulation 14E (17 CFR 240.14e-1 and 240.14e-2) pursuant to sections 3(b), 10(b), 13(d), 13(e), 14(d), 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)]. If adopted, these proposals would implement and augment the present statutory requirements by providing a definition of the term "tender offer," additional substantive protections, and antifraud protections applicable to any tender offer. The Commission is also proposing to rescind Rule 10b-13 (17 CFR 240.10b-13) and to adopt in lieu thereof proposed Rule 14e-5.

The Commission is also concurrently adopting amendments to Regulations 14D and 14E. Regulation 14D provides specific filing and disclosure requirements, optional dissemination provisions, and additional substantive protections with respect to tender offers subject to section 14(d) of the Exchange Act. Regulation 14E is applicable to any tender offer other than one involving exempted securities and includes provisions relating to the length of the tender offer and extensions thereof, payment of the consideration offered, and disclosure of the subject company's position with respect to the tender offer.

These proposals are not applicable to presently pending tender offers or to any tender offer commenced prior to the actual adoption and effectiveness of the proposals herein. Rule 10b-13 will continue in effect unless and until proposed Rule 14e-5 becomes effective. The proposals are based in part on the record in the Commission's Public Fact Finding Investigation in the matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons ("Tender Offer Hearings"),[1] the 105 letters of comment [2] received in response to the tender offer proposals published for comment in Release No. 34-15548 (February 5, 1979) (44 FR 9956) (the "February Release"), judicial decisions, and the Commission's experience. A discussion of each of the proposals follows.

Discussion

A. Proposed Rule 14d-1(b)(1): Definition of the term "Tender Offer"

The term "tender offer" is not defined in the Williams Act.[3] Since the passage of the Williams Act, the Commission has been continually involved in the development of the meaning of the term [4] but has not adopted a definition.

This position has been premised upon the dynamic nature of these transactions and the need for the Williams Act to be interpreted flexibly in a manner consistent with its purposes to protect investors. Consequently, the Commission specifically declined to define the term on two prior occasions.[5]

While there has been essential compliance with the provisions of the Williams Act when people seek shares through a public announcement and filings with the Commission, many persons have not complied with the Williams Act when they have invited tenders for shares in other ways. Many persons have deliberately structured tender offers in an effort to evade the provisions of the Williams Act. These approaches have included purported privately negotiated transactions, wide-scale solicitation of members of one family and various forms of massive open market purchase programs. In the Commission's judgment, these tender offers, however packaged, are subject to the provisions of the Williams Act and are required to be effected in accordance with its provisions.

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[1] Securities Act Release Nos. 5529 (September 9, 1974) (39 FR 33935) and 5538 (November 5, 1974) (39 FR 41223).

[2] Letters were received from the following categories of commentators: corporations (63); law firms and associations (11); trade organizations and associations (10); state administrative agencies (7); securities industry (6); academicians (1); and other interested persons (7). Copies of these letters are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-770). For the convenience of the public, a copy of the summary of these comment letters, which was prepared by the staff of the Commission, has been placed in File No. S7-770 and is also available for public inspection and copying.

[3] Both the Senate and House Reports describe the characteristics of a typical cash tender offer. S. Rep. No. 550, 90th Cong., 1st Sess. 2 (1967) ("1967 Senate Report") H.R. Rep. No. 1711, 90th Cong., 2d Sess. 2 (1968) ("1968 House Report").

[4] The involvement of the Commission and its staff has included: determinations relating to specific transactions, see Securities Exchange Act Release No. 8392 (August 30, 1968) (33 FR 14109); participation *amicus curiae* in litigation, *see e.g.* Memorandum of the Securities and Exchange Commission as Amicus Curiae *Cattlemen's Investment Company* v. *Fears*, 343 F. Supp. 1248 (W. D. Okla. 1972); enforcement actions, *see, e.g., Securities and Exchange Commission* v. *Sun Co.*, reported sub nom. *Wellman* v. *Dickinson* [Current] CCH Fed. Sec. L. Rep. ¶96,918 (S.D.N.Y. 1979); investigative hearings, *see* Public Fact-Finding Investigation in the Matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons, Securities Act Release Nos. 5529 (September 9, 1974) (39 FR 41123); no-action and interpretive letters, *see e.g.*, Letter to William Gleeson, Esq. re: Methode Electronics, Inc. (December 29, 1976); and monitoring tender offer practice.

[5] Release Nos. 34-12676 (August 6, 1976) (41 FR 33004, 33005) and 34-15548 (February 15, 1979) (44 FR 9956, 9960).

Recognizing the dynamic nature of these activities, the Commission has proposed a definition which would include within its coverage at least certain of these diverse forms of transactions. The Commission has done so because it believes that in substance many of these transactions are in reality tender offers and that the public is entitled to the benefits that would flow from their specific inclusion within the provisions of the Williams Act.

In developing the proposed definition, the Commission considered the provisions and purposes of the Williams Act, its legislative history, applicable case law, enforcement actions, administrative proceedings and positions, legal commentary and past and present tender offer practice. The proposed definition does distinguish between tender offers and transactions involving open market or privately negotiated purchases. However, not all so-called open market or privately negotiated purchases are automatically exempted from the definition simply because they occur on or off the market, and certain of these programs would be defined as tender offers.[6]

In proposing a specific delineation, the Commission is aware that the scope of the definition may include transactions which others believe ought to be excluded and may exclude transactions which others believe ought to be included. While this is a necessary consequence of any definition, the Commission invites public comment as to the scope of the term and what transactions should be excluded and included. In addition, the Commission requests specific suggestions as to the appropriate methods for taking account of such transactions.

Moreove, the scope of the proposed definition reflects the Commission's long-standing position that the term "tender offer embraces" not only tender offers formally announced by communications to shareholders but also offers accomplished by other means.[7] This position is supported by the case law [8] and legal commentators.[9]

The definition in proposed Rule 14d–1(b)(1) is designed to provide guidance to members of the financial community and their advisers. The proposal is divided into two tiers which would operate independently of each other. That is, an offer is a tender offer if it meets the test in either of the two tiers.

Under the first tier, proposed Rule 14d–1(b)(1)(i), the term "tender offer" consists of four elements: (1) one or more offers to purchase or solicitations of offers to sell securities of a single class; (2) during any 45-day period;[10] (3) directed to more than 10 persons;[11] and (4) seeking the acquisition of more than 5% of the class of securities.[12]

In order to be a tender offer within the meaning of proposed Rule 14d–1(b)(1)(i), all four elements must be present. Thus, an offer to purchase more than 5% of a class of securities from nine persons within a 45 day period would not constitute a tender offer. It should be noted that a block transaction which meets the four elements would be a tender offer subject to the Williams Act unless the exception, discussed below, is applicable.

The Commission recognizes that ordinary open market purchases which are part of the "free and open auction market" [13] should not be regulated as tender offers. To say that purchases take place on the floor of a securities exchange, however, does not end the inquiry. The use of facilities of a exchange may be a mere formality to disguise what is otherwise in effect a tender offer that should be subject to the requirements of the Williams Act. While the proposal contemplates that certain open market purchasing programs meeting the four elements discussed above would be tender offers, others are excepted. The exception would be limited to offers by a broker and its customer or by a dealer at the then current market price [14] on a national securities exchange or in the over-the-counter market if in connection with such offers three conditions are present.

First, neither the person making the offers nor the broker or dealer solicits or arranges for the solicitation of any order to sell. With respect to offers at the then current market on a national securities exchange, a broker or dealer who merely talked to the specialist(s) or the persons in the crowd on the floor of the exchange would not in the Commission's view be making a solicitation as that term is used in the definition. However, if the person making the offers and/or the broker or dealer talked to persons off the floor of the exchange and/or arranged for them or their representatives to be present in the crowd on the floor to accept the offer, such conduct would in the Commission's judgement be a solicitation and the exception would not

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[6] Section 14(d)(1) of the Act provides in pertinent part:

> It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce *or of any facility of a national securities exchange* or otherwise, to make a tender offer (italics supplied).

Thus, the statute recognizes that a tender offer may be made directly or indirectly by using the facilities of a national securities exchange. For example, a special bid, *see* New York Stock Exchange Rule 391 and American Stock Exchange Rule 560, is a tender offer within the meaning of the Williams Act. See Securities Exchange Act Release No. 8392 (August 30, 1968) (33 FR 14109).

[7] Release No. 34–15548 (Feb. 5, 1979) (44 FR 9957); Release No. 34–12676 (Aug. 6, 1976) (41 FR 33004); Securities Exchange Act Release No. 8392 (Aug. 30, 1968) (33 FR 14109); Memorandum of the Securities and Exchange Commission as *Amicus Curiae, Cattlemen's Investment Co.* v. *Fears*, 343 F. Supp. 1248 (W.D. Okla. 1972). The inclusion of various forms of tender offers within the meaning of the term "tender offer" was recognized by the Commission, Securities Exchange Act Release No. 8392 (Aug. 30, 1968), and by commentators at the time of the Williams Act's passage. *See, e.g.*, O'Boyle, *The Williams Amendments (S.510) to the 1934 Act*, in Fleischer & Flom, *Texas Gulf Sulphur: Disclosure & Insiders*, 126 (1968).

[8] *See, e.g., Cattlemen's Investment Co.* v. *Fears*, 343 F. suppl 1248 (W.D. Okla. 1972); *Loews Corp.* v. *Accident & Casualty Insurance Co.*, No. 74 C 1396 (N.D. Ill. bench opinion Aug. 20, 1974); *Smallwood* v. *Pearl Brewing Co.*, 489 F.2d 579 (5th Cir. 1974); *S–G Industries, Inc.* v. *Fuqua Investment Co.* [Current] CCH Fed. Sec. L. Rep. ¶96,750 (D. Mass 1978). Other cases, while not holding a transaction to be a tender offer, have recognized that the term goes beyond formal offers. *See, e.g., Nachman Corp.* v. *Halfred, Inc.*, [1973–1974 Transfer Binder] CCH Fed Sec. L. Rep. ¶94,455 (N.D. Ill. 1973); and *Kennecott Copper Corp.* v. *Curtiss-Wright Corp.*, 449 F. Supp. 951 (S.D.N.Y. 1978), *aff'd in part and rev'd in part*, [1978 Transfer Binder] CCH Fed. Sec. L. Rep. ¶96,565 (2d Cir. 1978).

[9] *See, e.g.*, Note, *The Developing Meaning of "Tender Offer" Under the Securities Exchange Act of 1934*, 86 Harv. L. Rev. 1250 (1973); and Lipton, *Open Market Purchases*, 32 Bus. Law. 1321 (1977).

[10] Offers within any 45 consecutive calendar day period would be included within this element, for example, offers to purchase made on June 1 and July 10 would be aggregated, whereas another offer made on December 1 would not be included therein.

[11] The Commission requests specific comment on the appropriate meaning of the term "person" as used in proposed Rule 14d–1(b)(1)(i), *e.g.*, whether the term should have the same meaning as in section 3(a)(9) of the Exchange Act or additionally include accounts administered by financial institutions in a manner similar to that set forth in Preliminary Note 5 to Rule 146 (17 CFR 230.146) or whether the term should have another meaning. The Commission recognizes that under certain circumstances certain persons, such as tightly knit family members, should be treated as one person with respect to the computation of the ten person limitation. The Commission requests comment on whether there is a need for a specific provision in the definition to this effect and whether other relationships should be included in such a provision.

[12] This element makes that offer itself is seeking more than 5% of the class of securities. The shares of the class beneficially owned by the offeror prior to his making the offer(s) would not be included. For example, if a person who is not the beneficial owner of any securities of a class of securities seeks to acquire 6% of such class, the elment would be satisfied. In contrast, the offer to acquire 4% of a class of securities by a person who had acquired 2% of such class more than 45 days prior to the first offer for such 4% would not come within this requirement.

[13] 113 Cong. Rec. 856 (1967) (Statement of Senator Williams).

[14] The term "then current market price" would generally refer to the higher of the last sale price or the highest current independent bid.

be available. Moreover, special bids and "assembling a block" off the floor which is then crossed on the exchange would also be viewed as solicitations. with respect to offers at the then current market price in the over-the-counter market, the mere fact that a market maker who has previously made quotes on a continuous basis in the securities being sought during the period that the offer is made should not be viewed as a solicitation by the dealer. Finally, with respect to both exchange and over-the-counter market transactions, the person making the offers to purchase will be considered to have solicited or arranged for the solicitation of sell orders if that person has, directly or indirectly, publicly announced or stated that it intends or is about to engage in a substantial purchase program.

The second condition to the availability of the exception to proposed Rule 14d–1(b)(1)(i) is that the broker or dealer performs only the customary functions of a broker or dealer. Finally, the broker or dealer can receive no more than the broker's usual and customary commission or the dealer's usual and customary mark-up for executing the trade.

If the conditions discussed above are satisfied, offers at the then current market price by a broker or dealer on a national securities exchange or in the over the counter market would be excluded for all purposes from the four elements of proposed Rule 14d–1(b)(1)(i).

As previously noted, the four elements embodied in proposed Rule 14d–1(b)(1)(i) are intended to distinguish tender offers from other transactions, including open market and privately negotiated purchases. The Commission notes that other percentage tests, time periods and numbers of solicitees have been suggested in other approaches, and specifically requests comment as to whether one of these or any other percentages test, time periods or numbers of solicitees should be included in the first tier of the definition. The Commission also requests comment on the interrelationship of the proposed exception to the four elements generally and specifically requests comment on the following questions: (1) whether the exception is necessary in Rule 14d–1(b)(1)(i) as proposed since most ordinary open market purchase programs rarely exceed 5% within a 45-day period; (2) whether the exception would be unnecessary if other elements of proposed Rule 14d–1(b)(1)(i), such as the percentage, were increased; (3) whether the exception should be retained in any event; and, (4) if so, the proper form and scope thereof. The Commission also requests specific comment on what customary practices should be included within the meaning of customer functions of a broker or dealer.

The Commission requests specific comment from the public and from members of the brokerage community in particular concerning the extent, if any, to which a broker-dealer engages in transactions during any 45-day period which involve offers to purchase or solicitations of offers to sell in excess of 5% of a single class of securities from more than 10 persons, where such offers are not on behalf of any single person or group other than such broker-dealer acting in the ordinary course of business. In connection with this inquiry, the Commission requests that commentators provide examples of any such situations together with supporting details concerning these transactions. The Commission also inquires whether it would be appropriate to except such offers from the first tier of the proposed definition.

The second tier of the definition of tender offer is set forth in proposed Rule 14d–1(b)(1)(ii). Unlike the first tier, the second tier does not contain a specific percentage test,[15] time period or number of solicitees. Under the second tier, one or more offers to purchase, or solicitations of offers to sell, securities of a single class would be a tender offer if three conditions are present. First, the offers to purchase or the solicitation of offers to sell must be disseminated in a widespread manner.[16] While this requirement could be satisfied through public announcements by means of newspaper advertisements or press releases, the absence of such announcements would not be determinative. A tender offer may be widely disseminated by other means, including telephone solicitations,[17] the use of the mails [18] and personal visits to security holders.[19]

Second, the price offered must represent a premium in excess of the greater of 5% of or $2 above the current market price [20] of the securities being sought. The third condition of the second tier is that the offers do not provide for a meaningful opportunity to negotiate the price and terms. Thus, truly negotiated purchases of securities would not be regulated as a tender offer under the second tier.[21] The Commission asks for general comment on the appropriateness of the three criteria and whether additional standards should be included.

As noted above, the two tiers of proposed Rule 14d–1(b)(1) are intended to operate independently of one another. One or more offers to purchase or solicitations of offers to sell can therefore be a tender offer under one tier of the definition even though they

[15] Proposed Rule 14d–1(b)(1)(ii) thus recognizes that offers to purchase or solicitations of offers to sell may constitute a tender offer even though the person making the offers is seeking less than 5% of the class of securities. This comports with the provisions of the Williams Act. Section 14(d)(1) is applicable to a tender offer for less than 5% of the securities of a class of securities described in that sub-section if the bidder already is the beneficial owner of more than 5% of such class or who would be the beneficial owner of more than 5% of such class upon consummation of the tender offer. Section 14(d)(8)(A) of the Act provides an exemption from section 14(d) if the acquisition of such securities together with all other acquisitions by the same person of the same class during the preceding twelve months do not exceed 2% of the class. Thus, under section 14(d)(8)(A) a tender offer for less than 2% of a class of securities described in Section 14(d)(1) would be exempt from the provisions of Section 14(d) but would be a tender offer nonetheless and would still be subject to section 14(e) of the Act. Section 14(e) is applicable to any tender offer whether or not it is made for securities of a class described in section 14(d)(1). *See, e.g., Butler Aviation Int'l Inc.* v. *Comprehensive Designers Inc.*, 307 F. Supp. 910, 914–15 (S.D.N.Y. 1969), *aff'd*, 425 F.2d 842 (2d Cir. 1970) (cause of action under Section 14(e) in an exchange tender offer, although such offers at that time were exempt from section 14(d)(1)); *Bertozzi* v. *King Louie International* 420 F. Supp. 1166 (D.R.I 1976) (issuer tender offer in a going private transaction); *Jack Smith* v. *The Newport National Bank*, 326 F. Supp. 874 (D.R.I. 1971) (tender offer for securities of a national bank); *Weeks Dredging & Contracting Inc.* v. *American Dredging Co.*, 451 F. Supp. 469 (E.D. Pa. 1978); and *A & K Railroad Materials Inc.* v. *Green Bay and Western Railroad*, 437 F. Supp. 636 (E.D. Wis. 1977) (securities of target companies were not registered pursuant to section 12 nor were the issuers of such securities subject to the periodic reporting requirements of section 15(d)). There is no percentage test in section 14(e). Therefore, section 14(e) contemplates that a transaction or transactions may be a tender offer regardless of the amount of securities being sought therein.

[16] The Commission expects that the term "widespread" would be interpreted in a manner consistent with the case law. *See Wellman* v. *Dickinson* [Current] CCH Fed. Sec. L. Rep. ¶96,918 (S.D.N.Y. 1979); *The Hoover Co.* v. *Fuqua Ind. Inc.*, Civil Action No. C79–1062 (N.D. Ohio, June 11, 1979).

[17] *See, e.g.*, Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong. 1st Sess. 107 (1967) (Testimony of Robert W. Haack) ("1967 Senate Hearings").

[18] *See, e.g., The Hoover Co.* v. *Fuqua Ind. Inc.*, Civil Action No. C79–1062 (N.D. Ohio, June 11, 1979).

[19] *See, e.g., Cattlemen's Investment Co.* v. *Fears*, 343 F. Supp. 1248 (W.D. Okla. 1972).

[20] For a description of the meaning of "current market price", *see* footnote 14, *supra*.

[21] In determining whether private negotiations are truly private or actually constitute a tender offer, the number of persons contacted by the person making the offers is of great significance. Aranow, Einhorn and Berlstein, *Developments in Tender Offers for Corporate Control* 9–10 (1977). Therefore, even though the offers may not be a tender offer under the second tier because of the provision for a meaningful opportunity to negotiate the consideration, such offers could nonetheless constitute a tender offer under the first tier of the definition if the offers were directed to more than ten persons and the other elements of proposed Rule 14d–1(b)(1)(i) are present.

would not constitute a tender offer under the other tier. In view of the complexity of securities transactions, the diverse and dynamic nature of tender offers, and the need to provide adequate protection of investors within the purposes of the Williams Act, the Commission believes that the two tier approach embodied in proposed Rule 14d–1(b) is feasible, and capable of providing guidance and certainty to practitioners and their clients and would not be unduly burdensome to prospective bidders.

The issue of what constitutes a tender offer is not limited to resolving the issues of whether privately negotiated and open market purchases can be tender offers. Another question is whether an exchange of securities pursuant to a statutory merger or consolidation which is the subject of a shareholder vote is a tender offer. The Commission believes that statutory mergers and consolidations are not tender offers within the meaning of the definition proposed for comment.[22] Under proposed Rule 14d–1(b)(1), and exchange of securities pursuant to a statutory merger or consolidation would not constitute an offer to purchase or a solicitation of an offer to sell securities. Rather, the exchange would be viewed as part of the mechanics of the merger process itself.[23] Similarly, certain repurchases of securities by corporations which are imposed by statute would not be viewed as tender offers within the meaning of proposed Rule 14d–1(b)(1). These would include purchases in court approved bankruptcy reorganizations and repurchases by a corporation of securities owned by shareholders who dissented from a proposal to eliminate mandatory preemptive rights when such obligation is imposed by statute.[24] The Commission requests specific comment on other repurchases which corporations are obligated by statute to make which should not be deemed offers to purchase within the meaning of the proposed definition.

In light of the foregoing and its experience in administering the Williams Act since 1968, the Commission proposes for comment the definition of the term "tender offer" in proposed Rule 14d–1(b)(1) pursuant to sections 3(b), 13(e), 14(d), 14(e) and 23(a) of the Exchange Act.[25] In addition, the Commission requests comment on the general issue of defining the term "tender offer" as well as approaches other than that set forth in the proposal. In this regard, the Commission requests specific comment with respect to the need for a provision which would permit transactions to be exempted by the Commission from the application of the definition as well as the scope and terms of such a provision.

As provided in Rule 14d–1(b), the adoption of which is announced in the companion release and in the revisions to that rule proposed for comment herein, the definition of the term "tender offer" in proposed Rule 14d–1(b)(1) would, if adopted in the form proposed or as revised, be applicable to sections 14(d) and 14(e) of the Exchange Act as well as the rules promulgated thereunder, including Regulations 14D and 14E.

B. Proposed Rule 14e–3: Trading in Subject Company Securities on the Basis of Material Non-Public Information.

As discussed more fully in the February release,[26] the testimony in the Senate and House Hearings on the legislation which became the Williams Act highlighted the market disruption and abusive practices associated with leaks of the intention of a bidder to make a tender offer.[27] During the hearings on the Williams Act amendments in 1970, the matter was brought to Congress attention in the context of the manner in which the Commission would implement its rulemaking authority under section 14(e).[28]

In the February release the Commission expressed serious concern about trading on the basis of material, nonpublic information leaked to the market.[29] Not only does this practice create disparities in market information[30] and market disruption,[31] but it also undermines the purposes of the Williams Act. Security holders who sell to persons with such material, nonpublic information are effectively denied the benefits of disclosure and the substantive protections provided by the Williams Act. If furnished with such information, these shareholders would be able to make an informed investment decision, which may involve deferring the sale of the securities until the actual commencement of the tender offer. On the other hand, the persons trading on such non-public information, who are usually short term investors, receive all the protections of the Williams Act. Finally, leaks may lead to the same "stampede effect"[32] which the Williams Act was designed to avert in the context of tender offers.

The Commission addresed this issue in the February release when it published for comment proposed Rule 14e–2. Paragraph (a) of that proposal applied to any person, other than a bidder, in possession of nonpublic information received directly or indirectly from a bidder that the bidder would make a tender offer for the subject company securities. Proposed Rule 14e–2(a) would have proscribed any purchase of subject company securities unless prior to the purchase the person publicly announced the information received and its source.

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[22] By taking the position, the Commission affirms the view of the Division of Corporation Finance set forth in Release No. 34–14699 (April 24, 1978) (43 FR 18163).

[23] *Accord*, Aranow and Einhorn, *Tender Offers for Corporate Control*, 76 (1973). *Cf. Dyer* v. *Eastern Trust & Banking Co.*, 336 F. Supp. 890 (D. Me. 1971). This position would be consistent with the Fifth Circuit's decision in *Smallwood* v. *Pearl Brewing Co.*, 489 F.2d 579 (5th Cir.), *cert. denied*, 419 U.S. 873 (1974). There the Fifth Circuit found that a letter sent to shareholders of the acquired company after the merger vote constituted a tender offer. *Id.* at 596–99. Such a letter solicitation of subject company shareholders would also be a tender offer under the proposed definition.

[24] *See Leighton* v. *AT & T*, 397 F. Supp. 133 (S.D.N.Y. 1975).

[25] In the past, the Commission has found it helpful to employ various factors which are derived from case law and legal commentary. *See Securities and Exchange Commission* v. *Sun Co., reported sub. nom. Weelman* v. *Dickinson*, [Current] CCH Fed. Sec. L. Rep. ¶96,918 (S.D.N.Y. 1979); *Brascan Ltd.* v. *Edper Equities Ltd.*, [Current] CCH Fed. Sec. L. Rep. ¶96,882 (S.D.N.Y. 1979); and *Hoover Co.* v. *Fuqua Ind. Inc.*, Civil Action No. C79–1062 (N.D. Ohio, June 11, 1979). The Commission believes that, in the absence of the adoption of a specific definition such as proposed Rule 14d–1(b)(1), these factors should be applied by prospective bidders and their legal advisers during the planning stages of an acquisition program.

[26] 44 FR 9976.

[27] *See, e.g.*, 1967 Senate Hearings at 69 *et passim*.

[28] During his testimony at the Senate hearings, then Chairman Budge was asked by Senator Williams to give the committee some examples of fraudulent, deceptive or manipulative practices used in tender offers which would be prevented by the rulemaking authority to be granted to the Commission under the proposed amendment to section 14(e) of the Act. 1970 Senate Hearings at 11. In response to this specific request, a memorandum from the Commission's Division of Corporation Finance was submitted for the record. Among the "problem areas" enumerated by this memorandum which the staff proposed to deal with by rulemaking authority under section 14(e), as amended, was the situation in which

> The person who has become aware that a tender offer is to be made, or has reason to believe that such bid will be made, may fail to disclose material facts wih respect thereto to persons who sell him securities for which the tender bid is to be made.

Id. at 12.

[29] 44 FR 9976–79.

[30] The term "market information" has been described as information that affects the price of a company's securities without affecting the firm's earning power or assets. *U.S.* v. *Chiarella*, 588 F.2d 1358 (2d Cir. 1978), *Cert. granted*, 47 U.S.L.W. 3747 (U.S. May 14, 1979) (No. 78–1202).

[31] Such purchases may create an artificial demand for the subject company's stock resulting in a distortive effect on the free play of market forces envisioned by the securities laws.

[32] *Rondeau* v. *Mosinee Paper Co.*, 422 U.S. 49, 58 n. 8 (1975).

Thus, proposed Rule 14e–2(a) would have affirmed a duty of disclosure on any person other than the bidder who purchased subject company securities on the basis of only one item of material, nonpublic information—the undisclosed intention of the bidder to make a tender offer. Since no duty would have arisen under proposed Rule 14e–2(a) if the person with such knowledge refrained from trading, the proposal would have established a "disclose or abstain from trading" rule under section 14(e).

Due in part to its concern that the scope of proposed Rule 14e–2(a) was not sufficiently broad to reach other aspects of the misuse of material, nonpublic information relating to a tender offer, the Commission did not adopt the proposal. Material, nonpublic information relating to a tender is not confined to the undisclosed intention to make a tender offer. The amount and class of securities being sought, the price or range of prices being offered therefor, and the date of commencement are among the other items of information which are material to investors in the context of a prospective tender offer. There are also items of information that are material to investors in the context of an on-going tender offer as well. Included within this category, for example, are price increases, the receipt of regulatory approval, or the withdrawal of the offer. Thus, purchases or sales of subject company securities on the basis of material, nonpublic information relating to a tender offer, whether made prior to the commencement of or during a tender offer, present issues and abusive practices similar to those addressed by proposed Rule 14e–2(a).

Proposed Rule 14e–3(a) addresses this broader problem directly. The proposal would apply to any person other than a bidder who is in possession of material nonpublic information relating to a tender ("tippee") by another person if the tippee knows or has reason to believe that the information was received directly or indirectly from such other person or a person acting on behalf of such other person. Any purchases or sales of subject company securities or options to purchase or sell securities by a tippee while in possession of such material, nonpublic information would be proscribed unless prior to the purchase the person publicly announced the information received and its source.

Like proposed Rule 14e–2(a), proposed Rule 14e–3(a) would affirm a duty of disclosure on any person, other than a bidder, who purchases on the basis of material, nonpublic information obtained directly or indirectly from a bidder, such as from persons involved or consulted by the bidder in the planning, financing, preparation or execution of the tender offer. However, proposed Rule 14e–3(a) would also pertain to sales of securities under such circumstances since sales can involve the same abusive acts and practices. Moreover, since no duty to disclose would arise if a person subject to the proposal refrains from trading, the proposal, if adopted, would also establish a "disclose or abstain from trading" rule under section 14(e). As with proposed Rule 14e–2(a), the Commission does not believe that making the disclosure required by proposed Rule 14e–3(a) prior to a purchase of subject company securities would be a defense for a breach of duty owed by such person.

Proposed Rule 14e–3(a) differs in several respects from proposed Rule 14e–2(a). Since proposed Rule 14e–3(a) comprehends any material, nonpublic information relating to a tender offer, including, but not limited to, the undisclosed intention to make a tender offer, it would, unlike proposed Rule 14e–2(a), apply throughout the period from the determination [33] to make a tender offer through its termination. Proposed Rule 14e–3(a) also requires that the person in possession of material, nonpublic information know or have reason to believe that such information was obtained directly or indirectly from the person who has determined to make a tender offer or a person acting on that person's behalf. This requirement addresses the commentators' concern with respect to the difficulty under proposed Rule 14e–2(a) of separating rumors and speculation from leaks from the person making the tender or persons acting on behalf of that person. In their view, many persons would be unwilling to trade for fear that their actions would be viewed as violative of the rule, unless the problem were addressed.

[33] The Commission believes that a bidder's determination to make a tender offer may be discerned from the facts and circumstances involved. Relevant factors include, but are not limited to, consideration or a resolution by the bidder's board of directors relating to the tender offer; the formulation of the intention to make a tender offer by the bidder or the person(s) acting on behalf of the bidder; or activities which substantially facilitate the tender offer such as: a plan to make a tender offer for a specific subject company's securities; arranging financing for a tender offer; preparing or directing or authorizing the preparation of tender offer materials; and authorizing negotiations, negotiating or entering into agreements with any person to act as a dealer manager, soliciting dealer, forwarding agent or depository in connection with the tender offer.

The abuse at which proposed Rule 14e–3(a) is directed is the actual misuse of material nonpublic information relating to a tender offer. The Commission recognizes that the proposal is capable of being applied to a person which is not a natural person even though the individuals making the investment decision on behalf of such person did not know and did not have access to material, nonpublic information. This could occur, for example, where one department of a multiservice financial institution received material, nonpublic information relating to a tender while a separate and independent department of the same organization made the decision to purchase (or sell) securities of the subject company without any knowledge of or access to such information. There would have been no actual misuse of material nonpublic information, yet the institution would constitute a person which purchased (or sold) subject company securities in apparent violation of proposed Rule 14d–3(a).

The Commission requests comment on alternative ways in which the impact of proposed Rule 14e–3(a) on multiservice financial institutions might be mitigated consistently with the prevention of the abuses noted above. There are a number of approaches to the conflicts faced by multiservice financial institutions in this context, some of which are discussed below. However, the Commission emphasizes that the discussion does not include all approaches and that the inclusion or exclusion of a particular alternative is no reflection on its adequacy. Moreover, the publication for comment of proposed Rule 14e–3(b), discussed below, is intended to promote meaningful and detailed public discussion of this difficult problem and does not necessarily reflect a preferred choice by the Commission.

Prompt disclosure of material, nonpublic information is clearly the preferred approach. However, this approach is not feasible where the institution is unable to persuade the person who has determined to make or is making the tender offer to disclose the information, the disclosure by the institution would violate a confidential relationship with such person and such person has a right to withhold disclosure for a proper purpose.

The internal isolation of material, nonpublic information, the so-called "Chinese Wall," is generally the approach taken in proposed Rule 14e–3(b). Under the proposal, conduct by a person other than a natural person which would, but for the application of

proposed Rule 14e–3(b), violate proposed Rule 14e–3(a), would be deemed nonviolative if the person who otherwise would have violated proposed Rule 14e–3(a) can show that the individuals who made the investment decision on its behalf did not know and did not have access to material, non-Public information relating to the tender offer. Thus, in the above illustration, the department of the multiservice financial institution that made the decision to purchase (or sell) subject company securities without knowledge of or access to the material, nonpublic information in the possession of the other department would not be viewed as having constructively received that information. With respect to the required showing, the proposal provides that the existence of policies and procedures to ensure that material, nonpublic information will not be used in violation of proposed Rule 14e–3(a) may, depending upon the facts and circumstances, be taken into account with respect to whether the department in fact had access. This test would ensure that the reality of the situation in question, i.e., the particular facts, would govern. However, it is also an acknowledgement that prescribing an exhaustive list of criteria which are capable of being applied to all of the factual situations comprehended by the proposal is not feasible. Moreover, even if such policies and procedures were found to be relevant in a particular case, they would merely be probative of whether access to material, nonpublic information relating to a tender offer is or was regularly provided. Thus, the ultimate issue would be whether there was knowledge of or access to material, nonpublic information in the particular case.

Another approach would be to require, either alone or together with a "Chinese Wall," a restricted-list procedure, whereby the institution is precluded from investing in any security on the list for its own account as well as from making recommendations to its customers with respect to the security. Under one variant, securities would be required to be placed on the list whenever the institution received material, non-public information with respect thereto and would be removed from the list once the information becomes public. Under another variant, the securities would be placed on the list when the firm entered into a relationship which would be likely to lead to the acquisition by the institution of material, non-public information and would remain restricted until the relationship is terminated or the information disclosed. Because the restricted list serves functions in addition to the prevention of misuse of material, non-public information, such as the prevention of violations of Rule 10b–6 (§ 240.10b–6), the placement of a security on the list does not necessarily signal the existence of material, non-public information with respect to that security. However, the Commission is concerned by this possibility and therefore requests specific comment as to how inferences as to the existence and nature of material, non-public information can be avoided.

The Commission also requests specific comment as to whether the relief provided to multi-service financial institutions should distinguish between: (1) types of multi-service financial institutions, e.g., banks and broker-dealers; (2) departments within multi-service financial institutions, e.g., commercial and trust departments of a bank; or (3) activities performed by multi-service financial institutions, e.g., arbitrage and market-making. Commentators are requested to discuss the nature of and reasons for such distinctions, if any, as well as the manner in which the proposal should be revised to reflect one or more of the distinctions.

In the February release the Commission also published for comment proposed Rule 14e–2(b). That proposal would have required a bidder who knew or had reason to believe that another person had violated, or was about to violate, proposed Rule 14d–2(a) to make promptly a public announcement of appropriate information with respect to the bidder's tender offer for subject company securities. The proposal was intended to provide a reasonable assurance that the marketplace and investors would be promptly alerted by the bidder of violations of proposed Rule 14e–2(a).

The Commission continues to believe that the bidder's role is critical in preventing the misuse of material, non-public information relating to a tender offer. However, in view of the substantial problems raised by the commentators with respect to proposed Rule 14d–2(b), the Commission has determined that a different approach to the problem is more feasible. While proposed Rule 14e–2(b) attempted to deal with the effects of misuse of material non-public information, proposed Rule 14e–3(c) is designed to prevent the leaks, the source of the problem. Under proposed Rule 14e–3(c) a person who has determined to make or is making a tender offer or any person acting on behalf of such person would be prohibited from communicating material, non-public information relating to such tender offer to any other person if such person knew or had reason to believe that the other person was likely to violate proposed Rule 14e–3(a) by purchasing or selling subject company securities. However, the proviso to proposed Rule 14e–3(c) recognizes that the person who has determined to make or is making a tender offer will normally not have reason to believe that its officers, directors, employees or partners as well as persons involved in the planning, financing, preparation or execution of the tender offer are likely to violate proposed Rule 14e–3(a). Thus, the communication of material, non-public information relating to the tender offer to such persons in order to implement the tender offer will not violate proposed Rule 14e–3(c) unless the person who has determined to make or is making the tender offer has evidence indicating that these persons are likely to violate proposed Rule 14e–3(a).

The Commission's Institutional Investor Study [34] found that bidders frequently give institutions advance notice in either general or specific terms of proposed tender offers.[35] This practice and other forms of "tipping" of material, non-public information relating to a tender offer when coupled with trading on such information undermines the Williams Act. The Commission therefore believes that the prophylaxis of proposed Rule 14e–3(c) is needed to prevent such practices.

The Commission also requests specific comment as to whether the purposes described above can be achieved by an alternative approach to proposed Rule 14e–3(c). As a means reasonably designed to prevent the fraudulent, manipulative or deceptive act or practice described in proposed Rule 14e–3(a), this alternative would make it unlawful for any person who has determined to make or is making a tender offer to communicate material, nonpublic information relating to such tender offer to any person who subsequently violates proposed Rule 14e–3(a) unless the communication (A) was made to a person involved in the planning, financing, preparation or execution of such tender offer, (B) was made in the ordinary course of business and (C) was made in accordance with

[34] Institutional Investor Study Report, H.R. Doc. No. 92–64, 92d Cong., 1st Sess. (1971).

[35] *Id.* at 2773, 2828–29, 2832–33. Among the reasons given for this practice was that, if the institution established a position in the subject company's securities, the bidder could expect to purchase such securities pursuant to the forthcoming tender offer. *Id.* at 2830.

procedures established by the person who has determined to make or makes the tender offer to avoid violations of proposed Rule 14e–3(a).

C. Proposed Rule 14e–4 Equal Treatment of Security Holders

The common practice in making a tender offer is to extend the offer to all the holders of the class of the security which is the subject of the tender offer. Exceptions to this practice have been limited in nature [36] and have not been challenged by the Commission as a matter of policy.[37]

Current tender offer practice thus reflects a common understanding that implicit in the Williams Act is a requirement that a tender offer be made to all security holders. The Congressional purpose underlying the Williams Act was to require fair and equal treatment of all holders of the class of security which is the subject of a tender offer.[38] Moreover, the operation as well as the legislative history of certain substantive provisions of the Williams Act contemplate that the tender offer will be made to all holders of the class being sought. For example, the additional ten-day pro rata period provided by section 14(d)(6) upon an increase in the consideration offered was described in both the Senate and House reports as "allowing all shareholders a fair opportunity to participate in the offer." [39] The Commission has consistently endeavored to fulfill the Congressional purpose by administering the Williams Act to prevent unreasonable discrimination among holders of the class of security which is the subject of a tender offer.

It is also common tender offer practice to pay all tendering security holders the same price for their shares. This practice similarly reflects a common understanding that there is implicit in the Williams Act a requirement to pay to every security holder the highest consideration offered to any other security holder pursuant to the tender offer. This construction furthers the purposes underlying the Williams Act, particularly those of section 14(d)(7) [40] which requires that a bidder pay any increae in the condideration offered to persons who have previously tendered their shares. Section 14(d)(7) has been administered by the Commission to require equal treatment of tendering security holders.[41]

In view of the fact that a definition of the term "tender offer" is being proposed for comment, the Commission believes it is appropriate to also propose for comment rules which would codify the "offer to all" and "highest consideration" requirements discussed above. By proposing these requirements simultaneously with the proposed definition of the term "tender offer," the Commission intends to clarify the distinction between the application of the definition to a transaction and the regulatory requirements that must be observed once it is determined that a tender offer is being made. The fact that an offer is extended to less than all the holders of a class of a security or that different consideration is offered to different holders of the same class of securities or both does not mean that a tender offer has not been made. It does, however, mean that if such a transaction is found to be a tender offer under the proposed definition, the transaction would not have been made in compliance with the proposed requirements that the offer be open to all security holders and that the consideration paid to any security hold be equal to the highest consideration offered to any other security holder. These requirments, like those stated explicitly in sections 14(d)(5), 14(d)(6) and 14(d)(7), are the consequences of making a tender offer and are therefore unrelated to the determination of whether or not a tender offer has been made.

Thus, proposed Rules 14e–4(a) and (b) would, if adopted, make explicit requirements which are implicit in the Williams Act. Proposed Rule 14e–4(a) would require the consideration paid to any security holder to be equal to the highest consideration offered to any other security holder pursuant to the tender offer. With respect to an odd-lot tender offer by an issuer for securities of a class of which it is the issuer, the proviso in proposed Rule 14e–4(a) would permit the consideration paid in such tender offers to be based on a formula such as market price prevailing on the date tendered securities are received by the issuer.

The Commission requests specific comment on whether the objective of proposed Rule 14e–4(a) now expressed in terms of "highest consideration" would be better achieved by another standard such as "same consideration" [42] or "substantially the same consideration." In this context, the Consideration." In this context, the Commission invites comment on whether different forms of consideration which are substantially equivalent ought to be permitted or whether the different forms of consideration such as cash or cash and securities should be offered to all security holders.

Proposed Rule 14e–4(b) would require the tender offer to be open to all holders of the class of securities which is the subject of the tender offer. Two

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[36] *See, e.g.*, Letter to Philip McGuigan, Esq. from the Division of Corporation Finance re: Orange and Rockland Public Utilities, Inc. (October 22, 1976).

[37] *Id.*

[38] This purpose was noted by then Chairman Cohen in his testimony during the Senate hearings:

> [T]he bill is designed to eliminate conditions surrounding the offer which discriminate unfairly among those who may desire to tender their shares.

1967 Senate Hearings at 17.

> The second objective of the bill is to assure fair treatment of all shareholders who decide to accept a tender offer.

Id. at 21.

[39] 1967 Senate Report at 10; 1968 House Report at 11.

[40] The Senate and House Reports on the bill which was finally enacted describe the purpose of section 14(d)(7) as being:

> to assure fair treatment of those persons who tender their shares at the beginning of the tender period and to assure equality of treatment among all shareholders who tender their shares.

1967 Senate Report at 10; 1968 House Report at 11.

The provision which became section 14(d)(7) was first suggested by the Commission, which described the purpose as being

> to remove a purely fortuitous factor from the calculation of the amount security holders should receive for their securities by assuring them of the same price for their securities regardless of when they are taken up and to avoid the discriminating effect of paying some holders more than others, since security holders tendering their shares pursuant to a tender offer normally assure tendering security holders will receive the same price.

112 Cong. Rec. 19003, 19005 (1966) (Memorandum of the SEC to the Committee on Banking and Currency, U.S. Senate on S. 2731, 89th Cong., 1st Sess., 111 Cong. Rec. 28256 (1965)).

[41] *See, e.g.*, Letter to William Gleeson, Esq. from the Division of Corporation Finance re: Methode Electronics, Inc. (December 29, 1976).

[42] *See* Release No. 34–14234, (December 7, 1977) (42 FR 63066, 63069) which published for comment a requirement of same consideration to all security holders in the context of issuer tender offers under then proposed Rule 13e–4(b)(7).

exceptions from this latter requirement are, however, also being proposed with respect to tender offers by issuers for their own securities. The first exception would allow issuer tender offers which are limited to persons who own, of record or beneficially, an aggregate of not more than a specified number which is less than one hundered shares of such security (an "odd lot"). This exception is based on proposed Rule 13e–4(b)(7) published for comment in 1977 [43] (the "1977 proposal"). The commentators generally agreed that the odd-lot holders, as well as the issuer and its other security holders, derive financial benefits from odd-lot tender offers. Holders of odd lots are afforded an opportunity to dispose of their shares without incurring disporportionately high transaction costs. The issuer and its other security holders benefit to the extent that the elimination of odd lots reduces the expenses incurred by the issuer in servicing small shareholder accounts. Although contemplated by the 1977 proposal, the exception has been revised to specifically permit odd-lot issuer tender offers to fewer than all holders of odd-lots. Thus, the issuer is able to determine the maximum odd-lot size for which a tender offer is made. The Commission believes that the exception to permit odd-lot issuer tender offers does not unreasonably discriminate among holders of the class being sought and that, as a matter of policy, such tender offers should not generally be discouraged.

The second exception would permit issuer tender offers which are not make to officers, directors or affiliates. The exclusion of securities held by these persons would operate to reduce the proration risk to an issuer's public security holders and thus would permit them to participate in the tender offer to a greater extent. Moreover, the relationship of the persons covered by the exception to the issuer is such that their exclusion from the tender offer will generally be volitional. Accordingly, the exception is not inconsistent with the purpose of the proposal.

D. Rule 14e–5. Prohibiting purchases not made by means of a tender offer

The Commission is proposing to rescind Rule 10b–13 and to adopt in lieu thereof proposed Rule 14e–5. Rule 10b–13 currently prohibits purchases from being made otherwise than pursuant to a tender offer from the time the tender offer is publicly announced until the expiration of the offer. Proposed rule 14e–5 would prohibit any person who makes a tender offer or simultaneous tender offers [44] for one or more classes of securities issued by a single subject company from making purchases of specified securities except by means of the tender offers [45] during the period from the public announcement of certain information or, if no announcement is made, the date on which the first of the tender offers commences through the tenth business day after the termination of the last of the tender offers to expire. Thus, tender offers for more than one class of securities would be specifically permitted under the proposal so long as purchases were not made outside of the tender offer, during the specified period.

The information which must be included in a public announcement that will trigger Rule 10b–13 is similar to that found in Rule 14d–2(c). However, proposed Rule 14e–5 would prohibit purchases from being made except by means of the tender offer after the public announcement of the information specified in Rule 14d–2(d) through the tenth business day after the termination of the tender offer. By basing the prohibition on the information contained in Rule 14d–2(d), the proposal would interrelate with and augment the protections afforded by Rule 14d–2(b).

Rule 14d–2(b) provides that a bidder's public announcement through a press release, newspaper advertisement or public statement of certain material terms of a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act causes the bidder's tender offer to commence under section 14(d).[46] The information which will trigger Rule 14d–2(b) incudes: the identity of the bidder and the subject company; a statement of the class and amount of securities being sought; and disclosure of the price or range of prices being offered therefor. The determination that section 14(d) is applicable upon the date of such public announcement was based on the Commission's judgment that putting such information in the public domain has such a demonstrable impact on both security holders and the market as to constitute the practical commencement of the tender offer. Such public announcements cause investors to make investment decisions with respect to a tender offer on the basis of incomplete information and trigger market activity normally attendant to a tender offer, such as arbitrageur activity.

Rule 14d–2(d) does, however, permit a bidder to make a public announcement of the following information [47] with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act without deeming the tender offer to have commenced under Rule 14d–2(b): the identity of the bidder and the subject company; and a statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject company which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor. While the Commission recognizes that the impact such statements on security holders and the market is not as significant as those in which the price to be offered and the amount of securities to be sought is specified, such statements do have a demonstrable impact and pose the same types of problems, albeit to a lesser extent, as the statements comprehend by Rule 14d–2(b).

In view of their lesser impact and the burden which would be imposed on bidders if such statements were deemed to constitute the commencement of the tender offer, the Commission has determined that such statements will not be viewed as commencing the tender offer. However, the Commission believes that a person who intends to make a tender offer should not be able to purchase securities after such public announcements have been made except by means of the tender offer. Requiring the person who intends to make a tender offer to cease purchasing after such an announcement is made will minimize, to the extent feasible, the abuses noted above. It will also reduce the likelihood

[43] Release No. 34–14234 (December 7, 1977) (42 FR 63066).

[44] Although the discussion will hereinafter refer to a tender offer for a single class of securities, it is equally applicable to simultaneous tender offers for more than one class of securities of a single subject company.

[45] Proposed Rule 14e–5(c) would, however, except certain purchases from the application of proposed rule 14e–5(a).

[46] Under Rule 14d–3(a) a bidder must file and transmit its Schedule 14D–1 on the date of commencement as well as publish or send or give the information required by Rule 14d–6(a) to security holders. It should be noted, however, that Rule 14d–2(b) contains an exception clause which is designed to prevent the imposition of undue burdens on a bidder and to assure the availability of security holder's rights under sections 14(d)(5) and 14(d)(6) and the rules promulgated thereunder. Under the exception clause, the tender offer would not be deemed to commence on the date of the public announcement if within five business days thereof the bidder either: (1) issues a subsequent public announcement stating that the bidder has determined not to continue with the offer; or (2) complies with the filing requirements of Rule 14d–3(a) and disseminates the disclosure required by Rule 14d–6(a) to security holders pursuant to Rule 14d–4 or otherwise. Nevertheless, in the latter case, section 14(d)(7) will apply from the date of such public announcement.

[47] The specified information is set forth in Rule 14d–2(c).

of fraudulent, deceptive or manipulative acts or practices during this period. Moreover, once the specified information has been publicly announced, the proposal removes any incentive on the part of holders of substantial blocks of securities to demand from the person making the tender offer(s) a consideration greater than or different from that currently offered to unaffiliated security holders.

The Commission specifically requests comment on whether the operation of proposed Rule 14e–5(a) should be predicated on an event other than the public announcement of the information contained in Rule 14d–2(d), such as, for example, the announcement of dissemination of the information contained in Rule 14d–2(c). The latter formulation would be consistent with existing interpretations under Rule 10b–13. In addition, the Commission requests comment on the impact which proposed Rule 14e–5(a) would have on the timing of the announcement to make a tender offer.

As noted above, proposed Rule 14e–5 also differs from Rule 10b–13 in that it would prohibit purchases for a period of ten business days after the termination of the tender offer.[48] The Commission believes that this provision may be necessary to ensure that a bidder does not take advantage of unsettled market conditions following the termination of its tender offer. The Commission specifically requests comment on whether a period of ten business days after a tender offer is sufficient to permit the impact of the offer on the market to subside before subsequent purchases can be made. Rule 13e–4(f)(6) (§ 240.13e–4(f)(6)) prohibits purchases of securities of the same class and series which are the subject of a tender offer covered by the rule during the ten business day period subsequent to the termination of the tender offer. Commentators advocating a longer period are asked to consider whether a different period should apply to tender offers which are subject to Rule 13e–4.

Paragraph (b) of proposed Rule 14e–5 specifies the securities to which the rule applies. The securities include not only those to be sought in the bidder's tender offer but also any option, warrant or right, convertible security or other security which involves a contractual right, privilege or other provision to purchase or acquire the security which is the subject of the tender offer. It should be noted, however, that a person meeting the conditions specified in paragraph (c) of proposed Rule 14e–5 may purchase any of these securities pursuant to the exercise of options, warrants or rights, the conversion of convertible securities, or the performance of agreements to purchase such securities. The specified conditions are: that the options, warrants, rights, convertible securities, or agreements were acquired or entered into prior to the time of such public announcement or pursuant to the tender offer; and that such securities or agreements and any exercise thereof are disclosed in any applicable filings under the Williams Act. If adopted, the proposal would change the practice under Rule 10b–13 which limits purchases other than pursuant to the tender offer during the specified period to the exercise of a right of conversion or exchange of another security that is immediately convertible into or exchangeable for the security which is the subject of the tender offer if the other security is owned prior to the public announcement. Specific comment is requested as to whether the expansion of the scope of purchases which are permitted to be made under proposed Rule 14e–5(c) except by means of the tender offer during the specified period is preferable to the limitation under Rule 10b–13. Comment is also requested with respect to the impact of each of these limitations on tender offer practice given the proposed change in the type of announcement that will trigger the prohibition on purchases outside of the tender offer.

Paragraphs (d) and (e) of proposed Rule 14e–5 are the same as paragraphs (c) and (d) of Rule 10b–13. Paragraph (d) would provide an exemption therefrom for purchases under specified conditions pursuant to "qualified stock options," "employee stock purchase plans," and "restricted stock options" as defined in sections 422, 423, and 424(b) of the Internal Revenue Code of 1954, as amended, respectively, as well as purchases under specified types of employee plans. Paragraph (e) would provide that the Commission may, unconditionally or on terms and conditions, exempt any transaction from the operation of the rule if the Commission finds that the exemption would not result in the use of a manipulative or deceptive device or contrivance or of a fraudulent, deceptive or manipulative act or practice within the purpose of the rule.

As proposed, Rule 14e–5 applies to certain purchases subsequent to the termination of any tender offer, whether for all or less than all of a class of securities. Specific comment is requested as to whether the regulation of post-termination purchases should distinguish between a tender offer for any or all securities and a tender offer for only a portion of the securities of a class which would result in pro ration if the offer is over subscribed. Commentators advocating such a distinction are requested to furnish the rationale therefor and to suggest appropriate treatment in each case.

General and Specific Inquiries

A. Issue Relating to Subject Companies

The Commission is becoming increasingly concerned by the effect of defensive corporate charter amendments on the interests of investors, particularly investors who are confronted with a tender offer. On October 13, 1978, the Commission authorized the Division of Corporation Finance to publish the instructions to its staff with respect to the review of proxy or information statements containing proposals relating to such amendments.[49] Since that time the Commission's staff has monitored proxy and information statements containing proposals relating to such amendments. In many instances, these defensive amendments may in part be designed to deter the making of a tender offer for companies with such provisions in their charters. In such cases, security holders of such companies would be denied the benefits of tender offers for their securities which were recognized by Congress in adopting the Williams Act.[50] Because these actions appear to be inconsistent with the protection of investors and the Congressional purpose

[48] This approach is being taken in lieu of the integration approach taken in proposed Rule 14d–8 which was published for comment in the February release. That proposal would have integrated, for purposes of section 14(d)(7) of the Exchange Act, certain purchases of subject company securities made by a bidder or its affiliates within forty business days after the termination of the bidder's tender offer. The commentators raised substantial problems with respect to both the approach taken therein as well as its operation and impact.

[49] Release No. 34–15230 (October 13, 1978) (43 FR 49863).

[50] In introducing the legislation which became the Williams Act, Senator Williams stated:

> This measure is not aimed at obstructing legitimate takeover bids. In some instances, a change in management will prove a welcome boon for shareholder and employee, and in a few severe situations it may be necessary if the company is to survive.

Cong. Rec. S443–444 (daily ed. January 18, 1967) (remarks by Senator Williams).

> I have taken extreme care with this legislation to balance the scales to protect the legitimate interests of the corporation, management and shareholders without unduly impeding cash takeover bids.

Id. at S444.

> . . . I am certain that this amendment to the Securities Exchange Act will benefit the interests of America's more than 20 million shareholders and will not serve as a device to protect an inefficient management from a legitimate takeover bid.

Id.

underlying the Williams Act, the Commission is requesting specific comment with respect to the following: (1) the impact of defensive corporate charter amendments on tender offer practice and the interests of investors in the context of tender offers; and (2) the need for and type of rulemaking action which should be taken by the Commission under the Exchange Act to address such charter and by-law amendments.

B. Issue Relating to Purchases Contrary to Statements in Schedule 13D

The Commission notes that in responding to Item 4 of Schedule 13D (§ 240.13d–101) there is often included a discussion of a number of alternative courses of action which may be taken. The Commission also notes that open market purchases are frequently made even though such discussion has not been amended prior thereto to reflect the specific intention to make such purchases. However, Rule 13d–2(a) (§ 240.13d–2(a)) requires an amendment to Schedule 13D if any material change occurs in the information set forth in the Schedule, including a change in the filing person's purposes, plans or proposals described under Item 4. While the Commission considers such purchases without a prior amendment to Item 4 to be a specific violation of Rule 13d–2(a), the Commission is also concerned about the deceptive effect such omissions may have on the market place. Therefore the Commission requests specific comment as to whether further rulemaking under section 10(b) of the Exchange Act is necessary. Specifically, such rulemaking would proscribe open market purchases by persons who have filed a Schedule 13D unless there is prior disclosure in such filing or amendments thereto specifically reflecting the intention to do so.

C. Application of Proposals to Tender Offers for Debt Securities

In addition to applying to tender offers for equity securities, the proposals published herein would be applicable to tender offers for debt securities. The Commission recognizes that certain issuer purchases of debt securities to satisfy sinking fund and other mandatory redemption requirements may constitute a tender offer within the meaning of the definition proposed for comment herein. In recognition of this and similar issues, the Commission invites specific comment as to whether or not it is necessary or appropriate in the public interest or for the protection of investors for any or all of these proposals to apply to such tender offers for debt securities, even if made to satisfy sinking fund provisions or requirements.

D. Application of Proposals to Tender Offers for Foreign Securities and Tender Offers Made in Foreign Countries or by Foreign Persons

The Commission invites specific comment with respect to the effect of the proposals published herein on: (1) tender offers by domestic persons for (a) domestic securities held in foreign countries and (b) for foreign securities held in the United States and/or foreign countries; and (2) tender offers by foreign persons for domestic and/or foreign securities held (a) in the United States or (b) in foreign countries. Specific comment is also requested as to the need for and type of exemption(s) from the proposals which might be created for such tender offers.

E. Other Inquiries

In addition to the above and the issues raised by the proposals, the Commission requests written comment on the following: (1) Whether the costs imposed on bidders, subject companies and/or others by the proposals published for comment herein outweigh their benefits to investors and the public interest; and (2) Whether any proposed rule or the proposed schedule, if adopted, would have an adverse effect on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry should include, to the extent feasible, detailed empirical and evidentiary material in support of any conclusions, opinions or positions. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

In addressing the issues raised and the proposals published in this release, commentators should feel free to consider the materials accumulated in Commission File No. S7–770.

Text of Proposals

The text of the proposals is set forth below: (Attention—The text of the following proposed amendments uses ► ◄ arrows to indicate additions and [ ] brackets to indicate deletions.)

I. 17 CFR Part 240 is proposed to be amended by revising Regulation 14D (§§ 240.14d–1 through 14d–101) in the following respects:

Section 240.14d–1 is proposed to be amended to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

(a) *Scope.* Regulation 14D (§§ 240.14d–1 through 240.14d–101) shall apply to any tender offer which is subject to section 14(d)(1) of the Act, including, but not limited to, any such tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E (§§ 240.14e–1 [and 240.14e–2] ►through 14e–5◄) shall apply to any tender offer for securities (other than exempted securities) unless otherwise noted therein.

(b) *Definitions.* Unless the context otherwise requires, all terms used in Regulation 14D or Regulation 14E have the same meaning as in the Act and in Rule 12b–2 (§ 240.12b–2) promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and Regulations 14D and 14E, the following definitions apply:

►(1) The term "tender offer" includes a "request or invitation for tenders" and means one or more offers to purchase or solicitations of offers to sell securities of a single class, whether or not all or any portion of the securities sought are purchased, which

(i) During any 45-day period are directed to more than 10 persons and seek the acquisition of more than 5% of the class of securities, except that offers by a broker (and its customer) or by a dealer made on a national securities exchange at the then current market or made in the over-the-counter market at the then current market shall be excluded if in connection with such offers neither the person making the offers nor such broker or dealer solicits or arranges for the solicitation of any order to sell such securities and such broker or dealer performs only the customary functions of a broker or dealer and receives no more than the broker's usual and customary commission or the dealer's usual and customary mark-up; or

(ii) Are not otherwise a tender offer under paragraph (b)(1)(i) of this section, but which (A) are disseminated in a widespread manner, (B) provide for a price which represents a premium in excess of the greater of 5% of or $2 above the current market price and (C) do not provide for a meaningful opportunity to negotiate the price and terms.◄

[(1)]►(2)◄ The term "bidder means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however,* That the term does not include an issuer which makes a tender offer for securities of any class of which it is the issuer;

[(2)] ►(3)◄ The term "subject company" means any issuer of securities which are sought by a bidder pursuant to a tender offer►: *Provided, however,* That, with respect to Rule 14e–3, the term includes any issuer of securities which are proposed to be sought pursuant to a tender offer by a person who has determined to make a tender offer◄;

[(3)] ►(4)◄ The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

[(4)] ►(5)◄ The term "beneficial owner" shall have the same meaning as that set forth in Rule 13d–3: *Provided, however,* That, except with respect to Rule 14d–3, Rule 14d–9(d) and Item 6 of Schedules 14D–1 and 14D–9, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of Rule 13d–3(d)(1) (§ 240.13d–3(d)(1));

[(5)] ►(6)◄ The term "tender offer material" means:

(i) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depositary) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

[(6)] ►(7)◄ The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) or any other person who performs similar policy making functions for a corporation;

[(7)] ►(8)◄ The term "business day" means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under Regulation 14D or Regulation 14E the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a non-business day such period shall begin to run on and shall include the first business day thereafter; and

[(8)] ►(9)◄The term "security position listing" means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participant's respective positions in such securities as of a specified date.

II. 17 CFR Part 240 is proposed to be amended by adding §§ 240.14e–3, 14e–4 and 14e–5 to Regulation 14E (§§ 240.14e–1 and 14e–2) which read as follows:

►§ 240.14e–3 Trading in subject company securities on the basis of material non-public information.

(a) It shall constitute a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act for any person who is in possession of material, non-public information relating to a tender offer that another person has determined to make or is making and who knows or has reason to believe that such information was received directly or indirectly from such other person or a person acting on behalf of such other person, to purchase or sell, cause to be purchased or sold or arrange to purchase or sell any security or any option to purchase or sell any security of such subject company unless within a reasonable time prior to any such purchase or sale such person makes a public announcement by press release or otherwise disclosing the information received and its source.

(b) Notwithstanding paragraph (a) of this section, purchases or sales by a person other than a natural person while in possession of material, non-public information relating to a tender offer will be deemed not to be a violation of paragraph (a) if such person can show that the individuals making the investment decision on behalf of such person did not know and did not have access to such material, non-public information. The existence of policies and procedures to ensure that material, non-public information will not be used in violation of paragraph (a) of this section may, depending on the facts and circumstances, be taken into account in determining whether the individuals who made the investment decision on behalf of such person had access to material, non-public information relating to the tender offer.

(c) It shall constitute a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act for any person who has determined to make or is making a tender offer or any person acting on behalf of that person to communicate material, non-public information relating to such tender offer to any other person if such person knows or has reason to believe such other person is likely to violate paragraph (a) of this section: *Provided, however,* That, unless such person has evidence indicating that its officers, directors, employees or partners, as the case may be, and any person involved in the planning, financing, preparation or execution of such tender offer is likely to violate paragraph (a), the communication of such information to those persons in order to implement such tender offer will not violate this provision.

§ 240.14e–4 Equal treatment of security holders.

As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act in connection with a tender offer and to ensure equal treatment of holders of securities for which a tender offer is made, no person shall make a tender offer unless:

(a) The consideration paid to any security holder is equal to the highest consideration offered to any other security holder pursuant to the tender offer: *Provided, however,* That in connection with a tender offer by an issuer for securities of a class of which it is the issuer which is made only to holders of not more than a specified number which is less than one hundred shares of such security, the terms of such tender offer may provide for the same formula for determining the consideration offered to all such holders; and

(b) The offer is open to all holders of the class of securities which is the subject of such tender offer *except that* this provision shall not prohibit the issuer from making a tender offer which is (1) limited to persons who own, of record or beneficially, an aggregate of not more than a specified number which is less than one hundred shares of such security; or (2) not made to officers, directors or affiliates of such issuer.

§ 240.14e–5 Prohibiting purchases not made by means of a tender offer.

(a) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, no person who makes a tender offer or simultaneous tender offers for one or more classes of securities issued by a single subject company shall purchase, cause to be purchased or enter into any agreement, arrangement or understanding to purchase securities described in paragraph (b) of this section, except by means of the tender offers, during the period from the

person's public announcement of the information described in Rule 14d–2(d) or, if no such announcement is made, the date on which the first of the tender offers commences, through the tenth business day after the termination of the last of the tender offers to expire.

(b) The security referred to in paragraph (a) of this section includes:

(1) Any security of any one of the same classes of securities sought in the tender offers; and

(2) Any option, warrant, right, convertible security or other security which involves a contractual right, privilege or other provision to purchase or acquire through exercise, conversion, exchange or otherwise any security described in paragraph (b)(1) of this section.

(c) Notwithstanding paragraph (a) of this section, a person referred to in that paragraph may purchsase or cause to be purchased the securities referred in paragraph (b)(1) of this section pursuant to the exercise of options, warrants or rights, the conversion of convertible securities, or the performance of agreements to purchase such securities, subsequent to the time of the public announcement or commencement referred to in paragraph (a) of this section, if the following conditions are satisfied:

(1) Such options, warrants, rights, convertible securities, or agreements were acquired or entered into prior to the time of such public announcement or pursuant to the tender offer; and

(2) Such options, warrants, rights, convertible securities or agreements, and any exercise, conversion or performance thereof, are disclosed in either the Schedule 14D–1 or Schedule 13E–4, if applicable, or amendments to either such schedule, filed by such person and in the tender offer materials disseminated to security holders.

(d) The provisions of this section shall not apply to a purchase of a security of the same class as that which is the subject of a tender offer (or of any other security which is immediately convertible into or exchangeable for such security) if such purchase is made, by the issuer, by participating employees of the issuer or the employees of its subsidiaries, or by the trustee or other person acquiring such security for the account of such employee, pursuant to (1) a stock option plan involving only "qualified stock options," or qualifying as an "employee stock purchase plan," as those terms are defined in sections 422 and 423 of the Internal Revenue Code of 1954, as amended, or "restricted stock options" as defined in section 424(b) of the Internal Revenue Code of 1954, as amended: *Provided, however,* That for the purposes of this paragraph an option which meets all of the conditions of that section other than the date of issuance shall be deemed to be "restricted stock options"; or (2) a savings, investment, pension or other stock purchase plan providing for both (i) periodic payments (or payroll deductions) for acquisition of securities by or on behalf of participating employees and (ii) periodic purchases of the securities by participating employees, or the person acquiring them for the account of such employees.

(e) This section shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance or a fraudulent, deceptive or manipulative act or practice comprehended within the purpose of this section. ◄

[Secs. 3(b), 10(b), 13(d), 13(e), 14(d), 14(e), 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155; sec. 202, 91 Stat. 1494; 15 U.S.C. 78c(b), 78j(b), 78m(d), 78m(e), 78n(d), 78n(e), 78w(a)].

Statutory Authority

The Commission hereby proposes for comment: amendments to Regulation 14D pursuant to sections 3(b), 10(b), 13(d), 14(d), 14(e) and 23(a) of the Exchange Act; proposed Rule 14e–3 pursuant to Sections 14(e) and 23(a) of the Exchange Act; proposed Rule 14e–4 pursuant to Sections 13(e), 14(d), 14(e) and 23(a) of the Exchange Act; and Rule 14e–5 pursuant to Sections 10(b), 13(e), 14(e) and 23(a) of the Exchange Act.

By the Commission.

November 29, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–37404 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 240

[Release No. 33–6160, 34–16386, IC–10960]

Withdrawal of Rule Proposals Concerning Tender Offers.

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of Proposals.

SUMMARY: The Commission is withdrawing two proposed rules concerning purchases of securities which are or would become the subject of a tender offer. One of the proposed rules would have integrated for certain purposes purchases of subject company securities during a period of forty business days subsequent to the termination of the tender offer. The other proposed rule dealt with the purchase of subject company securities by certain persons, including the bidder, prior to the bidder's announcement of its intention to make the tender offer. New proposals are being published for comment in a separate release which the Commission believes will deal more effectively with the abuses attendant to such purchases.

DATE: Effective December 6, 1979.

FOR FURTHER INFORMATION CONTACT: John Huber or John Granda (202–272–2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On February 5, 1979 the Commission published for comment certain proposed rules and a related schedule pertaining to tender offers, including proposed Rules 14d–8 and 14e–2.[1]

Proposed Rule 14d–8 would have integrated, for the purpose of the "best-price rule" embodied in section 14(d)(7) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)] certain purchases of subject company securities by a bidder or its affiliate after the termination of the bidder's tender offer. The Commission has determined to withdraw this proposal for the reasons expressed in Release No. 34–16384 (November 29, 1979) published elsewhere in this issue and is publishing for comment proposed Rule 14e–5, also discussed in that release, to address in a more effective manner the matters sought to be addressed by the proposal.

Proposed Rule 14e–2 dealt with the purchase of subject company securities by certain persons, including the bidder, prior to the bidder's announcement of its intention to make the tender offer. The Commission is withdrawing this proposal for the reasons expressed in Release No. 34–16384 (November 29, 1979) and is publishing for comment a more generic proposal, proposed Rule 14e–3, which is also discussed in that release.

By the Commission.

November 29, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–37405 Filed 12–5–79; 8:45 am]

BILLING CODE 8010–01–M

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[1] Release No. 34–15548 (February 5, 1978) (44 FR 9956).

Federal Register

Thursday
December 6, 1979

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 886

[Docket No. R-79-732]

Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Amended Interim Rule.

SUMMARY: This rule amends the present interim rule implementing the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects published September 11, 1978. The present interim rule has been revised based on public comment and amended to add additional provisions covering the disposition of projects where repairs and/or rehabilitation will be accomplished by the purchaser.

DATES: Effective date: December 26, 1979. However, no outstanding sales contracts or project sales procedures past advertisement shall be required to be reopened or repeated in order to bring them into compliance with these rules.

Comments due: February 4, 1980.

ADDRESS: The Department is soliciting comments from the public prior to issuing a final rule. All written comments on this rule should refer to Docket No. R-79-732 and should be submitted to the Rules Docket Clerk Room 5218, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, no later than February 4, 1980. All written comments made in connection with this subpart will be available for public inspection during normal business hours at this office. All comments received will be considered by the Department in preparation of the final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Kalish, Director, Office of Multifamily Financing and Preservation, Housing, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-5730. (This is not a toll free number)

SUPPLEMENTARY INFORMATION: On September 11, 1978, an interim rulemaking was published in the **Federal Register** for public comment (43 CFR 40402). Interested parties were given until December 11, 1978 to submit written comments. The interim rule was to provide a program where HUD could sell HUD-owned projects serving low to moderate income families with Section 8 assistance in order that the projects could be maintained as a source of decent, safe, sanitary and affordable housing for low to moderate income families where a need for such housing exists. This regulation was published to supplement the already existing regulation at 24 CFR 886, Subpart B, which provides for the sale of HUD-owned projects requiring Substantial Rehabilitation with rehabilitation to be accomplished by the purchaser.

Comments were received from twelve governmental offices and organizations. All comments received with respect to the interim rule were carefully considered.

Since the publication and in consideration of the comments, the Department has decided to emphasize an approach which promotes, when and where feasible, the repair of projects by the owners after the sale, rather than the Department undertaking such actions during its ownership. It is intended that this will reduce the time projects remain in HUD's ownership. While this approach is permitted by Subpart B, and consistent with Subpart C, the Department proposes to turn the programs into a revised and expanded Subpart C. Therefore, HUD is revising and amending Subpart C and intends to rescind Subpart B when sales currently being processed under that Subpart are closed. All future sales involving Substantial Rehabilitation will be processed under the amended Subpart C.

The revised and amended interim rule is intended to provide a program which will permit HUD to dispose of projects requiring section 8 assistance in a prompt, economical manner, together with the appropriate section 8 Existing, Moderate Rehabilitation or Substantial Rehabilitation assistance funds allocated as needed in accordance with the rehabilitation accomplished and the reasonable rent test.

The Department wishes to remind the public that the regulations at 24 GFR Part 290 are the basic regulations under which disposition decisions are developed by the Department. This rule is intended to be used as one available disposition alternative when and where conditions are warranted.

The following is a summary of the comments received and the corresponding revisions, as well as additions resulting from the merger of Subparts B and C, made to the interim rule.

Change of Title of Regulations

The title of the regulations in Subpart C has been shortened to Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects.

Applicability of Regulation

Several comments were received which questioned the applicability of the rule where a great amount of rehabilitation was needed and the Section 8 Existing Fair Market Rents are insufficient to meet the reasonable rent test. The Department has amended the rule to provide for more program flexibility, to emphasize purchaser repair rather than HUD repair, and to permit increased rents. Even though repair by the purchaser is emphasized, HUD does intend to make all necessary repairs on a priority basis whenever the Department determines that there is an immediate threat to the health and safety of the tenants.

Cooperative Sales

Several comments suggested that the language in the interim rule is inconsistent with the use of Section 8 in a cooperative sale, permitted under the interim rule. Among the issues raised were restricting equity appreciation and the government's potential claim on appreciation resulting from subsidy payments. The Department is currently reviewing the issues raised as they affect the cooperative ownership of any project receiving a subsidy and thus affect other Department programs. Therefore, no changes to the interim rule are being made in this area at this time.

Eligibility of Owner Occupants

One comment was received stating that owner occupants should be eligible under this program. The statute prohibits eligibility of owner occupants. Cooperatives, however, are eligible. Owners of projects who wish to reside in the project may do so, but they could not receive Section 8 assistance while they occupy a unit.

Continued Occupancy of Over Income Tenants

One comment received suggested that the rule may cause the displacement of tenants not eligible for Section 8 by raising rents and providing incentives to owners to attract only eligible families. The Department is very interested in seeing that its disposition programs keep displacement of tenants to a minimum. This rule provides for the establishment of reasonable rents, which are the same as the market comparable rents in the basic disposition regulation of 24 CFR 290. HUD's policy is to establish market comparable rents (reasonable) during

HUD's ownership. Therefore, the rents established in selling a project are intended to be the same as during HUD ownership and overincome tenants reside in these projects more by choice than by necessity. The Department does not intent that this rule would force overincome tenants to seek other housing. The Department has determined that if overincome tenants move from a project due to the use of Section 8 or the establishment of market comparable rents (reasonable) they do so voluntarily and not as a result of the Department's action. Where the reasonable rent test requires that rents be raised, the regulations at 24 CFR 290 provide that the rent authorized may be lower if HUD determines that to be desirable to maintain the existing economic mix in the project or prevent undesirable turnover.

PHA Involvement

One commentor suggested that PHA involvement in evictions and inspections could result in jurisdictional problems between HUD, the owner, and the PHA which could adversely affect project monitoring. HUD is required by the statute to involve PHAs in programs using section 8 Existing allocations. In order to keep this program as simple and easy to administer as possible, the role of PHAs has been kept to that of monitoring evictions and performing inspections. While this may in some instances cause jurisdictional problems as suggested by the commentor, no such problems have yet occurred. For those projects located some distance from the filed office, or where the project cannot be effectively monitored by HUD, PHA monitoring may be preferred, and PHAs may be requested to provide other services normally accomplished by HUD.

Housing Quality Standards

Several commentors suggested that the Housing Quality Standards are too general in nature and should be more specific. The Housing Quality Standards used in this rule are based on the Standards adopted by the Department in the section 8 Existing Housing and Loan Management Programs, with slight variations made to reflect the purpose and scope of this program.

While some changes are being made to update and conform these standards with those currently adopted by the Department, the standards are not being altered or changed substantially for projects in need of no repairs, minor repairs, or moderate rehabilitation at the time of sale. The Department needs the flexibility provided by these broad based standards to determine, on a project by project basis, how well projects meet these standards in view of the need for low to moderate income housing in the area and its other disposition alternatives. Projects in need of Substantial Rehabilitation at the time of sale shall be rehabilitated in accordance with HUD's Minimum Design Standards for the Rehabilitation of Residential Properties.

Housing Assistance for Vacancies

One commentor suggested that when an eligible family vacates an assisted unit the owner should receive 100 percent of the contract rent for up to 90 days, rather than 80 percent for up to 60 days as provided for in the interim rule. The Department believes that the current procedure provides sufficient funds to prevent financial difficulties caused by an unexpected vacancy by an eligible family while at the same time encourages a fast rent up of the unit. If an owner complies with the HUD approved Affirmative Fair Housing Marketing Plan, and maintains an approved waiting list, in most cases the unit will not be vacant even for the 60 days for which vacancy payments are permitted. If a project requires substantial rehabilitation the owner may also be eligible for debt service payments as provided in § 886.309(g).

Term of Contract

Several commentors suggested that the 15 year maximum contract term is a serious limitation. Housing Assistance Payments Contracts for units not requiring substantial rehabilitation are limited by statute to a maximum term of 15 years. For substantial Rehabilitation projects a longer contract term is available.

Responsibilities of the Owner Unclear

One commentor suggested that the scope of owner accountability and HUD monitoring be better defined along the lines of the HUD Regulatory Agreement for insured subsidized projects. The Department believes that owner accountability is defined sufficiently to put owners on notice of their obligations. The Department wants to keep its flexibility to alter specific requirements as may be needed on a project by project basis. It must be noted that the majority of the projects sold under this program will be sold with HUD mortgage insurance or a HUD purchase money mortgage which includes use of a Regulatory Agreement, and the Department has developed specific Regulatory Agreement language for use in these sales. In addition, sales documents have been designed to assure the owner's compliance with contractual obligations after the sale. Prior to their submitting an offer to purchase, all prospective purchasers receive a copy of all documents related to the requirements under the program. Thus they should be fully aware of the requirements prior to submitting a bid.

Lease Amendments Should Note Utility Allowance

One commentor suggested that, where the family will be paying for utilities, the utilities should be noted in the lease as well as the amount of the utility allowance. The Department has made an appropriate change in Section 886.332 implementing this suggestion.

Effects on Eligible Family if Contract is Terminated

Several comments were received regarding the impact on, and input from, eligible families if HUD were to abate housing assistance payments as provided under § 886.323(e) due to the owner's failure to maintain a dwelling unit in decent, safe, and sanitary condition. This section has been revised based on the procedure in the Section 8 New Construction program which provides that HUD will exercise its rights and remedies under the contract, and for these projects possibly rescinding the sale, in order to assure that the contract units are decent, safe and sanitary and remain available to eligible families. In addition HUD will provide assistance in finding eligible families suitable units in other buildings or projects in the event assistance payments are abated. However, it is the Department's intention to work with owners, tenants, and other interested parties to the extent possible to forestall such action.

Miscellaneous Comments

Several miscellaneous comments were beyond the scope of these regulations and therefore could not be adopted herein. In some cases, a suggested change would appropriately be made to the regulations at 24 CFR Part 290. The Department considered these suggestions in its preparation of the new 24 CFR 290 regulations which were published on October 1, 1979, effective October 31, 1979. Following is a brief synopsis of these comments:

1. Subpart C does not recognize potential financial problems that may call for innovative or special purchase financing arrangements. Provisions covering the financing of the disposition of a property are found in 24 CFR 290.

2. HUD should indicate whether approved units can or cannot be counted as achievements toward meeting local Housing Assistance goals.

The question of whether or not units assisted under this program should be counted as goal achievements in an administrative decision which need not be covered in these regulations. It is the Department's current policy that these units cannot be counted toward meeting Housing Assistance goals because in the majority of projects, the Department is replacing a previous subsidy with a new one. The Department is studying the situation where new subsidized units are being added through a project's disposition.

3. Regulations should either present a relocation plan or state that tenants are eligible for benefits under the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970. The sale of HUD-owned projects is not subject to the Uniform Act. The Uniform Act only applies to the acquisition of real property by a State agency for a federal or federally assisted project and to resulting displacement. 24 CFR 290 provides a procedure which in some cases permits the payment of out-of-pocket moving costs where tenants are forced to be moved, and sets forth in detail the rights of tenants in occupancy in projects being sold.

4. The regulations should provide more definitive provision on the basis for determining when to dispose of a project through a public bidding and when to negotiate. These provisions are found in 24 CFR 290 and were clarified in the revised 24 CFR 290 regulations based on this comment.

5. The field office should seek comments from the local government and the PHA as part of the process leading to the decision to use Section 8 assistance and not wait until after the decision is made. The regulations at 24 CFR 290 were revised to reflect this suggestion. The decision to use section 8 in a project is the Department's decision, based on the documented analysis provided for in 24 CFR 290 which includes consideration of comments from governmental agencies. Basically, where there is a demonstrated need for section 8 assistance to protect eligible families, the regulations at 24 CFR 290 require that it, or another form of housing assistance, will be used in the disposition. Projects with tenants requiring assistance will not generally be sold without assistance. 24 CFR 290 has been amended considerably to clarify the Department's position on this matter.

6. Tenants should be notified in writing when it has been determined that they qualify for housing assistance. 24 CFR 290 is being amended to reflect this suggestion as this is a basic program determination.

7. Eligible tenants should receive advance notice of any contemplated change in rent and be given an opportunity to comment. This suggestion has not been implemented because eligible tenants are not generally affected by market rent increases as their rents are determined by family income.

8. A complete model form of lease should be provided. The Department is currently developing a model lease. When the lease is available, this regulation will be revised to incorporate that lease.

Expansion of Rule for Moderate and Substantial Rehabilitation

In order to simplify Departmental regulations and assure consistency in disposition decisions regarding the use of section 8 assistance, the Department decided to merge the programs set forth in the interim rule and the rule at 24 CFR 886, Subpart B, with the Moderate Rehabilitation program to develop one concise set of regulations under which HUD owned projects in various stages of repair could be disposed of with Section 8 assistance at appropriate rent levels.

Since Subpart C already included provisions for repairs by the purchaser, the Department has expanded Subpart C to serve as the primary mechanism for disposition with Section 8 assistance.

Following are some of the areas of the interim rule amended herein:

1. A definition for the Agreement to Enter into a Housing Assistance Payments Contract has been added.

2. A definition for decent, safe and sanitary has been added.

3. The definition of Fair Market Rent has been amended to cover projects requiring moderate, substantial rehabilitation or no rehabilitation after the sale.

4. A definition of Minimum Property Standards has been added.

5. Definitions of Moderate Rehabilitation and Substantial Rehabilitation have been added.

6. Section 886.304(b) has been amended to assure that in projects where repairs are to be accomplished by the owner, Section 8 payments may only be made for units that are made decent, safe and sanitary.

7. Section 886.306(a) has been amended to remove unnecessary language and to increase clarity.

8. Section 886.307(m) has been amended to reflect recent Departmental changes in Housing Quality Standards for Congregate Housing and Section 886.307(o) has been amended to reflect the recent Departmental addition of Energy Efficiency Standards.

9. A new Section 886.309(c) has been added to provide owners with at least 80 percent of the Contract rent for contract units not leased up to 60 days subsequent to the effective date of the contract, as long as the owner has taken and continues to take appropriate actions to fill the vacancies.

10. Section 886.309(g) has been added to permit debt service payments for substantial rehabilitation projects.

11. Section 886.310 has been amended to include provisions for Initial Contract Rents for Moderate Rehabilitation and Substantial Rehabilitation projects. In addition, because some projects are located in areas containing no private unassisted projects, and therefore there are no comparable rents in the area a provision has been added to permit comparables based on HUD-insured or HUD-subsidized projects in the area.

12. Section 886.312 has been amended for clarity and to emphasize the fact the Department intends to have owners submit a written request for rent increases on contract units based upon supportable and substantiated evidence of the need for such an increase, rather than depending on the automatic annual adjustment factor. The Fair Market Rent applicable to the project, up to the 20 percent approvable under special circumstances will serve as the ceiling for contract rents.

13. Section 886.313 has been amended to provide for the additional Federal requirements applicable under the expanded Subpart C.

14. In response to one comment received, Section 886.318 has been amended to provide for notification to families, in writing, by the owner when the family has been determined to be eligible for assistance under this Subpart, if the family has not previously been notified by HUD.

Implementation of New Sections

The Department is adding new §§ 886.331 to 886.335 to provide the additional procedures necessary to implement a program where moderate or substantial rehabilitation is required by the purchaser after the sale. These procedures are based on the procedures provided at 24 CFR 881 for Substantial Rehabilitation, and 24 CFR 882 for Moderate Rehabilitation.

Section 886.331 provides for work write-ups and cost estimates of all needed repairs. The work write-ups and cost estimates are to be made by HUD or an agent of HUD such as an Architectural and Engineering firm. An important feature of the cost estimate is the funding of the shortfall in rents on

specific dwelling units which will occur from sales closing prior to execution of the Contract. Since the rents paid by the tenants prior to the sale and prior to the effective date of the Contract do not include housing assistance payments and are, therefore, substantially less than the rent to be received by the owner after the effective date of the Contract, the cost of the shortfall caused by the owners' requirement to maintain this lower rent schedule until the effective date of the contract will be considered a rehabilitation expense, as will the cost of any temporary relocation expenses.

Section 886.332 is added which provides that in order to maintain the Department's control over the project and the owner, and to assure completion of the prompt rehabilitation of the project and implementation of the Contract, an Agreement to Enter into a Housing Assistance Payments Contract is provided similar to that in the Section 8 New Construction and Substantial Rehabilitation programs.

Sections 886.333 and 886.334 cover the owner's obligation during the rehabilitation period, at project completion, and after acceptance of the project units by the Department.

Section 886.335 covers execution of the Contract upon acceptance of the units.

The Department is also in the process of revising the definitions for the Allowance for Utilities and Other Services, Contract Rent, Gross Family Contribution, and Gross Rent. The definitions herein will be revised accordingly in the final rule.

Other Information: A Finding of Inapplicability with regard to the Environmental Impact of these rules has been prepared in accordance with the HUD's Handbook "Procedures for Protection and Enhancement of Environmental Quality." A copy of the Finding is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Based on the fact that immediate implementation of this rule will be beneficial to tenants of HUD-owned Multifamily housing projects and to program administration, and the rule consists of a compilation of procedures which have had the benefit of public comment, the Department finds that good cause exists to make this rule effective as a revised interim rule. A final rule will be published after the comments on this interim rule are received:

For the reasons described above, 24 CFR Part 886, Subpart C is amended to read as follows:

PART 886–SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

Subpart C— Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

Sec.

886.301 Purpose.
886.302 Definitions.
886.303 Allocation and Reservation of Section 8 Contract Authority and Budget Authority.
886.304 Project Eligibility Criteria.
886.305 PHA Involvement.
886.306 Notices.
886.307 Housing Quality Standards.
886.308 Maximum Total Annual Contract Commitment.
886.309 Housing Assistance Payments to Owners.
886.310 Initial Contract Rents.
886.311 Term of Contract.
886.312 Rent Adjustments.
886.313 Other Federal Requirements.
886.314 Financial Default.
886.315 Security and Utility Deposits.
886.316 Establishment of Income Limit Schedules: 30 Percent Occupancy by Very Low-Income Families.
886.317 Establishment of Amount of Housing Assistance Payments.
886.318 Responsibilities of the Owner.
886.319 Responsibility for Contract Administration.
886.320 Default Under the Contract.
886.321 Marketing.
886.322 Lease Requirements.
886.323 Maintenance, Operation, and Inspections.
886.324 Reexamination of Family Income, Composition, and Extent of Exceptional Medical or Other Unusual Expenses.
886.325 Overcrowded and Underoccupied Units.
886.326 Adjustment of Allowance for Utilities and Other Services.
886.327 Inapplicability of Low-Income Public Housing Model Lease and Grievance Procedures.
886.328 Termination of Tenancy.
886.329 Reduction of Number of Contract Units for Failure to Lease to Eligible Families.
886.330 Work Write-Ups and Cost Estimates.
886.331 Agreement to Enter Into Housing Assistance Payments Contract.
886.332 Rehabilitation Period.
886.333 Completion of Rehabilitation.
886.334 Execution of Housing Assistance Payments Contract.
886.335 HUD Review of Contract Compliance.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

§ 886.301 Purpose.

The purpose of this subpart is to provide for the use of section 8 housing assistance in connection with the sale of HUD-owned housing in order to increase and maintain the amount of decent, safe, and sanitary housing affordable by lower-income families, to minimize displacement of tenants, to preserve and revitalize residential neighborhoods, and to dispose of projects in a manner consistent with HUD's disposition objectives.

§ 886.302 Definitions.

Act. The United States Housing Act of 1937.

Agreement. An Agreement to Enter into a Housing Assistance Payments Contract. See Section 886.332.

Allowance for utilities and other services ("Allowance"). An amount determined or approved by HUD as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the family.

Contract. (See section 8 contract.)

Contract rent. The rent payable to the owner under the contract, including the portion of the rent payable by the family. In the case of a cooperative, the term "contract rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if the project does not need Substantial Rehabilitation at the time of the sale and the requirements of § 886.307 are met, or if the project does require Substantial Rehabilitation at the time of sale and after such rehabilitation the Minimum Design Standards for Rehabilitation for Residential Properties are met.

Eligible family ("Family"). A family (including those covered by the definition of "Family" in 24 CFR 812) which qualifies as a lower income family and meets the other requirements of the Act and this part. Lower income single persons residing in projects in need of moderate or substantial rehabilitation, who are displaced as a result of the rehabilitation, may return to occupy an assisted unit as a "Family" in accordance with 24 CFR 812. A family's eligibility for housing assistance payments continues until its gross family contribution equals the gross rent for the dwelling unit it occupies, but the termination of eligibility at such point shall not affect the family's other rights under its lease nor shall such termination preclude resumption of

section 8 assistance as a result of subsequent changes in income or other relevant circumstances during the term of the Contract.

Eligible project or project. A HUD-owned multifamily housing project (see 24 CFR 290) or HUD-owned home properties together having five or more dwelling units: (1) For which the final disposition program developed in accordance with the provisions of 24 CFR 290 involves sale with section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families, and (2) the units of which are decent, safe, and sanitary.

Fair market rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which is determined by HUD at least annually and published in the **Federal Register.**

(a) For units in projects which are in decent, safe and sanitary condition at sales closing, as determined by HUD, the Fair Market Rent shall be an amount that would be required to be paid in order to obtain privately owned, existing decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents shall be established for dwelling units of varying sizes (number of bedrooms).

(b) For units in projects sold by HUD which are in need of moderate rehabilitation, as determined by HUD, at sales closing, and the purchaser agrees to rehabilitate the project promptly after the sale, as a condition of the sale, the Fair Market Rent shall be an amount equal to 120 percent of the amount set forth in paragraph (a) for a unit of corresponding type and size.

(c) For units in projects sold by HUD which are in need of substantial rehabilitation, as determined by HUD, at sales closing and the purchaser agrees, as a condition of the sale, to rehabilitate the project promptly after the sale, the Fair Market Rent shall be an amount that would not exceed the amount that would be required to be paid in order to obtain privately developed and owned, newly constructed rental housing of modest (non-luxury) nature with suitable amenities and sound architectural design meeting the objectives of the HUD Minimum Design Standards for Rehabilitation for Residential Properties. Separate Fair Market Rents will be established for dwelling units by various sizes (number of bedrooms) and types (e.g., elevator, row, detached, mobile homes; housing designed for the elderly or handicapped shall be a separate type for this purpose).

(d) The Fair Market Rent, minus the amount of any applicable allowance for utilities and other services payable directly by the family, shall be the maximum amount that can be approved as the contract rent, except that the maximum approvable amount may be higher or lower as provided in § 886.310 or § 886.312.

Gross family contribution. The portion of the gross rent payable by an eligible family, i.e., the difference between the amount of the housing assistance payment payable on behalf of the family and the gross rent. (See also 24 CFR 889.)

Gross rent. The contract rent plus any allowance for utilities and other services.

HCD Act. The Housing and Community Development Act of 1974.

Housing assistance payment on behalf of eligible family. The portion of the gross rent payable by or at the direction of HUD, i.e., the difference between the amount of the gross family contribution and the gross rent. (See also part 889.)

HUD. The Department of Housing and Urban Development.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD. (See also 24 CFR 889.)

Lease. A written agreement approved by HUD between an owner and an eligible family for leasing of a decent, safe, and sanitary dwelling unit in accordance with the applicable contract. The lease shall comply with the provisions of this subpart, including but not limited to § 886.322.

Lower income family. A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

Minimum Design Standards for Rehabilitation for Residential Properties. See HUD Handbook 4940.4.

Moderate Rehabilitation. The rehabilitation of an eligible project involving a minimum expenditure of $1,000 per unit, excluding the cost of contract rent shortfalls during rehabilitation and temporary relocation but including its prorated share of work to be accomplished on common areas or systems, to:

(a) Upgrade the property to decent, safe and sanitary condition to comply with the Housing Quality Standards, or other standards approved by HUD, from a condition below those standards and requiring minor repairs or the curing of an accumulation of deferred maintenance (improvements being of a modest nature and other than routine maintenance); or

(b) Repair or replace major building systems or components in danger of failure.

Owner. The purchaser, under this subpart, of a HUD-owned project, including a cooperative entity.

Project account. The account established and maintained in accordance with § 886.308.

Public Housing Agency ("PHA"). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families.

Section 8 contract ("Contract"). A written contract between the owner of an eligible project and HUD providing housing assistance payments to the owner on behalf of eligible families pursuant to this subpart.

Substantial Rehabilitation.

(a) The improvement of a property to decent, safe, and sanitary condition and in accord with the standards of this part from a condition below these standards. Substantial Rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as Substantial Rehabilitation under this definition.

(b) Substantial Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure.

Very low-income family. A family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 886.303 Allocation and reservation of section 8 contract authority and budget authority.

(a) *Allocation.* The contract authority and budget authority for this program will be provided from the Headquarters reserve authority approved specifically for use in connection with the sale of eligible projects.

§ 886.304 Project eligibility criteria.

(a) *Selection of projects.* HUD shall select projects for sale with assistance

under this subpart on the basis of the final disposition programs developed and approved in accordance with part 290 and the requirements of this subpart. In the evaluation of projects, consideration shall be given to whether there are site occupants who would have to be displaced, whether the relocation of site occupants is feasible, and the degree of hardship which displacement might cause.

(b) *Projects needing repairs.* A project, which is sold subject to the condition that following sale the project will be repaired by the owner so as to become decent, safe and sanitary, will be sold with an Agreement that Section 8 assistance will be provided after the repairs are completed by the owner and the project is inspected and accepted by HUD. In these projects, Section 8 payments may be made only for project units which are determined to be decent, safe and sanitary.

(c) *High-rise elevator projects.* High-rise elevator projects for families with children will not be assisted under this subpart unless the final disposition program, prepared in accordance with 24 CFR 290 indicates that there is a need for assisted housing for families and there is no other practical alternative for providing the needed housing.

§ 886.305 PHA involvement.

HUD, as part of its mortgage servicing activities, performs most of the processing activities normally performed by a PHA in the Section 8 existing housing program. Therefore, duplicative PHA processing activities are not required; however, PHA involvement may be appropriate in some circumstances.

(a) *Invitation to authorize eviction.* The PHA with jurisdiction over the area in which the project is located shall be invited by HUD, in writing, to authorize evictions on contract units for a fee established by HUD and paid by the owner.

(b) *Invitation to perform inspections.* HUD may invite the PHA to perform inspections of contract units on a fee basis, where HUD determines that such inspections will be performed more efficiently and economically by the PHA.

(c) *Other functions.* HUD may invite the PHA to perform other functions.

(d) *PHA Party to contract.* Where the PHA is to perform any functions, the contract between HUD and the owner shall provide that the PHA shall be a party to the contract for the purpose of authorizing evictions, inspections, or for such other purposes as may be agreed upon.

§ 886.306 Notices.

Before a project is approved for sale in accordance with this subpart, and as a part of the process of preparing a disposition recommendation in accordance with 24 CFR 290, the field office manager shall:

(a) *Notify the Local Government.* Notify in writing the chief executive officer of the unit of general local government in which the project is located (or the designee of that officer) of the proposed sale with housing assistance and afford the unit of local government an opportunity to review and comment upon the proposed sale in accordance with 24 CFR 891. Local government review shall address consistency with the housing needs and strategy of the community, not strict conformance to the limitations on variations from housing assistance plan goals which are contained in part 891.

(b) *Notify PHA to participate.* Notify in writing the PHA with jurisdiction over the area in which the project is located and advise it of HUD's intention to sell the project and to enter into a contract for Section 8 assistance with the purchaser. The notification shall invite the PHA to participate in the contract as provided in § 886.305 and to respond to HUD within 30 calendar days from the date of the notification letter.

§ 886.307 Housing quality standards.

Housing used in this program not requiring substantial rehabilitation at the time of sale shall meet the performance requirements set forth in this section. In addition, the housing shall meet the acceptability criteria set forth in this section except for such variations as are approved by HUD. Local climatic conditions and geographic features and local housing and building codes are examples which may justify such variations.

(a) *Sanitary facilities.* (1) Performance requirement. The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food preparation and refuse disposal*—(1) *Performance requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary.

(2) *Acceptability criteria.* The unit shall contain the following equipment in proper operating condition: Cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the owner or the family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation, and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and security*—(1) *Performance requirement.* The dwelling unit shall afford the family adequate space and security.

(2) *Acceptability criteria.* A living room, kitchen area, and bathroom shall be present; and the dwelling unit shall contain at least one sleeping or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal environment*—(1) *Performance requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil, or kerosene are unacceptable.

(e) *Illumination and electricity*—(1) *Performance requirement.* Each room shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets, one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and materials*—(1) *Performance requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and

safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability criteria.* Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition.

(i) In the case of a mobile home, the home shall be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding.

(g) *Interior air quality*—(1) *Performance requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water supply*—(1) *Performance requirement.* The water supply shall be free from contamination.

(2) *Acceptability criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead-based paint*—(1) *Performance requirement.* (i) The dwelling unit shall be in compliance with HUD lead-based paint regulations, 24 CFR 35, issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and the owner shall provide a certification that the dwelling is in accordance with such HUD regulations.

(ii) If the property was constructed prior to 1950, the family upon occupancy shall have been furnished the notice required by HUD lead-based paint regulations and procedures regarding the hazards of lead-based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability criteria.* Same as performance requirement.

(j) Access—(1) *Performance requirement.* The dwelling unit shall be usable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability criteria.* The dwelling unit shall be usable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and neighborhood.* Where a project is sold with an insured mortgage, the site selection criteria of the insurance program shall be utilized in lieu of the requirements and criteria in this paragraph.

(1) *Performance requirement.* The site and neighborhood shall be reasonably free from disturbing noises and vibrations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank backups, sewage hazards, or mudslides; abnormal air pollution, smoke, or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary condition*—(1) *Performance requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability criteria.* The unit and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate housing.* The foregoing standards shall apply except for paragraph (b) of this section and the requirement in paragraph (c)(2) of this section for a kitchen area. In addition, the following standards shall apply:

(1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower seats; and adequate space for movement.

(2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social and/or recreational community space shall be within the unit and the dwelling unit shall contain at least one sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. Regular fire inspections shall be conducted by appropriate local officials. Readily accessible first aid supplies and fire extinguishers shall be provided throughout the unit, smoke detectors shall be provided and emergency phone numbers (police, ambulance, fire department, etc.) shall be available at every phone and individual copies shall be provided to each occupant. All emergency and safety features and procedures shall meet applicable State and local standards.

(n) *Independent group residence.* The foregoing standards shall apply except for paragraphs (a), (b), (c), (k), and (m) of this section. In addition, Section 882.109(n) shall apply.

(o) *Energy Efficiency—Performance Requirement.* Appropriate energy conserving improvements such as insulation, weatherstripping and caulking must be accomplished by HUD or the purchaser as part of any rehabilitation under this Subpart. In addition, energy conserving improvements such as storm doors and windows must be considered by HUD and accomplished by HUD or the purchaser provided that these

improvements are determined by HUD to be cost-effective. See 24 CFR Part 39.

§ 886.308 Maximum total annual contract commitment.

(a) *Number of units assisted.* Based on the final disposition program developed in accordance with 24 CFR 290, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project.

(b) *Maximum assistance.* The maximum total annual housing assistance payments that may be committed under the contract shall be the total of the gross rents for all the contract units in the project.

(c) *Changes in contract amounts.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in contract rents, changes in family composition, or decreases in family incomes:

(1) A project account shall be established and maintained, in an amount as determined by HUD consistent with section 8(c)(6) of the Act, out of amounts by which the maximum annual contract commitment per year exceeds amounts paid under the contract for any fiscal year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of: (i) Housing assistance payments, and (ii) other costs specifically authorized or approved by HUD.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual contract commitment, causing the amount in the project account to be less than an amount equal to 40 percent of the maximum annual contract commitment, HUD, within a reasonable period of time, shall take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§ 886.309 Housing assistance payments to owners.

(a) *Payments for eligible families.* Housing assistance payments shall be paid for units under lease by eligible families, in accordance with the contract and as provided in this section. These housing assistance payments will cover the difference between the contract rent and the portion of said rent payable by the family as determined in accordance with the HUD-established schedules and criteria. (See 24 CFR 889.) Where the gross family contribution is less than the allowance for utilities and other services, the owner, on behalf of HUD, shall pay the difference to the family.

(b) *No assistance for owners.* No section 8 assistance may be provided for any unit occupied by an owner. However, cooperatives are considered rental housing rather than owner-occupied housing under this subpart.

(c) *Payments for vacancies from execution of contract to initial occupancy.* If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract provided that the Owner (1) has submitted a list of units leased as of the effective date and a list of the units not so leased; (2) 60 days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract; (3) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contracting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and (4) has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) *Payments for vacancies after initial occupancy.* If an eligible family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of Contract Rent for a vacancy period not exceeding an additional month. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. (See also § 886.315.) The owner shall not be entitled to any payment under this paragraph unless he or she: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD.

(e) *Payments for units where family is evicted.* If the owner evicts a family, the owner shall not be entitled to any payments pursuant to paragraph (d) of this Section unless the request for such payment is supported by a certification that the provisions of § 886.328 have been followed.

(f) *Prohibition for double compensation for vacancies.* The owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he or she is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to title I of the HCD Act or payments under § 886.315).

(g) *Debt service payments for substantially rehabilitated projects.* (1) If a contract unit continues to be vacant after the 60-day period specified in paragraph (c) or (d) of this section, the Owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (g) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit is not in a project insured under the National Housing Act except pursuant to section 244 of that Act.

(ii) The unit was in decent, safe, and sanitary condition during the vacancy period for which payments are claimed.

(iii) The owner has taken and is continuing to take the actions specified in paragraphs (c)(1), (2) and (3) or paragraphs (d)(1) and (2) of this section, as appropriate.

(iv) The Owner has demonstrated in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the Owner with revenues at least equal to the project costs incurred by the Owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.

(v) The Owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the Owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

§ 886.310 Initial contract rents.

(a) *Reasonable rent determination.* The HUD-determined contract Rents for Contracts Units in the project shall not exceed rents which are reasonable (comparable, see 24 CFR 290) for the location, quality, amenities, facilities, and management and maintenance services in relation to the rents paid for comparable units, nor shall the contract rents exceed the rents charged by the owner to unassisted families for comparable units. If comparable units in the private sector do not exist in the general neighborhood of the project, then HUD-insured or HUD-subsidized projects may be used as comparables. HUD shall maintain for 3 years all relevant documentation under this pargraph.

(b) *Fair Market Rent limitation.* The sum of the contract rent plus an allowance for utilities and other services (where utilities and other services are not included in the contract rent) shall be determined by HUD. This sum shall not exceed the sum of the published section 8 fair market rents, as defined in § 886.302, for contract units in the project, except that the fair market rents may be exceeded by up to 20 percent where the field office manager determines that special circumstances warrant such higher rents, and such higher rents meet the test of reasonableness in paragraph (a) of this section.

§ 886.311 Term of contract.

The contract term for any unit shall be one of the following:

(a) If the project units require no rehabilitation or moderate rehabilitation, the term shall be 15 years.

(b) If the project units require substantial rehabilitation, the term shall not exceed 30 years, except that the term shall not exceed 20 years in the case of a project financed with assistance of a loan made by or insured, guaranteed or intended for purchase by HUD. Notwithstanding the preceding sentence, in the case of a project financed by a loan or loan guarantee from a State or local agency, the term may not exceed 40 years.

§ 886.312 Rent adjustments.

(a) *Limits.* Housing assistance payments will be made in amounts commensurate with contract rent adjustments under this paragraph, up to the maximum amount authorized under the contract. (See § 886.308.)

(b) *Annual adjustments.* The contract rents may be adjusted annually, at HUD's option, either (1) on the basis of a written request for a rent increase submitted by the owner and properly supported by substantiating evidence, or (2) by applying, on each anniversary date of the contract, the applicable automatic annual adjustment factor most recently published by HUD in the Federal Register. If HUD requires that the owner submit a written request, HUD within a reasonable time shall approve a rental schedule that is necessary to compensate for any increase occurring since the last approved rental schedule in taxes (other than income taxes) and operating and maintenance costs over which owners have no effective control, or shall deny the increase stating the reasons therefor. Increases in taxes and maintenance and operating costs shall be measured against levels of such expenses in comparable assisted and unassisted housing in the area to ensure that adjustments in the contract rents shall not result in material differences between the rents charged for assisted and comparable unassisted units. Contract rents may be adjusted upward or downward as may be appropriate; however, in no case shall the adjusted rents be less than the contract rents on the effective date of the contract, provided there was no fraud or mistake adverse to the Department's interest in determining the initial contract rent.

(c) *Special adjustments.* Special adjustments in the contract rents shall be requested in writing by the owner and may be authorized by HUD to the extent HUD determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments and utilities not covered be regulated rates) which are not adequately compensated for by the adjustment authorized by paragraph (b) of this section.

(d) *Comparability between assisted and unassisted units.* Notwithstanding any other provisions of this subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: Provided, however, That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial contract rents assuming no fraud or mistake adverse to the Department's interest.

(e) *Addendums to contract and leases.* Any adjustment in contract rents shall be incorporated into the contract and leases by dated addendums to the contract and leases establishing the effective date of the adjustment.

§ 886.313 Other Federal requirements.

Participation in this program requires:

(a) Compliance with (1) title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968, and (2) all rules, regulations, and requirements issued pursuant thereto.

(b) Submission of an approvable Affirmative Fair Housing Marketing Plan.

(c) For projects where rehabilitation is to be completed by or at the direction of the owner, compliance with:

(1) The Clean Air Act and Federal Water Pollution Control Act;

(2) Where the property contains nine or more units to be assisted, prevailing wages must be paid for all rehabilitation work performed and other Davis-Bacon Act requirements must be met and the Labor Standards Provisions contained in the following Acts must be met:

(i) Contract Work Hours and Safety Standards Act.

(ii) Copeland Anti-Kickback Act; and

(iii) National Apprenticeship Act.

(3) Section 504 of the Rehabilitation Act of 1973;

(4) The National Historic Preservation Act (Pub. L. 89–665);

(5) The Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291);

(6) Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation at 36 CFR Part 800;

(7) The National Environmental Policy Act of 1969;

(8) The Flood Disaster Protection Act of 1973;

(9) Executive Order 11988, Flood Plains Management;

(10) Executive Order 11990, Protection of Wetlands.

§ 886.314 Financial default.

In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent housing assistance payments to the mortgagee until such time as the default is cured, or until some other time agreeable to the mortgagee and approved by HUD.

§ 886.315 Security and utility deposits.

(a) *Amount of deposits.* If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Gross Family Contribution or $50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family is expected to pay security deposits and utility deposits from its resources and/or other public or private sources.

(b) *When a Family vacates.* If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Family Contribution or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) *Interest payable on deposits.* In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(d) *Insufficient deposits.* If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of: (1) The amount owed the Owner, (2) two months' Contract Rent, minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Family Contribution due under the Lease and then to any other amounts owed. No reimbursement shall be claimed for unpaid rent for the period after the family vacates.

§ 886.316 Establishment of income limit schedules: 30 percent occupancy by very low-income families.

(a) *HUD-Established income limits.* HUD will establish schedules of income limits for determining whether families qualify as lower income families and very low-income families.

(b) *Preference to Low-Income Families.* During initial occupancy under a contract pursuant to this Subpart, the owner, in filling vacancies for contract units, shall give preference to very low-income families until at least 30 percent of the contract units are occupied by such families. Thereafter, the owner shall exercise his or her best efforts to maintain at least 30 percent occupancy of contract units by very low-income families.

§ 886.317 Establishment of amount of housing assistance payments.

The amount of the housing assistance payment on behalf of an eligible family shall be determined in accordance with 24 CFR 889. Where an allowance is established for utilities required to be supplied by the family, and the allowance exceeds the gross family contribution, the owner shall pay to the family each month an amount equal to the difference between the applicable utility allowance and the gross family contribution.

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.* The owner shall be responsible for the management and maintenance of the project in accordance with requirements established by HUD. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions including the taking of applications, selection of families in accordance with the owner's tenant selection factors approved by HUD, verification of income and other pertinent requirements, and determination of eligibility and amount of family contribution in accordance with HUD-established schedules and criteria;

(4) Collection of family rents;

(5) Preparation and furnishing of information required under the contract;

(6) Reexamination of family income, composition and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of family contribution and amount of housing assistance payment in accordance with HUD-established schedules and criteria;

(7) Redeterminations of the amount of family contribution and the amount of housing assistance payment in accordance with HUD-established schedules and criteria as a result of an adjustment by HUD of any applicable allowance for utilities and other services;

(8) Notifying families in writing when they are determined to be qualified for assistance under this subpart where they have not already been notified by HUD prior to sale;

(9) Reviewing at least annually the allowance for utilities and other services;

(10) Compliance with equal opportunity requirements; and

(11) Compliance with Federal requirements set forth in § 886.313(c).

(b) *Contracting for Services.* Subject to HUD approval, any owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: Provided, That such contract shall not shift any of the owner's responsibilities or obligations.

(c) *HUD review.* The owner shall permit HUD to review and audit the management and maintenance of the project at any time.

§ 886.319 Responsibility for contract administration.

HUD is responsible for administration of the contract.

§ 886.320 Default under the contract.

The contract shall contain a provision to the effect that if HUD determines that the owner is in default under the contract, HUD shall notify the owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including recovery of overpayments, where appropriate, and that if the owner fails to cure the default within a reasonable time as determined by HUD, HUD has the right to terminate the contract or to take other corrective action, including recission of the sale. When contract termination is under consideration by HUD, HUD shall give eligible families an opportunity to submit written and other comments. Where the project is sold under the arrangement that involves a regulatory agreement between HUD and the owner, a default under the regulatory agreement shall be treated as default under the contract.

§ 886.321 Marketing.

(a) *Marketing in accordance with HUD-Approved Plan.* Marketing of units and selection of families by the owner shall be in accordance with the owner's HUD-approved Affirmative Fair Housing Marketing Plan, HUD-approved tenant selection factors and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b)(1) HUD shall determine the eligibility for assistance of families in occupancy prior to sales closing. The owner shall be responsible for determination of eligibility of applicants for tenancy after sale, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the gross rent and the gross family contribution computed in accordance with 24 CFR 889. Where an allowance is established for utilities required to be supplied by the family and the allowance exceeds the gross family contribution, the owner shall pay to each family each month an amount equal to the difference between the applicable utility allowance and the gross family contribution. Local residency requirements are prohibited. Local residency preferences are discouraged and may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preferences, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(2) For every family that applies for admission, the owner and the applicant shall complete and sign the form of application prescribed by HUD. When the owner decides to no longer accept applications, the owner shall publish a notice to that effect in a publication likely to be read by potential applicants. The notice shall state the reasons for the owner's refusal to accept additional applications. When the owner agrees to accept applications again, a notice to this effect shall also be published. The owner shall retain copies of all completed applications together with any related correspondence for 3 years. For each family selected for admission, the owner shall submit one copy of the completed and signed application to HUD. Housing assistance payments will not be made on behalf of an admitted family until after this copy has been received by HUD.

(3) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable but the owner does not have a suitable unit to offer, the owner shall place such family on the waiting list and so advise the family indicating approximately when a unit may be available.

(4) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable in accordance with the HUD approved tenant selection factors and if the owner has a suitable unit, the owner and the family shall enter into a lease. The lease shall be on a form approved by HUD and shall otherwise be in conformity with the provisions of this subpart.

(5) Records on applicant families and approved families shall be maintained by the owner so as to provide HUD with racial, ethnic, and gender data and shall be retained by the owner for 3 years.

(6) If the owner determines that an applicant is not eligible, or if eligible, not selected, the owner shall notify the applicant in writing of the determination, the reasons upon which the determination is made, and inform the applicant that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing if the applicant believes that the owner's determination is based on erroneous information. The procedures of this subparagraph do not preclude the applicant from exercising his/her other rights if he/she believes he/she is being discriminated against on the basis of race, color, creed, religion, sex, national origin, or because of a handicap. The owner shall retain for 3 years a copy of the application, the letter, the applicant's response, if any, the record of any informal hearing, and a statement of final disposition.

(c) *Initial occupancy.* (1) Where moderate or substantial rehabilitation is involved, sixty days prior to the completion of the rehabilitation, or when the rehabilitation is begun, whichever is later, the Owner shall determine whether the tenant population of the project generally reflects the racial/ethnic makeup of the housing market area. Based on this determination, the Owner shall then conduct appropriate marketing activities in accordance with a HUD-approved Affirmative Fair Housing Marketing Plan. Such activities may include special outreach to those groups identified as not ordinarily expected to apply for these units without special outreach; notification to PHA's in the housing market area of any anticipated vacancies; and formulation of waiting lists based on the Owner's HUD-approved tenant selection factors.

(2) Where a PHA is notified, the PHA shall notify an appropriate size family (families) on its waiting list of the availability of the unit and refer the family (families) to the owner. (Since the Owner is responsible for tenant selection, the owner is not required to lease to a PHA selected family, but the owner must comply with § 886.321(b)(6).)

§ 886.322 Lease requirements.

The lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section. It also shall reflect the requirements of § 886.328 and shall otherwise conform to a form of lease approved by HUD.

(a) The term of the lease shall be for not less than 1 year. The lease may, or in the case of a lease of a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Required provisions.* The lease between the owner and the family shall contain the following provisions:

Addendum to lease. The following additional lease provisions are incorporated in full in the lease between ———— (owner) and ———— (family) for the following dwelling unit: ————. In case of any conflict between these and any other provisions of the lease, these provisions shall prevail.

1. The total rent shall be $—— per month.

2. Of the total rent, $—— shall be payable by or at the direction of the Department of

Housing and Urban Development ("HUD") as housing assistance payments on behalf of the family and $—— shall be payable by the family. These amounts shall be subject to change by reason of changes in the family's income, composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD of any applicable allowance for utilities and other services. Any such change shall be effective as of the date stated in a notification to the family.

3. The owner shall not discriminate against the family in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

4. The family agrees to notify the owner of a change in family composition, and further agrees to transfer to an appropriate size dwelling unit based on family composition upon appropriate notice by the owner that such a dwelling unit is available within the project.

5. The owner shall provide the following utilities, services, and maintenance: (Information to be inserted by owner). The family is responsible for the payment of the following utility bill(s) ————. (To be used only when appropriate).

6. The owner shall not evict the family unless the owner complies with the requirements of local law, if any, and of HUD regulations. The owner shall give the family a written notice of the proposed eviction, stating the grounds and advising the family that it has 15 days (or such greater number, if any, that may be required) within which to respond to the owner.

7. Because the owner must obtain HUD's authorization for an eviction, a copy of the notice shall be furnished simultaneously to HUD. The notice shall also state that the family may, within the same time period, present objections in writing or in person to HUD. HUD shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the lease. HUD shall make a good faith effort to notify the owner and the family of its determination within 30 calendar days of the date of the notice to the family whether or not the family has presented objections to HUD.

(c) *When PHA Is Party to the contract.* Where a PHA is a party to the contract between HUD and the owner, the PHA shall assume the responsibilities of HUD under (b)(7) of this section. The PHA shall be entitled to a fee to be paid by the owner as provided in the contract for each proposed eviction action submitted by the owner and reviewed by the PHA.

(d) *Excluded clauses.* Lease clauses which as determined by HUD fall within the classification listed below shall not be included in any lease.

(1) *Confession of judgment.* Consent by the family to be sued, to admit guilt, or to accept without question any judgment favoring the owner in a lawsuit brought in connection with the lease.

(2) *Seize or hold property for rent or other charges.* Authorization to the owner to take property of the family and/or hold it until the family meets any obligation which the owner has determined the family has failed to perform.

(3) *Exculpatory clause.* Prior agreement by the family not to hold the owner or its agents legally responsible for acts done improperly or for failure to act when it was required to do so.

(4) *Waiver of legal notice.* Agreement by the family that the owner need not give any notices in connection with (i) a lawsuit against the family for eviction, money damages, or other purpose, or (ii) any other action affecting the family's rights under the lease.

(5) *Waiver of legal proceedings.* Agreement by the family to allow eviction without a court determination.

(6) *Waiver of jury trial.* Authorization to the owner's lawyer to give up the family's right to trial by jury.

(7) *Waiver of right to appeal court decision.* Authorization to the owner's lawyer to give up the family's right to appeal a decision on the ground of judicial error or to give up the family's right to sue to prevent a judgment from being put into effect.

(8) *Family chargeable with cost of legal actions regardless of outcome of lawsuit.* Agreement by the family to pay lawyer's fees or other legal costs whenever the owner decides to sue the family, whether or not the family wins.

§ 886.323 Maintenance, operation, and inspections.

(a) *Maintain decent, safe, and sanitary housing.* The owner shall maintain and operate the project so as to provide decent, safe, and sanitary housing and the owner shall provide all the services, maintenance, and utilities which he or she agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.

(b) *HUD inspection.* Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they are in decent, safe, and sanitary condition.

(c) *Owner and family inspection.* Prior to occupancy of any vacant until by a family, the owner and the family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. Copies of these reports shall be kept on file by the owner for at least 3 years.

(d) *Annual inspections.* HUD will inspect the project (or cause it to be inspected) at least annually and at such other times as HUD may determine to be necessary to assure that the owner is meeting his or her obligation to maintain the units and the related facilities in decent, safe, and sanitary condition and to provide the agreed-upon utilities and other services. HUD will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the owner and the family of its determination regarding the condition of the units.

(e) *Failure to maintain decent, safe, and sanitary units.* If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family.

§ 886.324 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.

(a) *Reexamination of family income.* Reexamination of family income, composition, and the extent of medical or other unusual expenses incurred by the family shall be notice by the owner or HUD that such a dwelling unit is available. Such a family shall have priority over a family on the owner's waiting list seeking the same size unit.

(b) *Change in family composition, owner's responsibilities.* Upon receipt by the owner of a notification by the family of a change in the family size, the owner agrees to offer the family a suitable unit as soon as one becomes vacant and ready for occupancy. If the owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD may assist the family in finding a suitable dwelling unit and require the family to move to such unit as soon as possible.

(c) *HUD actions if appropriate size unit is not made available.* If the owner fails to offer the family a unit appropriate for the size of the family when such unit becomes vacant and ready for occupancy, HUD may abate housing assistance payments to the owner for the unit occupied by the family and assist the family in finding a suitable dwelling unit elsewhere.

§ 886.326 Adjustment of allowance for utilities and other services.

HUD shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the allowance for utilities and other services applicable to the dwelling units in the project on grounds of changes in utility rates or other change of general applicability to all units in the project. If HUD determines that an adjustment should be made, HUD shall prescribe the amount of the adjustment and direct the owner to make a corresponding adjustment promptly in the amount of rent to be paid by the affected families and the amount of housing assistance payment.

§ 886.327 Inapplicability of low-income public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-income public housing are applicable only to PHA-owned projects operated under section 8 commitments pursuant to this subpart.

§ 886.328 Termination of tenancy.

(a) *Applicability.* The provisions of 24 CFR 450 as modified by this section, apply to all decisions by an Owner to terminate the tenancy of a Family residing in a unit under Contract during or at the end of the Family's lease term.

(b) *Entitlement of Families to Occupancy* (1) *General.* The Owner may not terminate any tenancy except upon the following grounds: (i) Material noncompliance with the lease; (ii) Material failure to carry out obligations under any State landlord and tenant act, or (iii) Other good cause, which may include the refusal of a Family to accept a HUD-approved modified lease form (see paragraph (d) of this section). No termination by an Owner will be valid to the extend it is based upon a lease or a provision of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of good cause.* The conduct of a tenant cannot be deemed "other good cause" under paragraph (b)(1)(iii) of this section unless the Owner has given the Family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the Family in the same manner as that provided for termination notices under State and local law.

(3) *Material noncompliance.* The term material noncompliance with the lease includes (i) one or more substantial violations of the lease or (ii) repeated minor violations of the lease which disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a material noncompliance with the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination notice.* (1) The Owner must give the Family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the Family that it has 15 calendar days (or such greater time, if any, that may be required by law) within which to respond to the Owner. This notice shall also state that the family may, within the same time period, present its objections to HUD in writing or in person. The owner shall include in this notice the name, address, and telephone number of the appropriate HUD (or PHA) official to whom the family should respond.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iii) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the Family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the Family, the Owner may not rely on any grounds which are different from the reasons set forth in the notice. The owner must obtain HUD's authorization for an eviction; accordingly a copy of the notice must be furnished simultaneously to HUD and HUD must determine that the proposed termination is being performed in accordance with the procedures required in this section.

(i) If the family resides in a unit which is not a moderately or substantially rehabilitated unit, but a unit which is under contract, HUD shall forthwith examine the grounds for the termination and shall authorize the termination unless it finds the grounds to be insufficient under the lease. HUD shall make a good faith effort to notify the owner and the family of its determination within 30 days of the date of notice to the family, whether or not the family has presented objections to HUD.

(ii) Where the PHA is a party to the contract between the owner and HUD for the purpose of authorizing evictions, the PHA shall assume the responsibilities of HUD under paragraph (b) of this section. In this situation a copy of the notice of the proposed eviction shall be sent to the PHA. The PHA shall be entitled to a fee as provided in the contract for each proposed eviction action submitted by the owner and reviewed by the PHA.

(d) *Modification of lease form.* The Owner may, with the prior written approval of HUD, modify the terms and conditions of the lease effective at the end of the initial term or a successive term, by serving an appropriate notice on the Family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the Family at least 30 days prior to the last date on which the Family has the right to terminate the tenancy without being bound by the modified terms and conditions. The Family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the Owner written notice in accordance with the lease that he/she intends to terminate the tenancy. Any increase in rent must in all cases be governed by this Subpart and other applicable HUD regulations.

(e) *Continued assistance.* Should the Family be evicted in accordance with this section, HUD will have no obligation to continue assistance to the Family.

§ 886.329 Reduction of number of contract units for failure to lease to eligible families.

(a) *Reductions after initial six months.* If at any time, beginning 6 months after the effective date of the contract, the owner fails for a continuous period of 6 months to have all of the contract units leased or available for leasing by eligible families, HUD may on 30 calendar days notice reduce the number of contract units to not less than the number of contract

units under lease, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number. Failure by the owner to make a reasonable effort to lease the contract units to eligible families shall be considered a material default under the contract.

(b) *Amending the contract.* HUD may agree to an amendment of the contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (a) of this section if HUD determines that the restoration is justified as a result of changes in demand and in the light of the owner's record of compliance with his or her obligations under the contract and if annual contributions contract and budget authority are available; and HUD may take such steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance.

§ 886.330 Work write-ups and cost estimates.

(a) *HUD preparation of work write-up.* A work write-up, including plans and specifications, if needed, will be made by HUD specifying the rehabilitation necessary to make the project units decent, safe, and sanitary and/or to prevent the imminent failure of major building systems or components (e.g., roofs, foundations, electrical system, plumbing system).

(b) *HUD specifies deficiencies and corrective action.* The work write-up will specify deficiencies noted by HUD and describe the manner in which the deficiencies are to be corrected, including minimum acceptable levels of workmanship and materials.

(c) *HUD preparation of cost estimates.* HUD shall perform or cause to be performed a cost estimate to complete these repairs. The cost of any necessary relocation, as determined by HUD as being necessary to expedite the rehabilitation and the estimated cost to the owner of maintaining project rents at the Section 8 level, as required by HUD prior to execution of the Contract, plus other costs allowable by HUD will be included in the cost estimate. The work write-up and cost estimate shall become part of the disposition package and will be used in determining the sales price of the project.

§ 886.331 Agreement to enter into housing assistance payments contract.

(a) *Execution of agreement.* At the sales closing and prior to the Owner's commencement of any rehabilitation under this subpart, HUD will enter into an Agreement with the Owner which contains the following:

(1) A statement that the Owner agrees to rehabilitate the project unit(s) to make the unit(s) decent, safe, and sanitary in accordance with the work write-up and cost estimates provided under this subpart.

(2) A date by which rehabilitation will have commenced and a deadline date by which the rehabilitated project unit(s) will be completed and ready for occupancy. The Agreement may provide for staged rehabilitation, occupancy, and payments under the contract.

(3) The Contract Rent which will be paid to the Owner once rehabilitation is completed, the Contract is executed, and the unit(s) is/are occupied by an eligible family.

(4) A date for final inspection of the unit(s) by HUD and the owner shall be specified. This date shall be as soon as possible after the deadline date specified pursuant to paragraph (a)(2) of this section.

(5) The term of the contract.

(b) *Agreement part of sales contract.* The Agreement will be prepared by HUD and incorporated into the Contract of Sale and Purchase. The Agreement shall include all required information in paragraph (a) of this section and a statement specifying the Owner's responsibility for making relocation payments to Families temporarily displaced.

§ 886.332 Rehabilitation period.

(a) *Immediate start of rehabilitation after sales closing.* After the execution of the Agreement and the sales closing, the owner shall immediately proceed with the rehabilitation work as provided in the Agreement. In the event the work is not immediately commenced, diligently continued, and/or completed by the deadline date stated on the Agreement, HUD will have the right, upon written notification to the owner, to rescind the Agreement and the sale, or take other appropriate action.

(b) *Extensions.* Although extensions of time may be granted by HUD upon a written request from the owner stating the grounds for the extension, no increases in Contract Rents shall be granted for delays.

(c) *Changes.* (1) The Owner must submit to HUD for approval any changes from the work specified in the Agreement which would materially reduce or alter the Owner's obligations or the quality or amenities of the project. HUD may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior HUD approval, HUD will have the right to take action consistent with the purpose of this Subpart, including action intended to preclude the owner from benefiting from a change in the work specified without HUD approval. HUD action shall include but is not limited to reducing the Contract Rents, requiring the owner to remedy the deficiency, or rescission of the Contract of Sale with reimbursement to the owner for the HUD determined reasonable cost of work items completed by the Owner and acceptable to HUD.

(2) Contract Rents for moderate or substantial rehabilitation project units shall not be increased except in accordance with this subpart. Should an increase in Contract Rents be necessitated by changes in local codes or ordinances or other unanticipated changes in work items which could not have been anticipated by HUD, an increase will only be approved if HUD approval is obtained prior to incorporation of any changes in the project.

§ 886.333 Completion of rehabilitation.

(a) *Notification of completion.* The owner must notify HUD in writing when work is completed and submit to HUD the evidence of completion and cost certifications described in paragraph (b) and (c) of this section.

(b) *Evidence of completion.* Completion of the project must be evidenced by furnishing HUD with the following:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy as required by the locality.

(2) A certification by the owner that:

(i) The project unit(s) has been completed in accordance with the requirements of the Agreement;

(ii) The project unit(s) is/are decent, safe, and sanitary;

(iii) The project unit(s) has/have been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) The project was treated and is in compliance with applicable HUD Lead Based Paint regulations (24 CFR Part 35) and if the project was constructed prior to 1950, each Family will or has received the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, and that records showing receipt of such notice by each Family shall be maintained;

(v) If applicable, the owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the owner's knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the

Agreement. In the event there are any such pending claims to the knowledge of the owner of HUD, the owner shall be required to place a sufficient amount in escrow, as determined by HUD, to assure such payments;

(vi) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and

(vii) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in the approved purchase proposal other than changes approved in writing by HUD in accordance with the Agreement.

(c) *Actual cost and interest rate certifications.* The Owner must provide HUD with statements of the actual costs, including the interest rate incurred for the rehabilitation, Contract Rent shortfalls, and any relocation approved by HUD. The owner shall certify that these are the actual costs. HUD shall review and approve these costs subject to post audit.

(d) *Review and inspections.* (1) Within fifteen working days of the receipt of the evidence of completion, and the owner's certification of costs, HUD shall review the evidence of completion for compliance with paragraphs (b) and (c) of this section.

(2) Within the same time period, a HUD representative shall inspect the unit(s), both assisted and unassisted.

(i) If the units required moderate rehabilitation, the inspection shall determine whether the unit(s) have been completed in accordance with the Housing Quality Standards with HUD approved modifications.

(ii) If the units required substantial rehabilitation, the inspection shall be in a manner sufficient to enable the inspector to report that he/she has inspected the observable elements and features of the project unit(s) in accordance with professional standards of care and judgment and that, on the basis of the inspection, the project has been completed in accordance with the Agreement and that there are no observable conditions inconsistent with the evidence of completion, including the certifications of the Owner.

(e) If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs (g)(1) and (2) of this section.

(f) *Acceptance.* If HUD determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted.

(g) *Acceptance where defects or deficiencies reported.* If the projects unit(s) are not acceptable under paragraph (f), the following shall apply: (1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the contract executed. If the owner fails to complete the items within a reasonable time to the satisfaction of HUD, HUD may, upon 30 days notice to the owner terminate the contract and/or exercise its other rights thereunder, including rescission of the sale.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, HUD shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit HUD to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The owner shall be notified of HUD's determinations and, if the owner agrees to comply with the conditions, an addendum to the Agreement shall be entered into, specifying the remaining work, pursuant to which the defects or deficiencies will be corrected and the unit(s) then accepted. If the owner is unwilling to enter into such an addendum or fails to perform under the addendum, the units will not be accepted and appropriate remedies will be sought by HUD. Paragraphs (a), (b), (c), (d), (e), (f), and (g) will apply when the remaining work is completed satisfactorily.

(h) *Notification of non-acceptance.* If HUD determines that, based on the review of the evidence of completion and inspection, the unit(s) cannot be accepted, the Owner must be promptly notified of this decision and the reasons and steps shall be taken immediately to rescind the sale, or such other action deemed appropriate by HUD.

§ 886.334 Execution of housing assistance payments contract.

(a) *Time of execution.* Upon acceptance of the unit(s) by HUD pursuant to § 886.333(f), the contract will be executed first by the Owner and then by HUD. The effective date must be no earlier than the HUD inspection which provides the basis for unconditional acceptance.

(b) *Changes in initial contract rents during rehabilitation.* (1) The Contract Rents established pursuant to § 886.310 and 24 CFR 290 will be the Contract Rents on the effective date of the Contract except under the following circumstances:

(i) When, during rehabilitation, work items are discovered which (A) could not reasonably have been anticipated by HUD or are necessitated by a change in local codes or ordinances, and (B) were not listed in the work write-up prepared by HUD but are deemed by HUD, in writing, to be necessary work, and (C) will require additional expenditures which would make the rehabilitation infeasible at the Contract Rents established in the Agreement. Under these circumstances, HUD will:

(A) Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and the additional cost for this work,

(B) Recompute the Contract Rents, within the limits specified in paragraph (b)(4) of this section, based upon the revised cost estimate, and

(C) Prepare and execute an amendment to the Agreement stating the additional work required and the revised Contract Rents.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement.

(iii) When the actual certified relocation payments made by the Owner to temporarily relocated Families varies from the cost estimated by HUD.

(2) Should changes occur as specified in paragraph (b)(1)(ii) or (iii) (either an increase or decrease), HUD may recalculate the Contract Rents and amend the Contract or Agreement, as appropriate, to reflect the revised rents. The rents shall not be recalculated based on increased costs to maintain rents at the Section 8 level during the rehabilitation period.

(3) HUD must review and approve the Owner's certification that the rehabilitation costs and relocation costs are the actual costs incurred.

(4) In establishing the revised Contract Rents, HUD must determine that the resulting Gross Rents do not exceed the Fair Market Rent or the exception rent provided in § 886.310 in effect at the time of execution of the Agreement.

(c) *Unleased unit(s).* At the time the contract is executed, HUD will provide a list of dwelling unit(s) leased as of the effective date of the Contract and a list of the unit(s) not so leased, if any, and shall determine whether or not the owner has met the obligations with respect to any unleased unit(s) and for which of those unit(s) vacancy payments will be made by HUD. The

owner must indicate in writing either concurrence with this determination or disagreement reserving all rights to claim vacancy payments for the unleased unit(s) pursuant to the contract, without prejudice by reason of the owner's signing the contract.

§ 886.335 HUD review of agreement and contract compliance.

HUD will review project operations at such intervals as it deems necessary to ensure that the owner is in full compliance with the terms and conditions of the contract, Regulatory Agreement, and Agreement to Enter into a Housing Assistance Contract, if any. The equal opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

Issued at Washington, D.C., October 30, 1979.

Morton A. Baruch,

Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

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Part IV

Consumer Product Safety Commission

Safety Standard for Walk-Behind Power Lawn Mowers; Certification Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

Safety Standard for Walk-Behind Power Lawn Mowers; Certification Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission requires that manufacturers and importers certify that their walk-behind rotary power lawn mowers comply with the Commission's Safety Standard for Walk-Behind Power Lawn Mowers. The requirements provide for certifying rotary power mowers with a permanent label and for recordkeeping. The labeling and recordkeeping requirements are needed to help the Commission monitor compliance with the lawn mower safety standard. The labeling requirement will also enable consumers to distinguish complying from noncomplying mowers.

DATES: The rule is applicable to all walk-behind rotary power lawn mowers manufactured after December 31, 1981.

In order that all interested persons may have an equal opportunity to examine this certification rule as published in the **Federal Register** and then determine in an orderly manner whether to seek judicial review of the rule, this rule shall be considered promulgated at 12:00 noon, Eastern Standard Time, on December 17, 1979.

FOR FURTHER INFORMATION CONTACT: Allen Brauninger, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492–6629.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1979, the Commission published a final consumer product safety standard for power operated walk-behind rotary and reel-type lawn mowers (16 CFR Part 1205 Subpart A, 44 FR 9990). The standard contains performance and labeling requirements intended to reduce the risk of injury to consumers caused by contact, primarily of the foot and hand, with the rotating blade of a mower. The performance requirements of the standard apply only to rotary mowers. The labeling requirements apply to both rotary and reel-type mowers. The standard contains two main performance requirements applicable to rotary power lawn mowers. The first protects against foot contact injuries that occur while the operator is in the normal mowing position. This requirement states that the rear and discharge chute areas of the mower shall be capable of being probed with a specified foot probe that simulates the action of a human foot, without the probe contacting the blade. The second main requirement protects against hand or foot injuries that occur after the operator has left the normal mowing position by requiring the blade to stop within 3 seconds of the time the operator lets go of the mower. A more detailed explanation of the standard's requirements, rationale, and background is given in the preamble to the final power lawn mower safety standard.

Certification Rule

1. Certification Testing

Section 14(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a)(1), requires manufacturers (defined in the act to include importers) and private labelers of a product subject to a consumer product safety standard to issue a certificate which states that the product conforms to all applicable consumer product safety standards, specifies the applicable standard, states the name of the manufacturer or private labeler issuing the certificate, and includes the date and place of manufacture. The certificate must accompany the product or be furnished to any distributor or retailer to whom the product is delivered. Section 14(a) also requires that the certificate be based on a test of each product or upon a reasonable testing program.

The failure to issue a certificate of compliance or the issuance of a certificate which is false or misleading in any material respect violates section 19(a)(6) of the CPSA.

The Commission is issuing this certification and recordkeeping regulation to inform manufacturers and importers of the procedures to use in certifying that their products comply with the safety standard once the standard becomes effective and to exempt private labelers from the requirement to certify. The certification rule applies to walk-behind rotary power lawn mowers and not to reel-type mowers, since the latter are subject only to the labeling requirements of the standard. Under the certification rule, manufacturers and importers are responsible for 1) issuing a certificate of compliance in the form of a permanent label attached to each mower which states that the mower complies with the standard and supplies other specified information, and 2) keeping, or assuring the availability of, records showing that the certificates are based on a test of each mower or on a reasonable testing program. These requirements are discussed in detail below.

The certification rule issued below provides that manufacturers (defined at § 1205.32(a) to include importers and assemblers) must either test individual rotary walk-behind power lawn mowers or devise "reasonable testing programs." A "reasonable testing program" is defined in the rule as one which provides reasonable assurance that the certified mowers comply with the standard. The rule allows manufacturers and importers to define their own reasonable testing programs. The Commission has exempted private labelers from the requirement to certify.

The Commission has concluded that it is unnecessary to specify the testing program for the manufacturers. A power lawn mower's ability to meet the performance requirements (except for blade stopping time) is controlled by the mower's design, materials, and method of production. Initial tests made on mowers of a specific design should be sufficient to determine that the product manufactured at a later date to essentially the same design complies with the standard. However, because blade stopping time may vary from one mower to another of essentially the same design, the Commission believes that a prudent manufacturer should test production mowers of essentially the same design periodically for the blade stopping time requirement.

The certification rule states at § 1205.33(b)(2) that the Commission will test for compliance with the standard by using the test procedures in Subpart A of Part 1205. However, *manufacturers* are not bound by these procedures and are free to use any *reasonable* test procedures.

Section § 1205.33(b)(1) of this rule explains how a reasonable testing program is conducted. For certification testing, the mowers should be grouped into "production lots," defined at § 1205.32(b) to be a quantity of mowers from which certain mowers are selected for testing prior to certifying the lot. All mowers in a production lot are required to be essentially identical in those design, construction, and material features which relate to the ability of a mower to comply with the standard. Sample mowers are then selected from the production lot for testing in accordance with the reasonable testing program.

If the production lot has been properly limited as to number and design of mowers, it should be possible for a manufacturer to test samples from a lot for certification and not to test again as long as the mowers in the production lot

are essentially identical to the mowers tested for certification in all respects relating to the ability of the mower to meet the requirements of the standard. After a lot has been established, if there are any changes in the mower specifications which could affect mower performance in relation to the requirements of the standard, the manufacturer should establish a new production lot for testing. Similarly, if there are changes in parts, suppliers of parts, or production methods which could affect the ability of the mower to comply with the standard, the manufacturer should establish a new production lot for testing. Furthermore, if the testing program shows that a mower does not comply with a requirement of the standard, no mower in the production lot can be certified as complying until the noncomplying mowers have been identified and destroyed or altered by repair, redesign, or use of different materials or components to the extent necessary to make the mowers conform to the standard.

The Commission notes that the obligation to issue a certificate of compliance based on a reasonable testing program is in addition to, and not in place of, the obligation to manufacture, import, distribute, or private label only mowers which meet the requirements of the standard.

Consequently, if the Commission tests mowers in accordance with the standard and obtains failing results, the Commission may begin enforcement action for violation of section 19(a)(1) of the CPSA, even though the manufacturer or importer of the mower may have issued a certificate of compliance and may have based that certificate on a reasonable testing program which meets the requirements of the regulation issued below.

Section 22 of the CPSA authorizes the Commission to enjoin any person from violating section 19, and to seize any product which does not comply with an applicable standard. In addition, sections 20 and 21 of the CPSA authorize the Commission to seek civil or criminal penalties for violation of the CPSA in appropriate cases.

2. Recordkeeping

Section 1205.34 of the rule requires that manufacturers and importers of walk-behind rotary power lawn mowers subject to the standard maintain written records demonstrating that compliance certificates are based on tests of each mower or a reasonable testing program.

No specific format is prescribed for the records, but the records are required to contain sufficient information to show the nature of a firm's testing procedures, including the basis for and identity of the production lot, and to show whether the mowers which are being marketed and certified to comply with the standard are essentially identical in every respect that relates to compliance with the standard to the mowers that were tested for conformance with the standard. The records are also required to indicate exactly which mowers or production lots of mowers are being certified as a result of a specified test or series of tests. The records are required to be maintained for a minimum of 3 years from the date of certification of each mower or each production lot. This is because the Commission staff estimates that some mowers can reasonably be expected to remain in inventory and not reach consumers for a period of three years, and the Commission is particularly interested in being able to check the records concerning any mowers held in inventory.

These records, besides aiding Commission enforcement of the standard and the certification rule, could be helpful to a manufacturer in limiting the scope of a possible recall order under section 15 of the CPSA. (The Commission is authorized under section 15 to order a manufacturer of a product which is found, after opportunity for a hearing, to present a "substantial product hazard" to elect one of the following remedies: repair the defective product, replace the product with a non-defective product, or refund the purchase price of the product. "Substantial product hazard" is defined in section 15 to mean a failure to comply with an applicable consumer product safety rule, or a product defect, which creates a substantial risk of injury to the public.) Records of date and location of manufacture; dates of changes in specifications, parts, suppliers, or manufacturing procedures; and the dates and results of quality control or recertification testing are examples of the types of information which could serve to identify the period of time during which non-complying or defective mowers were manufactured. In the absence of such information, the entire production of a particular type of mower could be subject to a recall order.

The recordkeeping requirements of § 1205.34 are issued under the authority of section 16(b) of the CPSA, which authorizes requirements for the establishment and maintenance of records that are necessary to implement the act or to determine compliance with regulations issued under the act. The Commission believes the records required by § 1205.34 of the rule are necessary to monitor compliance with the power lawn mower standard.

Section 16(b) further provides that these records must be made available for inspection by duly designated agents of the Commission upon request.

3. Product Certification and Labeling

Section 1205.35 of the rule requires manufacturers of walk-behind rotary power lawn mowers manufactured after December 31, 1981, to affix to the mowers permanent labels which shall be considered a "certificate" of compliance, as that term is used in section 14(a) of the CPSA. (Section 14(c) of the CPSA authorizes the Commission to issue rules requiring a product to bear a label containing information similar to that required by section 14(a) for certificates.)

The certification label is required to include the following information:

1. The statement "Meets CPSC blade safety requirements."
2. An identification of the production lot.
3. The name of the manufacturer or importer issuing the certification label.
4. The location where the product was principally assembled.
5. The month and year the product was manufactured.

All of this information, except for the statement and the name of the person issuing the certificate, may be in code if an interpretation of the coding system is available to consumers, persons in the chain of distribution, and the Commission. If a mower is to be sold to a private labeler, and if the brand or trademark of the private labeler is on the certification label, the name of the manufacturer or importer may also be in such a code.

The certification label is required to be visible and legible to the ultimate consumer. However, where the permanent label is not immediately visible to the consumer at the time of sale because of packaging or other marketing practices, a second temporary label stating "Meets CPSC blade safety requirements" is required on the container, or if the container is not so visible, on the promotional material used with the sale of the mowers. The requirement for the temporary label for containers and promotional materials expires December 31, 1984.

In deciding that certification for lawn mowers should be in the form of a permanent label rather than a separate certificate supplied to persons in the distribution chain, the Commission points out that the label will be visible to all in the distribution chain, and the

certification will be immediately available if any questions concerning compliance with the standard arise about a particular mower. The Commission believes that a permanent label will benefit consumers and industry, as well as the Commission, in the following ways:

1. For a period of time after the mower standard goes into effect, both complying and noncomplying mowers will be available on the retail market. A label affixed to the individual mower, in contrast to a certificate covering a group of mowers supplied to the retailer, will help consumers purchasing mowers to make an informed choice between complying and noncomplying mowers.

2. A permanent label will make it easier to determine whether a particular mower was certified to comply with the standard. In the event a power mower is involved in an injury, for example, a CPSC investigator or the victim of the injury can tell immediately if the mower was certified.

3. The Commission may amend the walk-behind power mower standard in the future to add new requirements or to modify the existing requirements. A label stating the date of manufacture will make it immediately apparent which requirements apply to a particular mower, thereby aiding a Commission investigation of particular mower-related accidents.

4. A permanent label will enable CPSC investigators screening mowers for compliance to distinguish between mowers manufactured before and those manufactured after the standard without examining retailers' or distributors' shipping records. An examination of shipping records can be time-consuming and difficult. The label will also permit the Commission investigators to identify the firm responsible for the certification and the place of manufacture, thereby expediting any further Commission actions that may be appropriate.

5. A permanent label with an identification of the production lot and the date and location of manufacture will be advantageous to manufacturers, distributors, retailers, private labelers, and consumers in the event of a recall order under section 15 of the CPSA. If the recall is limited to a certain production period or manufacturing location, the label will help in identifying and limiting those mowers which are subject to the recall.

The last section of the rule (§ 1205.36) deals with certification labeling by importers. Importers of mowers are required to issue the certification labels, but may rely on the foreign manufacturer's tests to support the certification if the records of the tests are maintained in the United States and the importer is a resident of the U.S. or has a resident agent in the U.S. The requirements that the records must be maintained in the U.S. and the importer must reside, or maintain a resident agent, in this country are necessary to enable the Commission investigators to inspect the records and monitor compliance with the standard. Importers who certify are responsible for inspecting the test records to determine that all testing has been performed properly, that the records of the tests are accurate and complete, and that the tests provide reasonable assurance that all mowers imported comply with the standard.

Comments on the Proposal

In response to the proposal of the certification rule, the Commission received 11 comments. In addition, several comments received in response to the proposal of the power lawn mower safety standard concerned certification issues. The substance of these comments and the Commission's responses to them are explained below.

1. *Third party testing.* One commenter recommended that the rule specifically mention that the certification testing could be performed by an independent third party as authorized by section 14(b) of the CPSA. The Commission agrees that inclusion of a specific reference to the acceptability of third party testing is desirable. Section 1205.33 of the rule has been changed accordingly.

Another commenter believes that *only* third parties should be allowed to certify. However, section 14 of the act specifically states that the person required to issue the certificate (manufactures, importers, and private labelers) has the option to perform the testing or to have it performed by an independent third party qualified to perform the tests. Similarly, there is no express authority for requiring witnesses to such tests, as suggested by one commenter. Therefore, the final rule allows the certifying party to perform the testing program.

2. *Certification by importers or private labelers.* The proposal required certification by manufacturers, importers, and private labelers. (However, where more than one party would otherwise have been required to certify, only the party closest to the consumer in the distribution chain would have been required to issue the certificate.) The proposal provided that importers and private labelers would be allowed to rely on the tests of manufacturers to support the certificate of compliance if the importer or private labeler assured that all testing had been performed properly with acceptable results and that all records of such tests were accurate and complete.

One commenter, who markets under its own label mowers manufactured by others, stated that the proposal unreasonably required private labelers to become the insurers of the manufacturing practices and records of others over whom the private labeler may have no control. Therefore, the commenter suggests that private labelers should be allowed to issue certificates of compliance based on certification from the manufacturer that the testing had been performed properly with acceptable results and that all records of such tests comply with the requirements of the rule, unless the private labeler, in the exercise of due care, had reason to believe otherwise. This commenter also suggested that the manufacturers be *required* to issue such a certificate to the private labeler.

The Commission agrees that the manufacturer is in a much better position than a private labeler to efficiently designate production lots and to make the other judgments involved in the certification process. The Commission also believes that it would be an unnecessary duplication for private labelers to be required to independently determine the adequacy of the manufacturer's tests and records, as would have been required by the proposal. However, the Commission believes that the simplest way to address these concerns is to eliminate the requirement of the proposal that private labelers certify their products. Thus, such products would be certified only by the manufacturer, which is defined in section 3(a)(4) of the CPSA as any person who manufactures *or imports* a consumer product. Therefore, private labelers who are also importers would still have to certify. The provision of the proposal that would allow importers to rely on the tests conducted by foreign manufacturers under certain conditions is retained, but the wording of the requirement has been changed to state that the importer's duty is to determine that the test records appear to comply with the rule and that reliance on the tests must be in good faith.

3. *Component suppliers.* One commenter stated that component manufacturers should be allowed to certify their components, and another commenter stated that component manufacturers should not be involved in certification since the complete machine is certified rather than the components. The Commission believes that since the standard applies to the complete lawn

mower and not to its component parts, it is not appropriate to rely on tests by component manufacturers for purposes of the certification required by section 14 of the CPSA. Accordingly, manufacturers who manufacture or import only component parts of a mower are exempted from the requirement to certify. However, the mower manufacturer could contractually require its component suppliers to warrant that the components will meet certain criteria relating to the standard.

4. *Defective mowers.* Section 1205.33(b)(3) of the proposal stated that if the "reasonable testing program shows that a mower does not comply with one or more requirements of the standard, no mower in the production lot can be certified as complying until mowers in the lot have been altered by repair, redesign, or use of a different material or components to the extent necessary to bring them into conformance with the standard." One commenter states that this section assumes that a single failure is attributable to assembly, design, or material and that it is a problem affecting the whole lot. The commenter believes that the "practical effect [of the section] is to impose needless and costly delays in manufacturing by forcing producers to act as if isolated test deficiencies require basic rework throughout the production run."

The Commission does not agree that this section as proposed would require all mowers in the lot to be altered. The proposal states that mowers in the lot are to be altered *"to the extent necessary* to bring them into conformance." This does not necessarily require wholesale changes in assembly, design, or materials as stated by the commenter. Instead, the section requires the manufacturer to identify all noncomplying mowers within that lot and correct deficiencies before certifying them and offering them for sale.

However, the wording of the proposal has been changed in the final rule to more clearly point out that these corrective actions are required only for noncomplying mowers and to expressly authorize destruction of the noncomplying mowers. (Disassembly of the mowers and discarding of the defective parts would be considered a destruction of the mower for this purpose.)

5. *Records.* Proposed § 1205.34(b) also required the keeping of records of "which mowers or production lots of mowers are covered by particular certificates of compliance." One commenter stated that the use of the plural in this regard was confusing and suggested that the requirement be changed to read that the "records shall indicate which specific mower or production lot of mowers is covered by any particular certificate of compliance." Since each mower has an individual certification, the Commission does not agree that this change would more precisely describe the purpose of the recordkeeping requirement. However, the final rule has amended the language of this section to require that records be kept of the mower or production lot to which each test applies.

Proposed § 1205.34(b) also required the records to "describe" the tests to which the mowers were subjected. One commenter stated that this requirement could be interpreted as requiring the record of *each* test record to fully describe the test. The commenter believes the word "reference" would be more apt in this regard than would "describe." The Commission appreciates the commenter's concern, but does not believe that the suggested change would be an improvement. The Commission does not intend to require that the record of each individual test fully describe the manner in which the test is performed. The certifier must maintain a record containing a full description of the tests used for this purpose, however, even though the record for a particular test may only refer to the test by the designation assigned to it by the certifier. (A reference to a test required by the standard would be sufficient if the reference made it clear that was the test that was performed.) Accordingly, no change has been made in the wording of this requirement.

6. *Type of label.* Proposed § 1205.35(a) required the certificates of compliance to be in the form of a label which can reasonably be expected to remain affixed for the life of the mower. Two commenters believed that this language implied that the label could not be an integral part of the mower as would be the case if the label were stamped or cast into the housing. The Commission did not mean to imply in the proposal that integral labels would not be acceptable. In order to make this more clear in the final rule, the words "affixed to" have been deleted and "on" substituted.

7. *Combinations of labels.* In the proposal, the Commission asked for comment on whether it would be appropriate for certifiers to append the information needed for the certification label to the warning label required by the standard. Two commenters were in favor of allowing this. However, neither of these commenters suggested how such information could be presented so as not to detract from the safety message of the warning label. Accordingly, there has been no change in the final rule in this regard. However, the Commission notes that the rule does not prevent combining the information presented on the mower providing it does not detract from the conspicuousness of the warning label.

8. *Wording of label.* The proposal would have required that each mower bear a label stating "Meets CPSC blade safety requirements for walk-behind rotary power mowers." The words "for walk-behind rotary power mowers" were included so that consumers would not be inclined to think that mowers outside the scope of the performance standard (i.e., reel-type and riding mowers) did not comply with a standard by virtue of the fact that they did not bear a label. However, the industry trade association and a manufacturer commented that this language is self-evident and unnecessary and should be deleted from the label. Accordingly, these words are not required for the label required by the final rule.

The manufacturers's trade association also commented that the inclusion of the words "blade safety" before "requirements" in the label implied that other requirements exist and are not met by that mower and that "blade safety" should be deleted. The Commission disagrees with this comment. Without the indication that the mower complies only with requirements addressing the hazard of contact with the blade, consumers could be mislead into thinking that the requirements protect against other hazards, such as thrown objects, when in fact they do not.

The commenter also stated that if requirements addressing other hazards are issued in the future, the label would have to be changed, thus increasing the cost to manufacturers. The Commission, however, believes that such a cost would be minimal and would not outweigh the reasons explained above for retaining the words "blade safety" in the label.

Accordingly, the label required by the final rule will read "Meets CPSC blade safety requirements."

9. *Labeling of reel-type mowers.* One commenter suggested that reel-type mowers, which are not subject to the performance requirements of the standard but which must bear the warning label required by the standard, should be allowed to bear the label stating that the mower complies with CPSC blade safety requirements. The Commission, however, believes that consumers could be misleading if reel-type mowers were so labeled.

The exclusion of reel-type mowers from the performance requirements of the standard was not based on a finding that these mowers are less dangerous than rotary mowers but rather because the standard was primarily developed for rotary mowers and there were different considerations concerning the effectiveness and economic impact of the standard's requirements for reel-type mowers than for rotary mowers. For example, the blade of a rotary mower is required to stop within 3 seconds of when the operator releases a blade control mechanism. This is not required for reel-type mowers. To allow reel-type mowers to bear a label stating that the mowers meet the CPSC blade safety requirements could mislead consumers into relying on the protections afforded by the performance requirements of the standard, which in fact apply only to rotary mowers. Accordingly, only rotary mowers may bear the label.

10. *Labeling of promotional material.* One purpose of the label stating that a mower complies with the CPSC blade safety requirements is to assist consumers who wish to purchase a safer mower in determining which mowers available for sale comply with the standard. However, there are types of marketing situations where the consumer has no opportunity to view the mower before making the purchase. This could be the case, for example, where the purchase is made through a catalog or by telephone solicitation. In order to assist consumers who purchase mowers under conditions where they would not see a label on the mower prior to purchase, the proposal required that, under these conditions, a temporary label must appear on the container, or, if the container is not visible prior to purchase, the promotional material used in connection with the sale of the mowers.

One commenter stated that the requirement for the label on promotional material was unnecessary in that a notice on the mower container was sufficient to bring the information to the consumer's attention. However, as explained above, this is not the case for the situations where the consumer does not see the carton before purchasing the mower.

The commenter also stated that the requirement was vague and could be construed as applying to general advertising practices and policies beyond the scope of the safety standard or the Commission's jurisdiction. The Commission does not agree with this contention. The requirement would not apply to general advertising practices unless the advertising solicited sales by methods such as mail or telephone. Section 14 of the CPSA specifically authorizes the Commission to require the use and prescribe the form of labels.

Therefore, the requirement for labeling of containers and promotional material in situations where consumers will not be able to inspect the mower prior to purchase is retained in the final rule.

The commenter also suggested that the temporary label for containers and promotional material would be of value only during the period shortly after the standard goes into effect. They state that at some point these labels will be unnecessary since there will be no existing stocks of prestandard mowers on the market. They recommend that a cut-off date for this requirement be established and incorporated into the certification rule.

The Commission agrees that a cut-off date for requiring an affirmative label of compliance on cartons and promotional material is appropriate. From the information available to the Commission, it appears that retailers may have mowers in stock that are two model years old. Therefore, the Commission has decided to keep the requirement of § 1205.35(d) for affirmative labeling of containers and promotional material in effect for a period of 3 years from the effective date of the performance requirements of the standard (i.e., for mowers manufactured before January 1, 1985) after that date, the labels for containers and promotional material may be discontinued.

11. *Reasonable testing program.* The proposal did not specify any particular testing program that would be required as the basis for the certification by manufacturers that their mowers complied with the standard. The Commission believes that in view of the possible range of manufacturing practices and degrees of quality control it is more appropriate to allow each manufacturer to fashion its own reasonable testing program. However, several commenters stated that the Commission should establish criteria for a testing program specifying a percentage confidence level that not more than a certain percentage of noncomplying mowers will be present in the production lot. These comments assume that a test program will be "reasonable" only if the statistical parameters of the testing program are sufficient to provide a statistical assurance that it is unlikely that there are noncomplying mowers in the production lot. However, some manufacturers may achieve satisfactory assurance of compliance through extensive programs of sub-component inspection and testing, thereby requiring much lower levels of testing of assemblies than would be needed otherwise. Therefore, the Commission does not believe that it can justify the imposition of equal requirements for testing of assembled mowers on all manufacturers. Accordingly, the Commission is not establishing statistical parameters for a reasonable testing program.

The proposal, in § in 1205.33(b)(1), stated that production lots shall be limited as to the number and design of mowers "to insure that if the mowers selected for testing meet the standard, all mowers in the lot will meet the standard." Several commenters noted that, without testing each mower, it was not possible to completely assure that all mowers would pass the test of the standard. One commenter suggested that this section be amended to state that there should be a "reasonable assurance" that the mowers in the lot shall meet the standard. The Commission agrees that this language would more accurately express the intent of the section, and the final rule incorporates such language.

One commenter stated that § 1205.33(b)(2) could be clarified by inserting the word "manufacturer's" before "reasonable testing program" in order to point out that while manufacturers may, at their discretion, choose to adopt more rigorous test procedures than those mandated by the safety standard, the Commission will test only in strict accordance with the terms of the standard. The Commission agrees, and the change has been made in the final rule.

12. *Test manual.* Several commenters contended that certification regulation should be stayed until a reasonable interval after the Commission's test manual has been published. They argue that the requirements of the safety standard are ambiguous and incomplete and that manufacturers cannot make design decisions until they know what tests will be used by the Commission to determine compliance with the standard.

The Commission disagrees with the allegations that the standard's requirements are ambiguous or incomplete. The performance requirements of the standard clearly and definitely give the criteria which mowers must meet after the effective date of the standard. The purpose of the compliance test manual is to instruct the Commission's staff in how to test a mower. For example, one of the major performance requirements of the standard is the requirement that the

blade stop within 3 seconds of the time the operator releases a required blade control. The particular apparatus used to measure the time required for the blade to stop is immaterial to the understanding of the requirement. However, the compliance test manual will tell the Commission staff how to use the particular apparatus that will be used by the Commission.

Therefore, there is no need for the Commission to stay the certification rule pending publication of the compliance test manual. However, if manuacturers have any questions concerning the requirements of the standard, they should contact the Commission's Directorate for Compliance and Enforcement for clarification.

13. *Definitions.*

a. *Manufactured.* One commenter stated that the Commission should define what constitutes "manufactured" within the meaning of the certification rule, since different manufacturers might interpret the term differently. The Commission agrees that this clarification is desirable, and the term is defined in § 1205.32(b) as the earliest point at which the mower is in the form in which it will be sold or offered for sale to the consumer or is in the form in which it will be shipped to a distributor or retailer. In these forms, a "manufactured" mower may still require partial assembly by the consumer or the lawn mower dealer.

b. *Production lot.* One commenter stated that the definition of "production lot" at § 1205.32(c) of the proposal (now § 1205.32(d)) failed to specify how manufacturers using multiple suppliers for the same component parts are to define the lot. The proposal specified that all mowers in a lot must be "essentially identical" in those design, construction, and material features *which relate to the ability of a mower to comply with the standard.* The commenter believes that the term "essentially identical" suggests that a lot must be terminated whenever interchangeable parts of different suppliers are used on the assembly line. They suggest the use of the term "essentially equivalent" instead. The Commission believes that this commenter has not fully comprehended the meaning of the qualification that "essentially identical" relates only to the features *which relate to the ability of a mower to comply with the standard.* There is no requirement that a production lot be automatically established when interchangeable parts from another supplier are substituted. The manufacturer would have to make the judgment in an individual case concerning whether the possible differences in parts between suppliers "relate to the ability of a mower to comply with the standard." Accordingly, with the qualification explained above, the term "essentially identical" would appear to mean the same as the term "essentially equivalent," and no change from the proposal in this regard is required.

This commenter also states that the relationship between the definition of "production lot" and the one month labeling requirement of § 1205.35(b)(5) is not clear. The certification rule does not establish, or limit manufacturers to, any specific time limit for production lots. The one month labeling requirement merely requires identification of the production period and has no inherent relation to the beginning or ending of the production lot. Thus, if a production lot covered more than one month, the mowers produced in different months would be labeled with the same lot number but different month dates. Similarly, if more than one production lot is produced in a month, they would have the same month date but would otherwise be separately identified.

14. *Other comments.* A number of comments were received that related to the effectiveness and cost of the standard itself. Since these issues are not relevant to the issue of a certification rule, they are not discussed in this notice. However, these issues were extensively discussed in the **Federal Register** notice that issued the power lawn mower safety standard.

Other Changes to the Proposal

The proposal required that the compliance label state the month and year of production or, if the production lot is based on a period of less than one month, then a more specific date which relates to the production lot was required. However, the label is also required to contain an identification of the production lot. In view of this latter requirement, there is no need for a more specific date on the label, and the requirement for a more specific date than the month of production has been deleted from the final rule. Manufacturers are free to use a more specific date in order to identify the production lot, however, if they desire.

Anticipated Impact of the Certification Rule

The Commission believes that the retail price impact of the labeling and recordkeeping requirements of the certification rule will be approximately a $0.50 increase for each mower subject to the rule. The Commission notes that the rule mandates a label and recordkeeping but allows manufacturers a great deal of flexibility as to testing and recordkeeping.

The Commission points out that while the labeling specified in the rule will require more information on lawn mowers than is currently provided on lawn mower housings, most manufacturers already have the voluntary standard seal, the model number, and a serial number on the mower housing. Considering the amount of time until the certification rule becomes effective, it should be relatively easy and inexpensive for manufacturers, or importers to incorporate complying labels on mowers.

Furthermore, certification recordkeeping expenses should not be significant, especially for firms with relatively large production runs. Substantial recordkeeping is already done in connection with the voluntary standard and manufacturers' normal quality control procedures. Since the certification rule allows manufacturers a great deal of latitude in the format of their recordkeeping, manufacturers should be able to incorporate certification recordkeeping into their present systems with little difficulty. There may be one-time-only costs associated with changing labels and forms, and possibly computer programs for those firms with such programs, to accommodate certification information, but these costs should make only a miniscule contribution to increases in the price of mowers.

As explained above, even in the absence of a certification rule, the CPSA would require manufacturers (including importers) and private labelers to issue certificates of compliance based on a test of each mower or on a reasonable testing program. Since the rule being issued at this time does not specify what should constitute a reasonable testing program, the rule does not impose any additional testing burden on manufacturers than was already imposed by statute and the existence of the mower safety standard. With the possible exception of periodic tests of the time required for the blade to stop after release of the blade control, a reasonable testing program should not impose more of a burden to manufacturers than will be involved in initially implementing the standard and in conducting normal quality control reviews. Therefore, the additional costs imposed by the requirement to certify should not result in any significant increase in the price of mowers.

In fact, since the rule exempts private labelers from the requirement to certify, the rule lessens somewhat the burden

associated with certification that would otherwise be imposed by statute.

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 product certification or labeling rules normally have no potential for affecting the environment and environmental review of such rules is, therefore, generally not required (§ 1021.5(b)(2)).

The Commission finds that lawn mower certification rule will have no significant effect on the human environment and that no environmental review is necessary.

Effective Date

The certification rule is applicable to walk-behind rotary power lawn mowers manufactured after December 31, 1981 (§ 1205.31). This date corresponds to the effective date for the performance requirements of the lawn mower standard (see Part 1205, Subpart A).

In the time since the performance requirements of the standard were issued and the certification rule was proposed, the Outdoor Power Equipment Institute has submitted 2 petitions to the Commission for changes in the standard.

On August 17, 1979, OPEI asked for an eighteen month extension in the effective date of the standard. On November 29, 1979, the Commission denied this request. On September 12, 1979, OPEI also petitioned for an amendment to the standard that would allow, as a substitute for the blade stop requirement of the standard, the use of mowers with blades that are inaccessible as determined by a probe intended to simulate the actions of a human hand. The Commission expects that it will be several months before this petition is fully evaluated. If this petition is granted, or if other changes are made to the standard, the Commission will consider at that time whether any change in the effective date of this certification rule is appropriate.

Conclusion

Having considered the comments and other information relevant to the certification requirements set forth below, the Commission concludes that the requirements are needed, reasonable, and not unduly burdensome. Therefore, pursuant to sections 14, 16, and 27(e) of the CPSA (15 U.S.C. 2063, 2065, 2076), the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations by adding a new Subpart B to Part 1205, reading as follows:

PART 1205—SAFETY STANDARD FOR WALK-BEHIND LAWN MOWERS

* * * * *

Subpart B—Certification

Sec.

1205.30 Purpose, scope, and application.
1205.31 Effective date.
1205.32 Definitions.
1205.33 Certification testing.
1205.34 Recordkeeping requirements.
1205.35 Product certification and labeling by manufacturers.
1205.36 Product certification and labeling by importers.

Authority: Secs. 14, 16, 27(e); 86 Stat. 1220, 1222, 1228; 15 U.S.C. 2063, 2065, 2076)

Subpart B—Certification

§ 1205.30 Purpose, scope, and application.

(a) *Purpose.* Section 14(a) of the Consumer Product Safety Act, 15 U.S.C. 2063(a), requires every manufacturer (including importer) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product conforms to the applicable standard, and to base that certificate either on a test of each product or on a "reasonable testing program." The purpose of this Subpart B of Part 1205 is to establish requirements that manufacturers and importers of walk-behind rotary power lawn mowers subject to the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR Part 1205, Subpart A), shall issue certificates of compliance in the form of specified labeling and shall keep records of the testing program on which the certificates are based.

(b) *Scope and application.* (1) The provisions of this rule apply to all rotary walk-behind power lawn mowers which are subject to the requirements of the Safety Standard for Walk-Behind Power Lawn Mowers. This rule does not apply to reel-type mowers, which are subject only to the labeling requirements of the standard.

(2) As authorized by section 14(a)(2) of the act, the Commission exempts manufacturers who manufacture or import only component parts, and private labelers, from the requirement to issue certificates. (Private labelers who are also importers must still certify.)

§ 1205.31 Effective date.

Any walk-behind rotary power mower manufactured after December 31, 1981, must meet the standard and must be certified as complying with the standard in accordance with this rule.

§ 1205.32 Definitions.

In addition to the definitions set forth in section 3 of the act (15 U.S.C. 2052) and in § 1205.3 of the standard, the following definitions shall apply to this Subpart B of Part 1205:

(a) "Manufacturer" means any person or firm that manufactures or imports power lawn mowers subject to this standard, and includes those that assemble power lawn mowers from parts manufactured by other firms.

(b) "Manufactured" means the earliest point at which the mower is in the form in which it will be sold or offered for sale to the consumer or is in the form in which it will be shipped to a distributor or retailer. In these forms, a "manufactured" mower may still require partial assembly by the consumer or the lawn mower dealer.

(c) "Private labeler" means an owner of a brand or trademark which is used on a power lawn mower subject to the standard and which is not the brand or trademark of the manufacturer of the mower, provided the owner of the brand or trademark has caused or authorized the mower to be so labeled and the brand or trademark of the manufacturer of such mower does not appear on the label.

(d) "Production lot" means a quantity of mowers from which certain mowers are selected for testing prior to certifying the lot. All mowers in a lot must be essentially identical in those design, construction, and material features which relate to the ability of a mower to comply with the standard.

(e) "Reasonable testing program" means any test or seriles of tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and which are performed on one or more mowers of the production lot for the purpose of determining whether there is reasonable assurance that the mowers in that lot comply with the requirements of the standard.

§ 1205.33 Certification testing.

(a) *General.* Manufacturers and importers shall either test each individual rotary walk-behind power lawn mower (or have it tested) or shall rely upon a reasonable testing program to demonstrate compliance with the requirements of the standard.

(b) *Reasonable testing program.* (1) a reasonable testing program for rotary walk-behind power mowers is one that provides reasonable assurance that the mowers comply with the standard. Manufacturers and importers may define their own reasonable testing programs. Such reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs.

(2) To conduct a reasonable testing program, the mowers shall be divided into production lots. Sample mowers from each production lot shall be tested in accordance with the reasonable testing program so that there is a reasonable assurance that if the mowers selected for testing meet the standard, all mowers in the lot will meet the standard. Where there is a change in parts, suppliers of parts, or production methods that could affect the ability of the mower to comply with the requirements of the standard, the manufacturer should establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the test procedures contained in the standard. However, a manufacturer's reasonable testing program may include either tests prescribed in the standard or any other reasonable test procedures. (For example, in the shield strength test (§ 1205.4), the manufacturer might choose to use a force higher than the 50 lb force specified in the standard.)

(4) If the reasonable testing program shows that a mower does not comply with one or more requirements of the standard, no mower in the production lot can be certified as complying until the noncomplying mowers in the lot have been identified and destroyed or altered by repair, redesign, or use of a different material or components to the extent necessary to make them conform to the standard. The sale or offering for sale of mowers that do not comply with the standard is a prohibited act and a violation of section 19(a)(1) of the CPSA, regardless of whether the mower has been validly certified.

§ 1205.34 Recordkeeping requirements.

(a) *General.* Every person issuing certificates of compliance for walk-behind rotary power lawn mowers subject to the standard shall maintain written records which show that the certificates are based on a test of each mower or on a reasonable testing program. The records shall be maintained for a period of at least 3 years from the date of certification of each mower or each production lot. These records shall be available to any designated officer or employee of the Commission upon request in accordance with section 16(b) of the act (15 U.S.C. 2065(b)).

(b) *Content of records.* Records shall identify the mower tested and the production lot and describe the tests the mowers have been subjected to and the results of the tests.

(c) *Format for records.* The records required to be maintained by this section may be in any appropriate form or format that clearly provides the required information

§ 1205.35 Product certification and labeling by manufacturers.

(a) *Form of permanent label of certification.* Manufacturers (including importers) shall issue certificates of compliance for walk-behind rotary power lawn mowers manufactured after the effective date of the mower standard in the form of a label which can reasonably be expected to remain on the mower during the period the mower is capable of being used. Such labeling shall be deemed to be a "certificate" of compliance as that term is used in section 14 of the act. (15 U.S.C. 2063.)

(b) *Contents of certification label.* The certification labels required by this section shall clearly and legibly contain the following information:

(1) The statement "Meets CPSC blade safety requirements."

(2) An identification of the production lot.

(3) The name of the person or firm issuing the certificate.

(4) The location where the product was principally assembled.

(5) The month and year the product was manufactured.

(c) *Coding.* Except for the requirements of paragraphs (b)(1) and (b)(3) of this section, all of the information required by § 1205.35 may be in code, provided the person or firm issuing the certificate maintains a written record of the meaning of each symbol used in the code that will be made available to the distributor, retailer, consumer, and the Commission upon request. If a mower is manufactured for sale by a private labeler, and if the name of the private labeler is also on the certification label, the name of the manufacturer or importer issuing the certificate may also be in such a code.

(d) *Placement of label.* The label required by this section must be visible and legible to the ultimate purchaser of the lawn mower prior to purchase. For mowers manufactured before January 1, 1984, where the label is not visible to the consumer at the time of sale because of packaging or marketing practices, an additional label or notice, which may be temporary, stating "Meets CPSC blade safety requriements" shall also appear on the container, or, if the container is not so visible, the promotional material, used in connection with the sale of the mowers.

§ 1205.36 Product certification and labeling by importers.

(a) *General.* The importer of any rotary walk-behind power lawn mower subject to the standard must issue the certificate of compliance requried by section 14(a) of the Act and § 1205.35 of this regulation. If testing of each mower, or a reasonable testing program, meeting the requirements of this Subpart B of Part 1205 has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance provided the importer is a resident of the United States or has a resident agent in the United States and the records of such tests required by § 1205.34 of this Part are maintained in the United States.

(b) *Responsibility of importer.* If the importer relies on tests by the foreign manufacturer to support the certificate of compliance, the importer bears the responsibility for examining the records supplied by the manufacturer to determine that the records of such tests appear to comply with § 1205.34 of this Part.

Dated: December 3, 1979.

Sadye E. Dunn, Secretary,

Consumer Product Safety Commission.

[FR. Doc. 79-37541 Filed 12-5-79; 8:45 am]

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Part V

Department of Energy

Leasing; Proposed Rulemaking and Public Hearing Regarding a Fixed Net Profit Share Bidding System for Outer Continental Shelf Oil and Gas Leases and Accounting Procedures for Determining Net Profit Share Payments

DEPARTMENT OF ENERGY

10 CFR Parts 376, and 390

Leasing; Proposed Rulemaking and Public Hearing Regarding a Fixed Net Profit Share Bidding System for Outer Continental Shelf Oil and Gas Leases and Accounting Procedures for Determining Net Profit Share Payments

AGENCY: Department of Energy.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations establish a "fixed net profit share" bidding system for use in lease sales of Outer Continental Shelf oil and gas tracts. The proposed bidding system uses cash bonus as the bid variable and requires net profit share payments at a rate that is constant for the duration of the lease. There is also a fixed annual acreage rental payment. These regulations also establish accounting procedures that oil and gas firms are required to use in order to calculate net profit share payments due the United States for the right to produce oil and gas from Outer Continental Shelf leases issued under this bidding system. This proposal implements rulemaking responsibilities under section 8(a) of the Outer Continental Shelf Lands Act, as amended by Pub. L. 95–372, that were transferred to the Department of Energy under sections 302(b) and 303(c) of the Department of Energy Organization Act.

DATES: Written comments are due by March 7, 1980. Hearings will be held in Houston on February 26, 1980; in San Francisco on February 28, 1980; and in Washington, D.C. on February 20, 1980. All hearings will begin at 9:30 a.m. local time. Requests to speak at any hearing must be received by February 8, 1980.

ADDRESSES:

A. Hearing Locations

1. Houston: [To be published in **Federal Register** at a later date].

2. San Francisco: [To be published in **Federal Register** at a later date].

3. Washington, D.C.: Room 2105, 2000 "M" Street, N.W., Washington, D.C.

B. Requests To Speak

Requests to speak should be addressed to the appropriate office:

1. Houston Hearing: U.S. Department of Energy, 2626 Mocking Drive, Dallas, Texas 75235, Attn: Mac L. Lacefield, (214) 729–7745.

2. San Francisco Hearing: U.S. Department of Energy, 111 Pine, San Francisco, California 94111, Attn: Terry Osborne, (415) 556–4953.

3. Washington Hearing (One hundred copies of statement for this hearing are due by February 13, 1979, at the following address): Office of Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. LPD–79–06, 2000 "M" Street, N.W., Washington, D.C. 20461.

4. One copy of each request to speak for each hearing should also be forwarded to: Leasing Policy Development Office, U.S. Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 2313, Washington, D.C. 20461, Attn: Net Profit Share Hearing (Location of Hearing).

In the event that it becomes necessary for us to cancel a hearing, we will make every effort to publish advance notice in the **Federal Register** of such cancellation. Moreover, we will give actual notice to all persons scheduled to testify at the hearings. However, it is not possible to give actual notice of cancellations or changes to persons not identified to us as participants. Accordingly, persons desiring to attend a hearing are advised to contact the appropriate DOE office on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

C. Written Comments

All written comments (identify the outside envelope and the document with the designation "OCS Net Profit Share Leasing, Docket LPD–79–06") should be addressed to: Office of Hearings Management, Economic Regulatory Administration, Room 2313, Docket LPD–79–06, 2000 "M" Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearings Management), Economic Regulatory Administration, 2000 "M" Street, N.W., Room 2214C, Washington, D.C. 20461, (202) 254–5201.

Stuart W. Edwards (Leasing Policy Development Office), U.S. Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 2313, Washington, D.C. 20461, (202) 633–9035.

Michael T. Skinker (Office of General Counsel), U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5E064, Forrestal Building, Washington, D.C. 20585, (202) 252–2904.

Fred Appel, Public Affairs, Resource Applications, U.S. Department of Energy, 1200 Pennsylvania Avenue, NW., Room 3307, Washington, D.C. 20461, (202) 633–9418.

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I. Introduction

Sections 302 and 303 of the Department of Energy Organization Act (DOE Act, Pub. L. 95–91, 91 Stat. 578–580 (42 U.S.C. 7152, 7153)) transferred to the Secretary of Energy certain authorities previously held by the Secretary of the Interior under the Outer Continental Shelf Lands Act (OCSIA), the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act. Specifically, with respect to Federal leases issued under these statues, § 302(b) of the DOE Act authorizes the

Secretary of Energy to promulgate regulations which relate to the: (1) Fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures); (2) implementation of alternative bidding systems authorized for the award of Federal leases; (3) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements); (4) setting rates of production for Federal leases; and (5) specifying the procedures, terms, and conditions for the acquistion and disposition of Federal royalty interests taken in kind.

In addition, section 320(c) of the DOE Act grants the Secretary of Energy the authority to establish rates of production for Federal leases, and section 303(c)(1) permits the Secretary to disapprove any term of condition of a Federal lease that relates to the Department of Energy's (DOE) authority to promulgate regulations under section 302(b).

As required by section 303(b) of the DOE Act, the Secretary of Interior was consulted during the preparation of these proposed regulations and offered not less than thirty (30) days to comment formally on them. The Secretary of the Interior provided comments which were considered in drafing these regulations prior to today's publication.

II. Outer Continental Shelf Leasing—General

According to a predetermined schedule, the Department of Interior (DOI) periodically offers for sale oil and gas leases for tracts on the Outer Continental Shelf (OCS). This event is the culmination of a series of DOI actions, including nominations for the inclusion of OCS tracts in a sale, geological/geophysical analysis, preparation and publication of an environmental impact statement (EIS), public hearings, coordination with State officials and members of the public, coordination with Federal agencies, and the publication of a notice of OCS lease sale in the **Federal Register**. The bidding system or systems to be utilized by DOI in each OCS lease sale will be chosen from those authorized by the Outer Continental Shelf Lands Act, (OCSLA, Act of August 7, 1953, Ch. 345, 67 Stat. 462 (43 U.S.C. 1331 *et. seq.*), as amended by Pub. L. 95–372), and prescribed by regulation.

Bidders submit bids on the basis of the bidding system that is applicable to a particular tract as specified in the sale notice. The bidding system also states the method by which the successful bidder pays the United States for the lease. For example, under the proposed bidding system employing a fixed net profit share with a variable cash bonus bid and a fixed annual acreage rental, the successful bidder pays the United States a one-time cash bonus, a yearly cash rental and a fixed percentage (not less than 30 percent) of net profits, based on the revenue received from the production and sale of oil and gas minus the costs of production. After the bids submitted at the publicly held OCS lease sale are opened and evaluated, leases are awarded to successful bidders on a tract-by-tract basis.

III. The Proposed Regulation

A. *Authority.* The Secretary of Energy is specifically authorized to promulgate regulations under the OCSLA as they relate to the implementation of alternative bidding systems authorized for the award of Federal leases (section 302(b)(2) of the DOE Act) and to disapprove any term or condition of a Federal OCS lease which relates to DOE's authority to promulgate regulations under section 302(b) (section 303(c)(1) of the DOE Act).

B. *Purpose and Scope.* The purpose of this proposed regulation is to establish the fixed net profit share bidding system [1] for the award of Federal OCS leases and to prescribe accounting procedures required for the calculation of net profit share (NPS) payments due the United States for the production of oil and gas from leases issued under this bidding system.

Today's proposal amends the proposed regulations in 10 CFR Part 376 regarding bidding systems for OCS oil and gas leasing (44 FR 46236, August 6, 1979) by establishing the additional fixed net profit share bidding system and adds a new Part 390 containing the necessary accounting procedures to implement this new bidding system.

Section 205 of the Outer Continental Shelf Lands Act Amendments of 1978 (amendments, Pub. L. 95–372, 92 Stat. 629) authorizes the establishment of the fixed net profit share bidding system for the award of OCS oil and gas leases and requires the Secretary of Energy to establish rules to govern the calculation of net profits. The proposed regulation, therefore, includes accounting procedures designed to permit lessees to calculate net profits in a uniform manner. In addition, the proposed regulation establishes procedures for auditing by the Federal Government of lessees' accounting practices and net profit calculations and prescribes the process whereby a lessee may challenge any adjustment to its calculations resulting from such auditing.

The fixed net profit share bidding system satisfies a primary intention of Congress by reducing reliance on large front-end cash bonuses as the means for obtaining a fair price for the public's property. Congress' perception was that large cash bonus payments may inhibit competition for OCS leases by preventing smaller, independent firms from participating in OCS development. The fixed net profit share bidding system is designed to shift government return away from initial cash bonuses into deferred payments, which, in the case of this bidding system, are based on net profits from the actual production of oil and gas. The proposed bidding system should make it possible for smaller firms to compete more effectively for OCS leases and to free funds for exploration that previously have been tied up in cash bonuses.

C. *Impact of Proposal.* The primary impact of the fixed net profit share bidding system proposed by this regulation should be a reduction of cash bonus bids. The regulation is also expected to maximize production of oil and gas from the OCS, foster the development of marginal oil and gas fields, and increase the total revenue to the public for its property. The summary of the Regulatory Analysis supporting this regulation (section VIII of this preamble) explains how the proposed fixed net profit share bidding system promotes these objectives.

Since the administration of this regulation is the responsibility of the U.S. Geological Survey (USGS) within DOI, utilization of this bidding system will result in greater administrative responsibilities for the USGS, related to determinations on the allowability of certain costs, concern for inventory, and performance of periodic audits. USGS regulations are not superseded by this action but must be followed in conjunction with this regulation, as appropriate.

D. *Basis for Proposed Fixed Net Profit Share Bidding System.* Royalty based bidding systems require, in addition to the royalty rate, only the value or amount of lease production to determine royalty payments due the United States. However, a net profit share bidding system requires accounting procedures for the identification and measurement

[1] For purposes of this preamble the term "fixed net profit share bidding system" means any bidding system with a cash bonus bid, a fixed share of the net profit, and a fixed annual acreage rental, as proposed in section 376.110(a)(4).

of costs, and a system for charging costs against production revenue to determine net profits. This requirement makes the fixed net profit share bidding system considerably more complex than the bidding systems previously used for OCS lease sales.

Several systems for accumulating and charging costs against revenues were analyzed for their economic impacts by simulation with a resource policy evaluation model. The description of the model, assumptions made, systems studied, and discussion of the results is contained in the summary of the Regulatory Analysis (section VIII of this preamble). The results of these simulations led DOE to propose a fixed net profit share bidding system which utilizes the "fixed capital recovery system."

The fixed capital recovery system is a simple approach for (a) accumulating costs (both capital and non-capital) incurred during the exploration and development phase of lease operations, and then (b) recovering these costs from production revenues in a manner that provides a reasonable return on the lessee's investment. With the fixed capital recovery system, which forms the basis for calculating net profits as proposed by these regulations, costs are not segregated as to whether they constitute capital or non-capital expenses. Rather, costs are accumulated in a preproduction or a production account depending on whether they are incurred prior to, or after, the initiation of production, respectively.

The key feature of the fixed capital recovery system is the mechanism for capital recovery, including a return on investment. The balance in the preproduction account (expenses incurred during the preproduction period less any credits received) is multiplied by a number known as the "recovery factor." The product of this calculation becomes an amount designated as the "allowance for capital recovery." This allowance operates to defer net profit share payments until the amount of the allowance has been charged against production revenues.

The recovery factor is a number equal to or greater than 1.0. The recovery factor and the profit share rate are unique to each profit share lease and will be determined prior to each lease sale. They are selected to provide an adequate return on investment for overall lease operations, given the cost and resource expectations for a particular tract. The recovery factor and the profit share rate will be specified in the Notice of Lease Sale published in the Federal Register prior to an OCS lease sale.

The fixed capital recovery procedure is itself only part of the overall net profit share bidding system. It dictates the basic scheme for aggregating costs and manipulating aggregate costs and production revenues to determine net profits. The other part of the system is the set of accounting procedures for identifying, measuring, and allocating individual costs to the net profit share accounts.

The search for the other component of the system independently led DOE to the accounting procedure for joint offshore operations developed by the Council of Petroleum Accountants Societies of North America (COPAS). Unless otherwise noted the COPAS procedure used is Bulletin 15, "Accounting Procedure—Offshore Joint Operation," October 1977.

The COPAS procedure is an appropriate basis for the cost identification portion of the accounting procedures because: (1) The net profit share lease relationship is analogous to a joint working interest agreement between private parties (*i.e.*, an agreement that shares at a fixed rate all costs and revenue), (2) COPAS is only a procedure for identifying, measuring, and allocating costs for direct billing of joint interest partners; hence, it is not complicated by rules for capitalization or other guidelines for disposition of costs that would be contained in a complete financial accounting procedure, and (3) the COPAS procedure, or minor variations thereof, are in widespread use, thus use in a Government regulation would minimize accounting burden and interpretation problems for the industry.

The modifications to the COPAS procedure that were necessary to adapt it to the purpose of this regulation are discussed in section IV. B of this preamble.

E. *Description of Proposed Accounting Procedures—Part 390.* 1. *Definitions.* Most of the definitions appearing in § 390.002 are taken from two sources: The COPAS Procedure, and the Cost Accounting Standards Board Regulations (4 CFR Part 400), with necessary modifications to adapt them to this regulation. The terms "allowance for capital recovery", "net profit share base", "net profit share payment", "net profit share rate", "NPSL", "NPSL project area", "NPSL property", "NPSL operations", "NPSL tract", "outside party", "preproduction period", and "production period" are new definitions.

Definition of other terms used in Part 390 may be found in proposed Part 375 of Title 10, Code of Federal Regulations (10 CFR 375.004), which contains some general provisions that will be applicable to all of DOE's mineral leasing regulations (44 FR 45900, August 3, 1979).

2. *Accounts.* Proposed § 390.010 establishes five controlling accounts for net profit share lease (NPSL) operations: Preproduction account, production account, production revenue account, net profit share payment account, and lessee's net profit share account. The preproduction and production accounts are expense accounts. The production revenue account is, as its name implies, the account in which oil and gas production revenue entries are made. The net profit share payment account and the lessee's net profit share account are accounts for recording net profit share payments to the United States and net profits retained by the lessee, respectively.

All costs permitted by §§ 390.011 (schedule of allowable direct and joint costs and credits) and 390.012 (overhead allowance will be allocated to either the preproduction or production accounts, depending on whether they are incurred during the preproduction or the production period. Direct costs (costs that are traceable to and incurred exclusively for the benefit of NPSL operations) and joint costs (costs that are traceable to and benefit NPSL and non-NPSL operations) are allocated between the preproduction and production periods on the basis of whether they were incurred before or after the beginning of the production of oil and gas from the lease. Allowable direct and joint costs are limited by § 390.011 to the following 14 categories, which are based on the COPAS procedures: Lease rental to the United States for the tract; labor expenses, including fringe benefits and certain personal expenses; the costs of material, transportation, contracted services, insurance, communications, audit, damage and losses to NPSL property; certain legal expenses; use charges for equipment and facilities furnished by the lessee; taxes (except income taxes); the cost of complying with environmental regulations; and miscellaneous costs approved by the USGS Supervisor.

Credits are allocated to either the preproduction or production accounts in the same manner as direct and joint costs. That is, they are allocated on the basis of when they are incurred (before or after the start of production). Revenue is credited to the production account as explained in section III E.3 of this preamble.

Generally, overhead is a residual category for costs that are difficult to associate or attribute to a particular aspect of lease operations. Examples of

overhead costs are general and administrative expenses, office services, and research and development. Rather than allow charges for overhead expenses, these proposed regulations provide a charge equal to 4 percent of allowable direct and joint costs (exclusive of specific costs identified in § 390.012(c)) as an allowance for overhead costs occurring in the preproduction period. Similarly, an allowance equal to 10 percent of allowable direct and joint costs is proposed for the production period. The capital recovery factor is not applied to the overhead allowance.

3. *Determination of net profit share payments.* This section briefly describes the proposed net profit share accounting process and the determination of net profit share payments.

Direct and joint costs and credits incurred during the preproduction period are accumulated in the preproduction account. At the end of the preproduction period, the allowance for capital recovery is calculated and entered in the production period account. The preproduction period overhead allowance is also calculated and entered in the production period account.

During the production period, direct and joint costs and credits incurred or received are entered individually in the production period account. Examples of credits that may be entered into the production account include salvage credits, income from equipment rental, income from the sale of geological information, rebates, and refunds. Credits reflecting the value of production are entered in the production revenue account.

At the end of each month during the production period, the allowance for production period overhead is calculated and entered in the production account. Then, the balance in the production revenue account is cleared and credited to the production account.

The balance of the production account, that is, the difference between the costs and credits (including production revenue), is computed monthly. If the end of the month balance is positive (*i.e.*, a credit balance indicating that revenues exceed accumulated costs and allowance for capital recovery), the balance is the net profit share base which is distributed between the lessee and the United States according to the profit share rate. If the production account balance is negative (*i.e.*, a debit balance indicating that accumulated costs and allowance for capital recovery exceed revenues), the balance is carried forward to the next month.

The profit share payment is the United States' share of the profit share base and is calculated by multiplying the profit share base times the profit share rate.

4. *Administration.* Sections 390.030 through 390.034 propose the following procedural requirements necessary for the administration of fixed net profit share leases by the USGS: The keeping of records of production revenue, materiel inventory, costs, and credits; filing monthly reports of production revenue and costs; submitting monthly payments; taking an annual inventory of controllable materiel; provisions for an audit of records and accounts at least every two years; a provision for the USGS Supervisor to recalculate the profit share payment based on a determination that an expense was improperly claimed or classified or that another type of error was made; and a provision for the lessee to appeal any such determination made by the USGS Supervisor.

IV. Major Issues

A. *Selection of the Fixed Capital Recovery System.* Three different types of systems were considered in the course of developing the fixed net profit share bidding system regulations proposed in Part 390. The three systems differ in the mechanism each provides for the recovery of capital invested to develop a lease. An evaluation of the relative performance of these systems (fixed capital recovery, annuity capital recovery, and investment account systems) was made by DOE with a computer-based resource policy evaluation model. Based on the results of this analysis, the fixed capital recovery system is being proposed. Important conclusions of this analysis are summarized in section VIII of this preamble and specific comments are requested in section VI.A of this preamble.

B. *Adjustments to COPAS Accounting Procedures.* 1. *Allowable direct and joint costs.* The cost categories established by COPAS for direct charges to joint operations are generally adopted within the framework of the proposed regulations. However, various changes have been made to the COPAS approach. These changes are discussed below:

a. *Royalties.* The proposed fixed net profit share bidding system does not require royalty payments to the United States. Therefore, the proposed regulation deletes royalties from the schedule of allowable costs.

b. *Labor.* The guidelines in § 390.011(b) of the proposed regulation for charging labor are patterned after COPAS Bulletin No. 14, "Accounting Procedure—Arctic Operations," rather than COPAS Bulletin No. 15, "Accounting Procedure—Offshore Joint Operations." The Arctic Operations procedures are more liberal than the procedures for offshore operations in that they permit direct charging of field employees within the project area rather than on just the tract. They also permit the direct charging of technical personnel at headquarters or district offices. The Arctic Operation procedures were chosen because their more liberal provisions are better suited to the OCS with its attendant logistics problems than the offshore guidelines, which appear to be designed primarily for near-shore operations.

i. *Salaries and wages.* The proposed regulations adopt the COPAS definition and interpretation of "field employees," "first level supervisors," and "technical employees." Salaries and wages of field employees, first level supervisors, and technical employees are allowable costs, provided these personnel are employed in the NPSL project area and are engaged in NPSL operations. The NPSL project area includes the NPSL tract and shore based support and production facilities that directly support NPSL operations. When personnel work in the NPSL project area and are engaged in activities that benefit several tracts or separate activities in addition to the NPSL tract (e.g., a support facility that services several tracts), the charge to NPSL accounts must be made on the basis of time spent on activities that directly benefit NPSL operations.

The proposed regulations establish, by design, the criterion that a charge for salaries and wages is allowed for qualified personnel only if they are employed and "engaged in activities within the NPSL project area." There is only one exception to the requirement that personnel must physically work at a location within the NPSL project area. A charge is allowed for salaries and wages of technical employees assigned to a technical branch of the lessee's organization and who are engaged full time in activities that directly support NPSL operations or specific problems related to the NPSL tract. However, no charge is allowed for salaries and wages of technical employees who, while working on some aspect of NPSL operations not within the NPSL project area, are also assigned or perform collateral duties unrelated to NPSL operations.

This exception regarding technical workers is intended to relax somewhat the requirement that personnel must

work within the project area. However, the farther an individual is removed from the NPSL project area, the more difficult it is to establish the extent to which he is involved with NPSL operations. The requirements in the proposed regulations are dictated by the need to establish criteria that can be easily documented and verified at audit. To take advantage of this exception, it is expected that lessees will segregate within the technical branches of their organizations those technical employees working on NPSL operations or related technical problems, and that lessees will not assign these personnel duties unrelated to NPSL operations or problems.

No charge is permitted for salaries and wages of personnel not falling within the definitions of field employees, first level supervisors, or technical employees. The overhead allowances are intended to provide compensation for personnel involved in NPSL operations or support but who do not fall within these categories.

ii. *Personal expenses.* Limitations on employee relocation costs have been proposed in § 390.013(g) that are not contained in COPAS. Relocation costs that may not be claimed are: loss on the sale of a home, costs of acquiring a home in the new location, payments of employee income taxes incident to reimbursed relocation costs, and any relocation cost in connection with an employee move that is for the primary benefit of the lessee's other operations. Closing costs on the employee's former residence and continuing costs of ownership of the former residence are permitted, except that the amount claimed as an expense may not exceed 8 percent of the sales price of the property. These limitations are in place of negotiated terms and conditions recommended by COPAS.

c. *Materiel.* Through reference to § 390.015, DOE has required in § 390.011(c) that single items of equipment with an original cost of $100,000 or more that are acquired or disposed of by the lessee for NPSL operations be priced on a current market basis with approval by the Supervisor.

d. *Transportation.* The proposed regulation in § 390.011(d) would be more restrictive than COPAS with respect to allowable charges for materiel movements to and from the NPSL project area. COPAS limits such costs only with respect to movements between the NPSL project area and storage facilities owned by or under the control of the lessee. This regulation would extend the COPAS limitation to cover all materiel movements between the NPSL project area and any storage facility, regardless of its location or connection with the lessee. The ceiling on allowable materiel transportation costs would be the same ones that COPAS applies to materiel movements between the joint property and the operator's storage facilities. NPSL operations would not be charged for transportation costs greater than the distance between the NPSL project area and the nearest supply source where like materiel is normally available.

e. *Contract services.* As with salaries and wages, the COPAS requirement that contract services must be performed within the NPSL project area is relaxed. A charge is permitted for contract services performed away from the NPSL project area, provided that there is compliance with specific requirements in the regulations. These requirements are designed to isolate and verify that charges for services performed under contract to the lessee exclusively benefit NPSL operations.

f. *Equipment and facilities furnished by lessee.* Both COPAS and the proposed regulation in § 390.011(g) contain detailed provisions regarding the charging of lessee-owned equipment and facilities, and both require such items to be rented to the jointed operations. As an element of the rental rate, COPAS allows the estimate cost of platform dismantlement. The proposed regulation, however, would not include this element of the rental rate as an allowable cost. DOE believes that this charge is difficult to estimate accurately, and therefore, may result in interim debits that do not reflect the actual costs of removal. It is anticipated that potential bidders will estimate their expected cost of platform dismantlement and incorporate this estimate in calculations that determine cash bonus bids.

Unlike COPAS, the proposed regulation explicitly permits the charging of lease-to-shore pipelines and shore-base production facilities to NPSL operations on a rental or use charge basis.

g. *Taxes.* COPAS permits the operator to charge the joint account for all taxes paid by him for the benefit of the joint operations. The proposed regulations in § 390.011(i), however, expressly exclude income taxes and all other taxes based upon income from being charged to NPSL operations. This approach is required because the Government allows net profit share payments to be deducted from gross income for Federal income tax purposes. To permit income and related taxes to be allocated to NPSL operations would confer a double-benefit on lessees and result in the reduction of the public's return for its property.

h. *Audit.* In the event that the Government exercises its option under § 390.011(m) of the proposed regulation and requires the lessee to commission an independent audit, the cost of that audit may be charged to NPSL operations. The costs of audits of joint operations conducted under COPAS are borne by the partners since each partner contributes one or more staff auditors to the audit team.

i. *Other expenditures.* COPAS authorizes the operator to charge any expenditure, not listed as an allowable cost, that is incurred in the necessary and proper conduct of the joint operations. The proposed reulation in § 390.11(n), however, requires the prior approval of the USGS Supervisor before like charges to NPSL operations may be made.

2. *Unallowable costs.* Section 390.013 of the proposed regulation notifies lessees that certain costs are expressly disallowed as direct or joint costs and would not be approved by the USGS Supervisor. These include the cash bonus; interest on any loans obtained to finance NPSL operations, equipment, construction, etc.; the cost of taking inventory; research and development costs; certain employee relocation costs; the cost of adminstering employee benefit plans; certain expenses; the cost of construction and equipping shore-base facilities; and lease abandonment costs.

The cash bonus is not an allowable cost. Excluding the cash bonus as a charge tends to reduce the magnitude of initial cash bonuses—a desired effect—without distorting production economics.

Interest is not an allowable cost because the fixed capital recovery system proposed by these regulations is designed to provide a return on total capital investment, regardless of whether the capital is borrowed or equity.

Other costs (listed below) are not allowed because they are either inappropriate, not customarily charged, or because it is extremely difficult to determine the proportion that directly benefits NPSL operations: Construction of shore-based facilities and real property (note that shore-based facilities are, in effect, rented to NPSL operations); certain employee relocation costs (loss on the sale of a home; acquisition costs for a home in a new location such as brokerage fees, appraisal fees, etc.); payments for employee income taxes incident to reimbursed relocation costs; relocation costs for moving an employee when the

move primarily benefits non-NPSL operations; and fines or penalties levied by a Federal agency.

The cost of taking inventory, research and development costs, the cost of a legal staff, and administration costs for employer benefit plans are covered as overhead. Abandonment costs are not allowed for previously stated reasons.

3. *Overhead.* COPAS recognizes three categories of overhead costs: (1) Drilling and producing operations; (2) major construction; and (3) catastrophe. Traditional (i.e., general and administrative) overhead charges appear to be accommodated in category (1). Major construction overhead (2) is designed to compensate the operator for overhead costs associated with the installation or expansion of fixed assets required to develop the joint property or with dismantling for abandonment. The catastrophe category (3) compensates an operator for costs incurred for dealing with single-event natural or environmental disasters, and is calculated using a method similar to that which applies to major construction overhead. Under the COPAS procedures, the parties negotiate the fixed rate that will apply to each category, and these rates are specified in the joint operating agreement.

However, for the Government to undertake a similar procedure (i.e., negotiate overhead rates for each net profit share lease) would be both administratively burdensome and excessively time-consuming. Thus, in keeping with the proposed regulatory scheme of differentiating between preproduction and production costs, these regulations provide a preproduction period overhead allowance of 4 percent of allowable direct and joint costs (which compensates for overhead incurred during the capital intensive development phase of offshore operations) and a production period overhead allowance of 10 percent.

C. *Other Issues.* 1. Should the proposed regulations permit the cost of cleanup of oil spills to be charged to NPSL accounts?

Concern regarding this issue appeared to center on the propriety of the U.S. sharing in the cost of ameliorating environmental damage to U.S. property caused by operation of the lessee, and on the effect this cost sharing would have on the resolve of the operator to prevent oil spills. Nevertheless, DOE believes that to some extent, even with the exercise of all reasonable precautions, seepage and spillage may occur, and thus, their amelioration represents a normal cost of doing business which should be chargeable to NPSL operations. DOE does not believe that the sharing of these costs by the U.S. will weaken the incentive to prevent accidental contamination. Furthermore, DOE believes that consideration of the risks of accidental contamination will result in potential bidders discounting their bids as a means of offsetting these potential costs if they are not allowed to be charged to NPSL operations.

2. The proposed regulation should provide specific criteria for "proper materiel control, inventory, and purchasing" (§ 390.032(a)).

DOE believes that further guidance can not be provided by regulation, since individual situations such as distance from the supply base or store will determine what is reasonable. Thus, the USGS area supervisor will be called upon to interpret and implement these guidelines on an area or case-by-case basis.

3. The proposed regulations permit new materiel required or consumed by NPSL operations to be charged at current market value rather than charged at original cost or the lesser of original cost or current market value (§ 390.015). This is consistent with the requirement, in § 390.032, that the lessee can only maintain an inventory (the cost of which has been charged to NPSL operations) that is essential to support efficient and economical operations.

Taken together, these actions establish the condition that the cost of materiel is charged to NPSL accounts only when used to support NPSL operations, allowing some inventory flexibility to facilitate efficient operations. Thus, a charge is not necessarily made when the materiel is originally purchased. The regulations do not allow warehousing costs to be charged to NPSL operations except as is required to maintain the inventory that supports efficient and economical operations.

The intent of these provisions in the regulations is to avoid, to the extent possible, the problems of inventory control and audit. Clearly, the level of inventory required for efficient and economical operations depends on conditions encountered in each OCS region. Higher levels of inventory will be required to support operations in frontier Alaskan areas than are needed in the Gulf of Mexico. DOE expects that the supervisor will issue specific guidelines regarding the levels of inventory for each OCS region.

V. Example of Net Profit Share Payment Calculation

The following is a detailed example of how to calculate the NPS payment. These calculations illustrate how the NPS formula and the proposed NPS accounts are to work.

1. *During the Preproduction Period.* During the preproduction period, direct and allocable joint costs and credits are accumulated in the preproduction account.

Specifically, at the end of each month during the preproduction period, the preproduction account is charged for direct and allocable joint costs and credits for the month in each of the following 15 categories: rent, labor, materiel, transportation, services, legal expenses, equipment and facilities furnished by lessee, damages and losses to NPSL property, taxes, insurance, communications, ecological and environmental, audit and other costs and credits. Exhibit I illustrates these transactions:

Exhibit I

	Preproduction account	
	Dr.	Cr.
January		
Rent	5	
Labor	10	
Materiel	10	2
Transportation	2	
Services	1	
Legal	1	
Other	1	
Total	30	2
February 1980		
Rent	6	
Labor	12	
Materiel	12	4
Transportation	4	
Services	1	
Legal	1	
Other	3	
Total	39	4

2. *End of the Preproduction Period.* At the end of the preproduction period, the cumulative total of all direct and allocable costs and credits is determined by calculating the balance in the preproduction account. Exhibit II illustrates this transaction:

Exhibit II

	Preproduction account	
	Dr.	Cr.
January 1980	30	2
February 1980	39	4
March 1980	45	6
December 1985	60	10
	5,500	500
	5,000	

Next, the allowance for capital recovery and the preproduction

overhead allowance are calculated as follows:

The total allowance for capital recovery (TACR) is calculated by multiplying the balance in the preproduction account at the end of the preproduction period by the recovery factor. The recovery factor is a number between 1.0 and 2.0 that is published in the notice of NPSL sale and is fixed as a term of the NPSL; in this example, the recovery factor is 1.4.

Total allowance for capital recovery

(TACR)=$5,000×1.4=$7,000

The preproduction overhead allowance is calculated by multiplying the balance in the preproduction account (less any charges for the value of injected substances, rent, and legal expenses; in this example, $200) by 0.04.

Preproduction overhead allowance

(PPOA)=($5,000 $200)×0.04=$192

3. *Beginning of the Production Period.* At the beginning of the production period, the production account is debited by the allowance for capital recovery and by the preproduction overhead allowance calculated above. Exhibit III illustrates these transactions:

Exhibit III

	Production account	
	Dr.	Cr.
ACR	7,000	
PPOA	192	
Total	7,192	

4. *During the Production Period.* During the production period, direct and allocable joint costs and credits are accumulated in the production account; production revenue is accumulated in the production revenue account. Specifically:

The production revenue account is credited with production revenue.

The production account is debited with allowable costs and credited with allowable credits. (Credits associated with the preproduction period, however, are first multipled by the recovery factor before crediting the production account).

Exhibit IV illustrates these transactions for the first month of the production period:

Exhibit IV

	Production account	
	Dr.	Cr.
TARC	7,000	
PPOA	192	
Total	7,192	

Exhibit IV—Continued

	Production account	
	Dr.	Cr.
January 1986		
Rent	5	
Labor	10	
Material	10	2
Transportation	2	
Services	1	
Legal	1	
Other	1	
Total	30	2

	Production revenue account	
	Dr.	Cr.
January 1980		1,000

5. *At the End of Each Month During the Production Period.* At the end of each month during the production period, the production overhead allowance is calculated by multiplying the net of the debits and credits to the production account for that month (less any charges for the value of injected substances, rent, and legal expenses; in this example, $2) and any credits from the return of surplus material by 0.10.

Production overhead allowance

(POA) = ($28 −$2) × 0.10 = $3

The production account is then debited by the production overhead allowance.

The balance in the production revenue account is then calculated and cleared to the production account by debiting the production revenue account and crediting the production account by the balance in the production revenue account. Exhibit V illustrates these transactions:

Exhibit V

	Production account	
	Dr.	Cr.
TACR	7,000	
PPOA	192	
Total	7,192	
January 1986		
Rent	5	
Labor	10	
		2
Material	10	
Transportation	2	
Services	1	
Legal	1	
Other	1	
Total	30	2

	Production revenue account	
	Dr.	Cr.
P.O.A.	3	
Revenue		1,000
	7,225	1,002
	6,223	

	Production revenue account	
	Dr.	Cr.
		1,000
	1,000	
	1,000	1,000
		0

If, as a result, there is a debit balance in the production account, this debit balance is carried forward in the production account to the next month.

If, as result, there is a credit balance in the production account, this credit balance is the net profit share base for that month.

In this example, there is a debit balance of $6,223 in the production account. Therefore, this amount is carried forward in the production in the production account to the next month. Exhibit VI summarizes these transactions for the first 5 months of the production period:

Exhibit VI

	Production account		Production revenue account	
	Dr.	Cr.	Dr.	Cr.
	7,192	2		1,000
	33	1,000	1,000	
Total	7,225	1,002	1,000	1,000
	6,223			0
February	6,223	5		2,000
	60	2,000	2,000	
Total	6,283	2,005	2,000	2,000
	4,278			0
March	4,278	6		1,500
	70	1,500	1,500	
Total	4,348	1,506	1,500	1,500
	2,842			0

Exhibit VI—Continued

	Production account		Production revenue account	
	Dr.	Cr.	Dr.	Cr.
April	2,842	4		2,500
	80	2,500	2,500	
Total	2,922	2,504	2,500	2,500
	418			0
May	418	7		2,990
	85	2,990	2,990	
Total	503	2,997	2,990	2,990
		2,494		

At the end of the fifth month during the production period, there is a credit balance in the production account. This credit balance is the profit share base for that month.

The net profit share payment is calculated by multiplying the net profit share base (if any) by the net profit share rate; in this example, the net profit share rate equals 0.30.

Net profit share payment = $2,494 × 1.30 = $748

The lessee's net profit share is calculated by subtracting the net profit share payment from the net profit share base.

Lessee's net profit share = $2,494 − $748 = $1,746

At the end of each month during the production period for which a profit share base is calculated, the following transactions are then made:

Debit the production account by the profit share base for the month.

Credit the net profit share payments account by the net profit share payment for the month.

Credit the lessee's net profit share account by the lessee's net profit share for the month.

These transactions are illustrated in Exhibit VII:

Exhibit VII

NPS payment account		Production account	
Dr.	Cr.	Dr.	Cr.
	748	418	7
		85	2,990
		503	2,997
		2,494	2,494

Exhibit VII—Continued

Lessee's NPS account

Dr.	Cr.
	1,746

During the remainder of the production period, the net profit share payment account is used to accumulate each month's NPS payment due the Federal Government. The lessee's net profit share account is used to accumulate each lessee's NPS for the month.

VI. Public Comments and Public Hearing Procedures

We request comments on any aspect of this regulation as proposed. To the extent comments are submitted in response to this rulemaking either proposing or opposing amendments, they should be accompanied by as much supporting data as possible. Data submitted pursuant to this rulemaking that is deemed proprietary should be so labeled.

A. *Specific Comments Requested.* We are requesting comments on the following matters in particular:

1. *Selection of the fixed net profit share bidding system.* Many different net profit share bidding systems were originally considered in the analysis that guided the development of these regulations. Under the fixed net profit share bidding system, three systems for accumulating and charging costs against production revenue were identified—the fixed capital recovery system, the annuity capital recovery system, and the investment account system—as deserving careful evaluation. DOE performed this evaluation and decided to propose the fixed capital recovery system because it appears to be more effective in encouraging diligent and efficient development and production, and because this system minimizes administrative, compliance, and auditing costs.

Further, DOE has chosen not to propose regulations defining two alternative systems because this action will be unnecessarily confusing, will create uncertainty, and could generally undermine efforts to successfully implement profit share leasing. DOE recognizes that the fixed net profit share bidding system proposed in these regulations represents a distinct departure from bidding systems used in the past. Operating procedures and evaluation concepts must be changed and adapted to profit share leasing; an adjustment that will take place over several years. Thus, any attempt to experiment with several different systems concurrently (*i.e.*, use of fixed capital recovery system at one sale, then another system at another sale), each requiring somewhat different accounting and implementation procedures, would be confusing, create uncertainty, and generally slow the adjustment process. Ultimately, this could vitiate the effectiveness of profit share leasing.

Accordingly, DOE feels strongly that one profit share system should be adopted and used for the period of time necessary to determine accurately its effectiveness. This places a premium on proper evaluation and selection, at the outset, of that system. Because of the complexity of profit share systems and their evaluation, DOE requests comments on procedures and criteria for evaluating alternative profit share systems, including:

(a) What is the relative importance of the following evaluation criteria:

The degree to which the system reduces initial cash bonuses and the resulting increases in competition;
The present value of government receipts;
Net economic value achieved;
Production value;
Ability of the system to promote the development of smaller fields, *i.e.*, those that are uneconomic to produce under alternative leasing conditions;
Production life of fields developed.

(b) what are the likely effects of alternative profit share systems on:

Exploration and development decisions;
Timing and magnitude of investment in installed capacity;
Initiation and rate of production;
Timing and magnitude of operating costs;
Timing and magnitude of investments during production period.

(c) What is the likely effect of alternative systems as measured by the performance criteria listed in (a) of this section?

(d) What is the likely administrative impact and cost of:

Requirements to determine, for each lease sale, the parameters needed to specify the alternative profit share systems (capital recovery factors, interest rates, profit share rates, etc.);
Accounting and audit costs of the different system;
Compliance problems that result from incentives to manipulate the timing of expenses, and the degree to which the various systems mitigate these problems.

(e) Which system should be adopted in the final regulation and why that particular system should be selected?

2. *Treatment of abandonment costs and credits.* The proposed regulations provide that accounts are to be closed when production ends. Salvage credits

received by the lessee after this period are not credited to the NPSL account, but are retained 100 percent by the lessee. Similarly, abandonment expenses cannot be charged to NPSL accounts. The expected difference between the salvage credits and abandonment expenses must be anticipated by the lessee when he prepares his bid and an allowance made in his calculation of the cash bonus bid. Is this approach workable? Are there better—administratively feasible—alternatives to provide for abandonment expenses and credits?

3. *Percentage rate for overhead allowance.* The rates of 4 percent and 10 percent for preproduction period and production period overhead, respectively, were chosen as representative of overhead treatment in joint venture agreements. Are these rates appropriate, and if not, what evidence is there to suggest more appropriate rates?

4. *Accounting procedures.* Comments are requested on any of the accounting procedures proposed in Part 390, modifications to COPAS, or interpretations discussed in sections IV.B and IV.C of this preamble.

B. *Written Comments.* You are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in today's rulemaking. Written comments should be submitted by 4:30 p.m., March 7, 1980, to the address indicated in the "ADDRESSES" section of this preamble. Comments should be identified on the outside envelope and on the document with the designation: "OCS Net Profit Share Leasing, Docket LPD–79–06". Fifteen copies should be submitted. All copies received by the above date, and all other relevant information will be considered by DOE before final action is taken on this proposed regulation. 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 the information or data and to treat it according to our determination.

C. *Public Hearings.* 1. *Procedure for Request to Make Oral Presentation.* The time and place of the hearings are indicated in the "DATES" and "HEARING LOCATIONS" sections at the beginning of the preamble. The hearings will be continued, if necessary, on the next business day.

If you have an interest in today's proposal, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make an oral presentation. This request should be made by 4:30 p.m. on February 8, 1980 for all hearings, and should be sent to the appropriate addresses indicated in the "REQUEST TO SPEAK" section of this preamble. Please describe your interest and, if appropriate, state why you are a proper representative of a group or class of persons that has such an interest, and give a concise summary of the proposed oral presentation. 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 prior to the hearing. One hundred copies of your statement, labeled "OCS Profit Share Leasing," are due five working days prior to the date of the regional hearings and due February 13, 1979 for the Washington hearing and should be delivered to the "REQUEST TO SPEAK" addresses indicated at the beginning of this preamble. In the event any person wishing to testify cannot meet the 100 copy requirement, alternative arrangements can be made with the Office of Hearings Management in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the Office of Hearings Management at 202–254–5201.

2. *Conduct of the Hearings.* DOE reserves the right to select the persons to be heard at this 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.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. 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 "REQUEST TO SPEAK" before 4:30 p.m. the day prior to each hearing

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer DOE 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.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

VII. Environmental and Competitive Analysis

After reviewing this proposed regulation pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852 (42 U.S.C. 4321)) DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, DOE has determined that no environmental impact statement is required for the proposed regulation.

Environmental impacts resulting from the use of the fixed net profit share bidding system are expected to be minimal. There are two sources of potential environmental impact. First, since the fixed net profit share system is expected to improve economic incentives for expeditious exploration and development of tracts, there could be an increase of this activity on profit share tracts in the sale area. Second, the fixed net profit share bidding system will improve economic conditions and incentives for developing and producing smaller oil and gas deposits. Thus, the use of this bidding system could result in increased levels of production from the sale area.

In either case, however, the use of the bidding system is expected to result in a culmulative increase in activity or production, but no major increase on any individual tract. Absolute rates of activity or ultimate levels of production are not expected to fall outside the ranges that should be considered during an environmental impact analysis for lease sales conducted with conventional leasing systems. Environmental impacts associated with using the fixed net profit share bidding system will, of course, be examined prior to each lease sale. Moreover, potential environmental impacts resulting from the use of this system will be considered prior to the selection of a leasing system for tracts in each sale.

Thus, to summarize, DOE believes that any environmental impacts attributed directly to the use of the fixed net profit share bidding system are minimal and inconsequential. Moreover, the rates of activity and levels of production that could result from the use of the fixed net profit share bidding system are well within the ranges that must be considered by the environmental impact analysis for each specific sale.

Pursuant to § 204 of the Amendments (section 5 OCSLA, 43 U.S.C. 1334), a copy of this proposed regulation has been transmitted to the Attorney General for his views on any matters contained herein that may affect competition. The Attorney General will consult with the Federal Trade Commission in accordance with § 204 in preparing any such views. Their views will be carefully considered by DOE before the promulgation of final regulations.

VIII. Summary of Regulatory Analysis

We have determined that this is a significant regulation and will have a major impact within the meaning of DOE's procedures to implement Executive Order 12044 on "Improving Government Regulations" (DOE Order No. 2030.1, (44 FR 1032, January 3, 1979)). Therefore, a regulatory analysis is required for this proposed regulation.

A summary of the regulatory analysis prepared for this regulation is included below. Copies of the complete regulatory analysis are available for public review in the DOE Freedom of Information Reading Room, Room 2107, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Interested parties are invited to submit written comments on the Regulatory Analysis to the address indicated in the "ADDRESSES" section of this preamble.

The regulatory analysis examines the impact of using a cash bonus bid with a fixed share of the net profit from production (using a method of capital recovery known as the fixed capital recovery system) by comparing the performance of this bidding system with other types of net profit share and royalty based bidding systems including the current cash bonus bid with a fixed royalty.

Research performed in support of the analysis shows that when a fixed net profit share bidding system is used, prospective bidders lower their cash bonuses in anticipation of the higher costs in the form of net profit share payments to the government which they will incur during the production phase of the lease. This lowering of the cash bonus improves competition by lowering the "ante required to get into the game" and distributes risk more evenly between government and industry by minimizing industry's losses in the event of an unproductive lease. The analysis also shows that government revenue is expected to increase as potential risks to the bidders are decreased.

This same phenomenon of reduced cash bonuses with its attendant benefits is also observed for bidding systems which employ a variable royalty. Such systems, however, lead to perverse incentives for lease development and production. Higher royalty rates necessary to effect reductions in the cash bonus tend to cause the smaller oil fields to go undeveloped because they are uneconomic. Also, higher royalty rates affect the rate of production of the leases that are developed. Earlier studies of royalty systems indicated a premature termination of production. However, more recent studies indicate that, faced with high royalty rates, producers will install smaller initial production capacity and produce the same amount of resource over a longer period of time than would occur with the current cash bonus—⅙ royalty system or the proposed fixed net profit share bidding system.

Because net profit share bidding systems incorporate a definition of cost as well as revenue, they differ markedly from royalty systems which need only be concerned with the gross value of production. Thus, net profit share bidding systems require accounting procedures that define which costs are allowable as offsets to lease revenues.

Two controlling accounts are common to all of the net profit share systems analyzed for charging costs against production revenues: The preproduction account that accumulates all of the expenses incurred from lease acquisition until the start of production, and the production account that accumulates the expenses incurred in the production period. Provisions for captial recovery are specifically provided through the capital recovery mechanism of each leasing system. The different types of systems for determining net profit share payments, fixed capital recovery system, annuity capital recovery system, and investment account system, differ in the way in which capital recovery is made.

In the fixed capital recovery system the balance in the preproduction account is multiplied by a number known as the capital recovery factor. The product of this calculation is the total allowance for capital recovery (TACR). A portion of the TACR equal to the excess of revenue over operating costs is taken in successive reporting periods until the sum of the portions (ACR) equals the TACR.

In the annuity capital recovery system, the balance in the preproduction account at the end of the preproduction period is annuitized to determine the ACR available to the lessee each reporting period. The interest rate and the number of reporting periods would be selected as term of the lease.

The third system considered, the investment account system, has some of the features of the other two systems. Like the annuity capital recovery system, an interest rate rather than a fixed factor is applied; however, the interest rate is applied to the balance of the preproduction account at established accounting periods (months) during the preproduction period, rather than merely to the final preproduction account balance. At the end of the preproduction period the sum of all expenses and interest charges becomes the TACR that is available as an ACR in any production accounting period (as with the fixed capital recovery system). Unlike the fixed capital recovery system, any unused TACR and any operating expenses in excess of revenues accrued during each accounting period are forwarded to the next accounting period with an additional interest charge that is calculated by multiplying the sum of the operating expenses in excess of revenues plus the unused TACR by the interest rate.

The net profit share base from which the net profit share payments are calculated is determined by subtracting the current operating expenses in the production account and the ACR from gross lease revenue. If operating expenses or the ACR exceed the gross revenue to offset them, they are carried forward to the next accounting period. The net profit share payment is the net profit share base times the net profit share rate.

These three systems were analyzed by simulating their performance with a resource policy evaluation model. Four measures of performance were used to compare the performance of these systems. These measures are: 1) Percentage of cash bonus reduction (relative to the current cash bonus—⅙ fixed royalty system), 2) percentage of fields developed, 3) production life of the lease, and 4) the present value of total expected government revenue generated. Comparisons were made over a wide range of reservoir sizes and development costs, net profit share rates, and interest/recovery factor rates.

The simulations showed that the fixed capital recovery system with a recovery factor of 2.0 and net profit share rate of

60 percent gave the best overall performance. No investment account system variation was found that resulted in a greater percentage of cash bonus reduction while maintaining as high a percentage of fields developed as is available under the fixed capital recovery system. Furthermore, DOE found the investment account system provides less incentive for expeditious lease development and is susceptible to the artificial acceleration, for accounting purposes, of the timing of expenses. By contrast, the fixed capital recovery system (2.0 capital recovery factor, 60 percent profit share rate) as compared to the present cash bonus bid with a fixed ⅙ royalty improves the percentage of fields to be developed, thus enhancing efficient resource recovery; reduces expected cash bonuses approximately 40 percent, thus promoting competition; increases slightly the amount of expected government revenue; and does not result in any prolongation of the production period.

The implementation of the fixed net profit share bidding system will have some minor impacts on industry costs, resulting from the administrative costs attendant with accounting and reporting requirements. These costs will result from changes to accounting systems and procedures as required to track NPS tract expenses and calculate net profit. Estimates of these costs are $50,000 to $150,000 for the one time accounting system modification and $25,000 to $30,000 for the annual cost for administration. Administrative costs to the government for audit and monitoring of net profit share leases are expected to be nominal.

Authority: (Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462 (43 U.S.C. 1331 *et seq.*, 1953), as amended by Pub. L. 95–372; Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et. seq.*, 1977), E.O. 12009, 42 F.R. 46267.

In consideration of the foregoing it is proposed to amend Chapter II of Title 10, Code of Federal Regulations as set forth below.

Issued in Washington, D.C., November 30, 1979.

Dr. Ruth M. Davis,

Assistant Secretary, Resource Applications, Department of Energy.

1. Part 376 of Chapter II of Title 10, Code of Federal Regulations, is amended by adding paragraph (4) to § 376.110(a) to read as follows:

§ 376.110 Bidding systems.

(4) *Cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area and a fixed annual acreage rental.*

(i) *Net profit share payment calculation.* The amount of the net profit share payment to the United States by the person awarded the lease shall be determined for each month by multiplying the net profit share base times the net profit share rate, in accordance with § 390.022.

(A) *Net-profit share base.(1)* The net profit share base shall be calculated in accordance with § 390.021.

(2) The recovery factor needed to calculate the allowance for capital recovery, § 390.020, shall be specified in the notice of OCS lease sale published in the **Federal Register.**

In determining the recovery factor, which may vary from tract to tract, the factors stated in § 376.111 shall be considered in relation to the characteristics of each tract to which the bidding system will be applied.

(B) *Net profit share rate.* The net profit share rate, which determines the fixed share of the net profits owed to the United States, shall be a percentage that is specified in the notice of OCS lease sale published in the **Federal Register.** Such net profit share rate shall not be less than 30 percent of the net profit share base. In determining the net profit share rate, which may vary from tract to tract, the factors stated in § 376.111 shall be considered in relation to the characteristics of each tract to which the bidding system will be applied.

(ii) The amount of cash bonus to be paid is determined by the person submitting the bid. Any deferment and the schedule of payments shall be included in the notice of OCS lease sale published in the **Federal Register.**

(iii) The annual acreage rental to be paid by the person awarded the lease shall be the amount specified in the notice of OCS lease sale published in the **Federal Register.**

In determining the rental, which may vary from tract to tract, the factors stated in § 376.111 shall be considered in relation to the characteristics of each tract to which the bidding system will be applied.

2. Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 390 to read as follows:

PART 390—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Sec.

390.001 Purpose and scope.
390.002 Definitions.
390.010 Profit share accounts.
390.011 Schedule of allowable direct and joint costs and credits.
390.012 Overhead allowance.
390.013 Unallowable costs.
390.014 Allocation of joint costs and credits.
390.015 Pricing of materiel purchases, transfers, and dispositions.
390.020 Calculation of allowance for capital recovery and preproduction overhead allowance.
390.021 Determination of net profit share base.
390.022 Calculation of net profit share payment and lessee's net profit share.
390.030 Maintenance of records.
390.031 Reporting and payment requirements.
390.032 Inventories.
390.033 Audits.
390.034 Redetermination and appeals.

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337); sec. 302(b), Pub. L. 95–91, 91 Stat. 578–79 (42 U.S.C. 7152(b).

§ 390.001 Purpose and scope.

(a) This Part 390 establishes accounting procedures for determining the net profit share base and calculating net profit share payments due the United States for the production of oil and gas from Outer Continental Shelf leases.

(b) The procedures established by the Part 390 apply to any Outer Continental Shelf leases issued by the Department of the Interior under a net profit share bidding system established by § 376.110(a)(4) of this chapter.

§ 390.002 Definitions.

"Allowance for capital recovery" means the amount calculated according to procedures specified in § 390.020. This amount allows a premium for risk initially undertaken by the lessee and a return on his investment made during the preproduction period. It is provided in lieu of depreciation on equipment and materiel charged to the preproduction account.

"Compensated personal absence" means any absence from work for illness, vacation, holidays, jury duty, military training, disability benefits and other customary allowance, for which the lessee pays compensation directly to an employee under an existing plan of the lessee.

"Controllable materiel" means materiel which at the time of inventory is so classified in the Materiel Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies of North America.

"Cost" means an expense incurred by a lessee in conducting NPSL operations.

"Cost pool" means a grouping of incurred costs identified with two or more operations.

"Credit" means a payment, rebate, or reimbursement to a lessee, exclusive of production revenue, in the course of NPSL operations.

"Direct cost" means any cost listed in § 390.011 that benefits only NPSL operations.

"Field employee" means an employee below a first level supervisor who is directly employed in the NPSL project area.

"First level supervisor" means an employee whose primary function in NPSL operations is the direct supervision of other employees and contract labor directly employed on the NPSL tract in a field operating capacity.

"G & G" means geological and geophysical exploration.

"Joint cost" means any cost listed in § 390.011 that benefits NPSL operations and one or more other operations of the lessee or outside party.

"Lessee" means a person authorized by an OCS lease, or an approved assignment thereof, to develop and produce oil and gas, including all parties holding such authority by or through the lessee, and the person designated to conduct NPSL operations.

"Materiel" means equipment, apparatus, and supplies.

"Net profit share base" means the end of the month credit balance in the production account. The net profit share base is the production revenue remaining after substracting all allowable costs and adding all allowable credits (including production revenue) in accordance with the procedures established by this Part 390.

"Net profit share payment" means the portion of the net profit share base payable to the United States.

"Net profit share rate" means the fixed percentage share of the net profit share base payable to the United States.

"NPSL" means a net profit share lease, which is an OCS lease that provides for payment to the United Sttes of a fixed share of the profits for production of oil and gas from the tract.

"NPSL operations" means all activities subsequent to issuance of the NPSL necessary and proper for the exploration, development, operation, and maintenance of the NPSL property.

"NPSL project area" means the NPSL tract, offshore facilities, and shore base facilities.

"NPSL property" means the NPSL tract, and materiel and offshore facilities acquired for use in NPSL operations and that are installed and/or used on the NPSL tract.

"NPSL tract" means a tract subject to a NPSL.

"OCSLA" means the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.).*

"OCS lease" means a Federal lease for oil and gas issued under the OCSLA.

"OCS lease sale" means the DOI proceeding by which leases for certain OCS tracts are offered for sale and then issued to the person who is the highest qualified responsible bidder.

"Offshore facilities" means platform and support systems located offshore and that are necessary to conduct NPSL operations, *e.g.,* oil and gas handling facilities, living quarters, offices, shops, cranes, electrical supply equipment and systems, fuel and water storage and piping, heliport, marine docking installations, communication facilities, and navigation aids.

"Outside party" means any person who is not a lessee.

"Person" means person as defined in Part 376 of this chapter.

"Personal expenses" means travel and other reasonable reimbursable expenses of lessee's employees.

"Preproduction period" shall mean the period from the date of issuance of the NPSL until production begins.

"Production" means the bringing forth of oil or gas from the NPSL tract is commercial quantities, as determined by the Supervisor.

"Production period" means the time during which production occurs, for purposes of this Part 390.

"Production revenue" means the value of all oil and gas production saved, removed or sold from a tract, or, if the tract is unitized, the value of all oil and gas production saved, removed or sold and credited to the tract under a unitization formula, during a month, which value is determined in accordance with § 376.110(c) of this chapter.

"Reliable supply store" means a recognized source or common stock point for the particular materiel involved.

"Railway receiving point" or "recognized barge terminal" means the location that a vendor would use in determining the sale price to the lessee of new material to be delivered to the NPSL project area.

"Shore base facilities" means onshore facilities necessary for NPSL operations, including:

(a) Shore base support facilities, *e.g.,* a receiving and trans-shipment point for material, staging area for shuttling personnel to and from the NPSL tract, a communication, scheduling, and dispatching center; and

(b) Shore base production facilities, *e.g.,* pumps, separating facilities, gas plants, and tankage for production from the NPSL tract.

"Technical employees" means those employees having special and specific engineering, geological or other professional skills, and whose primary function in NPSL operations is the handling and resolution of specific operating conditions and problems for the benefit of NPSL operations.

"Tract" means land located on the OCS that is offered for lease through an OCS lease sale and is described and identified by an Outer Continental Shelf Official Protraction Diagram that is prepared and published by DOI in connection with an OCS lease sale.

§ 390.010 Profit share accounts.

(a) For each NPSL tract, five controlling accounts shall be established and maintained by lessee for NPSL operations, as follows:

(1) *Preproduction account.* The preproduction account shall include direct and allocable joint costs and credits that are incurred from issuance of the NPSL until the first day of the production period.

(2) *Production account.* The production account shall include (i) direct and allocable costs and credits incurred during the production period, (ii) the allowance for capital recovery, (iii) preproduction period costs not allowed in the allowance for capital recovery, and (iv) preproduction period overhead.

(3) *Production revenue account.* The production revenue account shall include credits reflecting the value of oil and gas produced during the production period.

(4) *Net profit share payment account.* The net profit share payment account shall include the amounts of net profit share payments due the United States.

(5) *Lessee's net profit share account.* The lessee's net profit share account shall include the amounts of net profit share base retained by the lessee.

(b) NPSL accounts shall be kept on an accrual basis.

§ 390.011 Schedule of allowable direct and joint costs and credits. The costs and credits specified in paragraphs (a)–(o) of this section may be charged direct, or allocated to NPSL operations, as appropriate, in accordance with § 390.014.

(a) *Lease rental.* The rent paid by the lessee for the NPSL tract.

(b) *Labor.* (1) (i) Salaries and wages of lessee's field employees, first level supervisors and technical employees employed in the NPSL project area in NPSL operations, if such costs are not charged under subparagraph (g) of this section.

(ii) Salaries and wages of technical employees within technical branches of the lessee's organization who are either temporarily or permanently assigned to, and directly employed in NPSL operations, provided that such employees work "full time" on some particular aspect of NPSL operations or some specific technical problem. Excluded from this category are employees assigned a role in NPSL operations as a duty collateral with other duties that do not directly benefit NPSL operations.

(2) Lessee's cost of compensated personal absence paid to employees whose salaries and wages are chargeable to NPSL operations under subparagraph (b)(1) of this section.

(3) Expenditures or contributions made pursuant to assessments imposed by governmental authority that are applicable to lessee's costs chargeable to NPSL operations under subparagraphs (b)(1) and (b)(2) of this section.

(4) Reasonable personal expenses, including allowable relocation costs of employees whose salaries and wages are chargeable to NPSL operations under subparagraph (b)(1) of this section and that are paid by the lessee or for which the employees are reimbursed under the lessee's normal practice.

(i) Allowable relocation costs include:

(A) Travel expenses, including transportation, lodging, subsistence, and reasonable incidental expenses of the employee and members of his immediate family and transportation of his household and personal effects to the new location.

(B) Other necessary and reasonable expenses normally incident to relocation, such as costs of cancelling an unexpired lease, disconnecting and reinstalling household appliances, and purchases of insurance against damages to or loss of personal property. Costs of cancelling an unexpired lease shall not exceed three times the monthly rental.

(C) Closing costs (*i.e.* brokerage fees, legal fees, appraisal fees, etc.) for the sale of the employees' actual residence when notified of the transfer; and

(D) Continuing costs of ownership of the vacant former actual residence being sold, such as continuing mortgage principal and interest payments, maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date or lease date of new permanent residence.

(ii) The combined total of costs listed in subparagraphs (b)(4)(i)(C)-(D) shall not exceed 8 percent of the sales price of the property sold.

(iii) Section 390.013(g) specifies employee relocation expenses that are not allowable as a charge ot NPSL operations.

(5) Lessee's current costs of established plans for employee's group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonds, and other benefit plans of a like nature that are made availabe to all employees on an equitable basis, applicable to lessee's labor cost chargeable to NPSL operations under subparagraph (b)(1) and (b)(2) shall be lessee's actual cost not to exceed 20 percent of the total charges under subparagraphs (b)(1) and (b)(2).

(6) Charges for expensed incurred under subparagraphs (b)(2)-(b) (5) of this section may be made to NPSL accounts on a "wide and as paid" basis on by a percentage assessment method. If the percentage assessment method is used, it shall be based upon the lessee. Actual cost experience for the proceeding year expressed as percentage of costs chargable under suparagraphs (b)(1) and (b)(2) of this section, and adjustments shall be made at the end of each fiscal year to balance total charges made NPSL accounts during the year with the lessee's actual costs for the year. Under either method the lessee's own cost of administering the plan and paying the salaries and benefits defined in this paragraph shall be excluded. In determining actual cost experience actual cost experience of any employee benefit plan, any dividend or refunds received are applicable to insurance of annuity policies shall be used to reduce the cost of such policies.

(c) *Materiel.* (1) Materiel purchase of furnished by a lessee as NPSL property shall be charged or credited at amounts specified in § 390.015. The purchase and inventorying of materiel is subject to conditions and provisions in $390.032.

(2) Credit for salvage or returned materiel shall be made to the account originally charged except that, in the case of crediting the preproduction account when the calculation of the allowance for capital recovery in § 390.020 has been made, the credit shall be multiplied by the recovery factor and entered in the production account.

(d) *Transportation.* Transportation of employees and materiel necessary for NPSL operations, to, from and within the NPSL project area, but subject to the following limitations:

(1) If materiel is moved to the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance from the nearest reliable supply store, recognized barge terminal, or railway receiving point where like materiel is normally available, unless agreed to by the Supervisor.

(2) If surplus materiel is moved from the NPSL project area, not charge shall be made to NPSL operations for a distance greater than the distance to the nearest reliable supply store, recognized barge terminal, or railway receiving point unless agreed to by the Supervisor. No charge shall be made to NPSL operations for moving materiel to other properties owned by or under the control of a lessee, unless agreed to by the Supervisor.

(3) In the application of subparagraph (1) and (2) of this paragraph , there shall be no equalization of actual gross trucking costs of $200 or less, excluding accessorial charge

(e) *Contract services.* Except when exclused by paragraph (f) of this section and/or $390.013(c), the cost of services and utilities provided under contract by outside parties to the lessee and which constitute proper and necessary NPSL operations or support for NPSL operations, and rental charges paid to outside parties for the rental of equipment used in the NPSL project area in support of NPSL operations, may be charged to NPSL operations subject to the following conditions and limitations:

(1) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit exclusively NPSL operations may be charged at the rates specified in the contract.

(2) Contract services (including professional consulting services and contract services of technical personnel that are entirely performed in the NPSL project area and benefit the NPSL operations and operations on other tracts must be allocated among all tracts benefited and only that portion representing services benefiting the NPSL tract charged to NPSL operations.

(3) Contract services (including professional consulting services and contract services of technical personnel) that are performed at sites outside the NPSL project area may be charged to NPSL operations only if:

(i) The contracted services benefit only the NPSL tract or support NPSL operations;

(ii) The contract under which such services are provided deals exclusively with services benefiting the NPSL tract or NPSL operations; and

(iii) Services specified in the contract relate to the resolution of specific technical problems confronting NPSL operations, or specific engineering design problems related to equipment or facilities required for NPSL operations.

(4) The cost of any contract service related to research and development is specifically excluded, as are contract services calling for feasibility studies not directly related to specific engineering design problems or alternatives for equipment and facilities required by NPSL operations.

(f) *Legal expenses.* Expense of handling, investigating and settling litigation or claime, discharging or liens, payments of judgments and amounts paid for settelement of claims incurred in or resulting from NPSL operations, or necessary to protect or recover the NPSL property, except tose costs listed in § 390.013(d) as unallowable.

(g) *Rental of equipment and facilities furnished by lessee.* (1)(i) NPSL accounts shall be charged for the use of equipment and facilities owned by a lessee that are proper and necessary for NPSL operations, including shore base and offshore facilities and pipelines from the tract to shore base production facilities, and that are not NPSL property. Charges shall be made at rates based upon actual costs of acquisition, construction, and operation. Such rates may include labor, the cost of setting up and dismantling equipment, maintenance, repair, other operating expenses, insurance, taxes, depreciation (calculated with the same method adopted for depreciating the asset for Federal income tax purposes), and a return on the remaining undepreciated basis not to exceed 8 percent per year. Any cost of acquiring real property in excess of that reasonably required to support the facilities furnished for NPSL operations shall not be included in the costs used to established these rates. Rates charged shall not exceed average commercial rates for equipment and facilities of similar nature and capability currently prevailing in the vicinity of the NPSL project area, or such other maximum rates as may be set by the Supervisor.

(ii) The term equipment and facilities is used in the broad sense to include equipment that may be mobile or semimobile and also installations that may be semipermanent or permanent is nature. Such equipment and facilities listed below shall be charged on the basis indicated:

Equipment/facilities	Basis of charge
A. Mobile equipment:	
Aircraft	Hour.
Automobiles	Mile or hour.
Trucks	Mile or hour.
Tractors	Hour.
Bulldozers	Hour
Mobile cranes	hour
Trailer-mounted test separators	Hour
Truck-mounted paraffin scraping units.	Hour
Trailer-mounted cement mixers.	Hour
Boats	Day or hour
House trailers	Day.
B. Semimobile equipment:	
Drill rigs.	Foot or day.
Workover rigs	Hour.
Pulling units	Hour.
Derricks	Day.
Drilling tender	Day.
Barges	Day.
C. Semipermanent installations:	
Skid-mounted separators	Day or volume.
Skid-mounted compressors	Day or volume.
D. Permanent installations:	
Compressor stations	Volume.
Saltwater disposal Wells	Volume or wells.
Source water wells and supply systems.	Volume.
Roads	Wells.
Production/drilling platform	Volume or wells.
Canals	Wells.
Dock	Wells.
Oil storage and loading facilities.	Volume.
Gathering systems and pipeline	Volume.
ACT systems	Volume.
Laboratory services (excluding research work).	Hour or unit.
Shore base production facilities	Volume.
Shore base support facilities	Wells.
E. Miscellaneous:	
Drill Pipe	Foot or day.
Casing Setting Tools	Day.
Well Testing Equipment	Day.

Equipment and facilities that are not listed shall be charged on a basis consistent with the nature of the use.

(2) In lieu of charges in subparagraph (g)(1) above, the lessee may elect to use average commercial rates prevailing in the vicinity of the NPSL project area less 20 percent. For automotive equipment, the lessee may elect to use rates established by the Supervisor. For other equipment for which no commercial rate exists, the lessee shall submit the basis for determining such costs to the Supervisor for approval.

(h) *Damages and losses to NPSL property.* All costs necessry for the repair or replacement of NPSL Property made necessary because of damages or loses incurred by fire, flood, storm, theft, accident, or other causes not covered by insurance, except those resulting from lessee's negligence or willful misconduct. Lessee shall inform the supervisor of all such damages and losses suffered as soon as practical following their discovery. Notice to the Supervisor shall include the time, cause, and extent of damage or loss, and the estimated charge. Any settlement received from an insurance carrier should be credited to NPSL operations when received.

(i) Taxes. All taxes, except income taxes, profit share payments, and taxes based upon income, that are assessed or levied upon or in connection with NPSL operations which have been paid by the lessee.

(j) *Insurance.* (1) Net premiums paid for insurance required to be carried for NPSL operations. For NPSL operations in which the lessee may act as self-insurer for Workmen's Compensation and Employer's Liability, the lessee may include the risk under its self-insurance program in providing coverage under State and Federal laws and charge NPSL operations at lessee's cost not to exceed manual rates.

(2) NPSL operations shall be credited for all reimbursements for costs of damage to NPSL property or personal injury. Reimbursements for damage NPSL property shall be credited as follows:

(i) If the damage NPSL property is replaced or repaired, to the NPSL account charged for the cost of replacement or repair; or

(ii) If the damaged NPSL property is not replaced or repaired, to the NPSL account originally charged for the cost of the NPSL property except that in the case of the preproduction account, when the calculations of the allowance for capital recovery in § 390.020 has been made, the production account shall be credited in accordance with § 390.021.(a)(2).

(k) *Communications.* costs of acquiring, installing, operating, repairing and maintaining communication systems, including radio and microwave facilities, between the NPSL tract and te lessee's nearest shore base facility. If communication facililties/systems serving the NPSL tract are lessee-owned, or serve operations and/or facilities outside the NPSL project area, charges to NPSL operations shall be made as provided in subparagraph (g) of this section.

(l) *Ecological and environmental.* Costs incurred in the NPSL project area as a result of statutory regulations for archeological and geophysical surveys relative to identification and protection of cultural resources and other environmental or ecological surveys required by the Bureau of Land Management or other regulatory authority. Also, the costs to provide or have available pollution containment and removal equipment, and the costs of actural control and cleanup and resulting responsibilities of oil spills as required by applicable laws and regulations.

(m) *Audit.* The cost of an audit of NPSL operations made by an independent auditor, if such audit is not performed by an agent of the United States.

(n) *Other costs.* Any other costs not covered in Paragraphs (a)–(m) of this section and not specified by § 390.013 that are incurred by the lessee in the necessary and proper conduct of NPSL operations and are approved by the Supervisor.

(o) *Other credits.* Credit shall be given to the preproduction or production

account, depending on when it is occurred, for NPSL property leased or used in non/NPSL operations, and for the sale of information derived from test wells and G & G.

§ 390.012 Overhead allowance.

(a) The preproduction period overhead allowance shall be calculated on a percentage basis at the rate of 4 percent of direct and allocable joint costs charged to the preproduction accout, exclusive of costs specified in § 390.012(c), and debited to the production period account in accordance with § 390.020.

(b) Production period overhead allowance shall be calculated on a percentage basis at the rate of 10 percent of direct and allocable joint costs.

(c) Overhead shall not be charged on the value of:

(1) Lease rental (§ 390.011 (a));

(2) Contract services (§ 390.011 (e));

(3) Legal expenses (§ 390.011(f));

(4) Rental of equipment and facilities furnished by the lessee and that are charged to NPSL accounts under (§ 390.011 (g));

(5) Taxes (§ 390.011(i));

(6) Injected substances charged under (§ 390.011 (c)); and

(7) Credits for materiel charged under (§ 390.011 (c)) that are salvaged, returned, or used for the benefit or non-NPSL operations.

§ 390.013 Unallowable costs.

The following costs shall not be charged as direct or joint costs to NPSL operations:

(a) Bonus payments to the United States;

(b) Interest (except as permitted under § 390.011(g));

(c) Depreciation, amortization, or any other charge for capital recovery, except as explicitly provided by the allowance for capital recovery calculated according to (§ 390.020, for materiel charged to a NPSL account under § 390.011 (c));

(d) The cost of taking inventory;

(e) Reserach and development costs;

(f) The following legal expenses;

(1) The costs of litigation against the Federal government;

(2) Fines or penalties levied by any Federal agency;

(3) Settlement of claims or other litigation resulting from the lessee's violation of regulatory requirements or negligence; and

(4) The cost of the lessee's legal staff or expense of outside attorneys.

(g) The following employee relocation costs (whether incurred by the employee or the lessee):

(1) Loss on the sale of a home;

(2) Purchase price of a home in the new location;

(3) Payments for employee income taxes incident to reimbursed relocation costs; and

(4) Any relocation cost in connection with an employee move that is for the primary benefit of the lessee's non-NPSL operations;

(h) The lessee's own cost of administering employee benefit plans;

(i) The cost of acquiring or constructing shore base facilities and real property improvements supporting NPSL operations but that are not on the NPSL property; and

(j) Abandonment costs.

§ 390.014 Allocation of joint costs and credits.

(a) Joint costs shall be grouped in cost pools for allocation to NPSL and non-NPSL operations in reasonable proportion to the beneficial or causal relationships which exist between a specific cost pool and the operations. That portion of a joint cost pool that may be allocated to NPSL operations is called an allocable joint cost.

(b) The following allocation principles apply in allocating joint costs:

(1) *G & C.* G & G shall be allocated on a line mile per tract basis.

(2) *Wages and salaries.* Wages and salaries that are not charged direct on the basis of time spent on a particular job shall be allocated on a well basis, i.e., on the basis of the number of wells on each property served.

(3) *Compensated personal absence, payroll taxes and personal expenses.* These items shall be allocated on the same basis as wages and salaries.

(4) *Transportation costs.* Transportation costs for employees that are not charged direct shall be allocated on the same basis as their salaries and wages.

(c) Joint credits shall be allocated in the same manner as joint costs.

§ 390.015 Pricing of materiel purchases, transfers, and disposition.

(a)(1) *Purchased materiel.* Except as provided in paragraph (a)(2)(i) of this section, materiel purchsed for use in NPSL operations shall be charged to NPSL operations at the price paid, after deduction of any discounts received. Should any purchased materiel be defective or returned to a vendor for other reasons, the credit shall be allocated to NPSL operations when received by the lessee in accordance with § 390.011(c)(2).

(2) *Transferred and disposed materiel.* An item of materiel with an original cost under $100,000, which is acquired by the lessee for use in NPSL operations by means other than purchase or disposed of by any means, shall be priced according to this subparagraph:

(i) *Condition A (New) Materiel:* (A) Tubular goods, except line pipe, shall be priced at the current market price in effect on date of movement on a minimum carload or barge load weight basis, regardless of quantity transferred, equalized to the lowest published price "free on board" (f.o.b.) railway receiving point or recognized barge terminal nearest the NPSL tract where such materiel is normally available.

(B) *Line Pipe. (1)* Movement of less than 30,000 pounds shall be priced at the current price in effect at date of movement, as listed by a reliable supply store nearest the NPSL tract where such materiel is normally available.

(2) Movement of 30,000 pounds or more shall be priced under provisions of tubular goods pricing in paragraph (a)(3)(i)(A) of this section.

(C) Other materiel shall be priced at the current price in effect at date of movement, as listed by reliable supply store or f.o.b. railway receiving point nearest the NPSL tract where such materiel is normally available.

(ii) *Condition B (Good Used) Materiel:* Materiel in sound and serviceable condition and suitable for reuse without reconditioning:

(A) Materiel transferred to the NPSL project area shall be priced at 75 percent of current Condition A price.

(B) Materiel transferred from the NPSL project area shall be priced—

(1) At 75 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition A materiel, or

(2) At 65 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition B materiel at 75 percent of current Condition A price.

(iii) *Conditions C and D (Other used) Materiel:* (A) *Condition C.* Materiel that is not in sound and servicable condition and not suitable for its original function until after reconditioning shall be priced at 50 percent of current Condition A price.

(B) *Condition D.* Materiel no longer suitable for its original purposes but suitable for some other purpose shall be priced on a basis commensurate with its use and comparable with that of material normally used for such other purpose. If the material has no alternative use it should be priced at prevailing prices as scrap.

(iv) *Obsolete Materiel.* Materiel that is serviceable and usable for its original function and has a value less than Condition A, B, or C materiel may be

valued at a price agreed to by the Supervisor. Such price should be the equivalent of the value of the service rendered by such materiel.

(3) *Transferred and disposed materiel with a value of $100,000 or more.* An item of materiel with an optional cost of $100,000 or more or item of similar materiel with aggregate original cost exceeding $100,000 acquired by the lessee for use in NPSL operations by means other than purchase or disposed of by any means, shall be priced on a current market basis with the approval of the Supervisor.

(b) *Pricing conditions.* (1) Loading and unloading costs shall be charged at a rate of 15 cents per hundred weight, or such other rate as may be set by the Supervisor, on all tubular goods movements, in lieu of loading/unloading costs sustained, when the actual hauling costs of such tubular goods is equalized under provisions of § 390.011(d).

(2) Materiel involving erection costs shall be charged at the applicable percentage of the current knocked-down price of new material.

(c) When materiel subject to subparagraphs (a)(2)(ii)(iii) of this section is transferred, the cost of reconditioning shall be borne by the receiving property.

§ 390.020 Calculation of allowance for capital recovery and preproduction overhead allowance.

(a) The allowance for capital recovery and the preproduction overhead allowance shall be calculated at the end of the preproduction period.

(1) At the end of the preproduction period, the allowance for capital recovery shall be calculated by multiplying the balance in the preproduction account, less any charges specified in § 390.011(g) and exlusive of the preproduction period overhead allowance, by the recovery factor that is published in the notice of lease sale and is specified in the NPSL.

(2) The preproduction overhead allowance shall be calculated by multiplying the balance in the preproduction account, less any charges specified in § 390.011(g), by 0.04.

(b) At the beginning of the production period, the production account shall be debited by the allowance for capital recovery and by the preproduction overhead allowance calculated in paragraph (a) of this section, and by the sum of charges specified in § 390.011(g) that were excluded from calculations in paragraph (a)(1) of this section.

§ 390.021 Determination of net profit share base.

(a) During each month of the production period:

(1) The production revenue account shall be credited with an amount reflecting the current value of production during the month and calculated in accordance with § 376.110(c) of this chapter.

(2) The production account shall be debited with allowable costs and credited with allowable credits. Credits associated with the preproduction period, however, shall first be multiplied by the recovery factor before crediting the production account.

(b) At the end of each month during the production period:

(1) The production overhead allowance shall be calculated by multiplying the net of the debits and credits to the production account for that month (less any charges or credits specified in 390.012(c)) by 0.10.

(2) The production account shall then be debited by the production overhead allowance.

(3) The balance in the production revenue account shall be calculated.

(4) The balance in the production revenue account shall then be cleared to the production account by debiting the production revenue account and crediting the production account by the balance in the production revenue account.

(c) If, as a result of the accounting transactions described in paragraph (b) of this section, there is a credit balance in the production account, this credit balance is the *net profit share base* for that month.

§ 390.022 Calculation of net profit share payment and lessee's net profit share.

(a) The net profit share payment shall be calculated by mulitplying the net profit share base calculated in accordance with § 390.021 by the net profit share rate.

(b) The lessee's net profit share shall be calculated by subtracting the net profit share payment from the net profit share base.

(c) At the end of each month during the production period for which a profit share base is calculated, the following transactions shall be made in the NPSL accounts.

(1) Debit the production account by the profit share base for the month.

(2) Credit the net profit share payments account by the net profit share payment for the month.

(3) Credit the lessee's net profit share account by the lessee's net profit share for the month.

§ 390.030 Maintenance of records.

(a) Each lessee subject to this part shall establish and maintain such records as are necessary to determine for each NPSL:

(1) The volume and disposition of all oil and gas production saved, removed or sold for each production period;

(2) The value of all oil and gas production saved, removed or sold for each production period;

(3) The amount and description of costs and credits to all NPSL accounts.

(4) The amount and description of all costs of acquisition, construction, and operation of equipment and facilities furnished by the lessee and charged to NPSL accounts under § 390.011(g). Such records shall include worksheets or other documents that indicate the method used to calculate the amount of each charge made under § 390.011(g).

(5) The cumulative balance of costs and credits to all NPSL accounts; and

(6) The inventory of material.

(b) Records shall be maintained from the date of issuance of the NPSL to the date five years subsequent to the abandonment of the NPSL.

§ 390.031 Reporting and payment requirements.

(a) Each lessee subject to this part shall file an annual report during the preproduction period. Such report shall list the costs incurred, credits received, and the balance of the preproduction account. Not later than 45 days after the start of production, a final preproduction report, that includes the calculation of the allowance for capital recovery, shall be filed.

(b) Each lessee subject to this part shall file a report, not later than 45 days following the end of each month, together with the appropriate net profit share payment, containing the following information for each NPSL:

(1) The volume and disposition of all oil and gas production saved, removed or sold for the production period;

(2) The monthly production revenue;

(3) The amount and description of all costs and credits to the production account, and monthly balance of the production account; and

(4) The monthly net profit share payment due the United States and the monthly profit share of the lessee.

(c) Each lessee subject to this part shall file a report each year, not later than 90 days after inventory is taken, reporting the controllable materiel on hand, acquired, transferred or used, and a list of overages and shortages.

(d) Each lessee subject to this part shall file a report, not later than 45 days following the end of production, together with the appropriate net profit share

payment, indicating the remaining balance and costs and credits to the NPSL accounts for the production period.

(e) Reports required by this section shall be filed with the Supervisor, either separately or as part of the reports that are currently filed.

Interest shall be charged at the annual rate of 18 percent, compounded monthly, on the amount of a net profit share payment, from the due date (45 days following the end of the production period) of a net profit share payment until such payment if received by the United States.

§ 390.032 Inventories.

(a) The lessee is responsible for NPSL materiel and shall make proper and timely cost and credit notations for all materiel movements affecting NPSL property. The lessee shall provide only such materiel as may be required for immediate use or is consistent with practical, efficient, and economical operations. The accumulation of surplus stocks shall be avoided by proper materiel control, inventory and purchasing. The lessee shall make timely disposition of idle and surplus materiel through sale.

(b) At reasonable intervals, but at least once every year, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Supervisor may be represented at the taking of inventory. Failure of the Supervisor to be represented at an inventory shall bind the Supervisor to accept the inventory taken by the lessee.

(c) Inventory shall be valued with any generally accepted accounting method used by the lessee to value the same materiel for financial or income tax reporting purposes, provided that the method is consistently applied throughout the life of the materiel.

(d) Reconciliation shall be made of a physical inventory with the NPSL by the lessee, and a list of overages and shortages shall be furnished to the Supervisor within three months following the taking of the inventory as part of the report required by § 390.031(c). Inventory adjustments of controllable materiel shall be made by the lessee to NPSL accounts for overages and shortages. Controllable materiel removed from physical inventory that has not been credited to NPSL operations under § 390.015(a)(2) or (3) shall be credited to NPSL operations at its original value.

§ 390.033 Audits.

(a) The records of financial transactions pertaining to NPSL operations shall be audited periodically, but at least once every two years, by the United States or, at its option, by an independent auditor. Such audit may include the records pertaining to NPSL operations of contractors or the lessee.

(b) An independent auditor is a certified public accountant who has no financial interest in the NPSL or any corporation or partnership which has an interest, and who is an independent contractor employed solely for the purpose of providing a periodic audit of the financial records of the NPSL.

(c) The Supervisor is authorized at any time, to inspect NPSL operations for compliance with this part.

(d) Records required to be kept under paragraph (a) shall be made available for inspection by any authorized agent of the United States at any time during normal business hours upon the request of the Supervisor or other authorized official.

§ 390.034 Redetermination and appeals.

(a) If, as a result of an inspection of records or an audit under § 390.033, the Supervisor determines that there is an error in an NPSL account or an error in calculating the net profit share payment, the Supervisor shall redetermine the net profit share base and recalculate the net profit share payment due the United States and notify the lessee of the recalculation.

(b) The lessee shall pay any additional amount of net profit share payment owed plus interest at the rate of 18 percent per year, compounded monthly, from the date that the payment was due until the date it is actually paid. If the recalculated profit share payment is less than the amount paid the United States, the lessee will reclaim a credit that will be applied to the next profit share payment.

(c) Within 30 days after receiving notice of the recalculation as provided in paragraph (a), the lessee may appeal the decision of the Supervisor in accordance with the appeals provisions of 30 CFR Part 290.

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Part VI

Nuclear Regulatory Commission

Disposal of High-Level Radioactive Wastes in Geologic Respositories; Proposed Licensing Procedures

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, and 70

Disposal of High-Level Radioactive Wastes in Geologic Repositories; Proposed Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: This notice invites public comment on a proposed rule for licensing the receipt and disposal of high-level radioactive wastes (HLW) at geologic repositories. The proposed rule sets forth requirements applicable to the Department of Energy (Department) in submitting an application for a license for such activities and specifies the procedures which the Commission will follow in considering such an application. The proposed rule also sets forth provisions for consultation and participation in the license review by State governments.

DATE: Comments must be received by March 3, 1980.

ADDRESS: Written comments or suggestions on the proposed rule should be sent to the Secretary of the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: I. C. Roberts, Assistant Director for Siting Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 443–5985.

SUPPLEMENTARY INFORMATION:

Background

In November of 1978, the Nuclear Regulatory Commission published for comment a proposed General Statement of Policy outlining procedures for licensing geologic high-level radioactive wastes (HWL) repositories to be constructed and operated by the Department of Energy. At the same time, a draft rule to implement the policy was circulated to State governments for review. Comments on the Policy Statement were received from thirty groups and individuals. Fourteen States commented on the draft rule. The rule that is presently being proposed reflects a change in our earlier views, stimulated in part by those comments and by a somewhat different appreciation of the quality and quantity of information needed to select a site for a repository. The Commission is withdrawing the proposed General Statement of Policy as being superseded by this action.

Authority and Rationale

Sections 202(3) and (4) of the Energy Reorganization Act of 1974, as amended, provide the NRC with licensing and regulatory authority regarding Department of Energy facilities used primarily for the receipt and storage [1] of high-level radioactive wastes resulting from activities licensed under the Atomic Energy Act and certain other long-term, high-level waste storage facilities of the Department of Energy. Pursuant to that authority, the Commission is developing procedures and criteria appropriate for licensing geologic disposal of HLW by the Department. The requirement contained in the instant proposed rule that the Department submit a site characterization report in advance of performing exploration which may include in situ testing at depth also implements Section 14(a) of the NRC Authorization Act of 1979 (Pub. L. 95–601).[2]

Alternatives to rulemaking that were considered included the issuance of regulatory guides and NUREG reports, which would be applied in the context of other, existing, parts of NRC regulations. However, the considerable differences between a geologic repository and other licensed facilities, particularly in view of the significance of a repository with respect to the health and safety of future generations, make it desirable to develop rules tailored specifically to geologic disposal of HLW. Moreover, the rulemaking proceeding should provide the Commission the broadest opportunity to receive and consider the views of the public.

Comments

Comments on the Policy Statement touched upon many issues. Some of the comments dealt with details of implementation that are being addressed for the first time in these proposed rules. The principal comments of a policy nature related to the timing and scope of the Commission's initial review, opportunities for State and public participation, and the respective NEPA responsibilities of the Commission and the Department of Energy.

Comments about the initial review straddled the position set forth in the Policy Statement. Some commenters urged the Commission to schedule hearings early in the Department's site selection process; others recommended that hearings be deferred until construction has been completed and an application to receive waste is filed. The Commission has undertaken a thorough review of the matter and now proposes a more extensive informal involvement during early phases of site characterization [3] and a deferral of formal proceedings until site characterization has been completed. The scope of the review procedures would be expanded, as urged by several commenters, to include an assessment of site characterization data for multiple sites. The reasons for the modifications are explained in the text below.

The proposed rule also provides detailed provisions to ensure extensive opportunities for State and public participation. We have not made specific provision for funding of intervenors, as requested by some commenters. This question may be addressed separately in the context of rulemaking applicable to various adjudicatory proceedings. Provisions for State participation would be reviewed in the light of any pertinent statutory changes that may be enacted.

The proposed regulations do not explicitly address the NEPA responsibilities of the Commission regarding matters within the scope of the Department's generic environmental impact statement on the management of commercially generated radioactive wastes. The possibility of adopting the Department's statement may be considered by the Commission, as suggested in comments, at an appropriate time.

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[1] The Commission interprets "storage" as used in the Energy Reorganization Act to include disposal.

[2] Section 14(a) reads as follows: Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, non-high-level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed sites whenever the Commission has knowledge of such proposal.

[3] Note.—Site characterization means the program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic conditions and the ranges of those parameters of a particular site relevant to the procedures under this part. Site characterization includes borings, surface excavations, excavation of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to determine the suitability of the site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken. The intent of permitting these activities is to allow the timely gathering of information needed both to characterize a site and for a meaningful comparison of alternatives.

Departure From the General Statement of Policy

The procedures delineated in the proposed rule depart from those set forth by the proposed General Statement of Policy in three ways. These departures all bear on the initial stages of the licensing process. First, it is clearly stated that review of the Department's plans for site characterization as well as the site selection methods and criteria to be used by the Department is required in advance of site characterization and that the Director of NMSS will issue an opinion on the basis of that review. Second, the review does not presume that the Department has selected a repository site, but only that it has identified a number of sites in appropriate media to undergo site characterization. The third departure from the Policy Statement is the elimination of the provisional construction authorization and expansion of the concept of site characterization. These changes are being proposed to reflect our current appreciation of the quality and quantity of information needed to bring the licensing proceeding to an appropriate conclusion.

Site Characterization Review

The provision for early review of the Department's site characterization plans will provide an opportunity for the Director to point out those aspects of a location which in the judgment of the staff require special attention or present special problems, and to indicate particular items of information needed for the Commission to make licensing decisions with respect to the sites being considered. Moreover, the Director will be able to consider the methods and procedures of exploration contemplated for use by the Department. The opportunity to review those methods and procedures is valuable because if the process of characterizing a site to obtain informaiton necessary to determine if a site is suitable for a repository is not carefull done, it may render the site unusable for a repository. For example, an excessive number of bore holes or improper excavation of an exploratory shaft or drift could make the repository unsealable. Presumably, this concern for possible exploration-induced damage is one reason that some commenters on the Policy Statement suggested a multi-step review process begun before commencement of site exploration. This factor and the desirability of evaluating whether the Department's program will generate data suitable to support a Commission licensing decision are reasons that the Commission regards some provision for preapplication review to be appropriate. Further, early guidance on development and consideration of alternative sites will help to avoid later delay caused by inadequate discussion of alternatives as required by NEPA.

In addition to providing for the early review of the Department's site characterization and site selection programs, the submittal of a site characterization report assures an early opportunity for other Federal and State agencies and the public to become involved in the decision making process with respect to those programs. The opportunity for involvement is provided through publication of the Department's site characterization report and the Commission staff assessment of same and by means of meetings between the Commission staff and State officials, residents of the areas near the sites to be characterized, and other interested persons. Furthermore, where other Federal agencies have decisionmaking authority regarding the Department's proposed action, it is expected that they will consider the recommendations of the Director in carrying out their responsibility.

The change is also intended to implement the requirements of Pub. L. 95–601, as set out above, and to ensure that the notice from the Department will, in fact, initiate a meaningful, substantive review. Although the Commission cannot direct the Department to comply with the provisions for involving it during the site characterization activities, any failure to do so is likely to result in imprudent expenditures and subsequent delays, and ultimately could result in the denial of the application for the proposed site.

In sum, the Commission believes that the required submission of a site characterization report and subsequent public review will achieve early Commission, State and public involvement without undue schedule delays.

Consideration has been given to providing for formal hearings prior to site characterization, with the objective of resolving alternative site issues. Early Site Review (ESR) regulations (10 CFR Part 2 Subpart F) certainly provide a precedent for this approach. However, this is a reasonable approach for reactors only because of the considerable experience we have had with siting such facilities, the knowledge we have of typical light water reactor designs and characteristic impacts, and the extent to which engineered features can be relied upon to accommodate deficiencies in site characteristics. The situation in the case of geologic repositories is different in each of these respects. With a geologic repository, reconnaissance level data alone will not support a presumption that a site is suitable with respect to safety for a repository. Hence, any decision on alternative site issues at this early point is likely to require reexamination at the construction authorization proceedings and, therefore, would be of questionable value.

However, other findings could be made: the adequacy and appropriateness of the Department's site characterization program, including the development of a slate of alternatives, can be reviewed in a licensing action which would allow the Department to proceed with that program. But, considering the preliminary nature of the geologic and hydrologic data available, the fact that the Director's review of these items as described earlier will include the benefit of public comment, and the relatively insignificant environmental impact of site characterization, the Commission has concluded that the considerable time and effort on the part of the Commission, the Department, and the public demanded by formal proceedings would not be justified.[4]

Provision for Characterizing Several Sites

The revised procedures permit the Department to include exploration and in situ testing at depth as part of its site characterization activities. We anticipate that it will be necessary for the Department to explore at depth more than one site at different locations and in different geologic media. This position follows from consideration of both the long-term performance required of and the technical uncertainties involved in geologic disposal of HLW, and the need for the Commission to discharge its NEPA responsibilities with respect to evaluation of alternatives.

It is expected that each site selected for site characterization and testing will potentially satisfy the technical criteria in 10 CFR 60, i.e., no obvious deficiency will be evident when the site is assessed in terms of NRC's preliminary site

[4] The principal impact of site characterization at a typical site can be attributed to management of the spoils from excavation of an exploratory shaft. The spoils will be in the neighborhood of 5000 cubic yards which either would be disposed of on site or trucked off site. The volume of these spoils is about 10% of that from excavation of a main shaft for a repository and less than 0.1% of the spoils from total excavation. The absence of formal Commission proceedings, of course, would not excuse the Department from considering this and other environmental impacts associated with major actions which it proposes to undertake.

review. NRC will examine the Department's site selection process with this in mind, and the results of this review will be reflected in the Director's opinion. Thus, application of the technical criteria will guide the Department toward a slate of candidate sites that are among the best that reasonably can be found. Under this approach, the selection of a proposed site from among the alternatives would be deferred until site characterization of the slate of candidate sites is at least substantially complete.

It can be noted that the procedure here is consistent with the recommendation of the Interagency Review Group on Nuclear Waste Management which calls for simultaneous investigation of several potential sites.[5]

Site Characterization and Authorization of Construction

Under the proposed Policy Statement, only surface exploration combined with some test borings would be permitted prior to the Commission's initial licensing decision—either a construction authorization or a provisional construction authorization. This procedure was intended to allow the Commission to complete a safety and environmental review before the Department undertook a major commitment of resources (money and manpower).

We now perceive two grounds for questioning our previous thinking. First, the quality of the data that will be available before completion of site characterization as currently envisioned is unlikely to provide a satisfactory basis for arriving at the technical judgments reflected in the standards for construction authorization and provisional construction authorization that are contained in the Policy Statement. Second, further study persuades us that the commitment of resources involved is not so great nor the environmental impacts so large as to lead the Commission to exercise its licensing authority in advance of site characterization. Our revised position now more closely resembles an approach presented in comments submitted by the Natural Resources Defense Council, among others, that deferment of some specific safety findings may be desirable in order to avoid decisions based on inadequate information and analyses so long as the increased financial investments and institutional commitments do not thereby reduce the stringency of the subsequent safety reviews.

Support for our revised position is bolstered not only by comments received on the Policy Statement but also by many in the earth science community with whom we have discussed this matter, including members of the U.S. Geological Survey staff. These experts agree that exploration and testing at depth should be performed if sufficient data are to be obtained to determine whether the surrounding geology will retard waste migration and to make meaningful comparisons among alternatives. Further, the importance of exploration at depth has been cited by both the IRG report (Appendix A) and the recent National Academy of Sciences report, "Implementation of Long-term Environmental Radiation Standards: The Issue of Verification" (Committee on Radioactive Waste Management, 1979).

The investigations which the Policy Statement would have allowed prior to construction authorization were limited to surface geophysical techniques such as aeromagnetic and gravity surveys and seismic traverses augmented by a few borings and well logs. Insofar as subsurface geology and hydrology are concerned, such investigation would provide substantial information regarding the stratigraphy and hydrogeology of the site. While this information is obviously relevant and extremely important in evaluating a site, the data needed to establish the ultimate suitability of the site is likely to be obtained only through exploration and in situ testing at depth, i.e., in the proposed host rock unit. This exploration and testing are needed not only to determine whether serious but not readily observed defects are present, but also to determine specific properties such as homogeneity, porosity, the extent of fracturing and jointing, and thermal response of the rock including expansion, fluid migration and decrepitation. Of course, the kinds of defects—fractures, breccia pipes, etc.—will vary from one kind of medium to another, and from site to site, as will the properties which are key to isolation of the wastes. But the important point is that without exploration and in situ testing in the proposed host rock unit, neither the defects nor the key parameters can be determined with confidence. It might be argued that deferring the initial licensing decision to a later stage in some cases could lead to the expenditure of some resources and the waste of time pursuing projects that might otherwise have been found to be unacceptable on the basis of careful examination of surface reconnaissance data. However, this situation is unlikely for two reasons. First, the process of site characterization is also a process of site elimination. There is no point to proceeding with exploration and testing at depth if the surface reconnaissance data reveal an insuperable defect. Second, under the procedures contemplated by the proposed rule, the Department will augment the site characterization report with semiannual reports to the Director, Office of Nuclear Material Safety and Safeguards. These reports along with any comment by the Director will be made public. If review of a report reveals such a defect, the Director will publicly inform the Department of the problem and, if warranted, could caution the Department from proceeding further with the site. Moreover, in the context of overall project costs for a repository, the incremental site characterization costs are small indeed. Again, it is difficult to generalize since different media and sites will present a variety of factual situations. In our analysis, however, we have determined that total site characterization expenses for a generic hypothetical site could be expected to amount to about $20 million.

We do not minimize the amount of public funds that we have identified as a reasonable estimate of incremental site characterization costs or the increasing urgency for disposing of the wastes which may accompany any delay in licensing action. These factors should be examined, however, in the light of the requirement discussed above that multiple sites must be characterized. The effect of this change is to decrease, in a highly significant way, the level of commitment of the Department or the Commission to any particular site. Also, the delay will help to assure that the Commission avoids making any improvident, premature commitment to a particular site by making a licensing decision before it has the necessary technical data that would permit it to make a commitment with confidence. Further, this approach could provide a ready alternative for consideration in the event that the Department's proposed site is found unsuitable.

As discussed earlier, it would be possible for the Commission to structure its proceedings so as to provide for formal hearings on limited issues at an early stage in the process. The hearing process has clear advantages as a mechanism for fact-finding. But it can be an inefficient and cumbersome means for arriving at decisions. Moreover, since several sites are to be

[5] Report of the Interagency Review Group on Nuclear Waste Management, March 1979.

characterized, hearings would not be so well-focused as they would be after a single site had been identified in a license application.

We are satisfied that the opportunities for public participation and the Commission's staff review that have been included in the proposed rule will provide an acceptable avenue for achieving early identification of relevant issues and concerns. The proposed rule contemplates an opportunity for formal Commission proceedings before construction, before receipt of radioactive waste, and before and after decommissioning. Each of these decision points may involve issues of great significance to the health and safety of the public. Questions arising during site characterization can be resolved less formally, in our judgment, without jeopardizing public health and safety. Moreover, the independent NEPA obligations of the Department provide additional structured opportunities for evaluation of environmental issues.

Scope of Proposed Rule

The proposed rule addresses only the licensing of geologic disposal of HLW. Alternative methods of disposal are not addressed chiefly because information from the department indicates that geologic disposal is the only technology likely to be the subject of a license application in the foreseeable future. Some methods are still developing technologies, e.g., transmutation. For others it is not clear what the Commission's licensing authority would be. For example technical feasibility issues aside, sea bed emplacement or disposal in Antarctic ice sheets would require international arrangements involving legislative action. In general, the Commission does have licensing authority over surface storage and disposal facilities within the United States. However, surface disposal is not anticipated; and surface storage, *per se*, could be covered under other parts of the commission's regulations.

The proposed rule contains only the procedural requirements for licensing. The technical criteria against which the license application will be reviewed are still under development. However, the scope of the technical criteria is regarded as being sufficiently developed to determine an appropriate licensing procedure for their implementation. This enables the Commission to propose a procedural rule even though the technical criteria are still under review. In the interest of proceeding with development of the necessary regulatory framework for licensing, these licensing procedures, therefore, are being proposed at this time.

Lincensing of a geologic repository would be a major Federal action which requires the preparation of an environmental impact statement by the Commission. While development of disposal technologies and methods is a programmatic activity for which the department must assume responsibility, issues related to alternative technologies will be considered by the Commission in the context of later decisions.

Procedures

The Commission will participate in four stages in the review of the Department activities involving high-level waste disposal at a particular geologic repository. Although essentially the same features are addressed, with each stage there is a progressive increase in knowledge regarding these features and a corresponding increase in confidence in a decision whether HLW can be disposed of at a repository at the site.

In the first stage when the Department has formulated plans for a prospective repository to the extent that it wishes to begin site characterization, it will be required to submit a site characterization report which contains, among other things, the program plan by which the Department will investigate and characterize sites. The report will address the process by which the media and site(s) were chosen for characterization and the Department's program for further development of alternatives.[6] The report also will contain a description of the media and site(s) to be characterized and the site characterization program. The report will be reviewed by the NRC staff with opportunity for public comment on both the report and a staff analysis of the report. Also, it is anticipated that the Commission will hold local public meetings in the immediate area of the site(s) to be characterized. These meetings will be held both to disseminate information and to obtain public input which will be factored into the final version of the staff analysis. Included in the final analysis will be a statement by the Director expressing his opinion on the site, the site report and the Department's site selection and characterization program. The Department should consider the site characterization analyses before publishing a final environmental impact statement, where such may be required under NEPA for site characterization activities proposed for a particular site. Once site characterization is initiated, the Department should inform the Director by semiannual report of the progress of the site characterization activities and schedules. The Commission staff should be permitted to visit the site and to observe excavation, boring and testing activities. The Director may respond from time to time in writing to the Department to express his current views on questions raised in the semiannual reports or site visits. Inasmuch as the site characterization activities could have an adverse impact upon site safety, i.e., could affect the site's ability to contain the waste, failure by the Department to involve the NRC in the manner described here and to implement the recommendations of the Director could result in denial of the subsequent license application. These procedures will be followed for each of the number of sites in appropriate geologic media which the Department intends to characterize, prior to its selecting a proposed site. We believe that these procedures will provide adequate regulatory participation so that a site will not be made unusable by characterization, and at the same time will assure that the data needed to enable a comparison of alternatives and a reasoned choice in the selection of a site is gathered.

The second stage begins with the submission by the Department of an application for construction authorization at a particular site from among those characterized.[7] We do not anticipate that action will be taken on an application until the site charaterization efforts at several sites are substantially complete.

Subsequent to staff review and preparation of an Environmental Impact Statement, it is anticipated that a licensing board will be appointed and the license application will undergo the first formal review, including public hearings. If the Commission finds after considering reasonable alternatives that the benefits of the proposal exceed the costs under NEPA and that there is reasonable assurance that the types and amounts of wastes described in the application can be received, possessed, and disposed of in a repository of the design proposed at the site without

[6] Note.—This will include the identification and location of other media and sites which the Department considers alternatives to the site being put forth for site characterization and for which the Department intends to submit subsequent site characterization reports.

[7] To satisfy the requirements of NEPA, the Commission anticipates such characterization at a minimum of three sites representing a minimum of two geologic media. However, in light of the significance of the decision selecting a site for a repository, the Commission fully expects the Department to submit a wider range of alternatives than the minimum suggested here.

unreasonable risk to the health and safety of the public or being inimical to the common defense and security, construction of the repository will be authorized.

Stage three is a further review of the application prior to receipt of wastes at the repository. The Commission will issue a license to the Department if it finds, among other things, that the issuance of the license will not constitute an unreasonable risk to the health and safety of the public. The findings would be based upon a review of an update of the application submitted for construction authorization and an updated environmental report if needed. Among items to be considered in the review are additional data acquired during construction, conformance of construction with design, and resolution of questions not answered during the construction authorization review. It is expected that adjudicatory hearings would be held to consider appropriate issues. [All hearings would be conducted in accordance with subpart G of 10 CFR Part 2.]

Once all the wastes have been emplaced, the Department may submit an application to decommission the repository, and the final review of repository activities will begin.[8] Additional geologic and hydrologic data acquired during the emplacement period as well as the results of test and experiments on backfilling and shaft sealing, along with the Department's planned decommissioning program, will be considered by the Commission in determining whether the planned method for decommissioning is adequate. Following decommissioning, DOE may seek an amendment to terminate the license. The Commission may terminate the license if it finds that the final disposition of wastes is in conformance with the Department's license, that the final state of the repository site is in conformance with the requirements of the license, and that termination of the license is authorized under the Atomic Energy Act. Alternatively, the Department may continue to be a licensee of the Commission and conduct such monitoring and exercise such control at the repository as might be appropriate.

[8]Unless expressly authorized in the license to receive and possess HLW, an amendment to that license will be required to allow the Department to conduct partial backfilling in parts of the repository once all the wastes have been emplaced in those parts. (This does not apply to backfilling tests that are described in the license.)

State Participation

The submittal of a site characterization report by the Department not only begins the Commission's involvement in the planning and development of a geologic repository, but also marks the beginning of State participation in the licensing process. States may submit proposals for participation in the review of the Site Characterization Report and any subsequent license application from the Department. In addition, at that time Commission staff will be made available to discuss with representatives of both State and local governments information submitted by the Department.

States may request to participate in several ways. States could assist the Commission in the review of specific portions of license applications. States could perform other technical assistance work for the Commission, particularly in the area of environmental studies and the like. States might perform environmental and radiation monitoring for the Commission throughout the operational period and perhaps after closure as well. States coud also participate through employment or exchange of State and Federal personnel under the Intergovernmental Personnel Act. In addition, States could participate in hearings on a license application under the applicable provisions of the rules of practice. The Commission intends to develop further guidance to assist the States in planning for such participation.

Besides review of site characterization reports, license applications, and ongoing work in support of the license application, States might also be involved by the Department (in response to the regulations for implementation of NEPA or otherwise) in the site selection process itself. The requirement that the Department must describe in its site characterization report how States were involved in the site selection process reflects the Commission's expectation that the Department will involve State and local governments in its site selection programs. The Commission believes that many issues, including the NEPA questions related to alternatives and alternative sites, will be more easily resolved if State concerns are identified and addressed at the earliest possible time. In any case, these procedures have been designed to allow affected States to participate to the fullest extent possible within the limits of the Commission's authority and the State's own desires and capabilities.

The Commission recently submitted to the Congress a report on "Means for Improving State Participation in the Siting, Licensing and Development of Federal Nuclear Waste Facilities," NUREG–0539, March 1979. The extent of State participation may be affected by legislative action on the matters discussed in that report.

Other Reviews

In addition to reviewing applications from the Department and materials submitted in support of those applications, the Commission's staff will follow closely the unfolding of the Department's overall program for the disposal of radioactive wastes. The Director will comment from time to time on all matters pertinent and appropriate to the Nuclear Regulatory Commission's role as the licensing agency. The Director also will provide the Department with specific guidance on technical matters relevant to licensing requirements.

Two areas to which the Commission staff intends to pay particular attention are the Department's site screening procedure and its waste form research and development program. Both the screening of sites for site characterization and selection of a waste form are programmatic decisions within the prerogatives of the Department as the agency charged with the responsibilities to dispose of the wastes. However, it is important to the Commission's ability to discharge its licensing responsibilities that the course which the Department follows to select sites is systematic, well-reasoned, publicly accessible, and ultimately will result in a slate of characterized sites whose members are among the best that reasonably can be found. Moreover, because selection of a waste form commits significant resources to the development and production of that waste form, as well as influences repository design, the Commission believes that the Department's research and development program must address and compare alternative waste forms. The Commission also must be familiar with the Department's waste form research and development program so the results of the program can be factored into the licensing process.

The Commission has decided not to prepare an Environmental Impact Statement for the rule here proposed. An Environmental Impact Appraisal setting forth the basis for this decision is available for public inspection in the Commission's Public Document Room.

Pursuant to the Atomic Energy Act of 1954, as amended, The Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that

adoption of a new 10 CFR Part 60 and the following conformation amendments to 10 CFR Parts 2, 19, 20, 21, 30, 40, 51 and 70 is comtemplated.[9] All interested persons who desire to submit written comments or suggestions for consideration in conjunction with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by March 3, 1980.

Copies of comments received on proposed amendment may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

PART 2—RULES OF PRACTICE

1. 10 CFR 2.101 is amended to add a new paragraph (f) to read as follows:

§ 2.101 Filing of application.

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental report required in connection therewith pursuant to Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application or environmental report is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commisison's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

(3) If the Director of Nuclear Material Safety and Safeguards determines that the tendered document is complete and acceptable for docketing, a docket number will be assigned and the applicant will be notified of the determination. If it is determined that all or any part of the tendered document is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination and the respects in which the document is deficient.

(4) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to (i) Submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Parts 60 and 51 require, (ii) serve a copy on the chief executive of the municipality in which the geologic repository operations area is to be located or, if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county, and (iii) make the direct distribution of additional copies to Federal, State, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

(5) The tendered document will be formally docketed upon receipt by the Director of Nuclear Material Safety and Safeguards of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addressees. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Material Safety and Safeguards. Within ten (10) days after docketing, the applicant shall submit to the Director of Nuclear Material Safety and Safeguards a written statement that distribution of the additional copies to Federal, State, and local officials has been completed in accordance with requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Material Safety and Safeguards.

(6) Amendments to the application and environmental report shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental report.

(7) The Director of Nuclear Material Safety and Safeguards will cause to be published in the **Federal Register** a notice of docketing which identifies the State and location at which the proposed geologic repository operations area would be located and will give notice of docketing to the governor of that State.

2. 10 CFR 2.103(a) is revised to read as follows:

§ 2.103 Action on applications for byproduct, source, special nuclear material, and operators' licenses.

(a) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, or if it is to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State and local officials specified in § 2.104(e) of the issuance of the license.

3. 10 CFR 2.104(e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a facility license or for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee or for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter to the Governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county.

4. 10 CFR 2.105(a) is amended by , renumbering existing subparagraphs (3) and (4) as (4) and (5), by adding a new subparagraph and revising the subparagraph renumbered as (4) to read as follows:

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, prior to acting thereon, cause to be published in the **Federal Register** a notice of proposed action with respect to an application for:

* * * * *

[9] Amendments to 10 CFR Part 51 were published as a proposed rule on October 25, 1979 (44 FR 61372). It is anticipated that rules similar to the ones there proposed will have been issued in final form before the instant amendments have been acted upon. If so, the amendments to Part 51 would be different in form, though not necessarily in substance, from those presently being proposed.

(3) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter;

(4) An amendment of a license specified in paragraph (a) (1), (2), or (3) of this section and which involves a significant hazards consideration; or

(5) Any other license * * *

5. 10 CFR 2.105(e) is amended by replacing the words "will issue the license" with the words "may take the proposed action" following the phrase ". . . or Director of Nuclear Material Safety and Safeguards, as appropriate," and by adding the words "or other action" following the phrase ". . . published in the **Federal Register** a notice of issuance of the license."

6. 10 CFR 2.106 is amended by adding a paragraph (c) to read as follows:

§ 2.106 Notice of issuance.

* * * * *

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the **Federal Register** notice of, and will inform the State and local officials specified in § 2.104(e) of, any action with respect to an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter for which a notice of proposed action has been previously published.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

§ 19.2 [Amended]

7. 10 CFR 19.2 is amended by adding "60," following "30, 40,".

§ 19.3 [Amended]

8. 10 CFR 19.3(d) is amended by adding "60," following "35, 40,".

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

§ 20.2 [Amended]

9. 10 CFR 20.2 is amended by adding "60," following "30, 40,".

§ 20.3 [Amended]

10. 10 CFR 20.3(a)(9) is amended by adding "60," following "35, 40,".

§ 20.301 [Amended]

11. 10 CFR 20.301(a) is amended by adding "60," following "35, 40,".

12. 10 CFR 20.408(a) is amended by deleting the word "or" following the phrase "of this chapter;" in subparagraph (a)(3), inserting the word "or" following the phrase "of the following quantities:" in subparagraph (a)(4), and adding a new subparagraph (a)(5) to read as follows:

§ 20. 408 Reports of personnel monitoring on termination of employment or work.

* * * * *

(5) Possesses high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

§ 21.2 [Amended]

13. 10 CFR 21.2 is amended by inserting "60," after "35, 40," and also by inserting "60," after "40, 50,".

§ 21.3 [Amended]

14. 10 CFR Part 21, § 21.3(a), 21.3(a–1)(1), 21.3(a–1)(2), and 21.3(k) are amended by adding "60," after "40, 50,".

§ 21.21 [Amended]

15. 10 CFR 21.21(b)(1)(i) and 21.21(b)(1)(ii) are amended by adding "60," after "40, 50,".

PART 30—RULES OF GENERAL APPLICABILITY TO LICENSING OF BYPRODUCT MATERIAL

16. 10 CFR 30.11 is amended by adding a new paragraph (c).

§ 30.11 Specific exemptions.

* * * * *

(c) The Department of Energy is exempt from the requirements of this part to the extent that its activities are subject to the requirements of Part 60 of this chapter.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

17. 10 CFR 40.14 is amended by adding a new paragraph (c).

§ 40.14 Specific exemptions.

* * * * *

(c) The Department of Energy is exempt from the requirements of this part to the extent that its activities are subject to the requirements of Part 60 of this chapter.

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

18. 10 CFR 51.5(a) is amended by adding new paragraphs (10) and (11), and renumbering present paragraph (10) as paragraph (12) to read as follows:

§ 51.5 Actions requring preparation of environmental impact statements, negative declarations, environmental impact appraisals; actions excluded.

(a) An environmental impact statement will be prepared and circulated prior to taking any of the following types of actions:

* * * * *

(10) Issuance of an authorization for a goelogic repository operations area pursuant to part 60 of this chapter.

(11) Issuance of a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

(12) Any other action which the Commission determines is a major Commission action significantly affecting the quality of the human environment.

19. 10 CFR 51.5(b) is amended by: replacing the period at the end of subparagrph (4)(iii) with a semicolon; adding a new subparagraph (4)(iv); substituting "(b)(4)(iv)" for "(b)(4)(iii)" in paragraph (5); inserting "60," following "40, 50," in paragraph (6); and adding a new paragraph (9). With these changes, 10 CFR 51.5(b)(4) reads in part as follows:

§ 51.5 Actions requiring preparation of environmental impact statements, negative declarations, environmental appraisals; action excluded.

* * * * *

(b) * * *

* * * * *

(4) Issuance of an amendment which would authorize a significant change in the types or significant increase in the amounts of effluents or a significant increase in the potential for accidental releases of a license for:

(iv) The receipt and possession of high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter.

* * * * *

(5) Renewal of licenses to conduct activities listed in paragraph (b)(4)(i)–(iv) of this section;

* * * * *

(9) Termination of a license for the possession of high-level radioactive waste at a geologic repository operations area at the request of the licensee.

20. 10 CFR 51.5(d)(3) is amended by adding "60," following "40, 50,".

21. 10 CFR 51.40 is amended by revising subsection (a) to start "except as provided in paragraphs (b), (c), and (d) of this section,. . ." and by adding a new subsection (d) to read as follows:

§ 51.40 Environmental reports

(a) Except as provided in paragraphs (b), (c), and (d) of this section, * * * * * * * * *

(d) The Department of Energy, as an applicant for a license to receive and posses radioactive waste at a geological repository operations area pursuant to Part 60 of this chapter, shall submit at the time of its application or in advance, and at the time of amendments, in the manner provided in § 60.22 of this chapter, environmental reports which discuss the matters described in § 51.20. The discussion of alternatives shall include site characterization data for a number of sites in appropriate geologic media* so as to aid the Commission in making a comparative evaluation as a basis for arriving at a reasoned decision under NEPA.

22. 10 CFR 51.41 is revised to read as follows:

§ 51.41 Administrative procedures.

Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.22–51.26 will be followed in proceedings for the issuance of materials licenses and other actions covered by § 51.5(a) but not covered by § 51.20 or 51.21. The procedures followed with respect to materials licenses will reflect the fact that, unlike the licensing of production and utilization facilities, the licensing of materials does not require separate authorizations for construction and operation. In the case of an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, however, the environmental impact statement required by § 51.5(a) shall be prepared and circulated prior to the issuance of a construction authorization; the environmental impact statement shall be supplemented prior to issuance of a license ot take account of any substantial changes in the activities proposed to be carried out or significant new information regarding the environmental impacts of the proposed activities.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

23. 10 CFR 70.14 is amended by adding a paragraph (c).

*To satisfy the requirements of NEPA, the Commission anticipates such characterization at a minimum of three sites representing a minimum of two geologic media. However, in light of the significance of the decision selecting a site for a repository, the Commission fully expects the Department to submit a wider range of alternatives than the minimum suggested here.

§ 70.14 Specific exemptions.

* * * * * *

(c) The Department of Energy is exempt form the requirements of the regulations in this part to the extent that its activities are subject to the requirements of Part 60 of the chapter.

24. A new Part 60 is added to read as follows:

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

Subpart A—General Provisions

Sec.
60.1 Purpose and scope.
60.2 Definitions.
60.3 License required.
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Subpart C—Participation by State Governments

60.61 Site review.
60.62 Filing of proposals for State participation.
60.63 Approval of proposals.

Subpart D—Records, Reports, Tests, and Inspections

60.71 Records and reports.
60.72 Tests.
60.73 Inspections.

Authority: Secs. 51, 53, 62, 63, 65, 81, 161b., f., i., o., p., 182, 183, Pub. L. 83–703, as amended, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); Secs. 202, 206, Pub. L. 93–438, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); Sec. 14, P.L. 95–601 (42 U.S.C. 2021a).

For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, §§ 60.71 to 60.73 are issued under Sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 60.1 Purpose and scope.

This part prescribes rules governing the licensing of the Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area.

§ 60.2 Definitions.

As used in this part: (a) "Candidate area" means a geologic and hydrologic system within which a geologic repository may be located.

(b) "Commencement of construction" means clearing of land, surface or subsurface excavation, or other substantial action that would adversely affect the environment of a site, but does not include changes desirable for the temporary use of the land for public recreational uses, site characterization activities, other preconstruction monitoring and investigation necessary to establish background information related to the suitability of a site or to the protection of environmental values, or procurement or manufacture of components of the geologic repository operations area.

(c) "Decommissioning" means final backfilling of subsurface facilities, sealing of shafts, and decontamination and dismantlement of surface facilities.

(d) "Department" means the Department of Energy or its duly authorized representatives.

(e) "Disposal" means permanent emplacement within a storage space with no intent to retrieve for resource values.

(f) "Director" means the Director of the Office of Nuclear Material Safety and Safeguards.

(g) "Geologic repository" means a system which is intended to be used for, or may be used for, the disposal of radioactive wastes in excavated geologic formations. A geologic respository includes (1) the geologic repository operations area and (2) all surface and subsurface areas where natural events or activities of man may change the extent to which wastes are effectively isolated from the biosphere.

(h) "Geologic repository operations area" means an HLW facility that is part of a geologic repository, including both surface and subsurface areas, where waste handling activities are conducted.

(i) "High-level radioactive waste" or "HLW" means (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated

reactor fuel, and (3) solids into which such liquid wastes have been converted.

(j) "HLW facility" means a facility subject to the licensing and related regulatory authority of the Commission pursuant to Section 202(3) and 202(4) of the Energy Reorganization Act of 1974 (88 Stat. 1244).*

(k) "Important to safety" with reference to structures, systems, and components, means those structures, systems, and components that provide reasonable assurance that radioactive waste can be received, handled, and stored without undue risk to the health and safety of the public.

(l) "Public Document Room" means the place at 1717 H Street NW., Washington, D.C., at which the records of the Commission will ordinarily be made available for public inspection and any other place, the location of which has been published in the **Federal Register**, at which public records of the Commission pertaining to a particular geologic repository are made available for public inspection.

(m) "Radioactive waste" means HLW and any other radioactive materials other than HLW that are received for emplacement in a geologic repository.

(n) "Site characterization" means the program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic conditions and the ranges of those parameters of a particular site relevant to the procedures under this part. Site characterization includes borings, surface excavations, excavation of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to determine the suitability of the site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken.

(o) "Traceability" means the ability, through the use of container identification and preparation and maintenance of appropriate records, to delineate a step-by-step history of any radioactive waste.

§ 60.3 License required.

(a) The Department shall not receive or possess source, special nuclear, or byproduct material at a geologic repository operations area exept as authorized by a license issued by the Commission pursuant to this part.

(b) The Department shall not commence construction of a geologic repository operations area unless it has filed an application with the Commission and has obtained construction authorization as provided in this part. Failure to comply with this requirement shall be grounds for denial of a license.

§ 60.4. Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director of Nuclear Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Communications, reports, and applications may be delivered in person at the Commission's offices at 1717 H Street, NW., Washington, D.C., or 7915 Eastern Avenue, Silver Spring, Maryland.

§ 60.5 Interpretations.

Except as specifically authorized by the Commission, in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be considered binding upon the Commission.

§ 60.6 Exemptions.

The Commission may, upon application by the Department, any interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Subpart B—Licenses

Preapplication Review

§ 60.11 Site characterization report.

(a) As early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization, the Department shall submit to the Director a site characterization report. The report shall include (1) A description of the site(s) to be characterized; (2) a description of the site characterization program including extent of planned excavations, plans for in situ testing, investigation activities which may affect the ability of the site to isolate wastes, and provisions to control any adverse, safety-related impacts from site characterization including appropriate quality assurance programs; (3) the criteria used to arrive at candidate areas; (4) the method by which the site(s) was selected for site characterization; (5) identification and location of alternative media and sites on which DOE intends to conduct site characterization for which DOE anticipates submitting subsequent site characterization reports; (6) a description of the decision process by which the site(s) was selected for characterization, including the means used to obtain public and State views during selection; and (7) any issues related to the site selection, alternative candidate areas or sites, or design of the geologic repository operations area which the Department wishes the NRC staff to review. The Department may include multiple sites in a single site characterization report. Also included shall be a description of the research and development activities being conducted by the Department which deal with the waste forms which may be considered appropriate for the sites to be characterized, including research planned or underway to evaluate the performance of such waste forms.

(b) The Director shall cause to be published in the **Federal Register** a notice that the information submitted under paragraph (a) of this section has been received and that a staff review of that information has begun. The notice shall identify the site(s) selected for site characterization and alternate areas considered by the Department and shall advise that consultation may be requested by State and local governments in accordance with § 60.61.

(c) The Director shall make available a copy of the above information at the Public Document Room. The Director also shall transmit copies and the published notice of receipt thereof to the Governor and legislature of the State and to the chief executive of the municipality in which a site to be characterized is located (or if it is not located within a municipality, then to the chief executive of the county) and to the Governors of any contiguous States.

(d) The Director shall prepare a draft site characterization analysis which shall discuss the items cited in paragraph (a) of this section. The Director shall publish a notice of availability of the draft site characterization analysis and request comment in the **Federal Register**. Copies shall be made available at the Public Document Room.

(e) A reasonable period, not less than 60 days, shall be allowed for comment on the draft site characterization analysis. The Director shall then prepare a final site characterization analysis

*These are Department of Energy "facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such act [the Atomic Energy Act]" and "Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive wastes generated by DOE, which are not used for, or are part of, research and development activities."

which shall take into account comments received and any additional information acquired during the comment period. Included in the final site characterization analysis shall be either an opinion by the Director that he has no objection to the Department's site characterization program, if such an opinion is appropriate, or specific objections of the Director to the Department's proceeding with characterization of the named site(s). In addition, the Director may make specific recommendations to the Department on the matters pertinent to this section.

(f) Neither issuance of a final site characterization analysis nor the opinion of no objection by the Director shall constitute a commitment to issue any authorization or license or in any way affect the authority of the Commisison, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any proceeding under Subpart G of Part 2 of this chapter. If the Department prepares an environmental impact statement with respect to site characterization activities proposed for a particular site, it should consider NRC's site characterization analyses before publishing its final environmental impact statement with respect to site characterization activities proposed for that particular site.

(g) During site characterization, the Department should inform the Director by semiannual report of the progress of the site characterization and waste form research and development including schedules as appropriate. During this time, NRC staff should be permitted to visit the site(s) and observe excavations, borings, and in situ tests as they are done. Inasmuch as these site characterization activities could have adverse impact upon site safety, failure by the Department to involve the Commission in the manner described here and to accommodate the recommendations of the Director could result in denial of the subsequent license application.

(h) The Director may respond from time to time in writing to the Department, expressing his current views on questions raised in the semiannual reports referred to above. Comments received from States in accordance with § 60.61 shall be considered by the Director in formulating his views. All correspondence between the Department and the NRC including the reports cited in paragraph(g) of this section shall be placed in the Public Document Room.

(i) The activities described in paragraphs (a) through (h) of this section constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended.

License Applications

§ 60.21 Content of application.

(a) An application shall consist of general information and a safety analysis report. An environmental report shall be prepared in accordance with Part 51 of this chapter and shall accompany the application. Any Restricted Data or National Security Information shall be separated from unclassified information.

(b) The general information shall include:

(1) A general description of the proposed geologic repository identifying the proposed site of the geologic repository operations area, the general character of the proposed activities, and the basis for the exercise of licensing authority by the Commission.

(2) Proposed schedules for construction, receipt of waste, and emplacement of wastes at the proposed geologic repository operations area.

(3) A certification that the Department will provide at the geologic repository operations area such safeguards as it requires at comparable surface facilities (of the Department) to promote the common defense and security.

(c) The safety analysis report shall include:

(1) A description and analysis of the site at which the proposed geologic repository operations area is to be located with appropriate attention to those features that might affect facility design. The assessment shall contain an analysis of the geology, hydrology, geochemistry, and meteorology of the site and the major design structures, systems, and components, both surface and subsurface, that bear significantly on the suitability of the geologic repository for disposal of radioactive waste. It will be assumed that operations at the geologic repository operations area will be carried out at the maximum capacity and rate of receipt of radioactive waste stated in the application.

(2) A description and discussion of the design, both surface and subsurface, of the geologic repository operations area including: (i) the principal design criteria and their relationship to any general design criteria promulgated by the Commission, (ii) the design bases and the relation of the design bases to the principal design criteria, (iii) information relative to materials of construction (including geologic media, general arrangement, and approximate dimensions), and (iv) codes and standards that the Department proposes to apply to the design and construction of the geologic repository operations area.

(3) A description and analysis of the design and performance requirements for structures, systems, and components of the geologic repository which are important to safety. The analysis and evaluation shall consider (i) the margins of safety under normal conditions and under conditions that may result from anticipated operational occurrences, including those of natural origin; (ii) the adequacy of structures, systems, and components provided for the prevention of accidents and mitigation of the consequences of accidents, including those caused by natural phenomena; and (iii) the effectiveness of engineered and natural barriers, including barriers that may not be themselves a part of the geologic repository operations area, against the release of radioactive material to the environment.

(4) A description of the quality assurance program to be applied to the design, fabrication, inspection, construction, testing, and operation of the structures, systems, and components of the geologic repository operations area important to safety.

(5) A description of the kind, amount, and specifications of the radioactive material proposed to be received and possessed at the geologic repository operations area.

(6) An identification and justification for the selection of those variables, conditions, or other items which are determined to be probable subjects of license specifications. Special attention shall be given to those items that may significantly influence the final design.

(7) A description of the program for control and monitoring of radioactive effluents and occupational radiation exposures to maintain such effluents and exposures in accordance with the requirements of Part 20 of this chapter.

(8) A description of the controls that the applicant will apply to restrict access and to regulate land use at the geologic repository operations area and adjacent areas.

(9) Plans for coping with radiological emergencies at any time prior to completion of decommissioning the geologic repository operations area.

(10) A description of the nuclear material control and accounting program.

(11) A description of design considerations that are intended to facilitate decommissioning of the facility.

(12) A description of plans for retrieval and alternate storage of the radioactive wastes should the geologic repository prove to be unsuitable for disposal of radioactive wastes.

(13) An identification of those structures, systems, and components of the geologic repository, both surface and subsurface, which require research and development to confirm the adequacy of design. For systems, structures, and components important to safety, the Department shall provide a detailed description of the programs designed to resolve safety questions, including a schedule indicating when these questions will be resolved.

(14) The following information concerning activities at the geologic repository operations area:

(i) The organizational structure of the Department, offsite and onsite, including a description of any delegations of authority and assignments of responsibilities, whether in the form of regulations, administrative directives, contract provisions, or otherwise.

(ii) Managerial and administrative controls to be used to ensure safety.

(iii) Identification of key positions which are assigned responsibility for safety at and operation of the geologic repository operations area.

(iv) Personnel qualifications and training requirements.

(v) Plans for startup activities and startup testing.

(vi) Plans for conduct of normal activities, including maintenance, surveillance, and periodic testing of structures, systems, and components of the geologic repository operations area.

(vii) Plans for decommissioning.

(viii) Plans for any uses of the geologic repository operations area for purposes other than disposal of radioactive wastes, with an analysis of the effects, if any, that such uses may have upon the operation of the structures, systems, and components important to safety.

§ 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material in a geologic repository at a site which has been characterized, and an accompanying environmental report, and any amendments thereto, shall be filed in triplicate with the Director and shall be signed by the Secretary of Energy or his authorized representative.

(b) Each portion of such application and environmental report and any amendments shall be accompanied by 30 additional copies. Another 120 copies shall be retained by the Department for distribution in accordance with written instructions from the Director or his designee.

(c) The Department shall, upon notification of the appointment of an Atomic Safety and Licensing Board, update the application and environmental report, eliminating all superseded information and serve them as directed by the board. In addition, at that time the Department shall serve one such copy on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendments to the application or environmental report shall be served in the same manner.

(d) At the time of filing of an application and environmental report, and any amendments thereto, one copy shall be made available in an appropriate location near the site of the proposed geologic repository (which shall be a public document room, if one has been established) for inspection by the public and updated as amendments to the application or environmental report are made. This updated copy shall be produced at any public hearing on the application for use by any parties to the proceeding.

(e) The Department shall certify that the updated copies of the application and environmental report, as referred to in paragraphs (c) and (d) of this section, contain the current contents of such documents submitted in accordance with the requirements of this part.

§ 60.23 Elimination of repetition.

In its application, environmental report, or site characterization report, the Department may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: *Provided,* That such references are clear and specific and that copies of the information so incorporated are available in each public document room.

§ 60.24 Updating of application and environmental report.

(a) The application and environmental report shall be as complete as possible in the light of information that is reasonably available at the time of submission.

(b) The Department shall update its application in a timely manner so as to permit the Commission to review, prior to issuance of a license:

(1) Additional geologic, hydrologic, meteorologic and other data obtained during construction.

(2) Conformance of construction of structures, systems, and components with the design.

(3) Results of research programs carried out to confirm the adequacy of designs.

(4) Other information bearing on the Commission's issuance of a license that was not available at the time a construction authorization was issued.

(c) The Department shall update its environmental report in a timely manner so as to permit the Commission to review, prior to issuance of a license, the environmental impacts of any substantial changes in the activities proposed to be carried out or any significant new information regarding the environmental impacts of activities previously proposed.

Construction Authorization

§ 60.31 Construction authorization.

Upon review and consideration of an application and environmental report submitted under this part, the Commission may authorize construction if it determines:

(a) *Safety:* That there is reasonable assurance that the types and amounts of wastes described in the application can be received, possessed, and disposed of in a repository of the design proposed without unreasonable risk to the health and safety of the public. In arriving at this determination, the Commission shall consider whether:

(1) The Department has described the proposed geologic repository including but not limited to (i) the geologic, geochemical and hydrologic characteristics of the site; (ii) the kinds and quantities of radioactive waste to be received, possessed, stored, and disposed of in the geologic repository; (iii) the principal architectural and engineering criteria for the design of the geologic repository operations area; (iv) construction procedures which may affect the capability of the geologic repository to serve its intended function; and (v) features or components incorporated in the design for the protection of the health and safety of the public.

(2) The site and design comply with the criteria contained in Subparts E and F of this part.

(3) The Department's quality assurance program complies with the requirements of Subpart G of this part.

(4) The Department's personnel training program complies with the criteria contained in Subpart H of this part.

(5) The Department's emergency plan complies with the criteria contained in Subpart I of this part.

(6) The Department's proposed operating procedures to protect health and to minimize danger to life or property are adequate.

(b) *Common defense and security:* That there is reasonable assurance that

the activities proposed in the application will not be inimical to the common defense and security.

(c) *Environmental:* That, after weighing the environmental, economic, technical and other benefits and considering reasonable alternatives, the action called for is issuance of the construction authorization.

§ 60.32 Conditions of construction authorization.

(a) A construction authorization shall include such conditions as the Commission finds to be necessary to protect the health and safety of the public, the common defense and security, or environmental values.

(b) The Commission may, at its discretion, incorporate provisions requiring the Department to furnish periodic or special reports regarding: (1) progress of construction, (2) any site data obtained during construction which are not within the predicted limits upon which the facility design was based, (3) any deficiencies in design and construction which, if uncorrected, could adversely affect safety at any future time, and (4) results of research and development programs being conducted to resolve safety questions.

(c) A construction authorization shall be subject to the limitation that a license to receive and possess source, special nuclear, or byproduct material at the geologic repository operations area shall not be issued by the Commission until (1) the Department has updated its application as specified in § 60.24, and (2) the Commission has made the findings stated in § 60.41.

§ 60.33 Amendment of construction authorization.

(a) An application for amendment of a construction authorization shall be filed with the Commission fully describing any changes desired and following as far as applicable the format prescribed for construction authorization applications.

(b) In determining whether an amendment of a construction authorization will be approved, the Commission will be guided by the considerations which govern the assurance of the initial construction authorization, to the extent applicable.

License Issuance and Amendment

§ 60.41 Standards for issuance of a license.

A license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area may be issued by the Commission upon finding that:

(a) Construction of the geologic repository operations area has been substantially completed in conformity with the application as amended, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission. Construction may be deemed to be substantially complete for the purposes of this paragraph if the construction of (1) surface and interconnecting structures, systems, and components, and (2) any underground storage space required for initial operation are substantially complete.

(b) The activities to be conducted at the geologic repository operations area will be in conformity with the application as amended, the provisions of the Atomic Energy Act and the Energy Reorganization Act, and the rules and regulations of the Commission.

(c) The issuance of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public.

(d) All applicable requirements of Part 51 have been satisfied.

§ 60.42 Conditions of license.

(a) A license issued pursuant to this part shall include such conditions, including license specifications, as the Commission finds to be necessary to protect the health and safety of the public, the common defense and security, and environmental values.

(b) Whether stated therein or not, the following shall be deemed conditions in every license issued:

(1) The license shall be subject to revocation, suspension, modification, or amendment for cause as provided by the Atomic Energy Act and the Commission's regulations.

(2) The Department shall at any time while the license is in effect, upon written request of the Commission, submit written statements to enable the Commission to determine whether or not the license should be modified, suspended or revoked.

(3) The license shall be subject to the provisions of the Atomic Energy Act now or hereafter in effect and to all rules, regulations, and orders of the Commission. The terms and conditions of the license shall be subject to amendment, revision, or modification, by reason of amendments to or by reason of rules, regulations, and orders issued in accordance with the terms of the Atomic Energy Act.

(c) Each license shall be deemed to contain the provisions set forth in section 183 b–d, inclusive, of the Atomic Energy Act, whether or not these provisions are expressly set forth in the license.

§ 60.43 License specifications.

(a) A license issued under this part shall include license conditions derived from the analyses and evaluations included in the application, including amendments made before a license is issued, together with such additional conditions as the Commission finds appropriate.

(b) License conditions shall include items in the following categories:

(1) Restrictions as to the physical and chemical form and radioisotopic content of radioactive waste.

(2) Restrictions as to size, shape, and materials and methods of construction of radioactive waste packaging.

(3) Restrictions as to the location, size, configuration, construction and physical characteristics (e.g., physical, chemical and thermal properties) of the storage medium.

(4) Restrictions as to the amount of waste permitted per unit volume of storage space considering the physical characteristics of both the waste and the storage medium.

(5) Requirements relating to test, calibration, or inspection to assure that the foregoing restrictions are observed.

(6) Controls to be applied to restrict access and to avoid disturbance to the geologic repository operations area and adjacent areas.

(7) Administrative controls, which are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure that activities at the facility are conducted in a safe manner and in conformity with the other license specifications.

§ 60.44 Changes, tests, and experiments.

(a)(1) Following authorization to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area, the Department may (i) make changes in the geologic repository operations area as described in the application, (ii) make changes in the procedures as described in the application, and (iii) conduct tests or experiments not described in the application, without prior Commission approval, provided the change, test, or experiment involves neither a change in the license conditions incorporated in the license nor an unreviewed safety question.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question if (i) the likelihood of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the application is increased, (ii) the possibility of an accident or malfunction

of a different type than any previously evaluated in the application is created, or (iii) the margin of safety as defined in the basis for any license condition is reduced.

(b) The Department shall maintain records of changes in the geologic repository operations area and of changes in procedures made pursuant to this section, to the extent that such changes constitute changes in the geologic repository operations area or procedures as described in the application. Records of tests and experiments carried out pursuant to paragraph (a) of this section shall also be maintained. These records shall include a written safety evaluation which provides the basis for the determination that the change, test, or experiment does not involve an unreviewed safety question. The Department shall prepare annually or at such shorter intervals as may be specified in the license, a report containing a brief description of such changes, tests, and experiments, including a summary of the safety evaluation of each. The Department shall furnish the report to the appropriate NRC Regional Office shown in Appendix D of Part 20 of this chapter with a copy to the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Any report submitted pursuant to this paragraph shall be made a part of the public record of the licensing proceedings.

§ 60.45 Amendment of license.

(a) An application for amendment of a license may be filed with the Commission fully describing the changes desired and following as far as applicable the format prescribed for license applications.

(b) In determining whether an amendment of a license will be approved, the Commission will be guided by the considerations that govern the issuance of the initial license, to the extent applicable.

§ 60.46 Particular activities requiring license amendment.

(a) Unless expressly authorized in the license, an amendment of the license shall be required with respect to any of the following activities:

(1) Any action which would make emplaced high-level radioactive waste irretrievable or which would substantially increase the difficulty of retrieving such emplaced waste.

(2) Dismantling of structures.

(3) Removal or reduction of controls applied to restrict access to or to avoid disturbance of the geologic repository operations area or adjacent areas.

(4) Destruction or diposal of records required to be maintained under the provisions of this part.

(5) Any substantial change to the design or operating procedures from that specified in the license.

(6) Decommissioning.

(b) An application for such an amendment shall be filed, and shall be reviewed, in accordance with the provisions of § 60.45.

Decommissioning

§ 60.51 License amendment to decommission.

(a) The Department shall sumbit an application to amend the license prior to decommissioning. The application shall consist of an update of the license application and environmental report submitted under §§ 60.21 and 60.22 including:

(1) A description of the program for post-decommissioning monitoring of the geologic repository.

(2) A detailed description of the measures to be employed—such as land use controls, construction of monuments, and preservation of records—to regulate or prevent activities that could impair the long-term isolation of emplaced waste within the geologic repository and to assure that relevant information will be preserved for the use of future generations.

(3) Geologic, hydrologic, and other site data that are obtained during the operational period pertinent to the long-term isolation of emplaced radioactive wastes.

(4) The results of test, experiments, and any other analyses relating to backfill of excavated areas, shaft sealing, waste interaction with emplacement media, and any other tests, experiments, or analysis pertinent to the long-term isolation of emplaced wastes within the geologic repository.

(5) Any substantial revision of plans for decommissioning.

(6) Other information bearing upon decommissioning that was not available at the time a license was issued.

(b) The Department shall update its environmental report in a timely manner so as to permit the Commission to review, prior to issuance of an amendment, substantial changes in the decommissioning activities proposed to be carried out or significant new information regarding the environmental impacts of such decommissioning.

§ 60.52 Termination of license.

(a) Following decommissioning, the Department may apply for an amendment to terminate the license.

(b) Such application shall be filed, and will be reviewed, in accordance with the provisions of § 60.45 and this section.

(c) A license shall be terminated only when the Commission finds with respect to the geologic repository:

(1) That the final disposition of radioactive wastes has been made in conformance with the Department's plan, as amended and approved as part of the license.

(2) That the final state of the geologic repository operations area site conforms to the Department's decommissioning plans, as amended and approved as part of the license.

(3) That the termination of the license is authorized by law, including sections 57, 62, and 81 of the Atomic Energy Act, as amended.

Subpart C—Participation by State Governments

§ 60.61 Site review.

(a) Upon publication in the Federal Register of a notice that the Department has selected a site for site characterization, in accordance with § 60.11(b), and upon the request of a State, the Director shall make available NRC staff to consult with representatives of State and local governments to keep them informed of the Director's view on the progress of site characterization and to notify them of any subsequent meetings or further consultations with the Department.

(b) Requests for consultation shall be made in writing to the Director.

(c) The Director also shall respond to written questions or comments from the States, as appropriate, on the information submitted by the Department in accordance with § 60.11 of this part. Copies of such questions or comments and their responses shall be made available in the Public Document Room and shall be transmitted to the Department.

§ 60.62 Filing of proposals for State participation.

(a) Consultation under § 60.61 may include, among other things, a review of applicable NRC regulations, licensing procedures, potential schedules, and the type and scope of State activities in the license review permitted by law. In addition, staff shall be made available to cooperate with the State in developing proposals for participation by the State.

(b) States potentially affected by siting of a geologic repository operations area at a site that has been selected for characterization may submit to the Director a proposal for State participation in the review of the site

characterization report and/or license application. A State's proposal to participate may be submitted at any time prior to docketing of an application or up to 120 days thereafter.

(c) Proposals for participation in the review shall be signed by the Governor of the State submitting the proposal and shall at a minimum contain the following information:

(1) A general description of how the State wishes to participate in the review, specifically identifying those issues which it wishes to review.

(2) A description of material and information which the State plans to submit to the NRC staff for consideration in the review. A tentative schedule referencing steps in the review and calendar dates for planned submittals should be included.

(3) A description including funding estimates of any work that the State proposes to perform for the Commission, under contract, in support of the review.

(4) A description of State plans to facilitate local government and citizen participation.

(5) A preliminary estimate of the types and extent of impacts which the State expects should a geologic repository be located at the site in question.

(d) If the State desires educational or information services (seminars, public meetings) or other actions on the part of NRC, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act, these shall be included with the proposal.

§ 60.83 Approval of proposals.

(a) The Director shall arrange for a meeting between the representatives of the State and the NRC staff to discuss any proposal submitted under § 60.62(b), with a view to identifying any modifications that may contribute to the effective participation by the State.

(b) Subject to the availability of funds, the Director shall approve all or any part of a proposal, as it may be modified through the meeting described above, if he determines that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State may bear, and

(2) The proposed activities (i) will enhance communications between NRC and the State, (ii) will contribute productively to the license review, and (iii) are authorized by law.

(c) The decision of the Director shall be transmitted in writing to the Governor of the originating State. A copy of the decision shall be made available at the Public Document Room. If all or any part of a proposal is rejected, the decision shall state the reason for the rejection.

(d) A copy of all proposals received shall be made available at the Public Document Room.

Subpart D—Records, Reports, Tests, and Inspections

§ 60.71 Records and reports.

(a) The Department shall maintain such records and make such reports in connection with the licensed activity as may be required by the conditions of the license or by rules, regulations, and orders of the Commission as authorized by the Atomic Energy Act and the Energy Reorganization Act.

(b) Records of the receipt, handling, and disposition of radioactive waste at a geologic repository operations area shall contain sufficient information to assure traceability from the shipper through all phases of storage and disposal.

(c) The Department shall promptly notify the Commission of each deficiency found in the site characteristics, and design and construction of the geologic repository which, were it to remain uncorrected, could (1) be a substantial safety hazard, (2) represent a significant deviation from the design criteria and design bases stated in the application, or (3) represent a significant deviation from the conditions stated in the terms of a construction authorization or the license, including license specifications. The notification shall be in the form of a written report, copies of which shall be sent to the Director and to the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A to Part 73 of this chapter.

§ 60.72 Tests.

The Department shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or are necessary for the administration of the regulations in this part. These may include tests of (a) radioactive waste, (b) the geologic repository including its structures, systems, and components, (c) radiation detection and monitoring instruments, and (d) other equipment and devices used in connection with the receipt, handling, or storage of radioactive waste.

§ 60.73 Inspections.

(a) The Department shall allow the Commission to inspect the premises of the geologic repository operations area and adjacent areas to which the Department has rights of access.

(b) The Department shall make available to the Commission for inspection, upon reasonable notice, records kept by the Department pertaining to activities under this part.

(Amendments to all parts issued pursuant to citations of authority presently codified or, in the case of 10 CFR Part 60, as proposed to be codified.)

Dated at Washington, D.C. this 3rd day of December, 1979.

For the U.S. Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 79-37569 Filed 12-5-79; 8:45 am]

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Thursday
December 6, 1979

Part VII

Federal Emergency Management Agency

Procurement; Interim Rules and Request for Comments

FEDERAL EMERGENCY MANAGEMENT AGENCY

41 CFR Chapter 44

[Docket No. FEMA-MISC-41-44]

Procurement; Interim Rules and Request for Comments

AGENCY: Federal Emergency Management Agency.

ACTION: Interim regulations and request for comments.

SUMMARY: These interim rules establish policies and procedures for acquisition of personal property and nonpersonal services (including construction) by the Federal Emergency Management Agency (FEMA). They implement the Federal Procurement Regulations in accordance with 41 CFR 1-1.008. Although these regulations involve contracts, FEMA is requesting public comment but by issuing a regulation which serves as a fully effective operating rule and at the same time affording an opportunity for such comment.

DATES: Effective date is December 6, 1979. Written comments should be submitted on or before February 4, 1980.

ADDRESS: Federal Emergency Management Agency, 1725 I Street NW. (M Street Bldg.), Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Division of Acquisition Management, Policy and Support Branch, (202) 634-6046.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The Plan was activated effective April 1, 1979 by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency," 44 FR 19367. The plan, The Executive Order, and subsequently, Executive Order 12148, effective July 15, 1979, 44 FR 43239, together transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the order, regulations of the predecessor agencies remain in full force and effect in FEMA until those regulations are superceded. Accordingly, to provide a single regulation for the acquisition of personal property and nonpersonal services (including construction) for all FEMA procuring offices, it is necessary to adopt FEMA regulations.

Interested parties may participate in the comment process by submitting their views, in writing, on this interim regulation to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA. It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1978 and the July 15, 1979 effective date for Executive Order 12148 established good cause for immediate publication of these regulations for interim effect.

Accordingly, a new Chapter 44 of Title 41 of the Code of Federal Regulations is added:

Dated: November 30, 1979.

John W. Macy, Jr.,

Director.

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY

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Authority.—41 CFR 1–1.008.

§ 44–1.000 Scope of part.

This part sets forth policies and procedures concerning: The Federal Emergency Management Agency Procurement Regulation System; definition of terms used throughout this chapter; general policies of procurement; small business concerns; labor surplus area concerns; and publicizing procurement actions.

Subpart 1.0—Regulation System

§ 44–1.001 Scope of subpart.

This subpart sets forth introductory information pertaining to the Federal Emergency Management Agency Procurement Regulation System; its purpose, authority, applicability, issuance, arrangement, implementation, supplementation and deviation procedure.

§ 44–1.002 Purpose.

This subpart establishes the Federal Emergency Management Agency Procurement Regulations (FEMAPR) for the codification and publication of uniform policies and procedures applicable to the Federal Emergency Management Agency (FEMA) in the procurement of personal property and nonpersonal services (including construction).

§ 44–1.003 Authority.

41 CFR 1–1.008 requires that as portions of Federal Procurement Regulation (FPR) material are prescribed, agencies shall publish in the **Federal Register** implementing regulations deemed necessary for business concerns, and others properly interested, to understand basic and significant agency procurement policies and procedures which implement, supplement, and deviate from the FPR. In compliance with this requirement, the FEMAPR are herein prescribed.

§ 44–1.004 Applicability.

The FEMAPR apply to all procurements within FEMA but do not apply to the placement or administration of cooperative agreements or grants.

§ 44–1.004–50 Relationship to the FPR.

Material published in the FEMAPR will not repeat, paraphrase or otherwise restate material in the FPR except to the extent necessary to implement, supplement or deviate therefrom.

§ 44–1.005 Exclusions.

Certain FEMA policies and procedures which come within the scope of the FEMAPR nevertheless may be excluded from the FEMAPR. These exclusions include the following categories:

(a) Policy or procedure for subject matter which bears a secruity classification.

(b) Policy or procedure which is expected to be effective for a period of six months or less.

(c) Policy or procedure which is being instituted on an experimental basis for a reasonable period.

(d) Policy or procedure of an internal nature which shall be issued as either a FEMA Handbook or Standard Operating Procedure or a revision to either of the above.

§ 44–1.006 Issuance.

§ 44–1.006–1 Code arrangement.

The FEMAPR are issued in the Code of Federal Regulations as Chapter 44 of Title 41, Public Contracts and Property Management.

§ 44–1.006–2 Publication.

The FEMAPR, as deemed necessary by the Director, Office of Finance and Administration, for information to the general public, are published initially in the daily issue of the **Federal Register** and in final cumulated form in Title 41 of the Code of Federal Regulations. The above regulations are printed in separate loose-leaf volume form for distribution to appropriate FEMA organizational elements.

§ 44–1.006–3 Copies.

Copies of the FEMAPR in **Federal Register** and Code of Federal Regulations form may be purchased at nominal cost from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Upon request, copies of the FEMAPR loose-leaf volume and amendments and additions thereto will be distributed to agency procuring offices and other appropriate agency organizational units by the Policy and Support Branch of the Division of Acquisition Management.

§ 44–1.006–4 Coordination.

In the development of FEMAPR issuances, the views of interested agency procuring offices, and, where appropriate and feasible, the views of interested business and professional organizations, will be considered.

§ 44–1.007 Arrangement.

§ 44–1.007–1 General plan.

The general plan, numbering system, and nomenclature used in the FEMAPR conform with those of the Federal Procurement Regulation (FPR) and Federal Register Standards approved for the FPR.

§ 44–1.007–2 Numbering and titling.

(a) Where the FEMAPR implements or deviates from a part, subpart, section or subsection of the FPR, the FEMAPR part, subpart, section or subsection will be numbered and titled to correspond to the part, subpart, section or subsection of the FPR.

(b) Where the subject matter contained in a part, subpart, section or subsection of the FPR requires no further implementation, the FEMAPR will contain no corresponding part, subpart, section or subsection number and the subject matter as published in the FPR governs.

(c) Material published in the FEMAPR which supplements the FPR will be assigned numbers from the number 50 onward to denote the new part, subpart, section or subsection being added. For example, § 44–50.100 (new part), § 44–1.5000 (new subpart). § 44–1.150 (new section), § 44–1.102–50 (new subsection).

§ 44–1.007–3 Citation.

FEMAPR will be cited in accordance with **Federal Register** Standards approved for the FPR. Thus this section, when referred to in divisions of the FEMAPR should be cited as "§ 44 – 1.007–3 of this chapter". When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 44–1.007–3". Any section of the FEMAPR may be informally identified as "FEMAPR" followed by the section number, such as FEMAPR 44–007–3.

§ 44–1.009 Deviation.

§ 44–1.009–1 Description.

As used in the FEMAPR, the term "deviation" includes any of the actions set forth in 41 CFR 1–1.009–1 for either the FEMAPR or the FPR.

§ 44–1.009–2 Procedure.

In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from the FPR and the FEMAPR shall be kept to a minimum and controlled as follows:

(a) Deviations in both individual cases and classes of cases must be authorized in advance by the Director, Division of

Acquisition Managment. Requests for such authorization shall:

(1) Cite the specific parts of the FPR or FEMAPR from which it is desired to deviate.

(2) Provided a full description of the deviation.

(3) Indicate the circumstances which will require use of the deviation.

(4) Give detailed reasons supporting the actions requested; and

(5) Give reasons why the action is in the best interest of the Government.

(b) Where the deviation applies to a class of cases, review and approval shall be accomplished in accordance with 41 CFR 1–1.009–2(c) for deviations to either the FPR or the FEMAPR.

(c) The contract file(s) of the requesting office shall include a copy of the request and the approval. Class deviations will be issued as a part of the FEMAPR, if they are of a continuing nature and publication is deemed appropriate by the Director, Office of Finance and Administration.

Subpart 1.2—Definition of Terms

§ 44–1.201 Definitions.

For the purposes of the FEMAPR, and unless otherwise indicated the following terms have the meaning set forth in this subpart.

§ 44–1.202 Agency.

"Agency" means the Federal Emergency Management Agency or as it is referred to throughout the FEMAPR, "FEMA".

§ 44–1.204 Director.

"Director" means the Director of the Federal Emergency Management Agency. In the FPR, the term "Secretary", where it pertains to a procuring agency, shall be construed to mean "Director".

§ 44–1.205 Procuring office.

"Procuring offices" means those offices which have delegated or redelegated authority to purchase or contract for supplies, services and/or construction.

§ 44–1.206 Head of the procuring activity.

"Head of the procuring activity" means the Director, Division of Acquisition Management.

§ 44–1.250 Contractor.

"Contractor" means any person, firm, association, or corporation entering into a contract with the Government.

§ 44–1.251 Subcontractor.

"Subcontractor" means any person, firm, association or corporation entering into a subcontract with a contractor or higher-tier subcontractor.

§ 44–1.252 Supplies and property.

"Supplies and Property" means materials and goods to be delivered to the Agency under contracts or purchase orders.

§ 44–1.253 Personal services.

"Personal Services" means those services rendered by an officially appointed or employed individual engaged in the performance of authorized Federal functions who is compensated on either a time or contract basis and is under the direct supervision of a Federal officer thereby establishing an employer-employee relationship.

§ 44–1.254 Nonpersonal services.

"Nonpersonal Services" means those services rendered by non-Government firms, institutions or persons through contract or agreement with FEMA wherein no employer-employee relationship exists.

§ 44–1.255 Program office.

"Program office" means any of various offices within the agency which generate requests for procurement action.

§ 44–1.256 Project officer.

"Project officer" means the representative of a program office cognizant over the technical aspects of a given procurement action.

§ 44–1.257 Interagency agreement.

"Interagency agreement" means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services or property are provided to, or obtained from, one or more agencies, bureaus or departments of the Federal Government.

Subpart 1.3—General Policies

§ 44–1.302 Procurement sources.

§ 44–1.302–1 General.

Supplies and services may be obtained from the following sources:

(a) Government Program Sources. Procuring offices shall endeavor to obtain required supplies or services from the following sources prior to initiating purchases from other sources. These sources shall be utilized to the maximum extent practicable in accordance with applicable laws and regulations and shall be solicited in the order in which they appear below:

(1) Excess and surplus stocks in the possession of any Government agency (See FEMAPR 44–4.5004).

(2) Federal Supply Schedules.

(3) GSA Stores Stock.

(4) Federal Supply Service Consolidated Purchase Program.

(5) Federal Prison Industries, Inc.

(6) National Industries for the Blind.

(b) Sources outside the Government. If the required supplies and/or services cannot be obtained from any of the sources listed in paragraph (a) above, procuring offices shall endeavor to obtain them from commercial or other non-Government sources (including State and local Governments) to the maximum extent practicable.

(c) Other Federal Agencies. If supplies and/or services are available from another Federal agency, and the circumstances of the requirement meet the criteria set forth in OMB Circular A–76, procuring offices may obtain the supplies or services from that Federal agency (See FEMAPR 44–4.5004).

§ 44–1.302–3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

When a requisitioning office becomes aware that a suggested procurement source is either a Government employee, or a business or organization substantially owned by a Government employee, or the spouse or immediate family of a Government employee, the appropriate procurement office shall be immediately notified and shall seek alternative sources. If no alternative sources can be located, the requisitioning office shall prepare a written justification to clearly support a contracting officer decision to procure from the Government employee source and to provide for actions, where possible, to prevent future related procurements from employee sources. Approval shall be obtained from the head of the program office and the Director, Office of Finance and Administration prior to any procurement award to a Government employee source.

§ 44–1.305 Specifications.

§ 44–1.305–6 Military and departmental specifications.

If no Federal Specification is available, Interim Federal, Military and Departmental Specifications shall be considered, in the order of precedence indicated herein, prior to using or developing other specifications.

§ 44–1.317 Noncollusive bids and proposals.

The authority to make the determination described in paragraph (d) of the certification set forth in 41 CFR 1–1.317(a) shall vest in the head of

the procuring activity without authority to redelegate.

Subpart 1.4—Procurement Responsibility and Authority

§ 44-1.400 Scope of subpart.

This subpart deals with the placement of procurement authority and responsibility with the Agency, the selection and designation of contracting officers, and the authority of procuring offices.

§ 44-1.401 Responsibility of the head of the procuring activity.

The head of the procuring activity shall be responsible for the establishment of policy throughout the Agency, monitoring the overall effectiveness and efficiency of the Agency's procuring offices, the establishment of adequate controls to assure compliance with applicable laws, regulations and procedures, and shall be responsible for delegating or redelegating contracting officer authority, which has been delegated the head of the procuring activity.

§ 44-1.404 Selection, designation and termination of designation of contracting officers.

§ 44-1.404-1 Selection.

In selecting contracting officers, the appointing authorities shall consider experience, training, education, business acumen, judgment, character, reputation and ethics. In the areas of experience, training and education the following shall be required unless contracting authority is limited to simplified purchase procedures. Waiver of any of the criteria set out below shall be in writing with specific justification therefor.

(a) Experience of an individual contracting officer or appointment of an individual to a position having contracting officer authority shall consist of a minimum of two years experience performing contracting, procurement or purchasing operations in a Government or commercial procurement office. Additionally where appointment of a contracting officer involves a specialized procurement field, experience in the field shall be considered as a criterion for the appointment.

(b) Educational requirements of an individual contracting officer or appointment of an individual to a position having contracting officer authority shall require as a minimum the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting or related fields. This educational requirement may be waived by the appointing official when it is determined that a potential appointee is otherwise qualified by virtue of extensive contract-related experience, training, business acumen, judgment, character, reputation and ethics.

(c) Training requirements of an individual contracting officer or appointment of an individual to a position having contracting authority as a minimum shall require that the individual has successfully completed training courses in Government basic procurement, of not less than 80 class hours, and Government contract administration, not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

§ 44-1.404-2 Designation.

Except for disaster-related activities and unusual circumstances as determined by the head of the procuring activity, it is the policy of the Agency to delegate contracting officer authority to positions rather than to individuals. Except in those instances where the redelegation of authority specifically includes the authority for further redelegation to subordinate positions, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include clear statement of such authority, its responsibilities and limitations.

Subpart 1.7—Small Business Concerns

§ 44-1.700 General.

This subpart implements and supplements general policies and procedures set forth in 41 CFR Subpart 1-1.7.

§ 44-1.704 FEMA direction and operation.

FEMA shall implement the policies and procedures set forth in 41 CFR 1-1.7 through its small business advisor and its small business specialists.

§ 44-1.704-1 Small business advisor.

The Director, Division of Acquisition Management, is hereby designated as FEMA's small business advisor for all procurement matters. The small business advisor is responsible for the establishment, implementation and execution of the small business procurement program. He is the central point of contact of inquiries concerning the program from industry, the Small Business Administration, the Congress, the Office of the Director and others. His duties include developing a plan of operation that will insure that an equitable share of contracts will be awarded to small businesses by the Agency. He will be assisted on a daily basis by the small business specialists.

§ 44-1.704-2 Small business specialists.

The small business advisor shall designate, by name and in writing, a small business specialist in each procuring office of FEMA, as appropriate, who shall be responsible for maintaining the program in that procuring office in accordance with the requirements of the FPR, the FEMAPR, and any further directives from the small business advisor. The small business specialist, for the Division of Acquisition Management at FEMA Headquarters, in addition to the above duties, shall act as coordinator for the small business activities in the other procuring offices and provide liaison between the other small business specialists and the small business advisor.

§ 44-1.705 Cooperation with the Small Business Administration.

§ 44-1.705-3 Screening of procurements.

FEMA has no SBA representative assigned to it on a full or part-time basis except to the extent that a representative of SBA regularly monitors the small business program within the Agency. Therefore, for all practical purposes, the small business specialists perform the duties of on-site SBA representatives.

Accordingly, all proposed procurements estimated to exceed $10,000 will be reviewed by the small business specialists to identify those procurements which should be set aside in whole or in part for small business, unless the head of the procuring activity determines in accordance with 41 CFR 1-1.705-3(a) that such review would unduly delay the procurement process. The small business specialist initiates recommendations to the contracting officer for small business set-asides for those individual procurements or classes of procurements, or portions thereof.

§ 44-1.706 Procurement set-asides for small business.

§ 44-1.706-2 Review of set-aside recommendations initiated by small business specialist(s).

When the small business specialist recommends that all, or a portion, of an individual procurement or class of procurements be set aside for small business, the contracting officer shall promptly either (a) concur in the recommendation or (b) disapprove the recommendation, stating in writing his reasons for disapproval. If the

contracting officer disapproves the recommendation of a small business specialist, the small business specialist may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.706-3 Withdrawal or modification of set-asides.

A withdrawal or modification of an individual or class set-aside which was originally established upon the recommendation of the small business specialist may be proposed by the contracting officer by giving notice, containing the reason for the proposed withdrawal or modification, to the small business specialist. If the small business specialist does not agree to a withdrawal or modification, the contracting officer may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.706-5 Small business class set-aside for construction, including repair and alteration.

A class set-aside is hereby made for each proposed procurement for construction which is not expected to exceed $1,000,000 in amount. Accordingly, contracting officers shall set aside for small business each such proposed procurement. If a contracting officer determines that any individual procurement falling within the class set-aside requirements of this section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn or modified in accordance with FEMAPR 44-1.706-3. Proposed procurements for construction which exceed an estimate of $1,000,000 shall be considered for set-aside on a case-by-case basis.

§ 44-1.706-50 Review of class set-aside program for construction, including repair and alteration.

Each procuring office, shall forward a semi-annual report on class set-aside withdrawals to the Director, Division of Acquisition Management as a part of the required Standard Form 37, Report on Procurement by Civilian Executive Agencies. The Director, Division of Acquisition Management, acting as the small business advisor, shall direct actions to be taken to improve small business participation under the class set-aside in FEMAPR 44-1.706-5.

§ 44-1.713 FEMA contracts with the SBA.

It is the policy of FEMA to increase small business participation in procurement programs by awarding procurement contracts, whenever feasible to the SBA as authorized by Section 8(a) of the Small Business Act (15 USC 637(a)) and the FPR.

§ 44-1.750 FEMA responsibilities and functions pursuant to section 8(a) of the Small Business Act are as follows.

(a) 8(a) program responsibilities. The FEMA Director for Small and Disadvantaged Business Utilization shall be responsible for the development and review of goals to be achieved under the 8(a) program and shall coordinate with the Director, the program offices, and the regional directors in establishing the level of FEMA's participation in the 8(a) program and the level of coordination with the small business advisor appropriate and necessary to definitize FEMA's plan for implementation of the 8(a) established goals. In conjunction with this responsibility for establishing 8(a) goals, the Director for Small and Disadvantaged Business Utilization shall make available to the small business advisor 8(a) program guides for use by the small business specialists and contracting officers in making determinations on individual procurements that should be processed as an 8(a) contract to be awarded to SBA.

(b) 8(a) procurement responsibility. The procurement and contracting aspects of this program shall be the responsibility of the small business advisor who shall assure that 8(a) procurement requirements are implemented through the small business specialists in each of their appropriate areas of assignment.

(c) 8(a) functions of the small business specialist. The small business specialist(s) acting on behalf of the small business advisor, shall screen proposed solicitations to determine the feasibility of placement under the 8(a) program as part of the performance of those duties set forth under FEMAPR 1.704-1. The small business specialists, after consideration of the goals and guidance established pursuant to paragraph (a) of this section, shall make recommendations for 8(a) procurement to the contracting officer, who may, in his discretion, contract with the Small Business Administration in accordance with 41 CFR 1-1.705-7 and 1-1.713.

(d) 8(a) reporting requirements. The small business advisor shall report to the Director for Small and Disadvantaged Business Utilization on a quarterly basis covering the activities of the 8(a) program which report shall include the following:

(1) A narrative statement regarding the operation of the program during the three month period; and

(2) The number and dollar amount of awards made to small business under the 8(a) program.

Subpart 1.8—Labor Surplus Area Concerns

§ 44-1.800 Scope of subpart.

This subpart sets forth policies and procedures governing aid to sections classified as having concentrated unemployment or underemployment and areas of persistent or substantial labor surplus hereinafter referred to as labor surplus areas.

§ 44-1.803 FEMA direction and operation.

FEMA shall implement the policies and procedures set forth in 41 CFR 1-1.8 through its labor surplus area advisor and its labor surplus area specialists.

§ 44-1.803-1 Labor surplus area advisor.

The Director, Division of Acquisition Management, is hereby designated as FEMA's labor surplus area advisor for all procurement matters. The labor surplus area advisor is responsible for the establishment, implementation and execution of the labor surplus area program within FEMA. He is the point of contact for inquiries concerning the program from industry, the Departments of Labor and Commerce, the Small Business Administration, the Congress, the Office of the Director and others. His duties include developing a plan of operation to increase the share of contracts awarded to labor surplus area concerns by FEMA. He will be assisted on a daily basis by the labor surplus area specialists.

§ 44-1.803-2 Labor surplus area specialists.

The labor surplus area advisor shall designate, by name and in writing, a labor surplus area specialist in each procuring office of FEMA who shall be responsible for maintaining the program in those procuring offices in accordance with the requirements of the FPR, the FEMAPR and any further directives from the labor surplus area advisor.

The labor surplus area specialist for the Division of Acquisition Management at FEMA headquarters, in addition to the above, shall also act as coordinator for the labor surplus area activities in the other procuring offices and provide liaison between the other labor surplus area specialists and the labor surplus area advisor.

§ 44-1.803-3 Screening of procurements.

All proposed procurements estimated to exceed $10,000 shall be reviewed by the labor surplus area specialist to identify those procurements which should be set aside in whole or in part for labor surplus area concerns in accordance with 41 CFR 1-1.804-1 and to identify possible subcontracting

opportunities for labor surplus area concerns.

The labor surplus area specialist shall initiate recommendations to the contracting officer based upon these reviews for labor surplus area set-asides for those individual procurements or classes of procurements or portions thereof identified.

§ 44-1.803-4 Review of set-aside recommendations initiated by labor surplus area specialists.

When the labor surplus area specialist recommends that all, or a portion, of an individual procurement or class of procurements be set aside for labor surplus area concerns, the contracting officer shall promptly either (a) concur in the recommendation or (b) disapprove the recommendation, stating in writing his reasons for disapproval. If the contracting officer disapproves the recommendation, the labor surplus area specialist may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.804 Partial set-asides for labor surplus area concerns.

§ 44-1.804-4 Withdrawal of set-asides.

A withdrawal of an individual or class set-aside which was originally established upon the recommendation of the labor surplus area specialist may be proposed by the contracting officer by giving written notice, containing the reason for the proposed withdrawal to the labor surplus area specialist. If the labor surplus area specialist does not agree to a withdrawal, the contracting officer may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.804-50 Modifications of set-asides.

Modifications of set-asides shall be handled in the same manner as withdrawals of set-asides.

Subpart 1.10—Publicizing Procurement Actions

§ 44-1.1003-2 General requirements.

(a) Except in the instances described in 41 CFR 1-1.1003-2(a)(1) through (10) every proposed modification to, or exercise of an option on, existing contracts, when new funds are obligated for additional supplies and services, which may result in an award of $5,000 or more, shall be published promptly in the Commerce Business Daily.

(b) Synopses prepared in accordance with paragraph (a) above on procurements negotiated on a noncompetitive basis, shall indicate that the procurement is being synopsized to show that the agency believes only one source to exist. Descriptions of noncompetitive procurements contained in such synopses shall be in such detail that a firm can clearly understand the requirement and thus decide on the basis of adequate information whether it has the ability to compete in performing the work.

Subpart 1.13—Small Business Concerns Owned and Controlled by One or More Socially and Economically Disadvantaged Individuals

§ 44-1.1300 Scope of subpart.

This subpart contains policies and procedures applicable to the participation in FEMA procurement of small business concerns owned and controlled by one or more socially and economically disadvantaged individuals.

§ 44-1.1302 Policy.

It is the policy of FEMA to foster and promote the participation, of small business concerns owned and controlled by one or more socially and economically disadvantaged individuals in the Agency's procurement program and to offer guidance to such firms to the maximum extent practicable in order to enhance their ability to compete for the placement of FEMA procurement contracts. In furtherance of this policy, a presolicitation notice shall be sent to each small business concern owned and controlled by one or more socially and economically disadvantaged individuals listed on the Bidders Mailing list which has indicated a capability in the particular subject area. Such notification shall include a description of the procurement in sufficient detail to allow the firm to make a judgment as to whether or not to request the solicitation package. This notification shall be sent as soon as practicable after receipt of the procurement but in no event later than the date the synopsis is forwarded to the Commerce Business Daily. Failure of a firm to respond to three consecutive presolicitation notices shall result in removal of that firm's name from the Bidders Mailing List.

§ 44-1.1303 Solicitation representation.

As with procurements over $10,000, it is desirable that a representation as a small business concern owned and controlled by one or more socially and economically disadvantaged individuals be obtained from all bidders, offerors, and contractors for procurement under $10,000. Accordingly, procuring offices shall request, whether in a solicitation or otherwise, that all bidders, offerors and contractors, complete and return on a voluntary basis, the certificate set forth in 41 CFR 1-1.1303, indicating also the applicable solicitation number or purchase order number. Completion of the certificate shall not be regarded as a condition for award.

Subpart 1.50—Criteria for Use of Procurement Contracts Versus Assistance Instruments [Reserved]

PART 44-2—PROCUREMENT BY FORMAL ADVERTISING

Sec.

44-2.000 Scope of part.

Subpart 2.1—Use of Formal Advertising

44-2.106 Procurement management review.

Subpart 2.2—Solicitation of Bids

44-2.201 Preparation of invitation for bids.
44-2.202 Miscellaneous rules for solicitation of bids.
44-2.202-1 Bidding time.
44-2.202-2 Telegraphic bids.
44-2.202-3 Place and method of delivery of supplies.
44-2.202-4 Bid samples.
44-2.202-50 Extension of time for bid opening.
44-2.202-51 Pre-bid conferences.
44-2.202-52 Bid envelopes.
44-2.205 Bidders mailing lists.
44-2.205-1 Establishment of lists.
44-2.205-4 Excessively long bidders mailing lists.
44-2.250 Small business concerns owned and controlled by one or more socially and economically disadvantaged individuals and labor surplus area concerns.

Subpart 2.3—Submission of Bids

44-2.301 Responsiveness of bids.
44-2.303 Late bids.
44-2.303-6 Notification to late bidders.
44-2.303-7 Disposition of late bids.

Subpart 2.4—Opening of Bids and Award of Contract

44-2.401 Receipt and safeguarding of bids.
44-2.402 Opening of bids.
44-2.406 Mistakes in bids.
44-2.406-3 Other mistakes disclosed before award.
44-2.407 Award.
44-2.407-7 Statement and certificate of award.
44-2.407-8 Protests against award.

Subpart 2.5—Two-Step Formal Advertising

44-2.502 Conditions for use.

Authority: 41 CFR 1-1.008.

§ 44-2.000 Scope of part.

This part implements and supplements the basic requirements for procurement of personal property and non-personal services (including construction) by formal-advertising, and establishes policies with respect to solicitation of bids, submission of bids, opening and evaluation of bids and the

awarding of contracts as set forth in 41 CFR Part 1–2.

Subpart 2.1—Use of Formal Advertising

§ 44–2.106 Procurement management reviews.

The Policy and Support Branch of the Division of Acquisition Management shall be responsible for meeting the requirements of 41 CFR Part 1–2.106.

Subpart 2.2—Solicitation of Bids

§ 44–2.201 Preparation of invitation for bids

Forms used in the preparation of invitations for bids are prescribed in 41 CFR Subparts 1–16.1 and 1–16.4 and Part 16 of the FEMAPR.

§ 44–2.202 Miscellaneous rules for solicitation of bids.

§ 44–2.202–1 Bidding time.

In the procurement of supplies and services, the following shall be observed:

(a) Procurement action which does not provide for the minimum bidding time required by 41 CFR 1–2.202–1(c) shall be justified by the contracting officer prior to releasing the invitation for bids. This justification shall take the form of a finding of fact which establishes the contracting officer's basis for the exception to the minimum bidding time.

(b) The minimum bidding time stipulated in 41 CFR 1–2.202–1(c) shall not be construed as a maximum. Each prospective procurement shall be examined on its own merits to determine the bidding time that will facilitate competition on reasonable and equal terms. As a general rule, procurement of a less complicated nature for which no extensive bid preparation by the prospective bidder is required in development of his bid may contain a bidding time of 20 calendar days. Where the specification may require prospective bidders to develop drawings or samples, or to do extensive preparation in developing a meaningful bid, 30 calendar days or more of bidding time may be required.

§ 44–2.202–2 Telegraphic bids.

Telegraphic bids will be authorized only by the contracting officer who shall document the official procurement file as to the necessity of telegraphic bids. Conditions under which telegraphic bids may be authorized are set forth in 41 CFR 1–2.202–2. When telegraphic bids are authorized by the contracting officer, a clause shall be incorporated in the invitation for bids, authorizing such bids and providing instructions on their submission in accordance with 41 CFR Part 1–2.202–2(a).

§ 44–2.202–3 Place and method of delivery of supplies.

To the maximum extent practical, invitations for bids issued by FEMA shall stipulate "f.o.b. destination." Only where the contracting officer determines in writing that it is in the Government's best interest may he deviate from this policy.

§ 44–2.202–4 Bid samples.

Bid samples submitted by bidders as required by an invitation for bids or as unsolicited samples, if not returned in accordance with 41 CFR Part 1–2.202–4(h), shall be disposed of by the contracting officer who shall document the contract file as to the method of disposition.

§ 44–2.202–50 Extension of time for bid opening.

Whenever such action is determined by the contracting officer to be in the best interest of the Government, bid openings may be rescheduled for a later date by issuance and distribution of an amendment (See 41 CFR 1–2.207) to the invitation for bids. Notices of change in bid opening date shall specify the exact time and date for the new opening and will be issued by mail or telegram as soon as possible, but, in any event, prior to the time specified for the opening of bids.

§ 44–2.202–51 Prebid conferences.

Whenever a prebid conference is proposed for a formally advertised procurement the following will be applicable:

(a) *General.* One of the essential elements of formal advertising is that all bidders are afforded an equal opportunity to compete. For this reason, discussions with prospective bidders will only be conducted by or with the knowledge and approval of the contracting officer. It is incumbent upon the contracting officer to avail all prospective bidders of the same information so as not to give one an advantage over the others. The need for prebid conferences in advertised procurements should be infrequent and such conferences shall not be used as a substitute for formally amending defective or ambiguous solicitations or to disseminate additional specification requirements. A prebid conference is only authorized when it is deemed by the contracting officer to be in the best interest of the Government and approved by the head of the procuring activity or when written internal program policy requires it under certain specified circumstances.

(b) *Purpose.* A prebid conference is held to accomplish these primary objectives:

(1) To provide discussion of unusual aspects of complex procurements.

(2) To impart information that removes areas of performance uncertainties which, unless removed, result in higher price to the Government, i.e., inclusion in the bid of an amount for the uncertainty or contingency.

(3) To avoid post-award performance problems which firms could have been made aware of at the time of bid preparation.

(c) *Format.* The typical format of a prebid conference is a formal presentation by the contracting officer or his representative followed by a question and answer period. All prospective bidders and their subcontractors shall be invited to the meeting in a manner deemed appropriate by the contracting officer. When held, a prebid conference shall be scheduled sufficiently in advance of the date set for bid opening to permit prospective bidders to use the information. A written record of the prebid conference shall be made and maintained in the procurement file as the official record of what was presented at the conference.

(d) *Conclusion.* As a result of the prebid conference, it may become necesary to change or substantially clarify the invitation for bid. This action shall be transmitted to all those receiving invitation for bids in the form of an official amendment to the solicitation, taking into consideration any extension of the closing date for the receipt of bids.

§ 44–2.202–52 Bid envelopes.

Mailing labels, or envelopes, bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, the Optional Form 17, "Sealed Bid Label" may be furnished with each bid set to inform the bidder as to what will be required on the bid envelope. 41 CFR 1–16.902–OF17 illustrates the referenced form and copies of same can be obtained from the General Services Administration.

§ 44–2.205 Bidders mailing lists.

§ 44–2.205–1 Establishment of lists.

New prospective suppliers that have been added to the bidders mailing list shall be notified by the procuring office by a letter so indicating.

§ 44-2.205-4 Excessively long bidders mailing lists.

It is the policy of FEMA to send preinvitation notices to concerns on the mailing list, described in 41 CFR 1-2.205-4(c), in lieu of initially forwarding complete bid sets for all procurements expected to result in awards in excess of $10,000.

§ 44-2.250 Small business concerns owned and controlled by one or more socially and economically disadvantaged individuals and labor surplus area concerns.

It is the policy of FEMA to send preinvitation notices to all small business concerns owned and controlled by one or more socially and economically disadvantaged individuals and labor surplus area concerns that are on the bidder's mailing list for each procurement expected to result in an award in excess of $10,000, subject to the provisions of 44-1.1302.

Subpart 2.3—Submission of Bids

§ 44-2.301 Responsiveness of bids.

Any bid which is not signed by the bidder or his authorized representative shall be disregarded, except when it is accompanied by other evidence which demonstrates the bidder's intention to be bound by the unsigned bid document. An example of such evidence is a bid guarantee or a letter (which does not qualify or otherwise render the bid non-responsive) signed by the bidder referring to, and clearly identifying the bid itself. In such a case, the contracting officer may waive the deficiency as a minor informality or irregularity (see 41 CFR 1-2.405) and shall document the file to so indicate.

§ 44-2.303 Late bids.

§ 44-2.303-6 Notification to late bidders.

In setting the date to be inserted in the notice to late bidders contained in 41 CFR 1-2.303-6, consideration should be given to the time required by the bidder to develop and prepare the required evidence in relation to the acceptance period specified by the otherwise apparent low bidder, avoidance of undue delay in the procurement cycle, and other pertinent factors. As a general rule, the bidder should be allowed a minimum of three (3) working days in addition to a time allowance for transmitting the notice to, and receipt of the evidence by, the contracting officer. The bidder shall be notified immediately in writing if his bid cannot be considered for award because of lateness.

§ 44-2.303-7 Disposition of late bids.

The return of a late bid which cannot be considered for award shall be accompanied by a statement from the contracting officer that the bid was not considered because of its late receipt. If the late bid had to be opened for identification purposes or was opened by mistake, this fact shall be included in the statement from the contracting officer accompanying the returned bid. In all cases where a late bid is not considered and returned to the bidder, the file shall be documented with all information relating to the determination of late receipt which shall include a copy of the late bid envelope.

Subpart 2.4—Opening of Bids and Award of Contract

§ 44-2.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received and the date. The individual receiving the bids shall then place his initials under the above marking.

(b) The contracting officer shall, in addition to the requirements of 41 CFR 1-2.401(b), retain in the file a copy of the envelope, wrapper or other container bearing the required documentation of a bid which was opened by mistake or for purposes of identification.

§ 44-2.402 Opening of bids.

The bid opening will be conducted by the contracting officer or his duly authorized representative designated as the bid opening officer. At the bid opening, the relative merits of any bids shall not be discussed by the person opening the bids, or the contracting officer, with the bidders, their representatives, casual observers, or Agency personnel. No statement shall be made by the person opening the bids or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, the responsiveness of any bid or responsibility of any bidder, etc. Oral instructions shall not be given to bidders at any time during the opening. Protests of bidders and inquiries regarding the award of the contract shall be referred to the contracting officer after the completion of the bid opening. Bidders are cautioned that information obtained at bid opening from other than the contracting officer may only be relied upon by the bidder at the bidder's own risk. After all bids have been opened, read aloud and recorded, the bid opening officer shall state that opening of bids has been completed.

§ 44-2.402-50 Timing of acceptance and withdrawal of bids.

Bidders may not withdraw their bids after bid opening unless the notice of withdrawal was mailed prior to the time set for bid opening and handled in accordance with 41 CFR 1-2.305.

§ 44-2.406 Mistakes in bid.

§ 44-2.406-3 Other mistakes disclosed before award.

The Director, Division of Acquisition Management, is delegated the authority to make determinations in accordance with 41 CFR 1-2.406-3 concerning mistakes in bid discovered prior to award other than obvious clerical errors. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

§ 44-2.407 Award.

§ 44-2.407-8 Protests against award.

(a) Resolution of protests, received before or after award, shall be pursued initially by the contracting officer. If the protest cannot be resolved to the satisfaction of the protestor, the contracting officer shall refer the matter to the head of the procuring activity prior to issuing a final decision. In referring the matter, the contracting officer shall prepare and forward to the head of the procuring activity a report consisting of the documents set forth in 41 CFR 1-2.407-8(a)(2). The head of the procuring activity shall consider the matter on the basis of this report, and any advice from the Office of General Counsel, the General Accounting Office (GAO) as may be requested, and shall provide the contracting officer with a recommended course of action to resolve the protest.

(b) A protestor shall be notified of the final decision on his protest within thirty (30) working days from the date the protest is received in the procuring activity, except where GAO views are requested in which case the time for rendering a decision shall be twenty (20) working days from receipt by the head of the procuring activity of GAO views.

(c) In a case where a protest is referred to the head of the procuring activity for review, to assure that the protestor receives timely notification of the final decision, the contracting officer shall submit the required report described above to the head of the procuring activity within ten (10) working days after receipt of the protest and the head of the procuring activity shall provide the contracting officer with

the recommended course of action within fifteen (15) working days after his receipt of the report or fifteen (15) days after receipt of GAO views, if requested.

(d) The contracting officer, except as described above, is responsible for all matters relating to protests against award of contracts within FEMA unless the protest has been filed concurrently or otherwise with the GAO. In such cases, the Office of General Counsel is responsible for liaison with the GAO. All communications concerning a protest, written or otherwise, directed to GAO shall be coordinated with the Office of General Counsel and all written connunications from FEMA to the GAO shall be by the Office of General Counsel. The contracting officer, via the head of the procuring activity, is responsible for furnishing the Office of General Counsel with all information relating to the protest.

(e) Upon receipt of a protest, or upon receipt of notification from the head of the procuring activity that a protest has been filed with GAO, the contracting officer shall promptly notify in writing the contractor, if award has been made, and in any case, all bidders who, in the opinion of the contracting officer appear to have a reasonable prospect of receiving an award if the protest is sustained. This notification shall indicate that a protest has been filed concerning the solicitation or the award of the contract and the basis for the protest (see 41 CFR 1–2.407–8(a)(3)). In addition, the contracting officer shall request the bidders to extend the time for acceptance of their bids. Both the contracting officer's request for such extension and the bidders' responses shall be in writing. Where a protest has been lodged with the GAO, and the GAO requests that a formal report be submitted, the Office of General Counsel shall be responsible for submitting the formal report, or a written statement setting forth the reasons for any delay and the expected date of submission to GAO, within twenty-five (25) working days after receipt of the request, unless a different time is stipulated by GAO.

(f) Upon receipt of the request, the Office of General Counsel shall immediately notify the head of the procuring activity of the request, and the head of the procuring activity shall immediately notify the contracting officer of same. Upon such notification from the head of the procuring activity, the contracting officer shall begin to compile the report that he would normally compile for protests which are referred to the head of the procuring activity, plus a statement of the urgency of the procurement and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government, if appropriate, or if not appropriate, a statement of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting officer shall then submit the report to the head of the procuring activity within ten (10) working days from receipt of notification. The head of the procuring activity shall then forward the report, with any comments, to the Office of General Counsel within five (5) working days of receipt. The Office of General Counsel's report to GAO shall include the documents and statements submitted by the head of the procuring activity, as appropriate, the GAO file number assigned to the protest, and any additional comments by the Office of General Counsel. The report shall be transmitted by a covering letter addressed to the individual in the GAO who signed the request and shall state that copies thereof have been sent to the protestor and any other name parties who have been given notice of the protest. The external distribution shall be shown on the original of the letter to GAO. In addition, letters shall be sent to the protestor and other interested parties enclosing a copy of the completed report and shall advise recipients that any comments shall be filed with the Office of General Counsel, General Accounting Office, within ten (10) working days after receipt, with copies to the procuring activity and the Office of General Counsel of FEMA. If GAO requests additional information, a supplementary report shall be transmitted to GAO within five (5) working days after FEMA receives the request and shall follow the procedures set forth in 41 CFR 2.4078(a)(4). Where the contracting officer makes a determination to award a contract notwithstanding a protest as authorized by 41 CFR 1–2.4078(b)(4), the head of the procuring activity shall approve such a determination prior to award.

(g) If the protest has not been filed with GAO, the head of the procuring activity may, at his discretion, obtain, through the Office of General Counsel the views of GAO regarding the protest whenever such action is considered desirable, prior to approving or disappproving the determination. If the head of the procuring activity approves the determination, he shall notify the contracting office that he is authorized to make the award. If the protest has been filed with the GAO, the head of the procuring activity, upon approval of the determination, but prior to authorizing the contracting officer to make the award, shall notify the Officer of General Counsel of the intent to make the award. The Office of General Counsel shall then furnish GAO with notification of the intent to obtain formal or informal advise concerning the current status of the case prior to making the award. This advice shall be transmitted to the head of the procuring activity, who, in light of this advice, shall notify the contracting officer as to whether or not the award should be made. However, if in the opinion of head of the procuring activity, obtaining this advice will delay excessively the award, he may proceed with award after advising GAO through the Office of General Counsel of his intent.

(h) Protests shall be filed to be received at the procuring office not later than five (5) working days after the basis for protest is known or reasonably should have been known, whichever is earlier.

(i) The head of the procuring activity shall maintain records relating to all protests received. The records shall contain adequate data to show the number and nature of formal protests received (whether filed directly with FEMA or with GAO), their disposition and the time for resolution. These records will be reviewed annually in order to update protest procedures.

Subpart 2.5—Two-Step Formal Advertising

§ 44–2.502 Conditions for use.

Pursuant to 41 CFR 1–2.502, approval must be obtained from the head of the procuring activity before the two-step formal advertising method of procurement may be used.

PART 44–3—PROCUREMENT BY NEGOTIATION

Sec.

44–3.000 Scope of part.

Subpart 3.1—Use of Negotiation

44–3.100 Scope of subpart.
44–3.101–50 Noncompetitive procurement.
44–3.101–51 Preference for local contractors in Federally-declared disaster areas.
44–3.103 Publicizing procurement actions.
44–3.103–50 Preproposal conferences.
44–3.104 Disclosure of mistakes after award.
44–3.150 Treatment of proposal information
44–3.150–1 General.
44–3.150–2 Disposition of unsuccessful proposals.
44–3.150–3 Use of successful proposals.

Subpart 3.4—Types of Contracts

44–3.400 Scope of subpart.
44–3.405–3 Cost-sharing contract.
44–3.408 Letter contact.

Subpart 3.7—Negotiated Overhead Rates

44–3.700 Scope of subpart.

Sec.
44–3.702 General.
44–3.707 Overhead ceilings.

Subpart 3.8—Price Negotiation Policies and Techniques

44–3.800 Scope of subpart.
44–3.801–2 Responsibility for determination of final price.
44–3.802 Preparation for negotiation.
44–3.802–2 Alternate procedures for consideration of late proposals.
44–3.805 Selection of offerors for negotiation and award.
44–3.805–50 Source selection procedures.

Subpart 3.51—Protests Against Award

3.5101 Negotiated procurement protests.

Authority: 41 CFR 1–1.008.

§ 44–3.000 Scope of part.

This part prescribes policies and procedures which shall be observed by FEMA procuring offices in connection with procurement by negotiation.

Subpart 3.1—Use of Negotiation

§ 44–3.100 Scope of subpart.

This subpart sets forth policies and procedures concerning exceptions to normal negotiation procedures and the dissemination of procurement information.

§ 44–3.101–50 Noncompetitive procurement.

(a) *General.* FEMA procurement shall be accomplished on a competitive basis to the maximum extent practicable. Procurement without competition shall be limited to those circumstances in which only one firm, organization or individual can provide the required supplies or services.

(1) *Procurements not expected to exceed $100,000.* Program offices recommending procurement on a noncompetitive basis shall submit a detailed summary of the factual circumstances justifying noncompetitive procurement to the contracting officer. The contracting officer shall review the justification in accordance with the critieria outlined in paragraph (c) of this section. If, in the judgment of the contract officer, the justification adequately supports procurement on a noncompetitive basis pursuant to paragraph (c) of this section, the contracting officer shall evidence his approval of the justification by preparing and signing a determination which states that the circumstances set forth in the justification meet one of the criteria for procurement on a noncompetitive basis set forth in FEMAPR 3.101–50(c) and which details the reasons why these circumstances are considered to meet this criterion. The contracting officer shall then insert the determination and accompanying rationale in the contract file with the justification and commence negotiations with the identified firm. In the event that the contracting officer does not feel that the justification adequately supports procurement on a noncompetitive basis, he shall evidence his disapproval of the justification by preparing and signing a determination which states that the circumstances set forth in the justification do not meet either of the criteria for procurement on a noncompetitive basis set forth in FEMAPR 3.101–50(c) and which details the reasons why these circumstances are not considered to meet either of the criteria. If the justification is disapproved by the contracting officer the originating program office may appeal the determination to the head of the procuring activity whose decision shall be final.

(2) *Procurements expected to exceed $100,000 But not expected to exceed $500,000.* The procedures set forth in paragraph (a) (1) of this section shall be followed for procurements expected to exceed $100,000, but not expected to exceed $500,000, except that when the contracting officer has either approved or disapproved the justification for noncompetitive procurement, the contracting officer shall submit the determination, the accompanying rationale and the justification along with the contract file to the head of the procuring activity. The head of the procuring activity shall then review the contracting officer's determination, accompanying rationale and the justification and either concur or not concur in the determination in writing. All nonconcurrences by the head of the procuring activity shall be accompanied by a statement of the reasons for the nonconcurrence. If the concurrence or nonconcurrence of the head of the procuring activity results in approval of the justification for noncompetitive procurement, the contacting officer shall commence negotiations with the identified firm. If the concurrence or noncurrence of the head of the procuring activity results in disapproval of the justification, the contracting officer shall advise the orginating program office in writing, of the disapproval detailing the reasons therefor.

(3) *Procurements expected to exceed $500,000.* The procedures set forth in paragraph (a)(2) of this section shall be followed for procurements expected to exceed $500,000, except that when the head of the procuring activity has either concurred or not concurred in the determination of the contracting officer the head of the procuring activity shall submit the contracting officer's determination, accompanying rationale and the justification along with the written concurrence or noncurrence of the determination to the Director, Officer of Finance and Adminstration. The Office of Finance and Administration shall review the justification in light of the information provided by the head of the procuring activity and approve or disapprove the justification. If the approval or disapproval represents a noncurrence with the recommendation of the head of the procuring activity, the Director, Office of Finance and Administration shall provide a written statement to the head of the procuring activity detailing the reasons therefor. If the justification is approved the contracting officer shall advise the originating program office, in writing, of the disapproval detailing the reasons therefor.

(b) *Exclusions.* The provisions of FEMAPR 44–3.101–50(a) do not apply to the following:

(1) Procurements of $500 or less

(2) Procurements from or through other Government Agencies

(3) Procurements of architect-engineer services

(4) Procurements of utility services where the services are available from only one source

(5) Procurements with the Small Business Administration

(6) Purchases from mandatory Federal Supply Schedule contracts which list only one source.

(c) *Justification for noncompetitive procurement.* In order for procurement on a noncompetitive basis to be approved by the Contracting Officer, the justification must demonstrate that one of the following criteria has been met:

(1) The recommended source possesses a unique characteristic or capability that serves to make that source the only one able to provide the desired product or service and all other sources unable to provide the product or service.

(2) The proposed procurement is for replacement of components for equipment specially designed by a manufacturer, and available data is not adequate to assure that replacement parts or components, if provided by a source other than the manufacturer of the equipment, would be compatible with, or perform the same function as, the parts or components being replaced.

§ 44–3.101–51 Preference to local contractors in procurements resulting from Presidentially declared major disasters or emergencies.

(a) *Scope of subsection.* This subsection establishes policies relating to local contractor preference to receive

procurement awards resulting from competitively negotiated solicitations with a Presidentially-declared major disaster or emergency operation.

(b) *Geographical coverage.* The geographic areas to which local contractor preference shall apply are those affected by the Presidentially-declared disaster and designated by the Associate Director for Disaster Response and Recovery in the Federal Register. Geographical areas shall be identified by county or other political subdivision.

(c) *Procurement for implementation of the procurement of supplies and services for disaster relief response.* The clause set forth below shall be included in each competitively negotiated solicitation for disaster relief response.

Provision for Competitively Negotiated Solicitations

In awarding any contract(s) pursuant to this solicitation, the Government shall give preference to local organizations, firms and individuals residing or doing business primarily in the geographic area identified as the disaster area by the Associate Director for Disaster Response and Recovery.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible for local contractor preference, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

Offerors for which eligibility is established (local offerors) shall be permitted to reduce their proposed price to meet the lowest price received from an otherwise eligible nonlocal offeror, provided that the proposed price from the local offeror(s) does not exceed 130% of the price received from the nonlocal offeror. The lowest priced local offeror within 130% of the lowest nonlocal price shall be given the initial opportunity to meet the nonlocal price. If the local offeror meets the lowest nonlocal price and is determined to be responsible, award shall be made. If the nonlocal offer is not met, the next lowest local offeror within 130% shall be given an opportunity to meet the lowest nonlocal price. This process shall continue until award is made to a local offeror within the 130% requirement or the supply of such local offerors is exhausted and award made to the lowest nonlocal offerors.

(d) *Exception to use of local preference provisions.* If it is determined by the Contracting Officer to be in the best interest of the Government the clause set forth in Paragraph (c) of this section need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the procuring activity.

(e) *Additional methods for encouraging local participation.* In the event the contracting officer makes the determination of paragraph (d) of this section, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus areas if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Subdividing large requirements into several smaller requirements.

§ 44–3.103 Dissemination of procurement information.

(a) *Publicizing procurement actions.* The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be given for this purpose. The search should include (a) a review of relevant data or brochures furnished by sources seeking to do business with the agency and (b) a cooperative effort by program personnel, small business specialists and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirements. Each procuring office shall use to the maximum extent practicable its bidders mailing list for soliciting competition.

(b) *Release of information during the solicitation phase.* No information shall be released during the solicitation phase of a procurement except as follows:

Each solicitation for a negotiated procurement shall specify an individual within the procuring office who shall be responsible for responding to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions concerning the solicitation whether of a procedural or substantive nature shall be directed to the above individual. All other personnel will avoid exchange of comments with all offerors or potential offerors. Answers to questions requiring clarification of the substantive portion of the solicitation shall be provided by amendment to the solicitation a copy of which shall be furnished to each recipient of the solicitation.

(c) *Release of information during the evaluation phase.* During the course of evaluating proposals, personnel involved in this activity shall not reveal any information concerning the evaluation of proposals to anyone who is not also participating in the same evaluation proceedings, except as may be required for internal clearances. However, the contracting officer, upon determination that a proposal is unacceptable, or not within the competitive range, shall provide prompt notice of the fact to the offeror submitting the proposal. In addition to stating that the proposal has been determined to be unacceptable, or not within the competitive range, the notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise the offeror that since further negotiation with him is not contemplated, a revision of his proposal will not be considered. Such notice need not be given if (a) in the judgment of the contracting officer, the disclosure will prejudice the Government's interest (the possibility of protest shall not be considered prejudicial), or if the proposed contract is to be awarded within a few days and notice pursuant to 41 CFR 1–3.103 would suffice. This notification procedure shall not apply to procurements negotiated pursuant to 41 USC 252(c) (4), (5) or (6); negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited; or urgent procurement actions which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(d) *Postaward release of procurement information.* Promptly after making award of any procurement in excess of $10,000, the contracting officer shall, if he has not done so pursuant to FEMAPR 44–3.103(c), give written notice to the unsuccessful offerors that their proposals were not accepted. The notice should name the successful contractor and state the amount of the award and the number of proposals received. Where additional information is requested by the offeror, it shall be provided as follows:

(1) It is the policy of FEMA to provide a debriefing to any unsuccessful offeror who makes a written request to the contracting officer within two (2) months after contract award.

(2) A debriefing is intended to:

(i) Tell an unsuccessful offeror which areas of his proposal were judged to be weak or deficient and whether the weaknesses or deficiencies were factors in his not having been selected.

(ii) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed and given a general comparison of significant areas, but not a point by point comparison of all the elements considered in the evaluation criteria.

(3) A debriefing should not reveal:

(i) Confidential business information, trade secrets, techniques, or processes of the other offerors; and

(ii) The relative merits or technical standing of the unsuccessful offerors or the scoring by the Source Evaluation Board or Technical Evaluation Panel.

(4) Any FEMA official who receives from an unsuccessful offeror a request, written or oral, for a debriefing shall immediately refer the request to the appropriate procuring office which shall make the necessary arrangements for the debriefing.

(5) It is essential that the debriefing be conducted in a scrupulously fair, objective and impartial manner, and that the information given be factual and consistent with the findings of the evaluation and the basis on which the source selection official made his decision.

(6) It is most important that all FEMA personnel engaged in the evaluation and selection process be aware of the foregoing policies and procedures. Detailed and complete records will be maintained by key technical and business participants in a manner which will facilitate either a written or oral debriefing of any unsuccessful offeror's proposal.

§ 44-3.103-50 Preproposal conferences.

In cases of complex procurement, preproposal conferences may be used to explain complicated specifications and requirements to prospective offerors so as to permit them to submit proposals without undue expenditure of effort, time and money. The preproposal conference shall not be used as a method for prequalification of offerors, and may only be used when approved by the head of the procuring activity. The preproposal conference shall be arranged and conducted by the contracting officer or his representative with participation by technical, legal and such other personnel as appropriate. All prospective offerors shall be furnished identical information in connection with the proposed procurement. Remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications. All conferees shall be advised that unless the solicitation is amended in writing it will remain unchanged and that if an amendment is issued, normal procedures relating to the acknowledgement and receipt of solicitation amendments shall be applied. A complete record shall be made of the conference.

§ 44-3.104 Disclosure of mistakes after award.

Mistakes discovered in prospective contractor's proposals after award is made, shall be handled in accordance with 41 CFR 1-2.406-4 as implemented by FEMAPR 44-2.406-4.

§ 44-3.150 Treatment of proposal information.

§ 44-3.150-1 General.

It is the general policy of FEMA to use information contained in proposals only for evaluation purposes except to the extent such information is generally available to the public, is already the property of the Government or the Government already has unrestricted use rights, or it is, or has been made available to the Government from other sources, including the offeror, without restriction.

§ 44-3.150-2 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed upon contract award. The one remaining copy of each unsuccessful proposal may be retained in the official contract file until for sixty (60) days at the end of which time it would be destroyed.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use of the proposal is given to the Government regardless of its success in the competition or (3) any of the conditions described in FEMAPR 44-3.150-1 exist.

§ 44-3.150-3 Use of successful proposals.

The Government shall normally be accorded unrestricted use of successful proposals. In the event that the successful offeror desires to place restrictions on the use of his proposal, the terms and extent of such restrictions may be set forth in the resulting contract. In any event the Freedom of Information Act will govern.

Subpart 3.4—Types of Contracts

§ 44-3.400 Scope of subpart.

This subpart sets forth policies and procedures concerning the use of cost-sharing contracts and letter contracts.

§ 44-3.405-3 Cost sharing contracts.

(a) *Purpose.* This subsection sets forth basic guidelines governing cost-sharing on research contracts with non-Federal organizations.

(b) *Basic guidelines.* Cost sharing with non-Federal organizations shall be encouraged as provided below for the following contracts for basic or applied research:

(1) A contract in which the parties have considerable mutual interest in the research (e.g., when it is probable that the performing organization or institution will receive significant future benefits from the research such as increased technical knowledge useful in future operations, additional technical or scientific expertise or training for its personnel, opportunity to benefit through patent rights, or the use of background knowledge in future production contracts).

(2) Cost sharing ordinarily shall not be applied to the following contracts:

(i) When the contracting officer has determined that:

(A) The research effort has only minor relevance to the non-Federal activities of the performing organization which is proposing to undertake the research primarily as a service to the Government; or

(B) The performing organization has few or no non-Federal sources of funds from which to make a cost contribution; or

(C) The performing organization is predominately engaged in research and development and has little or no production or other service activities and is, therefore, not in a favorable position to make a cost contribution; or

(D) Payment of the full cost of the project is necessary in order to obtain the services of the particular organization.

The contracting officer shall include the substance of his determination in the negotiation summary.

(ii) Contracts, except when cost sharing is specifically directed by the Director, Division of Acquisition Management, or voluntarily offered by the performing organization for projects:

(A) Where a particular research objective or scope of effort is specified by FEMA rather than proposed by the performing organization. This will usually include any formal solicitation for a specific contractual requirement.

(B) The principal purpose of which is the production of, or design, testing, or improving of products, materials, devices, systems or methods.

(c) *Guidelines for determining the amount of cost sharing.* (1) For educational institutions and other not-for-profit or non profit organizations, cost sharing normally may vary from 1 percent to as much as 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of signifiant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from as little as 1 percent or less of the total project cost to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise or competitive position and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominately engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from the research under Federal agreements.

(3) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit on the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit, rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated by the agency shall contain the clause included in FEMAPR 44–7.5002–9.

§ 44–3.408 Letter contract.

Prior to the award of a letter contract the contracting officer shall make a determination that no other type of contract is suitable under the circumstances surrounding the procurement and shall support this determination by detailing the reasons why no other type of contract is suitable. The determination and supporting documentation shall then be submitted to, and must be approved by, the head of the procuring activity before the letter contract may be awarded.

Subpart 3.7—Negotiated Overhead Rates

§ 44–3.700 Scope of subpart.

This subpart sets forth policies and procedures concerning negotiated overhead rates for use in cost-reimbursement type contracts.

§ 44–3.702 General.

(a) When a contractor performs work in the same period under several contracts for one or more procuring offices or agencies, it may be desirable and appropriate, when mutually agreed to by FEMA and the contractor, to negotiate uniform overhead rates for application to all such contracts in order to (1) effect uniformity of approach, (2) effect economy in administrative effort, and (3) promote timely settlement of reimbursement claims.

(b) When the contracting officer determines that the above conditions exist, he shall include the negotiated overhead rate clause set forth in 41 CFR 1–3.704–1.

(c) If the prospective cost-reimbursement contract is the only contract to be performed by the contractor for the Government during a given period or if the contracting officer determines that it is not appropriate to include the clause specified in 41 CFR 1–3.704–1, determination of the reimbursable amount of the overhead under the contract shall be based upon final audit of the actual costs incurred during the period of performance and the clause set forth in FEMAPR 44–7.5002–6 shall be included.

§ 44–3.707 Overhead ceilings.

When the contracting officer determines in accordance with 41 CFR 1–3.707 that it is appropriate to place an overhead ceiling in the contract, he shall include the clause set forth in FEMAPR 44–7.5002–8.

Subpart 3.8—Price Negotiation Policy and Techniques

§ 44–3.800 Scope of subpart.

This subpart sets forth policies and procedures concerning final price negotiation, consideration of late proposals, and source selection.

§ 44–3.801–2 Responsibility for determination of final price.

In the event a contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable and, if the contracting officer is unable to obtain a satisfactory solution after exhausting the courses of action set forth in 41 CFR 1–3.801–2(c), the matter shall be referred for resolution to the head of the procuring activity with a statement of facts and the contracting officer's recommendations.

§ 44–3.802 Preparation for negotiation.

§ 44–3.802–2 Alternate procedures for consideration of late proposals.

When the head of the procuring activity determines that the procedures set forth in 41 CFR 1–3.802–1 are not appropriate for certain classes of negotiated procurement conducted by FEMA, he may authorize the adoption of the procedures set forth in 41 CFR 1–3.802–2(b) for consideration of late proposals and modifications (except where the procurement of general purpose automated data processing equipment is involved unless use of the procedures set forth in 41 CFR 1–3.802–2(b) is expressly authorized by the Commissioner, Automated Data and Telecommunications Service, GSA).

§ 44–3.805 Selection of offerors for negotiation and award.

§ 44–3.805–50 Source selection procedures.

All competitive procurements in excess of $10,000 shall be subject to a formal selection procedure as described herein.

(a) A proposal evaluation team shall be appointed for each competitive procurement. For procurements under $500,000, the team shall be called the Technical Evaluation Panel. For those procurements in excess of $500,000, the team shall be called the Source Evaluation Board.

(b) Each competitive solicitation shall contain applicable selection criteria including the numerical ranking of each major criterion and shall be agreed upon by the proposal evaluation team.

(c) The proposal evaluation team shall evaluate each proposal against the criteria established in the request for proposal. The initial evaluation shall be to determine technical merit and then shall be combined with the business evaluation to determine the overall merit. Upon completion of this total evaluation the competitive range shall be established. The competitive range shall include those proposals which through written or oral discussions with the proposer have a reasonable chance of selection when all factors are considered, including cost. The competitive range shall be established by the Source Evaluation Board for procurements in excess of $500,000 and

by the contracting officer on those under $500,000.

(d) Discussions shall be conducted with all proposers in the competitive range. Each proposer shall be given an opportunity to submit a revised proposal. A common cutoff date shall be established for receipt of the revisions. Upon receipt the appropriate evaluation team shall evaluate and prepare a final ranking. A final recommendation report will be prepared and furnished to the selecting official. The selecting official for those procurements under $500,000 shall be the contracting officer and for those over $500,000 the head of the cognizant program office shall be the selecting official.

(e) The selecting official shall consider the recommendations and select the firm(s) for final negotiations. The contracting officer shall then enter into final negotiations with the selected firm(s) to resolve all remaining terms and conditions necessary to reach final agreement.

Subpart 3.51—Protests Against Award

§ 44-3.5101 Negotiated procurement protests.

Protests against award of negotiated contracts shall be processed in accordance with FEMAPR 44-2.407-8 and 41 CFR 1-2.407-8.

PART 44-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Sec.

44-4.000 Scope and applicability of part.

Subpart 4.9—Unsolicited Proposals [Reserved]

Subpart 4.10—Architect-Engineer Services

44-4.1000 Scope of subpart.
44-4.1004 Selection.
44-4.1004-1 Establishment of architect-engineer evaluation boards.
44-4.1004-50 Conflict of interest.
44-4.1004-51 Privity of information.

Subpart 4.11—Procurement and Contracting for Government-Wide Automated Data Processing Equipment, Software, Maintenance Services, and Supplies

44-4.1100 Scope of subpart.
44-4.1104 Request for procurement action.
44-4.1104-50 Clearance procedures.

Subpart 4.50—Interagency Procurement [Reserved]

Authority: 41 CFR 1-1.008.

§ 44-4.000 Scope and applicability of part.

This part sets forth policies and procedures regarding unsolicited proposals and the procurement of architect-engineer services, automatic data processing equipment and services, and property and services from other Federal agencies.

Subpart 4.9—Unsolicited Proposals [Reserved]

Subpart 4.10—Architect-Engineer Services

§ 44-4.1000 Scope of subpart.

This subpart sets forth policies and procedures for the establishment of architect-engineer evaluation boards and for architect-engineer source selection.

§ 44-4.1004 Selection.

§ 44-4.1004-1 Establishment of architect-engineer evaluation boards.

Each architect-engineer evaluation board, whether permanent or ad hoc, shall consist of at least five voting members who are Federal employees from the appropriate FEMA program office or, from Federal offices outside the program office, as appropriate. One member of each board shall be appointed chairman. Five alternate members, who are Federal employees, shall also be appointed. The majority of voting members shall be from the program office concerned. The members of a permanent board shall be appointed by the Director for a period of two (2) years.

§ 44-4.1004-4 Source selection.

(a) The heads of offices cognizant over programs which from time to time may require architect-engineer services are designated as source selection officials for all procurements of architect-engineer services, and as such are vested with the authority to review the recommendations of the evaluation board and to make the final selection of the firms best qualified to perform the work, in accordance with the provisions of 41 CFR 1-4.1004-4. Rejections of the recommended firms and the reasons for their rejection will be in writing.

(b) Upon the determination of the qualified firms by the source selection official, a requisition shall be forwarded to the procuring office which shall indicate the order of qualification, including capability, of the selected firms. The procuring office shall then send a request for proposal to, and begin negotiations with, the firm ranked highest on the list.

§ 44-4.1004-50 Conflict of interest.

If at any time during the selection process a board member or advisor to the board encounters a situation with one or more of the firms being considered that might be, or might appear to be, a conflict of interest, he will disqualify himself and call it to the attention of the chairman who shall refer the matter to the Office of General Counsel.

§ 44-4.1004-51 Privity of information.

The evaluation board is to be insulated from outside pressures to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

Subpart 4.11—Procurement and Contracting for Government-Wide Automated Data Processing Equipment, Software, Maintenance Services, and Supplies

§ 44-4.1100 Scope of subpart.

This subpart sets forth policy governing the procurement of all automatic data processing equipment, software, maintenance services, and supplies by FEMA.

§ 44-4.1104 Request for procurement action.

§ 44-4.1104-50 Clearance procedures.

No solicitation or modification to an existing contract, when related in whole or in part to the procurement of ADP equipment or services, shall be issued until approval is obtained from the General Services Administration pursuant to 41 CFR 1-4.1104.

Subpart 4.50—Interagency Procurement [Reserved]

PART 44-7—CONTRACT CLAUSES

Sec.

44-7.000 Scope of part.

Subpart 7.50—Additional Clauses

44-7.5001 Additional clauses to be used in all contracts.
44-7.5001-1 Notification of changes.
44-7.5001-2 Suspension of work.
44-7.5001-3 Disabled veterans and veterans of the Vietnam era.
44-7.5002 Additional clauses to be used in contracts as appropriate.
44-7.5002-1 Rights in data.
44-7.5002-2 Reproduction of reports.
44-7.5002-3 Coordination of Federal reporting requirements.
44-7.5002-4 Services of consultants.
44-7.5002-5 Publication.
44-7.5002-6 Indirect costs (actual).
44-7.5002-7 Limitation of funds.
44-7.5002-8 Indirect costs (ceiling).
44-7.5002-9 Consideration and payment (cost-sharing).
44-7.5002-10 Warranty.
44-7.5002-11 Ocean freight shipment—use of American-flag vessels—reports.
44-7.5002-12 Method of payment—letter of credit.

Authority: 41 CFR 1-1.1008.

§ 44-7.000 Scope of part.

This part sets forth special contract clauses which are in addition to clauses set forth in the FPR for use in connection with the procurement of personal property and nonpersonal services (including construction).

Subpart 7.50—Additional Clauses

§ 44-7.5001 Additional clauses to be used in all contracts.

§ 44-7.5001-1 Notification of changes.

Notification of Changes

(a) *Notices.* Except in the case of changes identified as such in writing and signed by the contracting officer, the contractor shall notify the contracting officer in writing promptly, and in any event within 5 calendar days from the date that the contractor identifies any Government conduct (including actions, inactions, and written or oral communications) which the contractor regards as a change to the contract terms and conditions. The notice shall state:

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and contractor official or employee involved in or knowledgeable about such conduct; and

(3) The identification of any documents and the substance of any oral communication involved in such conduct.

(b) *Continued Performance.* Following submission of the notice required by paragraph (a) of this section, the contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the contractor.

(c) *Government response.* The contracting officer shall promptly, and in any event within five calendar days after receipt of notice, respond thereto in writing. In such response the contracting officer shall either:

(1) Confirm or deny that the conduct of which the contractor gave notice constitutes a change, and

(2) In the event that the contracting officer confirms that the conduct constitutes a change, he shall provide the contractor with appropriate direction. In the event that the contracting officer denies that the conduct constitutes a change, he shall direct the contractor to continue performance of the contract in accordance with the communication regarded as a change, and advise him that should he wish to pursue the matter further to do so pursuant to the Disputes clause of the contract.

(d) *Equitable Adjustments.* If the contracting officer confirms that Government conduct effected a change as alleged by the contractor, and such conduct causes an increase or decrease in the contractor's cost of, or the time required for, performance of any part of the work under this contract, an equitable adjustment shall be made.

(e) *Notification of contacting officer.* If the contractor fails to notify the contracting officer of Government conduct regarded by the contractor to constitute a change to the contract within five (5) days from the date such conduct is identified, the Government will assume no liability in regard to the alleged change.

§ 44-7.5001-2 Suspension of work.

Suspension of Work

(a) The contracting officer may, at any time, by written order to the contractor, require the contractor to suspend, delay or interrupt all, or any part, of the work called for by this contract for a period up to ninety (90) days after the order is delivered to the contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a suspension of work issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work suspension. Within a period of ninety (90) days after a suspension of work order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer shall either:

(1) Cancel the suspension of work order; or

(2) Terminate the work covered by such order as provided in the "Termination for Convenience" clause of this contract.

(b) If a suspension of work issued under this clause is cancelled or the period of the order or any extension thereof expires, the contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(1) The suspension of work results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract, and

(2) The contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the contracting officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a suspension of work order is not cancelled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the suspension of work order shall be allowed in arriving at the termination settlement.

(d) If a suspension of work order is not cancelled and the work covered by such order is terminated for default, the reasonable costs resulting from the suspension of work order shall be allowed by equitable adjustment or otherwise.

§ 44-7.5001-3 Disabled veterans and veterans of the Vietnam era.

Disabled Veterans and Veterans of the Vietnam Era

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occuring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding

employment openings and hires as may be required. State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e) of this section.

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placings of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this order shall include, but not be limited to periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause:

(1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be in the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veteran's Readjustment Act (Hereinafter referred to as "The Act").

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by terms of the Vietnam Era Veteran's Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or order of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

§ 44-7.5001-7 Payment of interest on contractor's claims.

Payment of Interest on Contractor's Claims

(a) If an appeal if filed by the contractor from a final decision of the contracting officer under the Disputes clauses of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the contractor furnishes to the contracting officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding paragraph (a) of this section, (1) Interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the contracting officer determines the contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

§ 44-7.5002 Additional clauses to be used in contracts as appropriate.

§ 44-7.5002-1 Rights in data.

Rights in Data

The following clause shall be included in each contract for which data is expected to be a product of the work:

(a) *Subject data.* As used in this clause, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government-rights.* Subject only to the proviso of paragraph (c) of this section, the Government may use, duplicate or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in paragraph (b) of this section, with respect to any subject data which may be copyrighted, the contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate or dispose of such data in any manner and for any purpose whatsoever and to have or permit others to do so: provided, however, that such license shall be only to the extent that the contractor now has, or prior to completion or final settlement of this contract may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The contractor shall mark all subject data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The contractor shall not affix any restrictive markings upon any subject data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any subject data is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor subject data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within two years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any subject data and any data not called for in the schedule of this contract but generated in performance of the contract, and the contractor shall promptly prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in subject data as provided in paragraph (b) of this section. The contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of two years from the date he accepts such items. When data, other than subject data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

§ 44-7.5002-2 Reproduction of reports.

Include the following clause when the product of the contract is a report, data or other written material.

Reproduction of Reports

Reproduction of reports, data or other written material, if required herein is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8 by 10-½ inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils masters and plates which are to be used on single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10-¾ by 14-¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data or other written material.

§ 44-7.5002-3 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

Coordination of Federal Reporting Services

In the event that it is a contractual requirement to collect information from ten or more public respondents, the provisions of 44 U.S.C., Chapter 35, (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project officer the required Office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefor shall be in writing signed by the contracting offier.

§ 44-7.5002-4 Services of consultants.

The following clause shall be used in contracts where it is anticipated that consultant services may be used:

Services of Consultants

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled, "Subcontracting."

the prior written approval of the contracting officer shall be required:

(a) Whenever any employee of the contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract except when the consultant has been identified and rates established during negotiations of this contract.

Whenever contracting officer approval is required, the contractor shall obtain and furnish to the contracting office information concerning the need of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

§ 44-7.5002-5 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product:

Publication

(a) *Definition.* For the purpose of this clause, "publication" includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result, in, disclosing information to the public.

(b) *General.* The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or such other means as the Director of the Federal Emergency Management Agency shall determine.

(c) *Reports furnished the Government.* All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) *Publication by Government.* The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) *Publication by contractor or technical personnel.*

(1) *Publication in whole or in part of contractor's reports furnished the Government.* Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions, and the conditions in paragraph (e)(4) and paragraph (f):

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) *Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder.* The contractor or technical personnel may issue a publication concerning, or based in whole or in part on the results of, the research and development and studies conducted under this contract and may secure copyright therein but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish in such manner as he may deem to be in the public interest the results of such research and development and studies, subject to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained herein.

(3) *General condition if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance.* If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractors's reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) *Copies of contractor and technical personnel publications to be furnished the Government.* The contractor or technical personnel will furnish the contracting officer six (6) copies of any publications which are based in whole or in part on the research and development and studies conducted under this contract.

(f) *Administratively confidential information.* The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) *Inclusion of provisions in contractor's agreements.* The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study hereunder.

§ 44-7.5002-6 Indirect costs (actual).

When is has been determined pursuant to FEMAPR 44-3.702(c) that it is not appropriate to include the Negotiated Overhead Rates clause set forth in 41 CFR 1-3.704, the following clause shall be inserted:

Indirect Cost (Actual)

In accordance with the "Allowable Cost, Fixed Fee, and Payment" clause of the contract, the contractor shall be paid his actual overhead cost. Allowable overhead cost will be determined by the contracting officer in accordance with the principles set forth in 41 CFR Part 1-15. Any failure of the parties hereto to agree as to what constitutes actual overhead costs shall be considered a dispute covering a question of fact within the meaning of the clause of this contract entitled "Disputes".

§ 44-7.5002-7 Limitation of funds.

When a contract has not been funded in full the following clause shall be included:

Limitation of Funds

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates, but does

not exceed, the total amount actually allotted to the contract.

(c) If at any time the contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount then allotted to the contract, the contractor shall notify the contracting officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty days prior to the end of the period specified in the Schedule the contractor will advise the contracting officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the contracting officer will, upon written request by the contractor, terminate this contract pursuant to the provisons of the Termination clause on such date. If the contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the contracting officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the contractor for costs incurred in excess of the estimated cost to the Government set forth in the schedule, and the contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the total of the amount then allotted to the contract by the Government plus the contractor's corresponding share unless and until the contracting officer has notified the contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication, or representation in any other form or from any person other than the contracting officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the contractor for any costs in exess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted, unless the contracting officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the contractor to exceed the amount allotted in the schedule in the absence of a statment in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the contractor shall be entitled to that percentage of the fee set forth in the schedule equivalent to the percentage of completion of the work contemplated by this contract.

§ 44-7.5002-8 Indirect costs (ceiling).

When it has determined in accordance with 41 CFR 1-3.707 that it is appropriate to place an overhead ceiling in the contracts, insert the following clause:

Indirect Costs (With Ceiling)

(a) Pursuant to the provisions of the clause of this contract entitled, "Indirect Costs (Actual)", the following rates are established:

Period, Cost Center, Type, Rate, Base

(b) In addition to the principles for determination of costs set forth in the clause of this contract entitled "Indirect Costs (Actual)", the following special provision shall be applicable to this contract.

Final overhead rates shall not exceed ———% of the allowable direct labor dollars; provided, however, that in the event overhead rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling overhead rate agreed to herein then the rates based upon those established by such cognizant auditor shall apply. The Government will not be obligated to pay any additional amounts on account of overhead above the ceiling overhead rate set forth above.

§ 44-7.5002-9 Consideration and payment (cost-sharing).

The following clause shall be inserted in each cost-sharing contract:

Consideration and Payment (Cost-Sharing)

(a) The estimated cost for the performance of this contract is $———. The contractor agrees to bear without reimbursement by the Government —— % of the cost for performance hereunder. Such cost sharing shall be effected as set forth in Paragraph (b) below.

(b) Public vouchers or invoices shall be submitted to the contracting officer in an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the contractor in excess of ——% of such amount. The Government shall not be obligated to reimburse the contractor for the Government's share of the costs in excess of $——— nor is the contractor obligated by this contract to expend his own funds in excess of $———.

§ 44-7.5002-10 Warranty.

When it has been determined that it is appropriate to place a warranty on equipment or services furnished under a contract, insert the following clause set forth below. Each construction contract shall incorporate an appropriate clause.

Warranty

The contractor agrees that the supplies or services furnished by the contractor under this contract shall be covered by warranties which are either standard or customary in the trade or are substantially similar to, and not in excess of, a standard or customary trade warranty. The contractor shall furnish any warranty description at time of delivery. Supply package shall be simply marked to show existence of the warranty, its expiration date and the company official to be notified.

§ 44-7.5002-11 Ocean freight shipment—Use of American-flag vessels—Reports.

The following clause shall be used when appropriate with the required report filed as set forth in paragraph (b) of this section.

(a) It is the policy of FEMA to encourage and foster the American Merchant Marine. Pursuant to the provisions of section 901(b) of the Merchant Marine Act of 1936 (46 U.S.C. 1241) invitations for bids and request for proposals shall in appropriate cases contain the following clause:

U.S.-Flag Vessel Provision

The contractor agrees to ship in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of any equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels. Pursuant to section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. sec. 1241(b), the Director or his duly authorized representative may permit shipment in a manner other than that required by this provision upon the basis of evidence furnished by the contractor that U.S.-flag commerical vessels are not

available at fair and reasonable rates for U.S.-flag commerical vessels. The contractor will be required to certify compliance with this requirement prior to final payment. For purposes of this section, the term "privately owned U.S.-flag commercial vessels" shall not be deemed to include any vessels which, subsequent to September 21, 1961, shall have been either: (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of 3 years.

(b) Each affected office shall submit to the Chief, Office of Market Development, Cargo Preference Control Center, Maritime Administration, U.S. Department of Commerce, Washington, D.C. 20235, a report as follows: Within 20 working days of the date of loading for each shipment originating in the United States, or within 30 working days for each shipment originating outside the United States, a report consisting, where obtainable, of a properly notated and legible copy in English of the ocean bill of lading. If a copy of the bill of lading is unobtainable or not in English, the report shall be made in the following format:

Federal Emergency Management Agency

Office ———
Date ———
Cargo perference shipment report:
Vessel name ———
Vessel flag ———
Date of loading ———
Port of loading ———
Port of final discharge ———
Commodity description ———
Gross weight in pounds ———
Total ocean freight revenue in U.S. dollars —

§ 44-7.5002-12 Methods of payment—Letter of credit.

(a) The contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No.——, established by ———, Federal Emergency Management Agency (FEMA), against which the contractor will withdraw funds pursuant to prescribed Federal Reserve Letter of Credit procedures, as implemented by FEMA.

(b) The contractor shall: (1) initiate cash drawdowns only when actually needed for its disbursements, (2) timely report cash disbursements and balances as required by the contracting office, and (3) impose the same standards of timing and amount upon any secondary recipients including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the contractor against the Federal Reserve Letter of Credit referred to above shall be only for current allowable expenditures necessary for the performance of the contract.

(d) Then so requested in writing by the contracting officer, the contractor shall repay to the Government, in accordance with prescribed agency procedures, such part of the unliquidated balance of the advance payments as shall, in the opinion of the contracting officer, be in excess of the contractor's current needs or in excess of the contract price.

(e) If upon completion or termination of this contract all amounts obtained by the contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the contractor from the Government, and any excess funds shall be repaid by the contractor to the Government.

(f) Upon the happening of any of the following events of default: (1) a finding by the contracting officer that the contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the contractor withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; or

(3) Take possession of and, with or without advertisements, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the contractor.

(g) Notwithstanding any other provision of this contract, the contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(h) (1) Interest shall be charged in the manner provided herein at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41; 85 Stat. 97, for the Renegotiation Board on subadvances or downpayments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with nonprofit educational or research institutions for experimental, developmental or research work.

(2) The office administering advance payments is designated as the Division of Acquisition Management.

(i) For the performance of this contract, the Government shall pay the contractor: The cost thereof (hereinafter referred to as "allowable cost") determined by the contracting officer to be allowable in accordance with (1) 41–CFR 1–15 as in effect on the date of this contract; and (2) the terms of this contract.

(j) For the purpose of determining amounts to be advanced under this contract, costs previously incurred shall only include those recorded costs which result, at the time of requests for further advances, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid for

materials which have been issued from the contractor's stores inventory and production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for purposes of obtaining advances under this contract until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes of obtaining advances under this contract until payment has been made.

(l) The contractor shall submit an invoice or a voucher designated as a "Completion Invoice" or "Completion Voucher" promptly following completion of the work under this contract but in no event later than one year (or such longer time as the contracting officer may in his discretion approve in writing) from the date of such completion. The contracting officer can direct that a final report of expenditures be included with the completion invoice or voucher.

(m) The contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the contractor or any assignee under this contract shall be paid by the contractor to the Government, to the extent that they are properly allocable to costs for which the contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the contracting officer. Prior to final payment under this contract, the contractor shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allowable to costs for which the contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statements by the contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided, however, that such claims are not known to the contractor on the date of the execution of the release, and provided further, that the contractor gives notice of such claims in writing to the contracting officer not more than six years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

(3) Any cost incurred by the contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by references, designating services to be performed or materials to be furnished by the contractor at his expense or without cost to the Government.

PART 44–11—FEDERAL, STATE AND LOCAL TAXES

Sec.

44–11.000 Scope of part.

Subpart 11.4—Contract Clauses

44–11.401–4 Matters requiring special consideration.

Subpart 11.50—Resolution of Tax Problems

44–11.500–1 Resolution of tax problems.

Authority: 41 CFR 1–1.008.

§ 44–11.000 Scope of part.

This part sets forth policies and procedures for dealing with matters concerning Federal, State or local taxes.

Subpart 11.4—Contract Clauses

§ 44–11.401–4 Matters requiring special consideration.

Pursuant to 41 CFR 1–11.401–4(d), it is the policy of FEMA to implement the procedures set forth in 41 CFR 1–11.404–4 (a), (b), and (c) as appropriate.

Subpart 11.50—Resolution of tax problems

§ 44–11.500–1 Resolution of tax problems.

In order to have uniformity in FEMA's treatment of the tax aspects of a contract and to insure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within FEMA for handling all tax problems. Therefore, procuring offices will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the contracting officer shall request in writing the assistance of the Office of General Counsel. The request shall detail the problem and be accompanied by appropriate backup data. The Office of General Counsel shall report to the contracting officer as to the necessary disposition of the tax problem. The contracting officer will notify the contractor of the outcome of the tax problem. The Office of General Counsel shall have the responsibility for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

PART 44–13—GOVERNMENT PROPERTY

Sec.

44–13.000 Scope of part.
44–13.001 General policy.

Subpart 13.1—Definitions

44–13.100 Scope of subpart.
44–13.101 Government property.
44–13.102 Real property.
44–13.103 Personal property.
44–13.104 Facilities.

Subpart 13.2—Furnishing Government Property to Contractors

44–13.201 Responsibility of FEMA.
44–13.202 Availability of required property.

Authority: 41 CFR 1–1.008.

§ 44–13.000 Scope of part.

This part sets forth policy concerning the furnishing of Government property to contractors under FEMA contracts.

§ 44–13.001 General policy.

It is the general policy of FEMA to contract with suppliers which are able to perform the requirements of a

contract without being furnished property by the Government. This policy has been established to prevent FEMA from assuming any responsibility for the performance of work under a contract which rightly vests in the contractor, and to preclude the possibility of creating an unfair competitive advantage for one prospective contractor over another. However, circumstances may arise in which the interests of the Government would be best served by furnishing property to contractors, such as in a case where the property is necessary to contract performance, or, when furnishing Government property will result in substantial cost savings to the Government.

Subpart 13.1—Definitions

§ 44-13.100 Scope of subpart.

For purposes of this part, and unless otherwise indicated, the following terms have the meaning set forth in this subpart.

§ 44-13.101 Government property.

"Government property" means all property furnished by the Government or acquired with Federal funds by the contractor for use in performance of his contractual obligations. Government property includes Government-furnished property and contractor-acquired property as defined below:

(1) "Government-furnished property" is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise; made available to the contractor; and

(2) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

§ 44-13.102 Real property.

"Real Property" means land, buildings or items permanently affixed to either land or buildings.

§ 44-13.103 Personal property.

"Personal property" means all property that is subject to ownership except real property. Personal property includes:

(a) *Reportable property.* All property other than real property having a unit acquisition of cost of $100.00 or more and tools regardless of cost.

(b) *Expendable property (material).* Property which may be incorporated into, or attached to, an end item to be delivered under the contract or which may be consumed or expended in the performance of the contract.

It is the general policy of FEMA that contractors will furnish all materials required for the performance of its contracts. However, furnishing materials to contractors could be preferable when:

(1) The material is not readily available on the market or cannot be conveniently manufactured by a contractor or his subcontractors. This premise is valid only if the Government has the material in inventory or can readily obtain it;

(2) The cost would be less than if the contractor obtained the material;

(3) The Government may already be exercising control over the material;

(4) Standardization or Government-design control is desired;

(5) It is necessary to expedite the research; and

(6) Furnishing the material may significantly broaden the competitive base.

(c) *Residual Materials and Property.* All serviceable material not consumed in the performance of a contract, and all unserviceable or scrap equipment not consumed in the performance of a contract.

§ 44-13.104 Facilities.

"Facilities" means all industrial property (other than material, special tooling, military or space property, special test equipment and technical information) used for the production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

Subpart 13.2—Furnishing Government Property to Contractors

§ 44-13.201 Responsibility of FEMA.

When the Government furnishes property it assumes a direct role in the performance of the contract. Therefore, the furnishing of Government property should be carefully planned and scheduled in order to avoid delays or mistakes. When Government-furnished property is essential for performance of the contract, FEMA must insure that the contractor receives the property in the specified quantities and at the required time.

§ 44-13.202 Availability of required property.

Prior to making a decision to furnish property to a prospective contractor, the contracting officer shall first ascertain whether the subject property is available by inquiring into existing inventories. Property requested should be identified by functional need in order to maximize the effectiveness of furnishing Government property. The functions to which the Government furnished property are to be applied should be analyzed to determine what types of equipment can be used from available sources. When existing Government property is not available or suitable, the contractor may be authorized (subject to surveillance and approval of the contracting officer) to purchase new property. The contractor then vouchers for the property along with the normal billing process, is reimbursed and the Government takes title to the property. Contractor-acquired and Government furnished property can be combined in the same contract.

PART 44-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

44-15.000 Scope of part.

Subpart 15.50—Suspension and Disallowance of Contract Costs

44-15.5000 Scope of subpart.
44-15.5001 Suspension and disallowance of costs.
44-15.5001-1 Procedure.
44-15.5001-2 Recourse to determination of cost as unallowable.

Authority: 41 CFR 1-1.008.

§ 44-15.000 Scope of part.

This part sets forth policies and procedures concerning unallowable costs.

Subpart 15.50—Suspension and Disallowance of Contract Costs

§ 44-15.5000 Scope of subpart.

This subpart sets forth policies and procedures concerning suspension and disallowance of contract costs and recourse to determination of costs as unallowable.

§ 44-15.5001 Suspension and disallowance of costs.

§ 44-15.5001-1 Procedure.

In the event that the contractor presents a cost for reimbursement which the contracting officer considers to be unallowable, questionably allowable or partially unallowable, either specifically pursuant to 41 CFR 1-15, or consistent with the intent thereof, he shall notify the Division of Budget and Finance, the project officer, and the contractor that the subject cost, plus any corresponding overhead, general and administrative expense, indirect cost or fee associated with its incurrence, is being suspended pending receipt of supporting documentation from the contractor justifying the cost. This notification in each case shall be in writing and shall be accompanied by a copy of the invoice indicating the questioned cost. The notification to the contrctor shall also

indicate that supporting documentation for the cost must be received within thirty days, or such longer period as may be granted by the contracting officer, or the cost will be disallowed pending final audit. The notification to the Division of Budget and Finance shall also indicate that the cost and associated pool costs and/or fee should not be reimbursed. If the contractor provides the requested documentation, and the contracting officer considers it to adequately support the cost as allowable, the contracting officer shall so notify the contractor and advise him to resubmit the cost and associated pool costs on his next invoice clearly indicating the origin and identity of the cost. In the event that the contractor should fail to submit the requested documentation, or if the supporting documentation is considered to be inadequate, or does not support the cost as allowable, the contracting officer shall notify the contractor, in writing, to this effect and advise him that the cost is being disallowed and, therefore, shall not be reimbursed.

§ 44-15.5001-2 Recourse to determination of cost as unallowable.

When the contracting officer has determined, in accordance with the foregoing procedure, that a cost is unallowable, his decision shall be final and conclusive unless the contractor seeks remedy pursuant to the Disputes clause of the contract.

PART 44-16—PROCUREMENT FORMS

Sec.

44-16.000 Scope of part.

Subpart 16.1—Forms for Advertised Supply Contracts

44-16.101 Contract forms.

Subpart 16.2—Forms for Negotiated Supply Contracts

44-16.202 Contract forms.
44-16.202-50 Fixed price contracts.
44-16.202-51 Cost-reimbursement contracts.

Subpart 16.3—Purchase and Delivery Order Forms

44-16.301 Order-invoice-voucher forms.
44-16.301-2 Order for supplies or services (Standard Forms 147 and 148).

Subpart 16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect Engineer Contracts)

44-16.501 Contract forms.
44-16.501-1 Fixed price contracts.
44-16.501-2 Cost-reimbursement contracts.

Subpart 16.7—Forms for Negotiated Architect-Engineer Contracts

44-16.701 Forms prescribed.
44-16.701-1 Fixed price contracts.
44-16.701-2 Cost-reimbursement contracts.

Subpart 16.8—Miscellaneous Forms.

44-16.806 Contract pricing proposals.

Authority: 41 CFR 1-1.008.

§ 44-16.000 Scope of part.

This part prescribes forms for use by FEMA procuring offices in connection with the procurement of supplies, purchase and delivery orders, nonpersonal services, and architect-engineer services and other miscellaneous forms for use in connection with the procurement of supplies and services.

Subpart 16.1—Forms for Advertised Supply Contracts

§ 44-16.101 Contract forms.

Standard Form 32 (SF-32) shall be used for all advertised supply contracts in excess of $10,000.

Subpart 16.2—Forms for Negotiated Supply Contracts

§ 44-16.202 Contract forms.

§ 44-16.202-50 Fixed price contracts.

Standard Form 32 (SF-32) shall be used for all negotiated fixed price supply contracts in excess of $10,000.

§ 44-16.202-51 Cost-reimbursement contracts.

FEMA Form DAM/GP-1 shall be used for all cost-reimbursement supply contracts in excess of $10,000.

Subpart 16.3—Purchase and Delivery Order Forms

§ 44-16.301 Order-invoice-voucher forms.

§ 44-16.301-2 Order for supplies or services (Standard Forms 147 and 148).

All FEMA purchase and delivery orders shall be executed on Standard Form 147 (SF-147), "Order for Supplies or Services", and Standard Form 148 (SF-148), "Continuation Sheet".

Subpart 16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

§ 44-16.501 Contract forms.

§ 44-16.501-1 Fixed price contracts.

FEMA Form DAM/GP-3 shall be used for all advertised or negotiated fixed price contracts in excess of $10,000 for nonpersonal services other than construction, architect-engineer services and transportation.

§ 44-16.501-2 Cost-reimbursement contracts.

FEMA Form DAM/GP-2 shall be used for all cost-reimbursement contracts in excess of $10,000 for nonpersonal services other than construction, architect-engineer services or transportation.

Subpart 16.7—Forms for Negotiated Architect-Engineer Contracts

§ 44-16.701 Forms prescribed.

§ 44-16.701-1 Fixed price contracts.

The forms prescribed in 41 CFR 1-16.701 shall be used exclusively in preparing fixed price architect-engineer contracts with the exception that the clause set forth in 41 CFR 1-16.703(d) shall be substituted for Clause 7 of the Standard Form 253 (SF-253). In addition, FEMA Form DAM/SP-1 shall also be used.

Subpart 16.8—Miscellaneous Forms

§ 44-16.806 Contract pricing proposals.

Cost or pricing data shall be submitted by contractors on Optional Form 59, if the proposed contract is for other than research and development work.

PART 44-30—CONTRACT FINANCING

Sec.

44-30.000 Scope of part.

Subpart 30.4—Advance Payments

44-30.400 Scope of subpart.
44-30.406 Responsibility—delegation of authority.
44-30.408-1 Use of letter of credit method of financing.
44-30.414-2 Contract provisions for advance payments.

Authority: 41 CFR 1-1.008.

§ 44-30.000 Scope of part.

This part sets forth policies and procedures concerning advance payments on prime contracts.

Subpart 30.4—Advance Payments

§ 44-30.400 Scope of subpart.

This subpart covers policies and procedures concerning authority to make advance payments and the letter of credit method of financing and sets forth clauses to be used in contract where advance payment has been authorized.

§ 44-30.406 Responsibility—delegation of authority.

The responsibility and authority for making findings and determinations with respect to advance payments and in each case for approval of contract provisions for advanced payments, or for approval of terms and conditions thereof, shall be vested in the head of the procuring activity. Prior to committing FEMA to the making of an advance payment, the head of the

procuring activity shall obtain the advice and concurrence of the Director, Division of Budget and Finance concerning such advance payment.

§ 44-30.408-1 Use of letter of credit method of financing.

Letters of credit for contracts shall be established and administered in accordance with FEMA procedures established for all Letter of Credit transactions.

§ 44-30.414-2 Contract provisions for advance payments.

The clause set forth in 41 CFR 1-30.414-2 shall be included in all contracts for which advance funding has been authorized, but for which the letter of credit method of providing advance funding is not approprate. The clause set forth in FEMAPR 44-7.5002-12 shall be included in all contracts for which advance funding has been authorized and the letter of credit method of providing such advance funding is appropriate.

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Federal Register

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INFORMATION AND ASSISTANCE

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

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202-275-3054	Subscription problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
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213-688-6694	Los Angeles, Calif.
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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
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

64196 11–6–79 / Low-income housing; modernization program—PHA-owned projects

64072 11–6–79 / Mobile home loans; down payments

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

64204 11–6–79 / Indian housing

INTERIOR DEPARTMENT

Fish and Wildlife Service—

64247 11–6–79 / Coryphantha ramillosa (bunched cory cactus) et al.; endangered species

64250 11–6–79 / Endangered and threatened species; arctomecon humuilis (dwarf bear—poppy)

64246 11–6–79 / endangered and threatened species; berberis sonnei (truckee barberry)

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing December 5, 1979

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, D.C.

WHEN: Jan. 11 and 25; at 9 a.m. (identical sessions)

WHERE: Office of the Federal Register, Room 9409, 1100 L Street N.W., Washington, D.C.

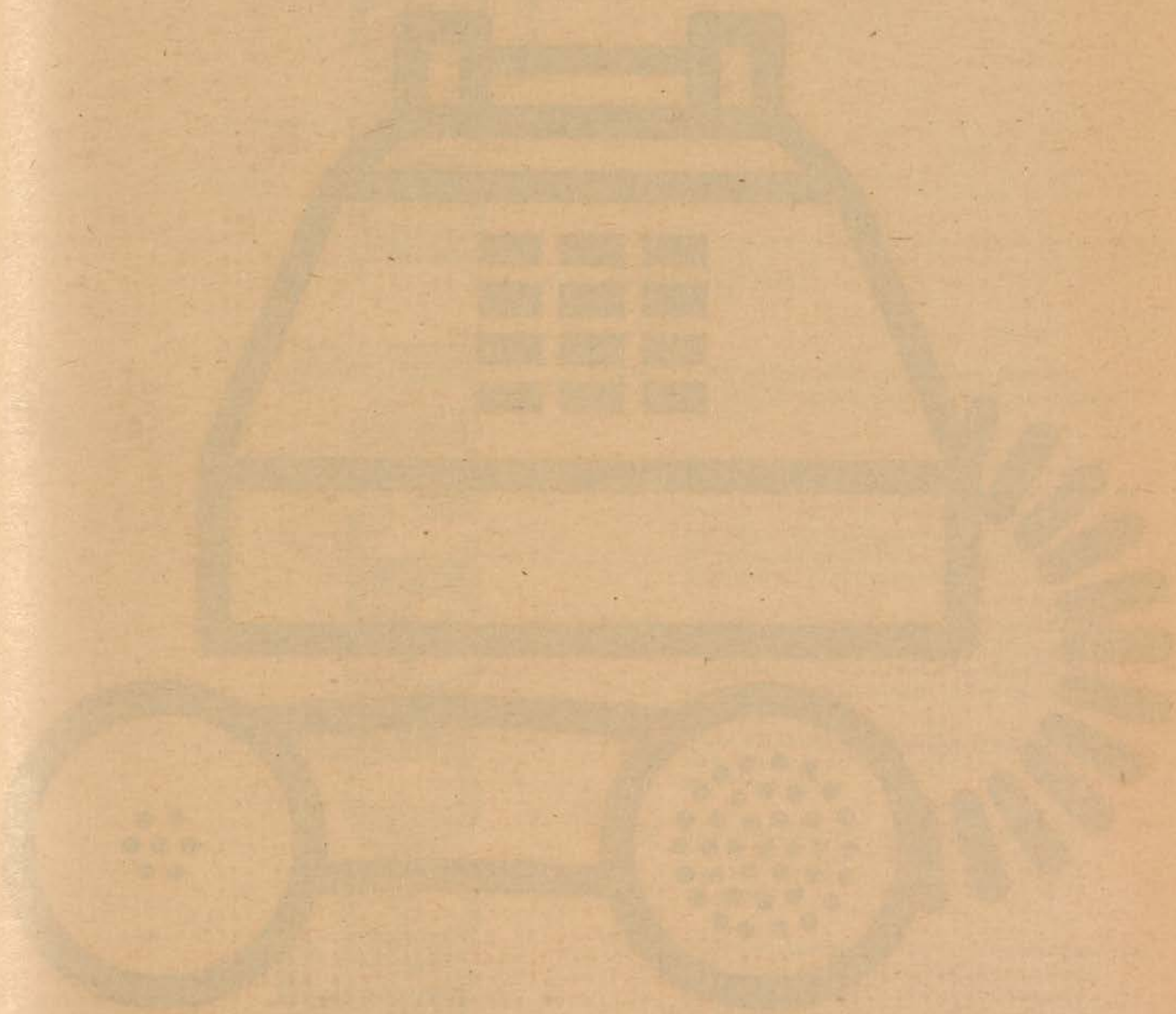
RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235 or Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

DALLAS, TEXAS

WHEN: December 8, 1979 at 9:30 a.m.

WHERE: Dunfey Dallas Hotel
3800 West Northwest Highway
Dallas, Texas

RESERVATIONS: Call Mary Peters (214) 445–0855



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