HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

EXECUTIVE ORDERS—
Revocation of Executive Orders pertaining to acquisition of, holding of or other transaction in gold........................................ 1003
Exemption of Willard Deason from mandatory retirement ................................................................. 1004

NUCLEAR FUEL AND WASTES—AEC regulates transportation to minimize environmental effects; effective 2-5-75 ......................................................... 1005

SELF-EMPLOYMENT TAX—Treasury/IRS proposal allowing inclusion in estimated tax and increasing applicable percentage; comments by 2-5-75.................. 1044

INCOME TAX—Treasury/IRS temporary regulations on election of lump sum distribution treatment......................................................... 1016

AIRPLANE NOISE—
DOT/FAA adopts emission standards for propeller-driven small planes; effective 2-7-75........................................................................ 1029
DOT/FAA proposals on standards for small planes in response to EPA submittal; comments by 3-7-75......................................................... 1061
DOT/FAA proposes noise abatement altitudes for turbojets in response to EPA submittal; comments by 3-7-75......................................................... 1072

MEDICARE—
HEW/SSA regulations on limiting liability of beneficiary; effective 2-5-75......................................................... 1022
HEW/SSA proposals on outpatient services for speech pathology and physical therapy; comments by 2-5-75......................................................... 1057

PESTICIDES—EPA establishes exemptions for formaldehyde and paraquat in raw agricultural commodities (2 documents); effective 1-6-75.................. 1042, 1043

GRANTS FOR PUBLIC SCHOOLS—HEW/OE finances special equipment and minor remodeling......................................................... 1017

(Continued Inside)

PART II:

NATIONAL HEALTH SERVICE CORPS—HEW/PHS proposal amending procedures and criteria for designating critical manpower shortage areas; comments by 2-5-75......................................................... 1203

PART III:

PRIVACY RIGHTS OF PARENTS AND STUDENTS—HEW proposals on access to and release of records; comments by 3-7-75......................................................... 1207
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.)

USDA/AMS—Lemons grown in California and Arizona; limitation on handling.
42673; 2-12-74

EPA—Prevention of significant air quality deterioration............. 42510; 12-5-74

FCC—Organization and procedure; citizens radio service; combined notice of apparent liability to monetary forfeiture and notice of violation............. 41256; 11-26-74

FHLBB—Federal Savings and Loan System; Advisory Directors............. 42340;
12-5-74

ATTENTION: Questions, corrections, or requests for information regarding the contents of this issue only may be made by dialing 202-523-5282. For information on obtaining extra copies, please call 202-523-5240. To obtain advance information from recorded highlights of selected documents to appear in the next issue, dial 202-523-5022.
THE PRESIDENT
Executive Order
Exemption of Willard Deason from mandatory retirement
Revocation of Executive Orders pertaining to the regulation of the acquisition, holding, or other transactions in gold

EXECUTIVE AGENCIES

ADVISORY COUNCIL ON HISTORIC PRESERVATION
Notices
Meeting:
Public information purposes

AGRICULTURAL MARKETING SERVICE
Rules
Expenses and rates of assessment:
Lettuce grown in South Texas
Plant variety protection; information concerning applications

Notices
Grain standards:
Protein in grain inspection point

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE
Rules
Marketing quotas and acreage allotments:
Rice
Sugarcane; Louisiana

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Commodity Credit Corporation; Farmers Home Administration.

ARMY DEPARTMENT
Notices
Meetings:
Shoreline Erosion Advisory Panel

ATOMIC ENERGY COMMISSION
Rules
Radioactive materials; environmental effects of transportation

CIVIL AERONAUTICS BOARD
Rules
Certification of aircraft carriers; exemption of.

Notices
Hearings, etc.:
Aerocucina, Inc., et al. (2 documents)
Allegheny Airlines, Inc., et al.
American Airlines, Inc., et al.
Delta Airlines
Delta Airlines
Domestic common fares
International Air Transport Association (6 documents)
Mail rates; Transatlantic, Transpacific and Latin American
Ozark Air Lines

COAST GUARD
Rules
Anchorage regulations:
Guam

Notices
Environmental statement:
Hanford waste management operations
Uranium Hexafluoride; charges, enriching services, etc.; revisions

COMMISSION ON HISPANIC HERITAGE
See National Endowment for the Humanities.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
Rules
Short supply controls:
Ferrous scrap

Notices
Scientific articles; duty free entry

DRUG ENFORCEMENT ADMINISTRATION
Notices
Watches and watch movements; allocation of quotas

ECONOMIC DEVELOPMENT ADMINISTRATION
Rules
Grants and loan program; establishment and organization

EDUCATION OFFICE
Rules
Public schools; strengthening academic subject instruction

EXECUTIVE DEPARTMENT
See also Domestic and International Business Administration; Economic Development Administration; National Oceanic and Atmospheric Administration.

HIGHLIGHTS—Continued

VETERANS EDUCATION—HEW/ OE proposed amendments to cost-of-instruction program; comments by 2-5-75
FERROUS SCRAP—Commerce/DIBA discontinues short supply export controls; effective 1-1-75
RAILROAD SAFETY—DOT/FRA proposes to discontinue approval of certain track inspection devices; comments by 2-17-75

FINANCIAL REPORTING
SEC requires increased disclosure of registrant/independent accountant relationships
SEC proposes requiring increased interim data disclosure; comments by 3-15-75

CLOSED MEETINGS REPORTS—Treasury makes summaries available to public

MEETINGS—
DDJ/Army: Shoreline Erosion Advisory Panel, 1-23 and 1-24-75
GPO: Depository Library Council to the Public Printer, 1-25-75
Commission of Fine Arts, 1-15-75
Advisory Council on Historic Preservation, 1-21-75

RESCHEDULED MEETING—
HEW/NIH: National Cancer Institute, 1-29 and 1-30, 1975

RESCHEDULED MEETING—

RESCHEDULED MEETING—

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
CONTENTS

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES
Notices
Committee renewals:
  Architecture Plus Environmental Arts Advisory Panel 1135
  Dance Advisory Committee 1136
  Expansion Arts Advisory Panel 1136
  Federal Architecture Task Force Advisory Panel 1135
  Federal Graphics Evaluation Advisory Panel 1135
  Federal-State Partnership Advisory Panel 1136
  Literature Advisory Panel 1136
  Music Advisory Panel 1136
  Public Media Advisory Panel 1136
  Theatre Advisory Panel 1136
  Visual Arts Advisory Panel 1136

NATIONAL INSTITUTES OF HEALTH
Notices
Meetings:
  National Cancer Institute 1114

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Notices
Marine Mammal permit applications:
  Southwest Fisheries Center, National Marine Fisheries Service 1112

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Proposed Rules
State plans for enforcement of standards:
  Colorado plan supplements 1082

PUBLIC HEALTH SERVICE
Proposed Rules
  National Health Service Corps: Critical manpower shortage areas 1203

RECLAMATION BUREAU
Notices
Lands sales:
  Wyoming 1083

SECURITIES AND EXCHANGE COMMISSION
Rules
  Financial statements:
    Disclosure of relationships between registrants and independent accountants 1010
  Information sources:
    Public reference facilities and publications 1009

Proposed Rules
  Financial statement disclosure:
    Interim data 1079
    Subsidiary companies 1078

TARIFF COMMISSION
Notices
  Workers determination petitions:
    Joseph Weks & Sons 1139

TRANSPORTATION DEPARTMENT
  See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration.

TREASURY DEPARTMENT
  See also Internal Revenue Service.

Notices
  Advisory committees:
    Public availability of reports 1084
  Antidumping:
    Lock-in amplifiers and parts form United Kingdom 1084
  Transfer of functions:
    Alcohol, Tobacco and Firearms Bureau 1084

Industries International, Inc 1138
NICOA Corp 1138
Westgate California Corp 1139
Zenith Development Corp 1139

SOCIAL SECURITY ADMINISTRATION
Rules
  Health insurance for aged and disabled:
    Liability limitations 1022

Proposed Rules
  Health insurance for aged and disabled:
    Outpatient physical therapy and speech pathology services 1057

NOTES

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
list of CFR parts affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month. A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

3 CFR
EXECUTIVE ORDERS:
EO 118235---------------- 1003
EO 118236---------------- 1004

7 CFR
183------------------------------- 1026
730------------------------------- 1027
874------------------------------- 1028
971------------------------------- 1029
1421------------------------------- 1030

10 CFR
51------------------------------- 1005

12 CFR
Proposed Rules:
545------------------------------- 1076
561------------------------------- 1076
563------------------------------- 1076

13 CFR
301------------------------------- 1029

14 CFR
21------------------------------- 1029
36------------------------------- 1029
29 (2 documents)---------------- 1030
71 (4 documents)---------------- 1030
72------------------------------- 1031
121------------------------------- 1032
239------------------------------- 1033
286------------------------------- 1049

Proposed Rules:
21------------------------------- 1061
36------------------------------- 1061
71 (7 documents)---------------- 1059, 1061
91------------------------------- 1072
15 CFR
377------------------------------- 1041
395------------------------------- 1041
17 CFR
200------------------------------- 1009
210------------------------------- 1012
240------------------------------- 1012
249------------------------------- 1013
Proposed Rules:
210 (2 documents)---------------- 1078, 1079
240------------------------------- 1079
249------------------------------- 1079

18 CFR
Proposed Rules:
1------------------------------- 1077
3------------------------------- 1077
20 CFR
405------------------------------- 1022
Proposed Rules:
405------------------------------- 1057
21 CFR
135------------------------------- 1013
135c (2 documents)---------------- 1013
135e------------------------------- 1013

26 CFR
1------------------------------- 1014
11------------------------------- 1016

Proposed Rules:
1------------------------------- 1044
301------------------------------- 1044
29 CFR
Proposed Rules:
1052------------------------------- 1083

33 CFR
110------------------------------- 1016
127------------------------------- 1019

40 CFR
126------------------------------- 1041
189 (3 documents)---------------- 1042, 1043

42 CFR
Proposed Rules:
23------------------------------- 1204

43 CFR
Proposed Rules:
5463------------------------------- 1017

45 CFR
141------------------------------- 1017
Proposed Rules:
99------------------------------- 1208
169------------------------------- 1053

47 CFR
91------------------------------- 1031

49 CFR
Proposed Rules:
213------------------------------- 1076
### PROPOSED RULES:

- **3 CFR**
  - Proclamations: 4339
  - Executive Orders: 11756 (see EO 11824) 761
  - 11824 751
  - 11825 1003
  - 11826 1009

- **7 CFR**
  - 180 1036
  - 730 1027
  - 874 752
  - 907 753
  - 910 753
  - 971 1028
  - 1431 1029
  - Proposed Rules: 928
    - 989
  - 205

- **15 CFR**
  - 209
  - 210
  - 240
  - 249

- **16 CFR**
  - Proposed Rules: 1
    - 210
    - 240
    - 249
  - 217

- **17 CFR**
  - 209
  - 310
  - 240
  - 249

- **18 CFR**
  - Proposed Rules: 1
  - 1077

- **19 CFR**
  - Proposed Rules: 1
  - 5

- **20 CFR**
  - 405
  - 614
  - Proposed Rules: 405
    - 797
    - 1057
    - 739

- **21 CFR**
  - 135
  - 135e
  - Proposed Rules: 940
    - 1304
    - 1308

- **24 CFR**
  - 205
  - Proposed Rules: 221
    - 787

- **25 CFR**
  - Proposed Rules: 221
    - 787

- **26 CFR**
  - Proposed Rules: 1
    - 1004

- **29 CFR**
  - 512
  - Proposed Rules: 1610
    - 1032
  - 31 CFR
    - 316
    - 754
  - 33 CFR
    - 110
    - 1016
  - 127
    - 1016
  - 36 CFR
    - 7
    - 762
  - 40 CFR
    - 123
    - 1043
  - 46 CFR
    - 915
    - 902
  - 41 CFR
    - 406
    - 921
    - 912
  - 42 CFR
    - 72
    - 1204
  - 43 CFR
    - Proposed Rules: 5422
  - 45 CFR
    - 141
    - 1017
  - 47 CFR
    - 91
    - 1021
  - 49 CFR
    - 571 (2 documents)
      - 4
      - Proposed Rules: 21
    - 800
    - 801
  - 50 CFR
    - 21
    - 1075
  - 51
    - 1053
  - 52
    - 1003

---

### FEDERAL REGISTER PAGES AND DATES—JANUARY

<table>
<thead>
<tr>
<th>Pages</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-747</td>
<td>Jan. 2</td>
</tr>
<tr>
<td>749-1002</td>
<td>3</td>
</tr>
<tr>
<td>1009-1216</td>
<td>6</td>
</tr>
</tbody>
</table>

Federal Register, Vol. 40, No. 3—Monday, January 6, 1975  

vii
Title 3—The President
EXECUTIVE ORDER 11825

Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold

By virtue of the authority vested in me by section 1 of the Act of August 8, 1950, 64 Stat. 419, and section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a), and as President of the United States, and in view of the provisions of section 3 of Public Law 93–110, 87 Stat. 352, as amended by section 2 of Public Law 93–373, 88 Stat. 445, it is ordered as follows:

SECTION 1. Executive Order No. 6260 of August 28, 1933, as amended by Executive Order No. 6359 of October 25, 1933, Executive Order No. 6556 of January 12, 1934, Executive Order No. 6560 of January 15, 1934, Executive Order No. 10896 of November 29, 1960, Executive Order No. 10905 of January 14, 1961, and Executive Order No. 11037 of July 20, 1962; the fifth and sixth paragraphs of Executive Order No. 6073, March 10, 1933; sections 3 and 4 of Executive Order No. 6359 of October 25, 1933; and paragraph 2(d) of Executive Order No. 10289 of September 17, 1951, are hereby revoked.

SECTION 2. The revocation, in whole or in part, of such prior Executive orders relating to regulation on the acquisition of, holding of, or other transactions in gold shall not affect any act completed, or any right accruing or accrued, or any suit or proceeding finished or started in any civil or criminal cause prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and may be enforced in the same manner as if the revocation had not been made.

This order shall become effective on December 31, 1974.

THE WHITE HOUSE,
December 31, 1974.

[FR Doc.75–472 Filed 1–3–75; 10:22 am]
EXECUTIVE ORDER 11826
Exemption of Willard Deason from Mandatory Retirement

Willard Deason, Commissioner of the Interstate Commerce Commission, will become subject to mandatory retirement for age during January of 1975 under the provisions of section 8335 of title 5 of the United States Code unless exempted by Executive order.

In my judgment, the public interest requires that Commissioner Deason be exempted from such mandatory retirement.

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of section 8335 of title 5 of the United States Code, I hereby exempt Willard Deason from mandatory retirement until December 31, 1975.

THE WHITE HOUSE,
December 31, 1974.

[FR Doc.75–473 Filed 1–3–75; 10:23 am]
PART 51—LICENSEING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Environmental Effects of Transportation of Radioactive Materials to and From Nuclear Power Plants


The proposed amendment addressed the question of consideration of environmental effects associated with the transportation of nuclear fuel and wastes in individual cost-benefit analyses for light-water-cooled nuclear power reactors. An Atomic Safety and Licensing Appeal Board had earlier held that such effects should be considered. The proposed amendment would allow applicants in their environmental reports, and the Commission in its detailed environmental statements, to account for the environmental effects of transportation of fuel and waste by using specified numeric values contained in an appended Summary Table.

The proposed amendment has been adopted by the Commission in the form set out below. Since the time of publication of the notice of Proposed Rule Making in this proceeding, the Commission has promulgated a new 10 CFR Part 51, Licensing and Regulatory Policy and Procedures for Environmental Protection, (39 FR 26279), which replaces and supersedes Appendix D to 10 CFR Part 50. In view of this, the rule set out below is in the form of an amendment to 10 CFR Part 51 rather than in the form of the originally proposed amendment to Appendix D to 10 CFR Part 50. To the extent that this rule differs from the Appeal Board decisions in Vermont Yankee, supra, those decisions have no further precedential significance.

In conjunction with publication of the proposed amendment, the Commission, by notice published in the Federal Register on February 5, 1973 (38 FR 3334), announced the availability for comment of the "Environmental Survey of Transportation of Radioactive Materials to and From Nuclear Power Plants" (WASH-1238), dated December 1972 and prepared by the Commission's Regulatory Staff. The Environmental Survey, which serves as a primary data base for the amendment, considers and assesses the contribution of environmental effects from transportation of fuel and solid wastes for a "typical" light-water-cooled nuclear power reactor. The Environmental Survey also contains an analysis of the probabilities of occurrences of transportation accidents, the expected consequences of such accidents, and an analysis of the potential public health and environmental protection of workers and the general public under normal conditions of transport. The document was not intended to serve, however, as a detailed analysis of all studies and cost-benefit analyses as they relate to the transportation aspects of the uranium fuel cycle. Nor was the purpose of this proceeding to undertake a full environmental review of transportation of fuel and waste. The purpose of this proceeding was to determine certain elements to be factored into Impact statements in particular licensing proceedings. In the rulemaking proceeding on the Environmental Effects of the Uranium Fuel Cycle (39 FR 14188, April 22, 1974), this proceeding addresses a procedural question involving the implementation of NEPA's requirement for cost-benefit analyses in impact studies. For this reason, no environmental impact statement has been prepared in connection with this rulemaking.

The Commission notes that transportation of mixed oxide fuel and waste to and from light-water reactors will be considered separately in the generic environmental impact statement currently being prepared in connection with use of that type of fuel in light-water reactors. In addition, a number of other studies are currently being conducted which relate to the transportation of radioactive materials, including reactor fuels and waste. These studies include, among others, (1) a surveillance program of cargo handlers and loading crews to determine the exposure of personnel involved in handling radioactive materials; (2) a Joint AEC-Department of Transportation program to simplify regulations to assure adequate training of shipper and carrier personnel and to encourage development of industry standards on transportation of radioactive materials; and (3) development of guides for state and local authorities on responsibilities and procedures for handling emergency situations. Any pertinent results of these studies and other ongoing studies will be reflected in a revised Environmental Survey, when such a revision is determined to be necessary.

In the notice of proposed rule making, all interested persons were invited to submit written comments and suggestions in connection with the proposed amendment and the Environmental Survey within 60 days after publication of the notices in the Federal Register. In addition, an informal rule making hearing was held on April 2, 1974 in Washington, D.C. to permit interested members of the public to present written and oral views on the Environmental Survey and the approach taken to the consideration of the environmental effects associated with the transportation of fuel and waste.

In setting forth the procedural format which was to be followed in the informal rule making hearing, the Commission specified, among other things, that since the hearing would be part of a rule making rather than an adjudicatory proceeding, the provisions of Subpart G, "Rules of General Applicability," of Part 2 of the Commission's Rules of Practice would not be applicable and, therefore, such procedural features as discovery and cross-examination would not be utilized.

It was provided, however, that the participants in the hearing would be subject to questioning by the presiding hearing board and that at the conclusion of the hearing, the record was to be held open for a period of 30 days, during which time any person could file supplemental written comments deemed appropriate in light of the hearing record. The notice further provided that after the expiration of the 30-day period, the presiding hearing board, without rendering any decision or making any recommendation, was to forward the hearing transcript to the Commission together with an identification of issues raised at the hearing.

Written comments were received from 26 individuals and organizations including Federal and State agencies, industry, public utilities, environmental and citizen groups, and private citizens. Participants in the informal rule making hearing included the Commission's Regulatory Staff; the Environmental Protection Agency; the Atomic Safety and Licensing Appeal Board and various individuals and organizations.

Vermont Yankee Nuclear Power Corporation: To the extent that this rule differs from the Appeal Board decision in Vermont Yankee, supra, those decisions have no further precedential significance. In conjunction with publication of the proposed amendment, the Commission, by notice published in the Federal Register on February 5, 1973 (38 FR 3334), announced the availability for comment of the "Environmental Survey of Transportation of Radioactive Materials to and From Nuclear Power Plants" (WASH-1238), dated December 1972 and prepared by the Commission's Regulatory Staff. The Environmental Survey, which serves as a primary data base for the amendment, considers and assesses the contribution of environmental effects from transportation of fuel and solid wastes for a "typical" light-water-cooled nuclear power reactor. The Environmental Survey also contains an analysis of the probabilities of occurrences of transportation accidents, the expected consequences of such accidents, and an analysis of the potential public health and environmental protection of workers and the general public under normal conditions of transport. The document was not intended to serve, however, as a detailed analysis of all studies and cost-benefit analyses as they relate to the transportation aspects of the uranium fuel cycle. Nor was the purpose of this proceeding to undertake a full environmental review of transportation of fuel and waste. The purpose of this proceeding was to determine certain elements to be factored into Impact statements in particular licensing proceedings. In the rulemaking proceeding on the Environmental Effects of the Uranium Fuel Cycle (39 FR 14188, April 22, 1974), this proceeding addresses a procedural question involving the implementation of NEPA's requirement for cost-benefit analyses in impact studies. For this reason, no environmental impact statement has been prepared in connection with this rulemaking.

The Commission notes that transportation of mixed oxide fuel and waste to and from light-water reactors will be considered separately in the generic environmental impact statement currently being prepared in connection with use of that type of fuel in light-water reactors. In addition, a number of other studies are currently being conducted which relate to the transportation of radioactive materials, including reactor fuels and waste. These studies include, among others, (1) a surveillance program of cargo handlers and loading crews to determine the exposure of personnel involved in handling radioactive materials; (2) a Joint AEC-Department of Transportation program to simplify regulations to assure adequate training of shipper and carrier personnel and to encourage development of industry standards on transportation of radioactive materials; and (3) development of guides for state and local authorities on responsibilities and procedures for handling emergency situations. Any pertinent results of these studies and other ongoing studies will be reflected in a revised Environmental Survey, when such a revision is determined to be necessary.

In the notice of proposed rule making, all interested persons were invited to submit written comments and suggestions in connection with the proposed amendment and the Environmental Survey within 60 days after publication of the notices in the Federal Register. In addition, an informal rule making hearing was held on April 2, 1974 in Washington, D.C. to permit interested members of the public to present written and oral views on the Environmental Survey and the approach taken to the consideration of the environmental effects associated with the transportation of fuel and waste.

In setting forth the procedural format which was to be followed in the informal rule making hearing, the Commission specified, among other things, that since the hearing would be part of a rule making rather than an adjudicatory proceeding, the provisions of Subpart G, "Rules of General Applicability," of Part 2 of the Commission's Rules of Practice would not be applicable and, therefore, such procedural features as discovery and cross-examination would not be utilized.

It was provided, however, that the participants in the hearing would be subject to questioning by the presiding hearing board and that at the conclusion of the hearing, the record was to be held open for a period of 30 days, during which time any person could file supplemental written comments deemed appropriate in light of the hearing record. The notice further provided that after the expiration of the 30-day period, the presiding hearing board, without rendering any decision or making any recommendation, was to forward the hearing transcript to the Commission together with an identification of issues raised at the hearing.

Written comments were received from 26 individuals and organizations including Federal and State agencies, industry, public utilities, environmental and citizen groups, and private citizens. Participants in the informal rule making hearing included the Commission's Regulatory Staff; the Environmental Protection Agency; the Atomic Safety and Licensing Appeal Board and various individuals and organizations.
RULES AND REGULATIONS

Industrial Forum; the Consolidated Utility Group; and Mr. Richard Sanders representing Mr. Ralph Nader, Friends of the Earth, and the Consolidated National Interveners.

In its Report to the Commission by the Fuel and Waste Transportation Rule Making Hearing Board, submitted on September 26, 1973, the presiding hearing board identified seven areas in which it believed issues were raised either at the hearing itself or by the written comments filed both before and after the public hearing.

The first area in which an issue was identified concerned the adequacy of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making procedures employed in the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Effects of the Uranium Fuel Cycle cited above. The hearing record indicates that the Survey shows that their assumptions are consistent with available scientific knowledge and that the Survey contains an extensive discussion of accident effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission prior to such operations. These standards must be met during design and construction. The Commission concluded that the assumptions used in estimating exposure doses, but since increased fuel rod failure might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where the moment has been a breach of the irradiated fuel cask, and the probability validity of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making procedures employed in the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Effects of the Uranium Fuel Cycle cited above. The hearing record indicates that the Survey shows that their assumptions are consistent with available scientific knowledge and that the Survey contains an extensive discussion of accident effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission prior to such operations. These standards must be met during design and construction. The Commission concluded that the assumptions used in estimating exposure doses, but since increased fuel rod failure might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where the moment has been a breach of the irradiated fuel cask, and the probability validity of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making procedures employed in the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Effects of the Uranium Fuel Cycle cited above. The hearing record indicates that the Survey shows that their assumptions are consistent with available scientific knowledge and that the Survey contains an extensive discussion of accident effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission prior to such operations. These standards must be met during design and construction. The Commission concluded that the assumptions used in estimating exposure doses, but since increased fuel rod failure might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where the moment has been a breach of the irradiated fuel cask, and the probability validity of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making procedures employed in the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Effects of the Uranium Fuel Cycle cited above. The hearing record indicates that the Survey shows that their assumptions are consistent with available scientific knowledge and that the Survey contains an extensive discussion of accident effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission prior to such operations. These standards must be met during design and construction. The Commission concluded that the assumptions used in estimating exposure doses, but since increased fuel rod failure might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where the moment has been a breach of the irradiated fuel cask, and the probability validity of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making procedures employed in the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Effects of the Uranium Fuel Cycle cited above. The hearing record indicates that the Survey shows that their assumptions are consistent with available scientific knowledge and that the Survey contains an extensive discussion of accident effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission prior to such operations. These standards must be met during design and construction. The Commission concluded that the assumptions used in estimating exposure doses, but since increased fuel rod failure might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where the moment has been a breach of the irradiated fuel cask, and the probability validity of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.

The Commission considered a similar challenge to the legal validity of the rule making procedures employed in the Environmental Effects of the Uranium Fuel Cycle cited above. The Commission concluded there, as it does here, that adjudicatory procedures were not warranted. Each participant was given all the time he requested for his oral presentation and was afforded full opportunity to submit information and data for the record. No testimony offered was excluded from the record. All documents, including the Survey, were available to the parties several weeks before the hearing. In addition, each participant was invited to submit to the hearing board relevant questions for the Regulatory Staff and/or other participants.

The second area in which issues were identified by the presiding hearing board concerns the technical adequacy of the Environmental Effects of the Uranium Fuel Cycle cited above. The hearing record indicates that the Survey shows that their assumptions are consistent with available scientific knowledge and that the Survey contains an extensive discussion of accident effectiveness of the package are maintained throughout its useful life. More important, Part 71 requires that package designs be reviewed and approved by the Commission prior to such operations. These standards must be met during design and construction. The Commission concluded that the assumptions used in estimating exposure doses, but since increased fuel rod failure might result in some increase in resultant doses, but since increased fuel rod failure affects only the accident case where the moment has been a breach of the irradiated fuel cask, and the probability validity of the rule making procedures employed and the nature of the participation by interested persons and organizations. One participant, Mr. Richard Sanders, argued that for any rule making hearing dealing with the transportation of fuel and waste on a generic basis to be legally valid, the rule-making procedures must incorporate the same procedural features used in individual production and utilization facility licensing adjudicatory proceedings, including the rights of discovery and cross-examination.
The regulatory staff submitted a letter to the Board and the other participants which noted that some of the differences in radiation dose estimates were due to differing interpretations of input data, some to differences in presentation, and some to differences in assumed values for uncertain parameters. Although there was not complete agreement, the hearing board noted that the differences in calculated values were deemed to be significant enough to consider the discrepancy resolved. In addition, the staff responded to the EPA recommendation for enlarging the values in the Summary Table in response to EPA's comments and the Staff's recommendation. As noted earlier, the staff intends to issue a supplement to the Survey explaining the differences in presentation, due to differing interpretations of input data, some to differences in presentation, and some to differences in assumed values for uncertain parameters. The Commission believes that the existing Survey provides an adequate data base for the promulgation of the regulation set forth below. The changes in the cumulative dose values in the Summary Table are in response to EPA's comments and the staff's recommendation. As noted earlier, the staff intends to issue a supplement to the Survey explaining the differences in presentation, due to differing interpretations of input data, some to differences in presentation, and some to differences in assumed values for uncertain parameters. The Commission agrees with the Board's concern regarding the rulemaking proceeding. The Commission has also accepted the staff's recommendation to enlarge the cumulative dose values in the rule and to revise the rule accordingly. It is anticipated, of course, that additional data and methods of analysis will be developed. After these data and methods become available, the Commission will undertake a re-evaluation of the environmental impact and, where significant changes are indicated, will make appropriate changes in the Environmental Survey and, where necessary, the Summary Table of environmental impact.

A third area in which issues were identified concerned the inter-relationship between the rulemaking proceeding on transportation and the rulemaking proceeding on the environmental effects of the uranium fuel cycle. A matter which was specifically addressed in the Notice of Proposed Rulemaking issued in this proceeding was the scope of the rule with respect to the derivation of these values. In addition, the Commission does not believe that incorporation of a clarifying scope provision into the amendment set forth below requires further public proceedings since the rule is not to be considered as a revision of the original proceeding but, rather, as a proposed revision of the original proceeding. Hence, there is no occasion to consider either reopening the proceeding or determining what form it should take.

A fifth area in which an issue was identified concerned the inter-relationship between the rulemaking proceeding on transportation and the rulemaking proceeding on the environmental effects of the uranium fuel cycle. A matter which was specifically addressed in the Notice of Proposed Rulemaking issued in this proceeding was the scope of the rule with respect to the derivation of these values. In addition, the Commission does not believe that incorporation of a clarifying scope provision into the amendment set forth below requires further public proceedings since the rule is not to be considered as a revision of the original proceeding but, rather, as a proposed revision of the original proceeding. Hence, there is no occasion to consider either reopening the proceeding or determining what form it should take.
Commission believes that these cases can be expedited if given the benefit of the rule's "practicable" exposures. Accordingly, compliance with the new rule will be required upon the effective date.

A seventh area in which the Board identified an issue concerns suggestions made by many of the participants for revision and reexamination of the Environmental Survey at periodic intervals. The Commission agrees with the suggestions that the Survey be re-examined from time to time to accommodate new technology and information, it does not believe it necessary or advisable to impose any specific time limit. As in the uranium fuel cycle proceeding, our view is that reexamination should be based on development of new methodologies and information for assessing the environmental impact associated with transportation, and not on any arbitrary or fixed time period.

The preceding hearing board also identified an issue concerning exposure items. One item concerns the Staff's position that since the overall environmental impact resulting from transportation is small, there is no need to search for alternative methods of reducing the environmental impact further. The question raised by the hearing board for Commission consideration is whether this position satisfies the principle of "as low as practicable" exposures. The Commission does not believe this proceeding is an appropriate one for considering whether or not the Staff's position with respect to transportation of fuel and wastes satisfies the "as low as practicable" requirement of 10 CFR Part 20. As indicated earlier, the purpose of this proceeding is to quantify the associated environmental impact of transportation of fuel and wastes under an existing set of circumstances. While the concept of "as low as practicable" must be considered in individual reactor licensing cases, it is not a concept which is applicable or appropriate to this proceeding. Of course, nuclear technology is not static; improvements in packaging are developed, they will be reflected in the Commission's requirements.

Another of the Board's suggestions for Commission consideration concerns requiring the Environmental Survey to include the Summary Table together with an indication of which parts of the Survey provide the basis for each part of the Table.

As discussed earlier, the Survey provides a methodology for analyzing and assessing the environmental effects associated with the transportation of nuclear fuels and waste and contains environmental impact values for a "model" light-water cooled nuclear power reactor. The environmental impact values contained in the Summary Table represent the application of that methodology to 84 reactors either under construction or in operation at 53 different sites. Impact values were derived for each individual reactor and values encompassing 90 percent of the 84 reactors studied were then calculated for insertion into the Table. In view of the fact that the Commission intends to issue a Supplement to the Survey showing how these values were derived, the Commission believes that this matter has been resolved.

Finally, the Board mentioned three matters raised by comments of the participants which the Staff contended were beyond the scope of the proceeding. These were: (i) regulatory standards for packaging covered by other Commission regulations; (ii) methods of transportation, types of fuel, and materials not covered by the Survey; and (iii) transportation from other than a single nuclear power reactor (i.e., transportation from 1000 reactors as opposed to a single "model" reactor). While these matters may be of interest, the Commission believes that these are beyond the scope of this proceeding.

The purpose of this proceeding was not to consider the adequacy or inadequacy of the Staff's position but rather, in part, was to assess the environmental impact of transportation of fuel and waste packaged in accordance with those regulations. Likewise, the purpose of this proceeding was not to assess or speculate as to the environmental impact of differing modes of transportation or differing types of fuel, but rather was to assess the environmental impact associated with currently used methods of transportation of fuel and waste. As to transportation from 1000 reactors as opposed to a single "model" reactor, the purpose of this proceeding was to develop environmental impact values for transportation of fuel and waste that could be factored into cost-benefit analyses for individual reactors, not to assess the cumulative environmental impact of transportation of fuel and wastes for all reactors contemplated to be in operation at some future date.

On the basis of the foregoing, the record of the rulemaking hearing, consideration of the comments received, and other factors involved, the Commission has adopted the amendment set forth below. The amendment is in substance essentially the same as the amendment proposed in the notice of proposed rulemaking published February 5, 1973 (38 FR 5954) except for the additional of a scope definition, and changes in certain values to reflect EPA comments and clarifying and editorial changes to make it conform with the format of 10 CFR Part 51.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 562 and 553 of title 5 of the United States Code, the following amendment to 10 CFR Part 51 is published as a document subject to codification.

A new paragraph (g) is added to § 51.20 to read as follows:

§ 51.20 Applicant's Environmental Report Construction Permit Stage.

(g) (1) The Environmental Report required by paragraph (a) for light-water cooled nuclear power reactors shall contain either (1) a statement that the transportation of cold fuel to the reactor and irradiated fuel from the reactor to a fuel reprocessing plant and the transportation of solid radioactive wastes from the reactor to waste burial grounds is within the scope of this paragraph, and as the contribution of the environmental effects of such transportation to the environmental cost of licensing the nuclear power reactor, the values set forth in the following Summary Table 8-4; or (ii) if such transportation does not fall within the scope of this paragraph, a full description and detailed analysis of the environmental effects of such transportation and, as the contribution of such effects to the environmental costs of licensing the nuclear power reactor, the values determined by such analyses for the environmental impact under normal conditions of transport and the environmental risk from accidents in transport.

(2) This paragraph applies to the transportation of fuel and wastes to and from a nuclear power reactor only if:

(i) The reactor is a light-water cooled nuclear power reactor with a core thermal power level not exceeding 3000 megawatts;

(ii) The reactor fuel is in the form of sintered uranium dioxide pellets encapsulated in zircaloy rods with a uranium-235 enrichment not exceeding 4% by weight;

(iii) The average level of irradiation of the irradiated fuel from the reactor does not exceed 33,000 megawatt-days per metric ton and no irradiated fuel assembly is shipped until at least 80 days have elapsed after the fuel assembly was discharged from the reactor;

(iv) Waste other than irradiated fuel shipped from the reactor is in the form of packaged, solid wastes; and

(v) Unirradiated fuel is shipped to the reactor by truck; irradiated fuel is shipped from the reactor by truck, rail, or barge; and waste other than irradiated fuel is shipped from the reactor by truck or rail.

(3) This paragraph does not apply to any applicant's environmental report submitted prior to
RULINGES AND REGULATIONS

SUMMARY TABLE S-4—ENVIRONMENTAL IMPACT OF TRANSPORTATION OF FUEL AND WASTE TO AND FROM ONE LIGHTWATER-COOLED NUCLEAR POWER REACTOR *

<table>
<thead>
<tr>
<th>NORMAL CONDITIONS OF TRANSPORT</th>
<th>ENVIRONMENTAL IMPACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Host (per irradiated fuel rod in transit)</td>
<td>220,000 Bq/m²</td>
</tr>
<tr>
<td>Weight governed by Federal or State restrictions</td>
<td>720 kg per truck; 100 tons per car per full ear.</td>
</tr>
<tr>
<td>Traffic facility</td>
<td>Rail</td>
</tr>
<tr>
<td>Rail</td>
<td>Less than 1 per day,</td>
</tr>
<tr>
<td>Less than 3 per month.</td>
<td></td>
</tr>
</tbody>
</table>

Exposed population | Estimated number of doses to exposed persons | Range of doses to exposed individuals per year (per reactor year) | Cumulative doses to exposed population (per reactor year) |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation workers</td>
<td>200</td>
<td>0.0 to 3,000 millirem</td>
<td>4 millirem.</td>
</tr>
<tr>
<td>General public</td>
<td>1,100</td>
<td>0.003 to 1.3 millirem</td>
<td>3 millirem.</td>
</tr>
<tr>
<td>Airport employees</td>
<td>600,000</td>
<td>0.0001 to 0.006 millirem</td>
<td></td>
</tr>
</tbody>
</table>

* Data supporting this table are given in the Commission's "Environmental Survey of Transportation of Radioactive Materials and Waste from Nuclear Power Plants," WAEB-1628, December 1972.

2. Paragraph (a) of § 51.23 is amended to read as follows:

§ 51.23 Contents of Draft Environmental Statement.

(a) The draft environmental impact statement will include the matters specified in § 51.20 (a), (e), and (g) and § 51.21, as appropriate.

* * *

(b) Public reference facilities; materials and records available. (1) The Commission has a specially staffed and equipped public reference room located at 1100 L Street, NW, Washington, D.C., and public reference facilities in the New York, Chicago and Los Angeles regional offices. Some facilities for public use are physically located in other regional and branch offices. In addition to materials otherwise set forth in this paragraph, certain of the materials described in paragraph (a) of this section will be available at the public reference room at the principal office of the Commission and may be available at the regional offices. Written requests should continue to be addressed to the Public Reference Section, 500 North Capitol Street, Washington, D.C. 20549.

* * *

(5) In the New York, Chicago and Los Angeles regional offices sets of microfiche are available for inspection and reproduction of all recent registration statements filed pursuant to the Securities Act of 1933, registration statements and periodic reports filed pursuant to the Securities Exchange Act, and periodic reports filed pursuant to the Investment Company Act, from 1967 to date.

(6) [Removed]

(7) [Removed]

* * *

(d) Requests for Commission records and copies thereof. Requests for Commission records may be made in person during normal business hours at the public reference room at the principal office of the Commission in Washington, D.C. Inquiries, in general, may be made to the public reference room personally, by telephone or by mail. One copy each of Commission records may be made personally or by mail to the public reference section.

* * *

(g) Fees for records services, schedule of fees. * * *

(1) * * *

(4) Copying services. * * *

1. * * *

(11) Self-service copying facilities. The contractor maintains coin-operated machines in the public reference room at the Commission's principal office in Washington, D.C. and coin-operated microfiche reader-printers in the New York, Chicago and Los Angeles regional offices. These machines, which are operated by customers on a do-it-yourself basis, can be used to make immediate copies of materials that are available for inspection in the public reference section.

2. In §§ 200.80b, 200.80c, and 200.80d the heading and text are revised to read as follows:

§ 200.80b Appendix B—SEC releases.

(a) Companies and persons who are registered with the Commission under the various Acts will continue to receive copies of individual releases pertaining to rule proposals and rule changes under the Acts for which they are registered.

(b) Other free mailing list distribution of releases has been discontinued by the Commission because of rising costs and staff limitations. However, the status of all releases under the various Acts, the corporate reorganization releases, and the litigation releases are contained in the SEC Docket, which may be purchased through the Superintendent of Documents as described in § 200.80b, and the Statistical Series releases are contained in the Statistical Bulletin, which also can be obtained by purchase through the Superintendent of Documents.

§ 200.80c Appendix C—Statutes, rules and miscellaneous publications available from the Government Printing Office.

(a) The current rules of the Commission are not published by the Commission in pamphlet form. All SEC public rules and regulations, including its Rules of Practice, are contained in Title 17 of the Code of Federal Regulations, which also is available for purchase from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Please address your request to him directly all inquiries, orders and payments concerning the following publications:


Uniform System of Accounts for Public Utility Holding Companies.

Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies.

Sample copies of the more commonly used forms under Form 10-K are available from the Commission.

(b) Pascals of copies of other SEC publications which are out of stock may be obtained through the Commission's Public Reference Section. At the cost of the copying service to be performed by the commercial copier employed to do the copying. Purchasers of copies will be billed by the copier. An example of the publications which are available in this way is the List of Registered Investment Companies.


3. Periodicals.


Statistical Bulletin. A monthly publication containing data on round lots and odd lot share volume in stock exchanges, OTC volume in selected securities, block distributions, securities registrations and offerings, not change in corporate securities outstanding, working capital of U.S. corporations, assets of non-insured pension funds, Rule 144 filings and 8K reports. SEC Docket. A weekly compilation of the full texts of SEC releases under the Securities Exchange Act, Securities Act, Trust Indenture Act, Investment Advisers Act, and Investment Company Act. Also included are the full texts of Accounting series releases, corporate reorganization releases, and litigation releases, New York Digest. A daily summary of orders, decisions, rules and rule proposals issued by the Commission under the various laws it administers, together with a resume of financial proposals contained in Securities Act registration statements and of other Commission announcements.


§ 200.80t Appendix D—other publications available from the Commission.

(a) Limited amounts of the following materials are available free of charge upon request to the Commission Publications Section:

Work of the Securities and Exchange Commission.
were such that had the firm been required to report on this period an adverse opinion would have been required. After discussions with the staff in this case, the registrant ultimately revised the interim statements.

It is essential that both the fact and the appearance of independence be sustained so that the confidence of the investing public in the reliability of audited financial statements and the integrity of the public profession be maintained and enhanced. To this end, the Commission has concluded that it is desirable to increase the level of disclosure regarding relationships between independent accountants and their clients.

Accordingly, the Commission is adopting herein a number of amendments to its rules and regulations designed to enhance the accountant’s independence by increasing disclosure of auditor-client relationships.

First, Item 12 of Form 8-K (17 CFR 249.308) under which changes in accountants must currently be reported is amended to expand the disclosures required and to clarify the intent of the Item. The amendments and the reasons therefor are as follows:

1. The resignation (or declination to stand for re-election after completion of the current audit) or dismissal of any accountant is required to be disclosed as well as the engagement of a new accountant. In the past, when only the engagement of a new accountant triggered the reporting requirement, there was sometimes considerable delay in bringing significant disagreements to the attention of investors. Under the new rule, timely disclosure is required. This may mean on some occasions that two reports on Form 8-K will be required for a single change of accountants, the first on the resignation (or declination to stand for re-election after completion of the current audit) or dismissal of the previous accountant and the second where a new accountant is selected. In such a case, information in connection with the first report may be incorporated by reference in the second.

A special variant of resignation, declination to stand for re-election after completion of the current audit, was not recognized in Securities Act Release No. 5534 which proposed these amendments. It is specified as a trigger for reporting in the adopted amendments because of a recognition that an auditor declines to stand for re-election after completion of his current audit, such action is the substantive act of resignation, and to the later time when his current engagement is terminated.

Changes in the independent accountant for a subsidiary or for a division of a corporation which the principal accountant expressed reliance also become reportable events. The proposal did not restrict this modification of existing rules to a significant subsidiary or division of the registrant, but rather to the later time reporting of changes which are minor in relation to the consolidated whole and of changes by non-controlled investee companies. For these purposes, significant subsidiary is as defined in Regulation S-X, 17 CFR 210.1-02, except that a division which was non-significant with respect to a report required in a prior period such as a division which met the size tests of the definition would be included.

In some circumstances, a report would be required regarding an accountant who did not report on financial statements of the registrant. For example, where Accountant A reported on the financial statements of a subsidiary and Accountant B was engaged for the current year but was replaced by Accountant C before he completed any examination, reports on Form 8-K should be required with respect to the change from Accountant A to Accountant B and from Accountant B to Accountant C.

2. The item would require disclosure as to whether the principal accountants reports for either of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to any one or more of the following principles. Based on comments received, the language was modified to make clear that "consistency" exceptions need not be reported in this item. The amendment to Item 12 of Form 8-K to determine whether there were any items in the previous two years which were of such an unusual and material nature that disclosure was required is inserted. Although such data are on file elsewhere, in most cases, including them in the 8-K filing will bring together in one place information which is relevant in the evaluation of auditor-client relationships.

3. The period prior to the date of the change of accountants for which warrant mention in the accountants' report if not resolved must be reported is extended from eighteen months to the period which includes the two most recent fiscal years and the subsequent interim period. The previous requirement was not sufficient to assure reporting of such disagreements in the previous two audits, and since two-year comparative statements are normally presented, this seems the minimum period which should be covered.

4. The item is amended to clarify the intent of the present item which was to require a description of all disagreements, including those where the disagreement was resolved to the satisfaction of the accountant. This clarification was necessary as a result of the experience gained from analyzing 8-Ks filed in which no description was given of disagreements or in which a simple statement was made that there were no unresolved disagreements and staff follow-up was required to obtain the necessary information. Some commentators on Securities Act Release No. 5534 which proposed these amendments requested clarification of whether disagreements at lower staff levels are required to be reported. Disagreements contemplated by this rule occur at the decision-making level; i.e., between personnel of the registrant responsible for presentation of its financial statements and the principal accountant responsible for rendering its report.

5. The term "disagreements" should be interpreted broadly in responding to this item. For example, if an accountant resigned or was dismissed after advising the registrant that he had concluded that internal controls necessary to develop reliable statements did not exist, this could constitute a disagreement in the event of a change of accountants. Similarly, if an accountant were to resign or be dismissed after informing the registrant that he had discovered facts which led him to no longer to be able to rely on management representations or which made him unwilling to be associated with statements prepared by management, such situations would constitute reportable disagreements.

6. The item is amended to require that the registrant's statement as to whether any disagreements existed be included in the Form 8-K filing rather than in a separate letter attached to the filing and to require that copies of the accountant's letter be filed as an exhibit. These changes are intended to simplify the filing procedure and to clarify the Commission's intent that the registrant's description of disagreements, if any, and the accountant's concurrence or non-concurrence therewith be included in the Form 8-K, (or attached as an exhibit). Under the existing rule, a few registrants have submitted letters separate from the Form 8-K filing with the result that the full disclosure of any disagreement was not readily available to the public.

7. When a change in independent accountants occurs so that the accountant being replaced is aware that a Form 8-K should be filed reporting the event, he might well bring that reporting responsibility to the attention of the registrant by advising him of the requirement. If he becomes aware that the required reporting has not been made, e.g., because he has not been requested to furnish a letter, he may require the registrant to file an exhibit. Item 12(d), he should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.

Second, Regulation S-X, 17 CFR Part 210 is amended to require disclosure in a note to the financial statements of any material disagreement on any matter of accounting principles or practices or financial statement disclosure reported under Item 12 of Form 8-K within twenty-four months of the date of the most recent financial statements filed in a filing. This disclosure is believed necessary to put readers of the financial statements on notice that such a disagreement existed which could have significantly affected the statements.

In addition, this amendment requires footnote disclosure of any transactions or events occurring during the fiscal year in which the change of accountants took place or during the subsequent fiscal year which are similar to any transactions...
or events which gave rise to a reported disagreement and are differently accounted for. This would include cases in which a disagreement arose during the year of change and the same transaction or transaction which gave rise to a reported disagreement was accounted for in a different manner than that which the previous accountant concluded was necessary.

If such transactions which raise the same issues of accounting principle application or disclosure are material and are accounted for in a manner different from that which the former accountant apparently concluded was required, disclosure must be made of the effect on the financial statements if the accounting method specified by the former accountant had been followed. Also, if disclosure which the former accountant apparently concluded was required regarding such events or transactions has not been made elsewhere in the financial statements, it should be made in the footnote required by this rule. The proposal was modified to not require such disclosure where the method asserted by the former accountant would be generally accepted because of standards subsequently issued. This disclosure will make investors aware of situations where alternative approaches may be followed and are favored by at least one professional accountant, and the effect of such alternative approaches. In addition, it is believed that such disclosure requirements may have the effect of discouraging shifts in accountants simply to obtain approval of an alternative accounting approach. If registrants and their present independent accountants believe that the disclosure of the effect of applying the alternative accounting approach favored by the predecessor accountant would not be significant to investors in the circumstances, they may submit a statement to that effect to the staff which will consider a waiver of the rule.

Finally, a number of amendments are made to Item 8 of Schedule 14A in CFR 240.14a-101 of the proxy rules to require additional disclosures in the proxy statement of the relationships between issuers and independent public accountants. Since this disclosure is unlikely to be relevant to other solicitation, it is required only for annual meetings of securities holders or where financial statements are required pursuant to Item 15. These changes and the reasons therefor are as follows:

1. Disclosure of the principal accountant selected or to be recommended to shareholders at an annual meeting of the directors of the issuer is required in the role of the independent accountant.

2. Disclosure of the name of the principal accountant for the previous year if different from that selected or recommended for the current year or if no accountant has been selected for the current year. This disclosure is designed to inform the stockholder when a change in accountants has occurred and who the independent accountant of record is in cases where no action has been taken to select an accountant for the current year.

3.Disclosure of disagreements between accountant and issuer reported on a Form 8-K filed to report a change in accountant during the past year is required. The disclosure is designed to call disagreements to stockholders' attention so that they may be more fully informed of the relationships between accountant and issuer. Since any disagreement must by its nature have two sides, it seems desirable that both sides have an opportunity to review its description in the interests of obtaining a balanced and complete presentation. Accordingly, the issuer is required to submit the description included in the preliminary proxy material to the accountant, and if the accountant believes that the description is not fair and appropriate, the issuer shall include a brief statement, ordinarily expected not to exceed 200 words, in the proxy statement presenting his view of the disagreement. In recognition of valid comments received, the time for submitting such statement to the issuer was extended to ten days and provision for flexibility in the number of words made.

4. Disclosure is required of whether or not representatives of the principal accountants for the current year and the most recently completed fiscal year are expected to be present at the stockholders' meeting with the opportunity to make a statement and available to respond to appropriate questions. The Commission believes that it is desirable for communication between stockholders and their independent accountants to be encouraged. While the principal communication is the accountant's report on financial statements, there may be some items that need to be brought to the attention of stockholders and there may be questions which stockholders wish to address to the accountant. This disclosure will emphasize the existence of this opportunity for communication when it is available.

5. Disclosure is required of the existence and composition of the audit committee of the Board of Directors. The Commission has already expressed its judgment that audit committees made up of outside directors have significant benefits for a company and its shareholders (Accounting Series Release No. 123). This disclosure will make stockholders aware of the existence and composition of the committees. If no audit or similar committee exists, the disclosure of that fact is expected to highlight its absence.

6. The current requirement in Item 8 for disclosure of any financial interests of the director or other certain relationships which existed during the past three years is rescinded inasmuch as the accountant, who must be independent of the financial statements, has no conflict of interest postulated from having such relationships with the accounting profession's (and the Commission's) standards for independence of accountants.

Commission action: The Commission hereby adopts amendments revising Item 12 and the list of exhibits in § 240.308 and Item 8 in § 240.14a-101 and adding a new rule designated as 240.14a-10 to § 210.3-16 of Title 17 of the Code of Federal Regulations and as amended they read as follows:

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

1. Part 210 of this chapter (Regulation S-X). A new rule designated as (a) is added to § 210.3-16 as given below:

§ 210.3-16 General notes to financial statements. (See Release No. AS-4.)

(a) to (p) • • • •

(s) Disagreements on accounting and financial disclosure matters.—If, within the twenty-four months prior to the date of the most recent annual financial statements, a Form 8-K has been filed reporting a change of accountants and included in such filing there is a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, and if such disagreement, if differently resolved, would have caused the financial statements to differ materially from those filed, state the existence and nature of the disagreement. In addition, if during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved a reported disagreement and if such transactions are material and were accounted for or disclosed in a manner different from that which the former accountant apparently concluded was required, state the effect on the financial statements if the method which the former accountant apparently concluded was required had been followed. The effects of the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

• • • • • • •

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

2. Regulation 14A: Solicitation of Proxies. Item 8 of Schedule 14A is revised as given below:


Item 8. Relationship with independent public accountants—if the solicitation is made on behalf of management of the issuer and relates to an annual meeting of security holders at which directors are to be elected, or financial statements are included pursuant to Item 16, furnish the following information.
RULES AND REGULATIONS

3. Item 12 of § 249.308 and Exhibits are revised to read as follows:

Item 12. Changes in Registrant's Certifying Accountant.

If an independent accountant who was previously engaged as the principal accountant for the current year resigns (or indicates he declines to stand for re-election after the completion of the current audit) or is dismissed as the registrant's principal accountant, or another independent accountant is engaged as principal accountant, or if an independent accountant on whom the principal accountant expressed an adverse opinion of the financial statements for the fiscal year most recently completed resigns (or indicates he declines to stand for re-election after the completion of the current audit), the company shall disclose in the proxy statement for the most recent annual meeting of shareholders and if in connection with such change(a) a disagreement between the accountant and registrant has been reported on Form 8-K or in the accountant's letter filed as an exhibit thereto, the disagreement shall be described. Prior to submitting preliminary proxy material to the Commission, registrants are expected not, to exceed 200 words, for instance, in the proxy statement, presenting his view of the matter.

(c) The proxy statement shall indicate whether or not the principal accountant is engaged to audit that subsidiary, if any, of the registrant responsible for preparation of its financial statements and personnel of the accounting firm responsible for rendering its report.

The amendments to Form 8-K and to Regulation 14A shall be effective for Forms 8-K and proxy statements filed subsequent to January 31, 1975. The amendments of Regulation S-X shall be effective with respect to financial statements filed for periods beginning on or after January 1, 1975, and shall be made applicable to Form 8-K and proxy statements filed subsequent to January 31, 1975.

By the Commission.

George A. Fitzgerald, Secretary.

December 20, 1974.

[FR Doc. 75-213 Filed 1-3-76; 8:45 am]

Title 22—Food and Drugs

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

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

Subpart C—Sponsors of Approved Applications

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

The Commissioner of Food and Drugs has evaluated a new animal drug application (38-6880V) filed by Farmers Feed & Supply Co., Tipton, IA 52772, proposing safe and effective use of a tylan premix in the manufacture of swine feed. The application is approved.

To facilitate referencing, the firm is being assigned a sponsor code number and placed in the list of firms in 21 CFR § 135.501(c).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (Sec. 512(d); 82 Stat. 247; 21 U.S.C. 360b(d)) and under authority delegated to the Commissioner (21 CFR § 2.120), Parts 135 and 135e are amended as follows:

1. In 135.501(c) by adding a new sponsor as follows:

§ 135.501 Names, addresses, and code numbers of sponsors of approved applications.

(a) * * * Firm name and address

(b) * * * * 

133 Farmer's Feed & Supply Co., Ninth St. at Northwestern Avenue, Tipton, IA 52772.

2. In 135e.10(b) by adding an additional approval as follows:

§ 135e.10 Tylan premix.

(b) * * *

(29) To 133: 0.4 grams per pound.

Item 4.

Effective date. This order shall be effective on January 6, 1975.


Dated: December 27, 1974.

Fred J. Kneisla, Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 75-213 Filed 1-3-76; 8:45 am]

PART 135e—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Diethylcarbamazine Citrate Tablets

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (6-4623V) filed by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposing safe and effective use of diethylcarbamazine citrate tablets containing 200 milligrams per tablet. In addition to previously approved tablet sizes, for the treatment of dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (Sec. 512(d); 82 Stat. 247; 21 U.S.C. 360b(d)) and under authority delegated to the Commissioner (21 CFR § 2.120), § 135e.66 is amended by revising paragraph (a) (1) to read as follows:

§ 135e.66 Diethylcarbamazine Citrate Tablets.

(a) (1) Specifications. Diethylcarbamazine citrate tablets contain 50, 200, or 400 milligrams of diethylcarbamazine citrate per tablet.
1. In the sixth line of the first full paragraph in the first column on page 44211 the number reading "1.0541" should read "1.0541 - 1."

2. In § 1.960-1(c)(4) the table to example (6) on page 44212 should appear as set forth below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretax earnings and profits of A Corporation:</td>
<td></td>
</tr>
<tr>
<td>Dividends received from B Corporation:</td>
<td>$150.00</td>
</tr>
<tr>
<td>Other income:</td>
<td>$50.00</td>
</tr>
<tr>
<td>Total pretax earnings and profits:</td>
<td>$200.00</td>
</tr>
<tr>
<td>Foreign income taxes:</td>
<td></td>
</tr>
<tr>
<td>On dividends received from B Corporation:</td>
<td>none</td>
</tr>
<tr>
<td>On other income ($250 X 0.40)</td>
<td>100.00</td>
</tr>
<tr>
<td>Total foreign income taxes:</td>
<td>100.00</td>
</tr>
<tr>
<td>Earnings and profits:</td>
<td></td>
</tr>
<tr>
<td>Attributable to dividends received from B Corporation to which sec. 902(b) does not apply</td>
<td>100.00</td>
</tr>
<tr>
<td>Attributable to other income:</td>
<td></td>
</tr>
<tr>
<td>Attributable to dividends received from B Corporation to which sec. 902(b) (1) applies</td>
<td>$50.00</td>
</tr>
<tr>
<td>Attributable to other income ($250 X 0.40)</td>
<td>200.00</td>
</tr>
<tr>
<td>Total earnings and profits:</td>
<td>300.00</td>
</tr>
<tr>
<td>Foreign income taxes deemed paid by N Corporation under sec. 902(a)(1)(C) with respect to A Corporation:</td>
<td></td>
</tr>
<tr>
<td>Tax paid by A Corporation in respect to its income other than dividends received from B Corporation which sec. 902(b) does not apply ($150/$200 X $100)</td>
<td>21.89</td>
</tr>
<tr>
<td>Tax of B Corporation deemed paid by A Corporation under sec. 902(b) (1) in respect to such income ($150/$200 X $29)</td>
<td>21.89</td>
</tr>
<tr>
<td>Total foreign income taxes deemed paid by N Corporation under sec. 902(a)(1)(C) with respect to A Corporation</td>
<td>43.78</td>
</tr>
</tbody>
</table>

3. In § 1.960-2(c) the table to example (7) on page 44213 should appear as set forth below:

<table>
<thead>
<tr>
<th>Corporation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>B Corporation (second-tier corporation)</td>
<td></td>
</tr>
<tr>
<td>Pretax earnings and profits:</td>
<td>200.00</td>
</tr>
<tr>
<td>Foreign income taxes (20%)</td>
<td>40.00</td>
</tr>
<tr>
<td>Earnings and profits:</td>
<td>160.00</td>
</tr>
<tr>
<td>Amount required to be included in N Corporation’s gross income for 1965 under sec. 961 with respect to B Corporation</td>
<td>100.00</td>
</tr>
<tr>
<td>Dividends paid by B Corporation:</td>
<td></td>
</tr>
<tr>
<td>Dividends to which sec. 902(b) does not apply (from B Corporation’s earnings and profits in respect of which an amount is required under sec. 961 to be included in N Corporation’s gross income with respect to B Corporation)</td>
<td>$100.00</td>
</tr>
<tr>
<td>Dividends to which sec. 902(b) (1) applies (from B Corporation’s other earnings and profits)</td>
<td>50.00</td>
</tr>
<tr>
<td>Total dividends paid to A Corporation:</td>
<td>150.00</td>
</tr>
<tr>
<td>Foreign Income taxes of B Corporation deemed paid by A Corporation for 1965 under sec. 902(b) (1) ($250/$180 X $40)</td>
<td>12.00</td>
</tr>
<tr>
<td>A Corporation (first-tier corporation)</td>
<td></td>
</tr>
<tr>
<td>Pretax earnings and profits:</td>
<td></td>
</tr>
<tr>
<td>Dividends received from B Corporation:</td>
<td>$150.00</td>
</tr>
<tr>
<td>Other income:</td>
<td>100.00</td>
</tr>
<tr>
<td>Total pretax earnings and profits:</td>
<td>250.00</td>
</tr>
<tr>
<td>Foreign income taxes:</td>
<td></td>
</tr>
<tr>
<td>On dividends received from B Corporation:</td>
<td>none</td>
</tr>
<tr>
<td>On other income ($100 X 0.40)</td>
<td>10.00</td>
</tr>
<tr>
<td>Total foreign income taxes:</td>
<td>10.00</td>
</tr>
<tr>
<td>Earnings and profits:</td>
<td></td>
</tr>
<tr>
<td>Attributable to dividends received from B Corporation to which sec. 902(b) does not apply</td>
<td>$100.00</td>
</tr>
<tr>
<td>Attributable to other income:</td>
<td></td>
</tr>
<tr>
<td>Attributable to dividends received from B Corporation to which sec. 902(b) (1) applies</td>
<td>$50.00</td>
</tr>
<tr>
<td>Attributable to other income ($100 X 0.40)</td>
<td>140.00</td>
</tr>
<tr>
<td>Total earnings and profits:</td>
<td>240.00</td>
</tr>
</tbody>
</table>
RULES AND REGULATIONS

A Corporation (first-tier corporation)—Con.

Earnings and profits after exclusion of amounts attributable to dividends to which sec. 902(b) does not apply ($240—$00)----------------------------- 140.00
Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to A Corporation----------------------------- none

Dividends paid by A Corporation:

Dividends to which sec. 902(a) does not apply (from A Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to A Corporation)----------------------------- none

Dividends to which sec. 902(a) (1) applies (from A Corporation's earnings and profits)--------------------------------- 175.00

Total dividends paid by A Corporation--------------------------------- 175.00

N Corporation (domestic corporation):

Foreign income taxes deemed paid by N Corporation under sec. 951 (1) with respect to B Corporation ($100/$100 X 60)----------------------------- 25.00
Foreign income taxes deemed paid by N Corporation under sec. 902(a) (1) with respect to A Corporation (allocation of earnings and profits being made under paras. (c) (2) and (d) of this section):

Tax paid by A Corporation in respect to dividends received from B Corporation to which sec. 902(b) does not apply ($100/$100 X 60)----------------------------- none

Tax paid by A Corporation in respect to its other income ($100/$100 X 60)----------------------------- 5.38

Tax of B Corporation deemed paid by A Corporation in respect to such other income ($100/$100 X 60)----------------------------- 6.70

Total foreign income taxes deemed paid by N Corporation under sec. 901------------------------------------------------------------- 12.00

Total foreign income taxes deemed paid by N Corporation under sec. 901--------------------------------- 87.00

4. In § 1.960-2(e) the table to example (8) on page 44214 should appear as set forth below:

<table>
<thead>
<tr>
<th>B Corporation (second-tier corporation):</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretax earnings and profits:</td>
<td>$250.00</td>
</tr>
<tr>
<td>Foreign income taxes (20 percent):</td>
<td>$50.00</td>
</tr>
<tr>
<td>Earnings and profits:</td>
<td>$200.00</td>
</tr>
<tr>
<td>Amount required to be included in N Corporation's gross income for 1965 under sec. 951 with respect to B Corporation:</td>
<td>$150.00</td>
</tr>
<tr>
<td>Dividends paid by B Corporation:</td>
<td></td>
</tr>
<tr>
<td>Dividends to which sec. 902(b) does not apply (from B Corporation's earnings and profits in respect of which an amount is required under sec. 951 to be included in N Corporation's gross income with respect to B Corporation):</td>
<td>$150.00</td>
</tr>
<tr>
<td>Dividends to which sec. 902(b) (1) applies (from B Corporation's other earnings and profits):</td>
<td>$50.00</td>
</tr>
<tr>
<td>Total dividends paid to A Corporation:</td>
<td>$200.00</td>
</tr>
<tr>
<td>Foreign income taxes of B Corporation deemed paid by A Corporation for 1965 ($100/$250 X 100):</td>
<td>$12.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A Corporation (first-tier corporation):</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretax earnings and profits:</td>
<td>$200.00</td>
</tr>
<tr>
<td>Other income:</td>
<td>$100.00</td>
</tr>
<tr>
<td>Total pretax earnings and profits:</td>
<td>$300.00</td>
</tr>
<tr>
<td>Foreign income taxes:</td>
<td></td>
</tr>
<tr>
<td>On dividends received from B Corporation to which sec. 902(b) does not apply ($850 X 0.05):</td>
<td>$7.50</td>
</tr>
<tr>
<td>On other income:</td>
<td></td>
</tr>
<tr>
<td>Dividends received from B Corporation to which sec. 902(b) (1) applies ($850 X 0.05):</td>
<td>$2.50</td>
</tr>
<tr>
<td>Other income of A Corporation ($100 X 0.20):</td>
<td>$20.00</td>
</tr>
<tr>
<td>Total foreign income taxes:</td>
<td>$30.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Earnings and profits:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attributable to dividends received from B Corporation to which sec. 902(b) does not apply ($150—$75.00):</td>
<td>$75.00</td>
</tr>
<tr>
<td>Attributable to dividends received from B Corporation to which sec. 902(b) (1) applies ($850—$30.00):</td>
<td>$142.50</td>
</tr>
<tr>
<td>Attributable to other income:</td>
<td></td>
</tr>
<tr>
<td>Attributable to other income:</td>
<td></td>
</tr>
<tr>
<td>Attributable to other income:</td>
<td></td>
</tr>
<tr>
<td>Total earnings and profits:</td>
<td>$270.00</td>
</tr>
</tbody>
</table>
RULES AND REGULATIONS

A Corporation (first-tier Corporation)—Con.

Earnings and profits after exclusion of amounts attributable to dividends to which sec. 902(b) does not apply ($270 less $142.50)------------------------------ 127.50
Earnings and profits attributable to dividends made with respect to N Corporation's gross income with respect to A Corporation---------------------------------------- none

Dividends paid by A Corporation:

Dividends to which sec. 902(a) does not apply (from A Corporation's other earnings and profits)------------------------------------------ 100.00

Total dividends paid to N Corporation----------------------------------------------- 100.00

N Corporation (domestic Corporation):

Foreign income taxes deemed paid by N Corporation under sec. 900(a) (1) (C) with respect to—

B Corporation ($195/$250X$250)--------------------------------------------- 37.50
A Corporation (allocation of earnings and profits being made under § 1.860–1 (c) (3) and par. (d) of this sec.):

Tax paid by A Corporation ($27.50/$127.50X$250.50)------------------- 8.38
Tax of B Corporation deemed paid by A Corporation under sec. 902(b) (1) ($27.50/$127.50X$250.50)------------------- 8.38

Total taxes deemed paid under sec. 900(a) (1) (C)----------------------------- 50.54

Foreign income taxes deemed paid by N Corporation under sec. 902(a) (1) with respect to A Corporation (Cost of earnings and profits made under pars. (c) (2) and (d) of this sec.) ($100/$142.50X$75.50)------------------- 5.25

Total foreign income taxes deemed paid by N Corporation under sec. 901------------------------------- 55.80

(T.D. 7339)

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Temporary Regulations Relating to Election of Lump Sum Distribution Treatment Under Sections 402 and 403 of the Code

This document contains temporary income tax regulations (26 CFR Part 11) under section 402(e) (4) (B) of the Internal Revenue Code of 1954, as added by section 2005 (a) of the Employee Retirement Income Security Act of 1974 in order to provide rules for the election to treat an amount as a lump sum distribution.

Section 402(e) defines the term “lump sum distribution” and provides a special 10-year averaging method of calculating the tax on the ordinary income portion of such a distribution. Under section 402(e) (4) (B), a taxpayer may elect this special averaging method for a taxable year with respect to a lump sum distribution if he elects to treat all such distributions received during that taxable year under the special method. However, after an individual has attained the age of 59½, only one election may be made with respect to that individual. The individual referred to in the preceding sentence is the employee who has participated in the plan. This is clearly expressed in the Conference Committee reports, H. R. Rep. No. 93–1280, 93rd Cong., 2d Sess. 351 (1974), and in H. R. Rep. No. 93–597, 93rd Cong., 2d Sess. 194 (1974). Individuals, estates, and trusts are the only taxpayers permitted to use the special averaging method. If a lump sum distribution with respect to an employee is made to two or more trusts, the election is to be made by the employee or by the personal representative of a deceased employee.

The proposed temporary regulations provide that an election is to be made before the expiration of the period (including extension thereof) prescribed in section 6511 of the Code for making a claim for credit or refund of the assessed tax imposed by chapter 1 of subtitle A of the Code for such taxable year.

An election to be made by filing Form 4972 as a part of the taxpayer’s income tax return or amended return for the taxable year. BecAuse of the need for immediato...

Amendments to the regulations.

In order to prescribe temporary income tax regulations relating to the election to treat an amount as a lump sum distribution pursuant to section 402(e) (4) (B) of the Internal Revenue Code of 1954, as added by section 2005 (a) of the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406, 88 Stat. 987), the following temporary regulations are hereby adopted:

Section 11.402(e) (4) (B)–1 Election to treat an amount as a lump sum distribution.

(a) In general. For purposes of sections 402, 403, and this section, an amount which is described in section 402 (a) (4) (A) and which is not an annuity contract may be treated as a lump sum distribution under section 402(e) (4) (A) only if the taxpayer elects for the taxable year to have all such amounts received during such year so treated. Not more than one election may be made under this section with respect to an employee after such employee has attained age 59½.

(b) Taxpayers eligible to make the election. Individuals, estates, and trusts are the only taxpayers eligible to make the election provided by this section. In the case of a lump sum distribution made with respect to an employee to ten or more trusts, the election provided by this section shall be made by the employee or by the personal representative of a deceased employee.

(c) Procedure for making election—

(1) Time and scope of election. An election under this section shall be made for each taxable year to which such election is to apply. The election shall be made before the expiration of the period (including extension thereof) prescribed in section 6511 of the Code for making a claim for credit or refund of the assessed tax imposed by chapter 1 of subtitle A of the Code for such taxable year.

(2) Manner of making election. An election by the taxpayer with respect to a taxable year shall be made by filing Form 4972 as a part of the taxpayer’s income tax return or amended return for the taxable year.

(3) Revocation of election. An election made pursuant to this section may be revoked within the time prescribed in subparagraph (1) of this paragraph for making an election, only if there is filed, within such time, an amended income tax return for such taxable year, which includes a statement revoking the election and is accompanied by payment of any tax attributable to the revocation. If an election for a taxable year is revoked, another election may be made for that taxable year under subparagraphs (1) and (2) of this paragraph.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 533 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section. (Secs. 902(e) (4) (B) and 7805 of the Internal Revenue Code of 1964 (86 Stat. 960, 66A Stat. 1) 26 U.S.C. 402(e) (4) (B), 7805)

DONALD C. ALEXANDER, Commissioner of Internal Revenue.

Approved: December 27, 1974.

FREDERICK W. HICKMAN, Assistant Secretary of the Treasury.

[FR Doc. 75–303 Filed 1–3–75; 8:45 am]

Title 33—Navigation and Navigable Waters
CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION
[CGD 73–101]

PART 110—ANCHORAGE REGULATIONS

PART 127—SECURITY ZONES

Apra Harbor, Guam

The purpose of this amendment to the Coast Guard anchorage and security zone regulations is to disestablish Explosive Anchorage and to replace it with a new Explosive anchorage, and revise the rules for using the general anchorage in Apra...
HARBOR. This amendment also disestablishes Security Zones C, D, E, and F and revises the rules for using Security Zone B in Apra Harbor.

The Commander, Fourteenth Coast Guard District has issued two Public Notices, No. 14-72-02 dated December 19, 1972 and No. 14-73-04, dated November 26, 1973, which proposed these amendments. Only one comment was received as a result of the first Public Notice, and this comment, from the Harbor Master and Deputy Director of the Commercial Port of Guam was in complete support of the proposal. No comments were received as a result of the second Public Notice.

Explosives Anchorages 702 and 703 are disestablished because of their close proximity to the explosive transfer facility at Navy Wharf H. An Explosive Anchorage designated 701 is established within Naval Anchorage A. All vessels carrying more than 25 tons of high explosives are required to use this anchorage.

A special anchoring area is established in the northwest corner of Apra Outer Harbor. Security Zones C, D, E, and F are no longer needed by the U.S. Navy.

In order to promote the safe passage of all vessels, the exemption of public vessels from the regulations in § 127.1401 (b) (1) and (3) is removed. These amendments have local applicability and were the subject of a local notice to and the comment by the persons concerned or they relieve restrictions to operation of vessels or are minor clarifications. Therefore notice and public comment on these amendments are unnecessary.

In consideration of the foregoing, Parts 110 and 127 of Title 33 of the Code of Federal Regulations are amended as follows:

1. By amending Subpart A by adding a new § 110.129a to read as follows:

§ 110.129a Apra Harbor, Guam.

(b) Special regulations.—(1) Section 127.15 does not apply to Security Zones C and D, except when Navy Wharf H, or a vessel berthed at Navy Wharf H is, displaying a red (BRAVO) flag by day or a red light by night.

(2) Vessels under 65 feet in length may anchor in the Special Anchorage Area as described in § 110.129a of this part without permission of the Captain of the Fort.


Effective Date: These amendments become effective on February 6, 1975.

Dated: December 24, 1974.

O. W. Sikes, Admiral, U.S. Coast Guard Commandant.

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 6422]

IDAHO

Withdrawal for National Forest Administrative Sites and Recreation Areas

By virtue of the authority vested in the President and pursuant to Executive Order No. 10556 of May 26, 1952 (17 FR 4931), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

FAYETTE NATIONAL FOREST

BOISE MEDIAN

Fools Mountain Lookout Administrative Site

T. 18 N., R. 2 W., Sec. 20, S2 W2/4.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975

Title 23—Highways

PART 301—INFORMATION AND DATA

§ 301.14 National Forests.

(Reserved.)

§ 301.24 National Forests.

(Reserved.)

§ 301.34 National Forests.

(Reserved.)

§ 301.44 National Forests.

(Reserved.)

Title 43—Public Lands: Interior

PART 101—GENERAL ADMINISTRATION

§ 101.1 National Forests.

(Reserved.)

§ 101.2 National Forests.

(Reserved.)

§ 101.3 National Forests.

(Reserved.)

§ 101.4 National Forests.

(Reserved.)

Title 50—Wildlife and Fisheries

PART 70—WILDLIFE CONSERVATION

§ 70.1 National Wildlife Refuge System.

(Reserved.)

§ 70.2 National Wildlife Refuge System.

(Reserved.)

§ 70.3 National Wildlife Refuge System.

(Reserved.)

§ 70.4 National Wildlife Refuge System.

(Reserved.)
RULES AND REGULATIONS

Subpart E—Acquisition of Equipment and Minor Remodeling

141.40 Equipment and minor remodeling eligible for Federal financial participation.

141.47 Equipment and minor remodeling costs eligible for Federal financial participation.

141.49 Use of equipment in other subject areas.

Subpart F—Supervision and Administration

141.54 Programs for supervision and related services.

141.55 Expansion or improvement.

141.56 Time basis for measurement of activities.


Subpart A—Definitions; General Provisions

§ 141.1 Definitions.


"Arts" includes, but is not limited to, music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, film, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution and exhibition of such matters.

"Audiovisual library" means a facility for the acquisition, preparation, maintenance, and circulation of audiovisual materials for education in academic subjects in public elementary and secondary schools, and controlled and operated by a State or local educational agency or other public school authority below the State level.

"Class" means a group of students assembled for instruction for a given period of time under a teacher or teachers.

"Electronic digital and analog computing equipment" means electronic devices capable of input (receiving information), memory (storing information), programs (performing arithmetical and logical operations), and output (presenting the results of the processing). Input devices may be in the form of key or paper punches, magnetic tape impregnators, magnetic ink, printed characters, or keyboard. Memory devices may be in the form of magnetic drums, tapes, disks, cards, or cores. The term also includes output media which may be in the form of punch cards, magnetic or paper tapes, printed copy, visual display. (Special-purpose computing devices and auxiliary equipment whose major application is in data processing and other business and administrative functions or for mediating instruction in one of the academic subjects.)

"Equipment" means laboratory and other special equipment as defined in this section, including materials as defined in § 100.1 of this chapter.

"Humanities" includes, but is not limited to, the study of the following: language, both modern and classic; linguistics; literature; history; jurisprudence; philosophy; archaology; the history, criticism, theory, and practice of the arts; and those aspects of the social sciences which have humanistic content and employ humanistic methods.

"Laboratory and other special equipment" (a) The term includes: (1) Fixed or movable articles, including electronic digital and analog computing equipment, which are particularly appropriate for use in providing education in academic subjects in a public elementary or secondary school and which are to be used either by teachers in connection with teaching or by students in learning in such subjects; (2) audiovisual equipment (including projectors, recorders, television cameras, television receivers, closed-circuit television distribution systems, and ancillary television and reception equipment to be used primarily for nonbroadcast purposes, except where broadcast takes the place of closed-circuit cable systems), to be used, either by teachers in connection with teaching or by students in learning with learning, primarily in providing education in academic subjects in a public elementary or secondary school; (3) materials (as defined in § 100.1 of this chapter) and devices (other than those used for printing, such as printing presses and offset printing machines) to be used for preparation of audiovisual and instructional materials for academic subjects; (4) storage equipment to be used solely for the care and protection of the items specified in paragraphs (a) (1) and (2) of this definition, when used in laboratories or classrooms; (5) test grading equipment to be used primarily in providing education in academic subjects in a public elementary or secondary school; and (6) specialized equipment for audiovisual libraries serving public elementary or secondary schools when such equipment is to be used primarily in providing education in academic subjects.

(b) The term excludes such items as general-purpose furniture, school public address systems, or items for the maintenance and repair of equipment. However, the term does include equipment for maintenance, repair, and storage of materials in audiovisual libraries.

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. It also includes any
"Minor remodeling" (notwithstanding the definition set forth in § 100.1 of this chapter) means those minor alterations, in a previously completed building, so as to extend the extent of the building to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Projects" proposed by the State educational agency for the acquisition of a building or other special equipment in academic subjects, which are needed to make effective use of the equipment. The term includes those minor alterations in previously completed buildings which are needed to make effective use of the equipment. The term also includes those minor alterations in previously completed buildings which are needed to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Plans" are subject to the approval of the Commissioner. The term shall include a requirement that there be a direct relationship between the minor remodeling and the improvement of instruction in the academic subjects. The term shall include a requirement that there be a direct relationship between the minor remodeling and the improvement of instruction in the academic subjects.

"State educational agency" or "State agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"Textbook" means a book, workbook, or manual which is used as the principal source of study material for a class or group of students, a copy of which is expected to be available for the individual use of each pupil in that class or group of students.

"Standards" are criteria, categories of eligible equipment and materials, and such relevant information as the State wishes to use in determining eligibility, including any limitations, prohibitions, or minimum quality requirements developed by the State to encourage long-range planning and to ensure acquisition of equipment appropriate for a specific purpose.

"Supervisory services" mean those technical services provided by the special education supervisors for the improvement of instruction in academic subjects.

"Supervisory services" mean those technical services provided by the special education supervisors for the improvement of instruction in academic subjects.

"Technology" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"Technology" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"Special education" means those educational programs provided for students, which are needed to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Special education" means those educational programs provided for students, which are needed to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Related services" mean those educational services provided for students, which are needed to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Related services" mean those educational services provided for students, which are needed to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.

"Related services" mean those educational services provided for students, which are needed to make effective use of the equipment. The term does not include building construction, structural alterations to buildings, building maintenance, repair, or renovation.
the State educational agency named in
the plan is the agency having authority
to administer the State plan or to super-

vise the administration of the State plan;
that the State educational agency has
authority under State law to develop,
submit, and administer or supervise the
administration of the plan; and that the
State has authority under State law to
carry out the State plan.

(20 U.S.C. 449(a))

§ 141.9 Approval by the Commissioner.
The Commissioner will approve each
plan which he determines meets the ap-
plicable requirements of Title III-A of
the Act and regulations in this part, and
will notify the applicant of the granting
or withholding of approval in each such
case. However, no final action, other than
one of approval, will be taken by the
Commissioner unless he first notifies the
applicant of his proposed action and af-
serts the applicant a reasonable oppor-
tunity for a hearing on whether the af-
tected plan meets such requirements.

(20 U.S.C. 443(b), 584(b))

§ 141.10 Ineligibility to participate.
Whenever the Commissioner, after
reasonable notice and opportunity for a
hearing, finds:
(a) That the plan fails to comply with
the requirements of Title III-A of the
Act or the regulations in this part; or
(b) That in the administration of the
plan there is a failure to comply substi-
tially with any such provisions, the
Commissioner will notify the applicant
that the applicant will not be regarded as eli-
gible to participate in the program under
Title III-A of the Act until the Com-
missioner is satisfied that there is no
longer any such failure to comply.

(20 U.S.C. 684(c))

§ 141.11 State plan assurances.
Each State plan shall contain the fol-
lowing assurances:
(a) Authority, That the State agency
will administer the plan and have ade-
quate authority to do so under State law.
(b) Fiscal procedures. That the State
agency has provided for such fiscal con-
trol and fund accounting procedures as
shall assure proper disbursement of and
accounting for Federal funds paid to the
State under the plan, including the funds
paid by the State to local educational
agencies. Subject to the applicable pro-
visions of Part 100 of this chapter, such
administration shall be conducted in ac-
cordance with applicable State laws, pol-
licies, and procedures.

(c) Reports. That the State agency will
participate in periodic consultations and
will make reports to the Commissioner
at such time, in such form, and containing
such information, as the Commissioner
may consider reasonably necessary to en-
able him to perform his duties under the
Act and will keep such records and af-
ford such access thereto, and will comply
with such other requirements as the
Commissioner may find necessary to as-
sure the correctness and verification of
such reports.

(d) Description of program. That the
State agency has developed a program
under which funds paid to the State from
its allotment under section 302(a) of
Title III-A of the Act will be expended
for projects approved by the State agency
and will be determined by the State
agency for the acquisition of (1) labora-
tory and other special equipment (other
than supplies consumed in use), includ-
ing audiovisual materials and equip-
ment, (2) printed and published mate-
rials (other than textbooks), suit-
able for use in providing education in
academic subjects in public elementary
and secondary schools, and (3) test-
grading equipment for those schools and
specialized equipment for audiovisual li-

taries serving those schools; and (2)
projects approved by the State agency for
minor remodeling of laboratory or other
space used for those materials or equip-
ment. In addition, that the State agency
has developed a program under which
funds paid to the State from its allot-
tment under section 302(b) will be ex-

defed solely for projects for (1) expan-
sion or improvement of supervisory and
related services in public elementary
and secondary schools, including leader-
ship and services to local educational
agencies to improve instruction in aca-
demic subjects, and (II) for the adminis-
tration or improvement of supervisory
and administrative reviews of the State
plan, the Commissioner will be respon-
dible for conducting periodic reviews, In-
cluding onsite reviews of the administra-
tion or programs under Title III-A of the
Act. These reviews will involve analysis
of programs and their administration in terms
of plan provisions and program objec-
tives. The State agency shall include a
report of such administrative review and
evaluation in its annual report.

(20 U.S.C. 443, 584)
The Federal Government will pay from each State's allotment an amount equal to one-half of the sums expended for the purchase of equipment and for minor remodeling, when expended for an approved project under an approved State plan. There can be no Federal financial participation in the expenditures for a project if the project, including any amendments thereto, had not been approved by the State agency prior to the incurring of the expenditures. 

(20 U.S.C. 444(a))

§ 141.31 Supervision and administration.

The Federal Government will pay from each State's allotment for Title III-A of the Act one-half of the total sum expended by the State for supervision, related services, which includes salaries of personnel or individuals unless such contributions are deposited in accordance with State law to the account of the unit or agency of State or local government without such conditions or restrictions as would negate their public character. 

(20 U.S.C. 444(b))

§ 141.32 Public nature of funds.

The expenditures to be used in computing Federal financial participation must be made from public funds. Public funds do not include contributions by private organizations or individuals unless such contributions are deposited in accordance with State law to the account of the unit or agency of State or local government without such conditions or restrictions as would negate their public character.

(20 U.S.C. 444)

§ 141.33 Reallotment.

(a) If the Commissioner determines that any part of the amount allotted to any State for any fiscal year under section 302(a) of the Act will not be required for that year, the Commissioner may reallocate the amount to other States. The reallocation will be made in proportion to the amounts originally allotted to other States for that year, except that the total amount available to each State will be reduced to the extent it exceeds the sum the Commissioner determines that State needs and will be able to use for that year, and the total of such reductions shall be similarly reallocated among the States whose allotments were not so reduced.

(b) The amounts to be so reallocated will be determined by the Commissioner on the basis of (1) reports filed by the States of the amounts required to carry out the State plan approved by the Commissioner, and (2) such other information as he may have available. Each State agency shall, if requested, submit to the Commissioner, on such date or dates as he may specify, a report or reports showing the anticipated need during the current fiscal year for the amount previously allotted or any amount needed in addition thereto, and such other information as the Commissioner may request.

(c) If the Commissioner determines that any amount reserved for any fiscal year for making loans under section 305 of the Act will not be required for that year, that part shall be available for allotment to the States in the manner provided for reallocation of Title III-A funds under paragraph (a) of this section.

(20 U.S.C. 442(c))

§ 141.34 Allotment to the Department of the Interior and the Department of Defense.

The Commissioner will make allotments, according to their respective needs for the types of programs authorized under Title III-A of the Act, to the Secretary of the Interior for elementary and secondary schools operated by Indian children by the Department of the Interior, and to the Secretary of Defense for elementary and secondary schools operated for overseas dependents by the Department of Defense.

(20 U.S.C. 588(B))

Subpart E—Acquisition of Equipment and Minor Remodeling

§ 141.46 Equipment and minor remodeling eligible for Federal financial participation.

A State educational agency may approve projects for the acquisition, with Federal financial participation, of items or equipment, for minor remodeling, for education in academic subjects only, equal to or less than such reductions are covered by the State plan current at the time of project approval.

(20 U.S.C. 443)

§ 141.47 Equipment and minor remodeling costs eligible for Federal financial participation.

(a) Equipment. (1) Acquisition of equipment includes the costs of delivery to the school and installation. (2) Equipment includes the costs of delivery, installation, and supervision services to be rendered; and (b) Minor remodeling. A minor remodelling project may include the costs of materials and the labor of local school or district personnel, provided that the costs are properly substantiated by documentation.

Subpart F—Supervision and Administration

§ 141.54 Programs for supervision and related services.

The State agency shall establish policies or procedures for programs for the expansion or improvement of the State agency's supervisory and related services to provide elementary and secondary schools in academic subjects. The policies and procedures shall set forth (a) how and to what extent the programs provide a new service or are improvements or expansions of existing services in the nature of supervision or instruction or services which effectively contribute to the supervisory services to be rendered; and (b) the scope of the agency's activities and arrangements to be undertaken in carrying out such programs.

(20 U.S.C. 443)

§ 141.55 Expansion or improvement.

An expansion or improvement of an existing program of supervisory or related services is a program which involves additional expenditures by the State agency for such services to public elementary or secondary schools in academic subjects over and above those therefor expended for like services and does one or more of the following: (a) Provides for the employment of additional qualified personnel to render such services; (b) for rendering additional or improved services to local educational agencies; (c) extend the services already being rendered to more local educational agencies.

(20 U.S.C. 443)

§ 141.56 Time basis for measurement of activities.

Whether a program is an "expansion" or "improvement" of an existing program will be measured against the activities being carried on by the State agency prior to the first day of the fiscal year in which the initial State plan of the State agency was submitted for approval.

(20 U.S.C. 442)
CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 405—FEDERAL SECURITY INSURANCE FOR THE AGED AND DISABLED

Limitation on Liability of Beneficiary Where Medicare Claims Are Disallowed

On April 8, 1974, there was published in the Federal Register (39 FR 12763) a notice of proposed rule making with proposed amendments to Subparts A, C, E, and H of Regulations No. 5 (20 CFR Part 405), regarding implementation of section 213 of Pub. L. 92–903 (66 Stat. 1366–89) entitled “Limitation on Liability of Beneficiary Where Medicare Claims Are Disallowed.” Interested persons were given until May 8, 1974, to submit written comments or suggestions thereon. Comments and suggestions received with regard to the notice of proposed rule making, responses thereto, and changes in the proposed regulations are summarized below.

1. With respect to the requirement for home health agencies, many comments were received that the procedures as drawn were not realistic in that the time frames specified for review and submission of medical records to the intermediary were too short. These comments were considered to be well taken and the procedures have been revised to take into account the problems encountered by agencies in obtaining written statements from physicians through the mails and in their own billing and recordkeeping operations.

2. A variety of comments were directed toward appeal rights. Several comments were received regarding the right of appeal by the provider established by section 213. Some indicated a belief that § 405.710(b), as published in the notice of proposed rule making, would preclude the provider from filing a request for appeal until after the beneficiary stated in writing that he intends to appeal when the provider established in section 213 means that the intermediary will take action to determine whether the beneficiary intends to appeal when the provider initiates the request. Should the provider be given notice as to whether it has been made a party to the proceeding. Another comment suggested that it would not be necessary to make the beneficiary a party to an appeal request by the provider. However, since the beneficiary is a party to the initial determination, it is a critical aspect of any subsequent proceeding that potentially could change the result of the initial determination. Therefore, this suggestion has not been adopted. Another comment objected to the restatement of existing regulations in the notice of proposed rule making, concerning the determination of amount in controversy, suggesting that amount in controversy for later appeals should be based on the amount in controversy after the initial determination. We do not believe it would be appropriate to do so if an intervening determination found that additional amounts were payable. However, it has been revised to clarify that items or services found to be noncovered will be considered in determining amount in controversy even though payment is made under the waiver of liability provision.

3. A number of comments suggested that the criteria for providers to qualify for a favorable presumption should specify the time requirements for submitting bills and medical information in a “timely manner” and the statistical basis to be used for determining whether the providers effectively distinguished between covered and noncovered cases. Since these operating guides will be subject to change based on changes in claims processing procedures, we do not believe they should be set forth in regulations but rather that they are more appropriate for inclusion in operating instructions. Another suggestion was made that the regulations specify the period of time for which program payment will be made after notice is given of noncoverage. This suggestion has been adopted. A question was raised as to whether the presumption established on the basis of meeting the criteria applies to all categories of claims submitted by a provider. Section 405.331(a) (4) has been clarified to indicate that the presumption applies to selected categories of claims, e.g., outpatient services.

4. A number of comments were received regarding the determination that there was knowledge of noncoverage of services. Comments regarding the granting of a presumption to a provider that meets the criteria set forth in the regulations but has not timely notified the provider, is now made automatically a party to the proceeding. Another comment suggested that it would not be necessary to make the beneficiary a party to an appeal request by the provider. However, since the beneficiary is a party to the initial determination, it is a critical aspect of any subsequent proceeding that potentially could change the result of the initial determination. Therefore, this suggestion has not been adopted. Another comment suggested that the regulation include a reference to the right of providers to appeal on cost settement disputes. Since such appeal rights are set forth in a different section of the Part 405, it has been determined that the waiver of liability provision, the suggestion has not been adopted.

5. Regarding Indemnification, a suggestion was made and adopted that the waiver of liability provision for a provider would be effective February 1, 1975.

Effective date: These amendments shall be effective February 5, 1976. (Catalog of Federal Domestic Assistance Program No. 13–800, Health Insurance for the Aged—Hospital Insurance, and 13.901, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: December 5, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: December 26, 1974.

CASPAR W. WETHNER,
Secretary of Health, Education, and Welfare.

Part 405 of Chapter III of Title 20 is further amended as set forth below.
§ 405.129 [Revoked]

1. Section 405.129 is revoked.
2. Sections 405.195 and 405.196 are added to read as follows:

§ 405.195 Procedures for determining whether providers of services are liable for overpaid services.

(a) General. Sections 405.330-405.332 describe the applicable standards for determining whether a provider of services will be held liable for items or services furnished a beneficiary which are excluded from coverage by reason of § 405.310(g) or § 405.310(c). In general, there will be a presumption in favor of the provider that it did not have knowledge, actual or implied, that such items or services are excluded from coverage. However, the presumption will be rebutted for all or some categories of items or services if, among other things, the provider does not meet the criteria in paragraph (b) of this section, in the case of a hospital, in paragraph (c) of this section, in the case of a skilled nursing facility, or in paragraph (d) of this section, in the case of a home health agency. In determining whether a hospital, skilled nursing facility, or home health agency meets the applicable criteria, the intermediary will, where appropriate, make findings on the basis of the provider's claims experience, onsite reviews, and review of available data and information and will advise the provider in writing of its findings if the presumption has been rebutted.

(b) Criteria for a hospital. In the case of a hospital, the criteria referred to in paragraph (a) of this section are as follows:
(1) The Secretary has found that the hospital complies with each of the standards for utilization review as set out in § 405.103(c) in effect when such finding is being made and as may from time to time be revised; and
(2) The hospital complies with the procedures established by the Administration to assure that bills for payment and medical documentation are submitted in a timely manner; and
(3) The hospital has established procedures which give the Administration reasonable assurance that it promptly notifies the patient and his attending physician where it is determined (whether by the hospital or intermediary) that such patient is being or will be furnished items or services which are excluded from coverage under title XVIII of the Act; and
(4) On the basis of the bills submitted by the hospital, the Administration finds that the agency effectively distinguishes between cases where items or services furnished by the hospital are covered under title XVIII and cases where they are excluded from coverage; and
(5) The hospital has demonstrated that it is effectively applying the conditions for certification and recertification as required by § 405.165(b).

(c) Criteria for a skilled nursing facility. In the case of a skilled nursing facility, the criteria referred to in paragraph (a) of this section are as follows:
(1) The Secretary has found that the skilled nursing facility complies with each of the standards for utilization review as set out in § 405.103(c) in effect when such finding is being made and as may from time to time be revised; and
(2) The skilled nursing facility complies with procedures established by the Administration to assure that bills for payment and medical documentation are submitted in a timely manner; and
(3) The skilled nursing facility has established procedures which give the Administration reasonable assurance that it promptly notifies the patient and his attending physician where it is determined (whether by the facility or intermediary) that such patient is being or will be furnished items or services which are excluded from coverage under title XVIII of the Act; and
(4) The skilled nursing facility has demonstrated that it is effectively applying the conditions for certification and recertification as required by § 405.165(b).

(d) Criteria for a home health agency. In the case of a home health agency, the criteria referred to in paragraph (a) of this section are as follows:
(1) The home health agency complies with the procedures described in § 405.196; and
(2) The home health agency complies with procedures established by the Administration to assure that bills for payment and medical documentation are submitted in a timely manner; and
(3) The home health agency has established procedures which give the Administration reasonable assurance that it promptly notifies the patient and his attending physician where it is determined (whether by the agency or the intermediary) that such patient is being furnished items or services which are excluded from coverage under title XVIII of the Act; and
(4) On the basis of the bills submitted by the home health agency, the Administration finds that the agency effectively distinguishes between cases where the items or services furnished by the agency are covered under title XVIII and cases where they are excluded from coverage; and
(5) The home health agency has demonstrated that it is effectively applying the conditions for certification and recertification as required by § 405.170(b).

§ 405.196 Procedures for home health agencies in handling cases.
In order to meet the requirements set forth in § 405.195(d)(1), a home health agency must give the Secretary reasonable assurances that it is complying with the following procedures:
(a) One or more of its first home health visits (see § 405.151) to an individual entitled to benefits under title XVIII, the home health agency will obtain orally or in writing the physician's grant of the individual's attending physician. The home health agency promptly reviews such plan to determine whether the services the physician has prescribed constitute home health services as described in § 405.163.

(b) Where the agency determines that the patient's care constitutes home health services as described in § 405.163, it schedules the case for review when in its judgment it believes that the care will no longer constitute home health services as so described, but in no event should such review take place later than the 60th day after the initial home health visit. At the request of the intermediary in specific cases, the home health agency submits medical evidence promptly after the initial home health visit with review by the intermediary.

(c) If the home health agency has reasonable doubt as to whether the individual requires home health services as described in § 405.163, it promptly submits medical information to the intermediary, in accordance with procedures established by the intermediary, certifying the need to the intermediary as to whether the individual needs home health visits as described in § 405.1633 and, if so, an appropriate review date.

3. Section 405.301 is revised to read as follows:

§ 405.301 Scope of subpart.

Sections 405.310 to 405.329 describe certain exclusions from coverage applicable to hospital insurance benefits (Part A of title XVIII) and supplementary medical insurance benefits (Part B of title XVIII). The exclusions in this subpart are applicable in addition to any other conditions and limitations in this part 405 and in title XVIII of the Act. Sections 405.330 to 405.332 relate to payments for expenses for certain items or services otherwise excluded from coverage. Sections 405.335 to 405.339 relate to the adjustment or recovery of an incorrect payment, or a payment made under section 1814(a) of Part A of title XVIII of the Act. Sections 405.370 to 405.373 relate to the suspension of payment to a provider of services or other supplier of services where there is evidence that such provider or supplier has been or may have been overpaid.

4. The introductory-text of § 405.310 is amended to read as follows:

§ 405.310 Types of expenses not covered.

Notwithstanding any other provisions of this part 405, no payment (except as provided in §§ 405.330-405.339) may be made for any expenses incurred for the following items or services:

- - -
§ 405.330 Payment for certain nonreimbursable expenses.

(a) Notwithstanding the provisions of § 405.310, payment may be made for items or services furnished after October 30, 1972, which involve custodial care (§ 405.1035(p) or items or services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (§ 405.310(k)) if:

(1) Such items or services were furnished by a provider of services (see § 405.609), or by another person pursuant to an assignment as provided for in § 405.310(b), and

(2) Neither the individual to whom such items or services were furnished nor such provider of services or other person, as the case may be, knew or could reasonably have been expected to know that the expenses incurred for such furnished items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k).

(b) Where payment is made under this provision, such payment may be made for those inpatient hospital services (§ 405.110), posthospital extended care services (§ 405.125), and home health services (§ 405.236) furnished before the fourth day after whichever of the following days is the earlier:

(1) The day on which the individual, to whom such items or services were furnished, has been determined, pursuant to § 405.332(a), to have knowledge, actual or imputed, that such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k).

(2) The day on which the provider of services, which furnished such items or services, has been determined, pursuant to § 405.332(b), to have knowledge, actual or imputed, that such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k).

§ 405.331 Liability for certain noncovered items or services.

(a) Even though payment may not be made pursuant to § 405.330 only because the provisions of paragraph (a) (2) thereof are not met, the individual to whom the items or services were furnished will be indemnified by the program (in the case of items or services furnished after October 30, 1972), to the extent specified in paragraph (b) of this section, if:

(1) The individual paid the provider of services or other person, as the case may be, all or some of the charges for such services; and

(2) Such individual did not know and could not have reasonably been expected to know that the expenses incurred for such items or services were excluded from coverage by reason of § 405.310(g) or § 405.310(k); and

(3) Such provider of services or other person, as the case may be, knew or could reasonably have been expected to know that the expenses incurred for such items or services were excluded from coverage; and

(d) Such individual files a proper request for such indemnification prior to the close of the month in which the payment specified in paragraph (a)(1) of this paragraph was made or, if later, the month in which the intermediary or carrier informed the individual (or someone on his behalf) in writing that the individual would not be liable for items or services, except that, for good cause shown such 6-month period may be extended.

§ 405.332 Criteria for determining that there was knowledge that certain services were nonreimbursable.

(a) The individual to whom items or services are furnished. An individual to whom items or services were furnished (or someone on his behalf) is presumed not to have knowledge, actual or imputed, that such items or services are excluded from coverage, or that such items or services were furnished were not covered; who received the payment referred to in paragraph (a)(1) of this section and shall be recoverable in accordance with the provisions of this part or other applicable provision of law.

§ 405.333 Availability of other or additional remedies.

(a) Such individual may be entitled to recover any amounts paid for the items or services furnished; who received the payment referred to in paragraph (a)(1) of this section and shall be recoverable in accordance with the provisions of this part or other applicable provision of law.

(b) The provider of services or other person who furnished items or services to an individual. A provider of services or other person who furnished items or services to an individual which are excluded from coverage by reason of § 405.310(g) or § 405.310(k) shall, in the absence of evidence to the contrary, be presumed not to have knowledge, actual or imputed, that such expenses are so excluded. Evidence to the contrary shall include (but shall not be limited to) the following situations:

(1) The intermediary or carrier informed the provider or other person that the expenses for the items or services furnished the individual were not reimbursable or that such items or services similar or reasonably comparable thereto were not covered;

(2) The group or committee responsible for conducting the utilization review of the institution furnishing such items or services (see § 405.1035 or § 405.1137) informed the provider that such items or services were not covered;

(3) The provider of services failed to comply with the criteria set forth in paragraphs (b), (c), or (d) of § 405.195 (whichsoever is appropriate), unless the provider demonstrates through objective evidence that, had it complied with such criteria, it would not have known that the items or services furnished are excluded from coverage;

(4) Even though the provider complied with the criteria set forth in paragraph (b), (c), or (d) of § 405.195 (whichever is appropriate), it is clear and obvious that, despite such compliance, the provider should have known at the time such items or services were furnished that they were excluded from coverage.

6. Section 405.702 is revised to read as follows:

§ 405.702 Notice of initial determination.

After a request for payment under Part A of title XVIII of the Act is filed with the intermediary by or on behalf of the individual who received inpatient hospital services, extended care services, or home health services, the intermediary or its contractor, as appropriate, has determined that the items or services were not covered or is pending; and

(2) The intermediary or its contractor, as appropriate, has determined that the items or services were not covered or is pending; and

(3) The provider of services or other person furnishing such items or services to the individual informed the individual (or someone on his behalf) in writing that such items or services were excluded from coverage.

(4) In a prior case involving such individual he was notified under the circumstances referred to in paragraphs (a)(1), (3), or (3) of this section in which the intermediary or its contractor, as appropriate, has determined that the items or services furnished were not covered or is pending.

(5) In a prior case involving such individual he was notified under the circumstances referred to in paragraphs (a)(1), (2), or (3) of this section in which the intermediary or its contractor, as appropriate, has determined that the items or services furnished were not covered or is pending.
§ 405.704 Actions which are initial determinations.

(a) Initial determinations with respect to an individual. For purposes of this Subpart G, an initial determination with respect to an individual includes any determination made on the basis of a request for payment by or on behalf of such individual under Part A of title XVIII of the Act, including a determination with respect to:

1. The coverage of items and services furnished;
2. The amount of an applicable deductible;
3. The application of the coinsurance feature;
4. The number of days of inpatient hospital days or for purposes of the inpatient psychiatric hospital 190-day lifetime maximum;
5. The number of days of the 60-day lifetime reserve utilized for inpatient hospital coverage;
6. The number of days of posthospital extended care benefits utilized;
7. The number of home health visits utilized;
8. The physician certification requirement;
9. The request for payment requirement;
10. The beginning and ending of a spell of illness;
11. The medical necessity of services;
12. When items or services are excluded from coverage pursuant to § 405.310(g) or § 405.310(k), whether such individual or the provider of services who furnished such items or services, or both, knew or could reasonably have been expected to know that such items or services were excluded from coverage (see § 405.333); and
13. Any other issues having a present or potential effect on the amount of benefits to be paid under Part A of title XVIII of the Act, including a determination as to whether there has been an overpayment or underpayment of benefits paid under Part A, and if so, the amount thereof.

(b) Initial determination with respect to a provider of services. For purposes of this Subpart G, an initial determination with respect to a provider of services shall be a determination made on the basis of a request for payment filed by such provider under Part A of title XVIII of the Act on behalf of an individual who was furnished items or services by such provider, but only if such determination involves the following:

1. A finding by the intermediary that such items or services are not covered by reason of § 405.310(g) or § 405.310(k), and
2. A finding by the intermediary that either such individual or such provider of services, or both, knew or could reasonably have been expected to know that such items or services were excluded from coverage under the program.

§ 405.708 Effect of initial determination.

(a) The initial determination under § 405.704(a) shall be final and binding upon the individual on whose behalf payment under Part A has been requested or, if such individual is deceased, upon the representative of such individual's estate, unless it is reconsidered in accordance with §§ 405.710-405.717 or revised in accordance with § 405.750. Such individual (or the representative of such individual's estate if the individual is deceased) shall be the party to such initial determination.

(b) The initial determination under § 405.704(b) shall be final and binding upon the provider of services unless it is reconsidered in accordance with §§ 405.710-405.717 or revised in accordance with § 405.750. Such provider of services shall be the party to such initial determination.

§ 405.710 Right to reconsideration.

(a) An individual who is a party to an initial determination, as specified in § 405.704(a), (or if such individual is deceased, the representative of such individual's estate) and who is dissatisfied with the initial determination may request a reconsideration of such determination in accordance with § 405.711 regardless of the amount in controversy. A provider of services who is a party to an initial determination (as specified in § 405.704(b)) and who is dissatisfied with such initial determination may request a reconsideration of such determination in accordance with § 405.711, regardless of the amount in controversy, but only if the individual on whose behalf the request for payment was made has indicated in writing that he does not intend to request reconsideration of the intermediary's initial determination on such request for payment, or if the intermediary has made a finding (see § 405.704(b)) that such individual did not know or could not reasonably have been expected to know that the expenses incurred for the items or services for which such request for payment was made were not reasonable, as made by reason of § 405.310(g) or § 405.310(k).

10. Section 405.714 is revised to read as follows:

§ 405.714 Withdrawal of request for reconsideration.

A request for reconsideration may be withdrawn by the party to the initial determination who filed the request or by his representative provided that the withdrawal is made in writing and filed at an office of the Administration or, in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board prior to the date of the mailing of the notice of reconsidered determination. A withdrawal filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the Administration as of the date it is filed with the intermediary.

11. Section 405.715 is revised to read as follows:

§ 405.715 Reconsidered determination.

(a) In reconsidering an initial determination, the Administration shall review such initial determination, the evidence and findings upon which such determination was based, and any additional evidence submitted to the Administration or otherwise obtained by the intermediary or the Administration; and shall make a determination affirming or revising, in whole or in part, such initial determination.

(b) If the request for reconsideration is filed by an individual with respect to an initial determination specified in § 405.704(a)(12), the provider of services who furnished the items or services shall, prior to the mailing of the reconsidered determination, be given notice of such request. If pursuant to § 405.710(b), a request for reconsideration is filed by a provider of services with respect to an individual determination under § 405.704(b), the individual who was furnished the items or services shall, prior to the mailing of the reconsidered determination, be made a party thereto.

12. Section 405.716 is revised to read as follows:

§ 405.716 Notice of reconsidered determination.

Written notice of the reconsidered determination will be mailed by the Administration to the parties and their representatives at their last known addresses and shall state in the case of a qualified railroad retirement beneficiary, with the Railroad Retirement Board prior to the date of the mailing of the notice of reconsidered determination to such parties, or unless the reconsidered determination is revised pursuant to the provisions of § 405.750.

13. Section 405.717 is revised to read as follows:

§ 405.717 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon the parties thereto unless a request for a hearing is filed with the Administration within 6 months after the date of mailing notice of the reconsidered determination to such parties, or unless the reconsidered determination is revised pursuant to the provisions of § 405.750.

14. Section 405.720 is revised to read as follows:

§ 405.720 Hearing; right to hearing.

A person has a right to a hearing regarding any initial determination made under § 405.704 if:
(a) Such initial determination has been reconsidered by the Administration;
(b) Such person was a party to the reconsideration;
(c) Such person or his representative has filed a written request for a hearing in accordance with the procedure described in §405.722; and
(d) The amount in controversy is $100 or more.
15. Section 405.722 is revised to read as follows:
§ 405.722 Time and place of filing request for a hearing.
The request for a hearing shall be made in writing and filed at an office of the Administration or with an administrative law judge or, in the case of a qualified railroad retirement beneficiary, at an office of the Railroad Retirement Board. Such request must be filed within 6 months after the date of mailing notice of the reconsideration determination to the parties thereto, except where the time is extended as provided in §404.954.
16. Section 405.730 is revised to read as follows:
§ 405.730 Court review.
To the extent authorized by section 1869 and section 1879(d) of the Act, a party to a decision of the Appeals Council (see §405.920 of this chapter), on the decision of an administrative law judge where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is $1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 208(g) of the Act (see §222.210 of this chapter for filing procedure).
17. Section 405.740 is revised by adding paragraph (h) to read as follows:
§ 405.740 Principles for determining the amount in controversy.
The following principles shall be applicable for purposes of determining the amount in controversy:

- (h) Notwithstanding the provisions of paragraph (a) of this section, when payment is made for certain non-reimbursable expenses pursuant to §405.330, or the liability of the individual is limited for certain noncovered items or services pursuant to §405.331, the amount in controversy should be computed as the amount that would have been charged for the individual for the items and services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to §405.330 or had such liability not been limited pursuant to §405.331.
18. Section 405.745 is revised to read as follows:
§ 405.745 Amount in controversy ascertained after reconsideration.
For the purpose of determining whether a party to a reconsidered determination is entitled to a hearing, the amount in controversy after the reconsideration action is limited to the amount in controversy initially at issue shall be controlling.
19. Paragraph (b) of §405.303 is revised to read as follows:
§ 405.303 Initial determination.

- (b) An initial determination for purposes of this subpart includes among others, a determination as to whether items and services furnished are covered; whether the deductible has been met; whether the receipted bill or other evidence of payment is acceptable; whether the charges for items or services furnished are reasonable; and if the items or services furnished an enrollee, physician, or supplier knew or could reasonably have been expected to know that such items or services were excluded from coverage.
20. Section 405.820(b) is revised by adding subparagraph (f) to read as follows:
§ 405.820 Right to hearing.
(a) General. Any party designated in §405.822 shall be entitled to a hearing after a review determination has been made by the carrier if the amount in controversy is $100 or more as determined in accordance with paragraph (b) of this section when such party files a written request for a hearing.

- (b) Amount in controversy. For the purpose of determining an individual's right to a hearing under paragraph (a) of this section:
  (1) The amount in controversy shall be computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

- (f) Notwithstanding the provisions of subparagraph (1) of this paragraph, when payment is made for certain non-reimbursable expenses pursuant to §405.330 or the liability of the individual is limited for certain noncovered items or services pursuant to §405.331, the amount in controversy shall be computed as the amount that would have been charged for the individual for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to §405.330 or had such liability not been limited pursuant to §405.331.

[FR Doc.75-284 Filed 1-3-75;8:45 am]
of information in regard to whether a variety is to be sold by variety name only as a class of certified seed, together with the number of generations the seed is to be certified. The lack of information in the Official Journal on this specification may mean (1) that no specification has been made, or (2) a specification has been made but publication of this fact has not been approved by the applicant. The resulting failure to show the information in the Official Journal is causing problems and confusion for farmers and seed certifying agencies who must comply with the rules for selling and certifying seed.

Pursuant to the administrative procedure provisions of 5 U.S.C. 553, there was published in the Federal Register (39 FR 35177) on September 30, 1974, a notice of proposed rulemaking with respect to proposed amendments of the regulations and rules of practice (7 CFR 180) relating to §§ 180.18 and 180.19 to permit the publication in the Official Journal without specific approval of the applicant whenever the applicant specifies that his variety is to be sold by variety name only as a class of certified seed.

Interested persons were given an opportunity to submit written comments regarding the proposal. Over 1,500 copies of the proposal were distributed to interested trade and Government persons, groups, and organizations together with a press release. Written comments were received from two organizations. Both favored adoption of the proposal.

It is concluded that the amendment of §§ 180.18(a) and 180.19 as proposed on September 30, 1974, and in the press release in the interest and accordingly those sections are hereby amended as follows:

(Sec. 6, Stat. 1545 (7 U.S.C. 2320) 39 FR 76-22617)

1. Section 180.18(a) is revised to read as follows:

§ 180.18 Applications handled in confidence.

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application, nor will access be given to, or copies furnished of, any pending application or papers relating thereto, without written authority of the applicant, or his attorney or agent. Exceptions to the above may be made by the Commissioner in accordance with 5 U.S.C. 552 and § 1.4 of this title and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress as provided in sections 56 or 57 of the Act or 180.19.

2. Section 180.19 is revised to read as follows:

§ 180.19 Publication of pending applications.

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show the (a) application number and date of filing, (b) the name of the variety or temporary designation, (c) the name of the kind of seed, and (d) whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it can be certified. Additional information, such as the name and address of the applicant or a brief description of the novel features of the variety, may be published only upon request or approval received from the applicant at the time the application is filed or at any time before the issuance of a certificate is issued.

These amendments shall become effective on February 5, 1975.

Done at Washington, D.C., on December 30, 1974.

John C. Butz,
Associate Administrator.

[FR Doc.75-2262 Filed 1-3-76; 8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 730—RICE

Subpart—1975-76 Marketing Year Marketing Quota and National Acreage Allotment for 1975 Crop Rice, and Apportionment of 1975 National Acreage Allotment of Rice Among the Several States

The provisions of §§ 730.1501 to 730.1504 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.) (referred to as the "act") with respect to the 1975 crop of rice. The purpose of these provisions is to (1) proclaim that marketing quotas shall not be in effect for the 1975 crop of rice, (2) establish the national acreage allotment for such crop, (3) apportion the national acreage allotment among the States, and (4) establish State reserves for new farms and new producers. The estimated availability of rice for the calendar years 1970 through 1974 is determined to be 4,526 pounds per planted acre. The national acreage allotment of rice for 1975 is determined to be 121.9 million hundredweight (rough basis). The normal supply of rice for such marketing year is determined to be 122.3 million hundredweight (rough basis). Since the total supply of rice for the 1975-76 marketing year is less than the normal supply for such marketing year, marketing quotas will not be in effect for the 1975 crop of rice.


The normal supply of rice for the marketing year commencing August 1, 1975, is determined to be 92.4 million hundredweight (rough basis). The carryover of rice on August 1, 1975, is estimated at 10.8 million hundredweight. Therefore, the production of rice needed in 1975 to make available a supply of rice for the 1975-76 marketing year equal to the normal supply for such marketing year is 81.6 million hundredweight. The national average yield of rice for the calendar years 1970 through 1974 is determined to be 1,504 pounds per planted acre. Since such amount is more than the minimum national acreage allotment of 1,500 acres prescribed under section 353(c)(6) of the act, the national acreage allotment for rice for the calendar year 1975 shall be 1,500 acres.

§ 730.1503 Apportionment of 1975 national acreage allotment of rice among the several States.

The national acreage allotment proclaimed in § 730.1502, less a national reserve of 300 acres, is hereby apportioned among the several rice producing States as follows:
RULES AND REGULATIONS

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

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

Expenses and Rate of Assessment

This document authorizes the South Texas Lettuce Committee to spend $21,000 for its operations during the fiscal period ending July 31, 1975, and to collect one cent ($0.01) per carton on assessable lettuce handled by first handlers to defray such expenses.

The committee is the administrative agency established under Marketing Agreement No. 144 and Order No. 971 (7 CFR Part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Notice was published in the December 11 Federal Register (39 FR 42320) regarding the proposals. It afforded interested persons an opportunity to file written comments not later than December 27, 1974. None was filed.

After consideration of all relevant matters, including the proposals set forth in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (39 U.S.C. 553) because this part requires that the rate of assessment for a particular fiscal period shall apply to all assessable lettuce from the beginning of such period.

The regulation follows:

§ 971.214 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1975, by the South Texas Lettuce Committee for its maintenance and functioning and for such other purposes as the Secretary may determine to be appropriate will amount to $21,000.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be one cent ($0.01) per carton of assessable lettuce handled by him as the first handler during the fiscal period.

(c) Unexpended revenue in excess of expenses for the fiscal period ending July 31, 1975, may be carried over as a reserve to the extent authorized in § 971.43(d)(2).

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

(See 1-10, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)


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

[FR Doc. 76-591 Filed 1-6-76; 8:45 a.m.]
CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS


PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1970 and Subsequent Crops, Rice Loan and Purchase Program

CHANGE IN INSPECTION—CHARGE

The regulations issued by the Commodity Credit Corporation (CCC) at 35 FR 8445 and 8573, as amended, containing the regulations Governing the 1970 and Subsequent Crops, Rice Loan and Purchase Program are hereby amended as follows:

Section 1421.308 is amended to provide that the charge made for each lot of rice sampled for farm-stored loans and for each warehouse receipt for modified-commingled or identity—preserved warehouse-stored loan is increased from $7.30 to $9.70. Because the 1974 crop rice is currently being placed under loan and the need of producers to know the fees applicable to the rice loan and purchase program is imperative and contrary to the public interest to follow the notice of proposed rulemaking procedure with respect to this amendment. The amended section reads as follows:

§ 1421.308 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11. In addition, a charge of $9.70 for each lot sampled will be made in connection with farm-stored loans and in connection with each warehouse receipt serving as security for a modified—commingled or identity—preserved warehouse-stored loan or both.

(Sees. 3, 5, 63 Stat. 1079 as amended; see sec. 101, 401, 402, 63 Stat. 1651 as amended; 28 U.S.C. 13243; Amdts. 21, 42; 36 FR 5270)

This amendment shall be effective with respect to all loans made on or after January 5, 1975.

Signed at Washington, D.C., on December 27, 1974.

KENNETH B. FRICK,

Executive Vice President,

Commodity Credit Corporation.

[FED Reg Dec 976-923 Filed 1-3-75; 8:14 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 12243; Amdts. 21-42; 36 FR ——]

PART 29—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

PART 35—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Noise Standards for Propeller Driven-Small Airplanes

The purpose of these amendments is to prescribe noise standards for the issue of normal, utility, acrobatic, transport, and restricted category type certificates for propeller driven small airplanes; to prescribe noise standards for the issue of standard airworthiness certificates and restricted category airworthiness certificates for newly produced propeller driven small airplanes of older type designs, and to prohibit "acoustical changes" in the type design of these airplanes that increase their noise levels beyond specified limits.

The primary basis for these amendments is section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431).

These amendments are based on Notice 73–26, published in the Federal Register on October 10, 1973 (38 FR 23016). Interested persons have been afforded an opportunity to comment on the matters contained herein, and all relevant comments have been considered in the issuance of these amendments.

Pursuant to 49 U.S.C. 1431(b) (1), the Federal Aviation Administration has consulted with the Secretary of Transportation, concerning all matters contained herein, prior to the adoption of this amendment. Pursuant to that paragraph and § 1500.9(b) of the guidelines of the Council on Environmental Quality concerning statements on proposed Federal actions affecting the environment, published in the Federal Register on August 1, 1973 (38 FR 20550), the Federal Aviation Administration has consulted with the Environmental Protection Agency (EPA) and has submitted this amendment to that agency for review and comment.

A. Background: Relation to Proposed Regulations of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972, and to the Noise Control Act of 1978, as amended

During the period of FAA consultation with EPA on this amendment, EPA transmitted to the FAA (on December 6, 1974), its proposed regulation concerning the noise of propeller driven small airplanes, pursuant to section 611(c) (1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92–574). Section 611(c) (1) of the Federal Aviation Act of 1958 provides that EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom as EPA determines is necessary to protect the public health and welfare. That section also provides that the FAA "shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of its submission to the FAA, publish the proposed regulations in a Notice of Proposed Rule Making." Pursuant to that provision, the proposed rule making, entitled "Proposed Regulations submitted to the FAA by the Environmental Protection Agency: Noise Standards for Propeller Driven Small Airplanes," is being issued by the FAA simultaneously with this amendment.

A detailed project report, dated November 25, 1974, was also transmitted to the FAA by EPA to support its proposed regulations. Since receiving the EPA proposed regulation and supporting project report (and in view of the fact that this amendment, representing a year of FAA analysis and review of public comments in response to Notice 73–26, was ready for issuance when the EPA proposal was received), the FAA has conducted a comparative study of the EPA proposal (and its supporting project report), and the provisions of this amendment. This study was conducted to determine whether issuance of this amendment at this time would in any manner commit the FAA to a course of action that would conflict with an objective review of the EPA proposal under the procedures prescribed in section 611(c) of the Federal Aviation Act of 1958, or in any other way impair the FAA's ability to fulfill its obligations under the Noise Control Act of 1974.

This study concentrated on the areas in which the EPA proposal may differ from this amendment with respect to the control and abatement of the noise of propeller driven small airplanes. The study, thus, concentrated on differences involving (1) the unit of noise measurement, (2) the compliance dates, (3) the noise levels for each affected airplane weight, (4) the climb performance correction procedure, (5) the treatment of agricultural and fire fighting airplanes, (6) weight limitations derived from the noise compliance test, (7) the effect of wind on conduct of the noise test, (8) correction of test data for microphone losses, (9) the supplementing of field calibrations with the use of a voltage insert device, (10) the engine power that must be used, and (11) the methods of correcting acoustical and performance interchange. The review of these areas was conducted in the light of EPA's supporting data in its Project Report.

Based on this review, the FAA is confident that there is no provision of the EPA proposal that would conflict with this amendment, as amended by the Noise Control Act of 1972, and as amended by the Noise Control Act of 1978. As stated in Notice of Proposed Rule Making, the FAA is committed to the issuance of this amendment at this time, to a course of action that would conflict with the public interest, and to the intent of the Noise Control Act of 1972, to delay this immediately available regulatory action until the regulatory process prescribed in section 611(c) is completed, the new will respect to the recent EPA proposals.

Finally, in response to Notice 73–26, EPA submitted, on December 20, 1973, its comments in the form of a comprehensive project report. This amendment is issued after analysis of that project report. A summary of FAA response to that project report has been prepared in support of this amendment. However, since this earlier project report has been superseded by the later EPA proposal and project report, it is no more. This statement of the issues has, therefore, been placed in the docket as history and is not recited in this preamble. To prevent confusion, and unless otherwise noted, all FAA responses to EPA's submittals in this matter relate to the second project report (dated November 25, 1974) and its proposed regulation.

B. Public Comments on Notice 73–26

One comment stated that the acoustical change provisions of the proposed regulations would result in unwarranted constraints on operators of antique aircraft. It was argued that powerplant conversions of antique aircraft are necessitated by the unreliability of the original model engine or are desirable either to substitute alternate engines offered as original equipment by the manufacturer, or to provide further noise reduction. The FAA believes that, for antique aircraft that cannot achieve the noise limits of § 36.301 (b) prior to the change in type design, the FAA has no power under the Noise Control Act of 1972 to require that such an aircraft be limited to noise levels prior to the change in type design. This amendment permits noise increases up to that limit.

In either case, the FAA will monitor the burden of the regulation on antique aircraft to determine if the problem of aging aircraft justifies further review of the noise limits proposed herein. The FAA also noted that the acoustical change provisions of this proposal apply to the issuance of any type design change approval, not only the issuance of supplemental type certificates. It was stated that this would be an unwarranted burden on antique aircraft owners. The general answer to this comment is stated above. The comment, however, is not correct in that the acoustical change provisions of this proposal apply to the issuance of any type design change approval, not only the issuance of supplemental type certificates.

One comment stated that it was not clear whether the proposed acoustical change provisions applied only to aircraft type certificates under the proposed rulemaking, or whether they also applied to antique aircraft. As stated in § 36.1(e), this amendment applies to the issuance of
...certain airworthiness certificates for new production versions of older aircraft types, not only to the issuance of new type certificates.

One comment stated that the acoustical change rules were proposed in such a manner that the tests required by Part 36, Appendix F, must be conducted by persons authorized to perform functions under Part 43 Maintenance, Preventive Maintenance, Rebuilding, and Alteration. This comment is not correct. The acoustical change provisions of Part 36 are limited by the terms of § 21.93(b) to changes in the type design of an aircraft. These provisions do not change, in any respect, the provisions of Part 43 concerning alteration of aircraft to conform to changes in type design that have already been approved. The acoustical change requirements in this amendment must be met, however, as a condition for the issuance of type design change approvals after the effective date of this amendment. The commentator also stated that no person has been identified as having the authority to conduct acoustical change reviews by the Administrator or his designated representative. It is the function of persons authorized to perform functions under Part 43, it would not be appropriate, at this time, to designate persons under Part 43 to conduct the required tests.

One comment stated that the proposed acoustical change provisions place an expensive and time consuming burden on aircraft modifiers because of the required climatic conditions. This comment recommends that testing may be required unless there is "reasonable evidence" that the modification will result in noise levels exceeding the regulatory limit. The climatic conditions proposed within which no corrections for temperature and humidity are required cannot be expanded due to the need for consistent and repeatable results. The applicant has the burden for performing altimeter tests and conducting the test in a more favorable climate, or correcting the data if the tests are conducted outside the "no correction test window." Further, the desirability of such a test, as defined in § 21.93(b) (3), if the test change is an "acoustical change" under the above section, the FAA believes that reasonable evidence does exist that modification may result in increased noise. For this reason, this amendment requires that the acoustical change compliance test be conducted.

One comment stated that the acoustical change provisions should only apply to aircraft exceeding a specified horsepower/propeller/RPM combination. Section 21.93(b) (3) specifies the alterations that constitute an acoustical change. Because of the range of noise levels and propulsion systems addressed by this amendment, it would be unworkable to attempt to specify horsepower/propeller or horse-power/RPM combinations that would adequately describe the type design changes that may result in noise increases.

One comment stated that acrobatic aircraft should be excluded from the regulations on the same basis as agricultural and fire fighting aircraft since acrobatic aircraft also need all available horsepower/firepower for the job. This comment is not correct. The FAA believes that an acrobatic aircraft is type certificated in the acrobatic category under Part 23 of the Federal Aviation Regulations justifies exclusion of the aircraft from noise rules. It should be noted, however, that this amendment does not apply to experimentally certificated aircraft used for acrobatics. One comment stated that the type certification noise standards, while essential, must be supplemented with operational procedures in order to ensure adequate noise control. This comment stated that all airplane flight manuals should contain noise operating procedures and abatement procedures to make pilots sensitive to noise problems. The FAA agrees that operating procedures are an important aspect of the overall solution to the noise problem. The FAA also agrees that airplane flight manuals (in addition to containing noise information obtained during type certification) may be a useful means of conveying awareness of aircraft noise problems to the owners and operators of aircraft. While the FAA encourages manufacturers to develop general information in the airplane flight manual, the close relationship between noise operating procedures and safety, does not believe that specific procedures should be recommended and approved in an airplane flight manual.

One comment cited two reports ("Transportation Noise and Noise from Aircraft Powered by Internal Combustion Engines," presented to the Federal Aviation Administration, December 31, 1971, and Results of Noise Survey of Seventeen General Aviation Aircraft, FAA, December, 1972) and performed by the Environmental Protection Agency, that indicate that, for new production aircraft of current types, the proposed standard to be applied to airworthiness certification should be made effective for all types prior to January 1, 1980. While the FAA does not disagree with the general accuracy of much of the information cited by the commentator, that information does not address the potentially serious impacts on certain aircraft types, that could result if the January 1, 1980, date were accelerated.

One comment stated that the public is concerned with the noise generated by an aircraft and, from this standpoint, is not concerned with the weight of the aircraft generating the noise. This being the case, the comment notes that aircraft smaller than 12,500 pounds should be subject to noise limits lower than those that apply at the higher weight. The FAA agrees that the annoyance caused by aircraft noise is not related directly to the weight of an aircraft. However, weight is chosen as the basis for selecting a correction factor because the weight of an aircraft is directly related to the engine power required by the aircraft, and, in general, the higher horsepower engines are capable of generating more noise.

From the standpoint of technological practicability and economic reasonableness, it is appropriate that weight differences be reflected in the limiting noise levels.

One comment pointed out differences between the proposed FAA standards and procedures being considered for adoption by the International Standardization Organization (ISO). These comments concerned the measurement unit, the test conditions, and the number of required overflights. First, the comment recommends the addition of a duration conversion to dB(A). The addition of a duration correction adds complexity to the certification process similar to that required for other ambient factors. There has been no demonstrated requirement for a measurement unit more complex than the universally accepted A-weighted decibel. The comment also notes that the "test window" (i.e., the limiting atmospheric conditions) proposed for ISO adoption and that proposed for adoption by the FAA. The ISO proposal is more restrictive than the FAA proposal in that it allows less variation in the atmospheric absorption coefficients. The FAA does not believe that this more restrictive test is necessary in order to obtain valid acoustical data for propeller driven small airplanes. The "test window" proposed in the Notice is believed to be adequate. The commentator stated that the ISO proposal would permit a ± 1,000-foot variation in test altitude but would require correction to the required 1,000-foot altitude, whereas the Notice produced a ± 30-foot variation, did not propose any correction procedures. The FAA believes that the smaller altitude variation can be practically complied with during the test flights and believes that correction procedures, within the permitted altitude variation, would merely add unnecessary complexity without significantly affecting the noise levels generated by the aircraft. This aspect of the proposal is, therefore, believed to be valid. Finally, the commentator suggested that six overflights, rather than four, would be appropriate considerations, within the data correction procedures made by the commentator in § 36.201. To eliminate this inconsistency,
the words "above 90 percent or" are not included in § F36.101(a).

One comment stated that rather than requiring maximum continuous power and permitting accelerated flight (for aircraft that can exceed a limiting airspeed at maximum continuous power), the regulation should require that the test be conducted at the allowed limit but at reduced power. The FAA believes that reduced power may mask noise problems that may be evident at maximum continuous power. The FAA stated that the flight does not significantly affect the accuracy of measured data. Therefore, this amendment specifies maximum continuous power and permits accelerated flight.

One comment stated that § F36.105(e) implies the use of the "slow" dynamic characteristics of the sound level meter and that this should be expressly stated. The FAA agrees. This provision, therefore, includes the words "with dynamic characteristics designated 'slow'" after the words "A filter.

One comment questioned the need for and the added regulatory complexity caused by, permitting aircraft of 3,500 pounds and above to generate 2 more dB(A) now than in the future. The FAA believes the noise levels and timing provisions in this amendment properly reflect economic and technological factors involved in the certification of propeller driven small airplanes. Another comment noted the possibility of an abrupt change in severity as between the provisions of Appendix F for aircraft close to 12,500 pounds, and the provisions of Appendix C for turboprops and for transport category airplanes slightly heavier than 12,500 pounds. The FAA agrees that Appendix F does represent a significant advance in noise reduction over Appendix C for aircraft close to the 12,500 pound dividing line. However, this reflects the fact that Appendix C was primarily developed to respond to the technological problems associated with the abatement of jet noise, whereas the provisions of Appendix F deal exclusively with the inherently lower noise levels of propeller driven small airplanes.

One comment opposed the proposal that aircraft used for dispensing fire fighting or agricultural materials be required to comply with FAA approved noise abatement routes and flight plans if they cannot meet the prescribed noise limits. This comment indicated that neither agricultural nor fire fighting operations can be conducted under such a constraint since both kinds of operation may require a capability of rapid response that is incompatible with a job-by-job approval of routes for noise abatement purposes. The FAA agrees with this comment and does not adopt this proposal.

One comment raised the question of whether the recording of flow noise should be made with "A" or "linear" weighting. There is no need to specify which weighting is required since the "A" weighting required to obtain a dB(A) noise value may be applied during the recording or during the analysis of the tape. The comments also asked whether a specified calibration procedure is intended. There does not appear to be a need to require a particular calibration procedure in view of the rapidly changing technology in this field. The FAA, therefore, will consider, for approval, any calibration procedure that yields acceptable results.

One comment asked whether a non-directional microphone could be used. This amendment does not prohibit the use of such microphones.

One comment stated that the noise tests cannot be conducted at maximum weight because of the burnoff of fuel needed to conduct the tests. The FAA agrees. The comment stated that, if the test is conducted at weights less than an airworthiness limited weight, the lower weight becomes an operating limitation. However, to reflect this comment, this amendment adds an exception where needed to account for fuel that must be used during the test itself.

One comment recommended that testing be prohibited at altitudes greater than 6,000 feet above sea level. The FAA believes that this comment may have merit for airplanes powered by supercharged engines and for the administration of this amendment to those airplanes to determine if additional rulemaking is needed. For normally aspirated engines, the decrease of available power with altitude would, in any case, prevent the developing of maximum continuous power at high altitudes. This amendment does not contain an altitude limit as a test requirement.

One comment stated that § F36.109(g) implies that a time history record of position must be kept. Beyond requiring the applicant to demonstrate that the position of the airplane, during the actual measurement of noise, complies with the regulation, this amendment does not require the keeping of a time history of position.

One comment stated that the methods used to correct for temperature and humidity data outside of the specified limits should either be specified in the applicable regulations or comply with acceptable industry practices. The FAA does not believe that a particular correction method should be prescribed and will consider any method that adequately corrects the data to the acoustical standard day.

One comment stated that the formula in § F36.201(c) should be limited to sea level standard day conditions for a normal takeoff distance. The values used in the formula (except for takeoff distance in some cases) are those developed during type certification under the airworthiness regulations. It is therefore not believed to be necessary to specify the conditions under which they are developed. Where takeoff distance is not developed as approved performance information, the formula in § F36.201(d) must be applied in each case, so that reference to sea level is not needed.

One comment requested that the definition of "acoustical change" in § 21.93 (b) be amended to specify that an acoustical change is one that may increase the noise levels of the airplane in terms of FAR 36 measurement criteria. Since that paragraph begins with the words "for the purpose of applying Part 36 of this chapter * * *" and in view of several years of administering § 21.93(b) without problems concerning the definition of "acoustical change," the FAA does not believe that the suggested language is necessary.

One comment stated that the proposed amendment to § 21.115(a) (which proposed to add a reference to the normal change requirements in that paragraph) is unnecessary since § 21.113(b) already requires compliance with § 21.33(b) which includes required noise standards. The FAA agrees in part. However, to ensure that the section heading and paragraph (a) of § 21.115 are consistent with the other regulatory changes in this amendment, the change to that section is adopted as proposed.

One comment stated, that while noise standards are appropriate conditions of type certification, they should not be applied to the issuance of airworthiness certificates. The FAA believes that the proposed application of noise standards to type and airworthiness certificates was addressed in Notice 72-10, Newly Produced Airplanes of Older Type Designs. The Federal Register (37 FR 14611) on July 25, 1972. In that Notice, (first associated noise standards with airworthiness certificates) it was stated that the proposed application of noise standards to airworthiness certificates—* * * reflects the requirement in § 611(a) of the Federal Aviation Act of 1958 that the Administrator shall issue noise abatement regulations or should be methods compatible with such standards, rules, and regulations in the issuance * * * of any certificate authorized by this title. Whereas the appropriate certificate for insuring that new type designs incorporate acoustical performance features is therefore useful as an appropriate type certificate. The airworthiness certificate is an appropriate type certificate for insuring that the production copies of previously type certified aircraft incorporate acoustical performance design features prior to operation. This is the reason that the airworthiness certificate is individually issued to each aircraft after production, and is therefore useful as an acoustical performance standard (e.g., by date of issuance) those particular aircraft within a production run that require noise compliance demonstration * * *

For the reasons discussed in Notice 72-19, the FAA believes that it is appropriate to apply noise standards to the issuance of airworthiness certificates to previously type-certificated aircraft where the objective is improving noise standards on newly produced aircraft of older type designs.

One comment stated that the proposed regulation is not adequate since (1) it does not account for the noise of aircraft operating below 1,000 feet, as during landing and takeoff, and (2) it does not involve retrofit of the current fleet of propeller driven small airplanes. By requiring maximum noise levels at the 1,000-foot altitude, the FAA believes that this amendment also addresses the noise source that is also a problem at lower altitudes, and that the added complexity of takeoff and approach noise...
§ 21.25 Issue of type certificate: Restricted category aircraft.

(a) An applicant is entitled to a type certificate for an aircraft in the restricted category for special purpose operations if he shows compliance with the applicable noise requirements of Part 36 of this chapter, and if he shows that no feature or characteristic of the aircraft makes it unsafe when it is operated under the limitations prescribed for its intended use, and that the aircraft—

(b) For the purpose of complying with Part 36 of this chapter, and except as provided in subparagraph (b) (3) of this paragraph, any voluntary change in the type design of an airplane that may increase noise levels of that airplane is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following airplanes:

(1) Subsonic transport category large airplanes.

(2) Subsonic turbojet powered airplanes (regardless of category).

(3) Propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, for dispensing fire fighting materials). For airplanes to which this subparagraph applies, "acoustical changes" are limited to the following type design changes:

(i) Any change to, or removal of, a muffler or other component designed for noise control.

(ii) Any change to, or installation of, a powerplant or propeller that increases maximum continuous power or thrust at sea level, or increases the propeller tip speed at that power or thrust, over that previously approved for the airplane.

3. Section 21.93 (b) is amended to read as follows:

§ 21.93 Classification of changes in type design.

(b) For the purpose of complying with Part 36 of this chapter, and except as provided in subparagraph (b) (3) of this paragraph, any voluntary change in the type design of an airplane that may increase noise levels of that airplane is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following airplanes:

(1) Subsonic transport category large airplanes.

(2) Subsonic turbojet powered airplanes (regardless of category).

(3) Propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, for dispensing fire fighting materials). For airplanes to which this subparagraph applies, "acoustical changes" are limited to the following type design changes:

(i) Any change to, or removal of, a muffler or other component designed for noise control.

(ii) Any change to, or installation of, a powerplant or propeller that increases maximum continuous power or thrust at sea level, or increases the propeller tip speed at that power or thrust, over that previously approved for the airplane.

6. Section 21.183(e) is amended to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, and transport category aircraft.

(e) Noise requirements. Notwithstanding all other provisions of this section, the following must be complied with for the original issuance of a standard airworthiness certificate:

(1) For subsonic transport category large airplanes and subsonic turbojet powered airplanes that have not had any flight time before the dates specified in § 36.1(d), no standard airworthiness certificate is originally issued under this section unless the Administrator finds that the type design complies with the noise requirements in § 36.1(d) in addition to the applicable airworthiness requirements in this section. For import airplanes, compliance with this paragraph is shown if the country in which the airplane was manufactured certifies, and the Administrator finds, that § 36.1(d) (or the applicable airplane noise requirements of the country in which the airplane was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with § 36.1(d) and paragraph (c) of this section are complied with.

(2) For normal, utility, acrobatic, or transport category propeller driven small airplanes (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, for dispensing fire fighting materials) that have not had any flight time before the applicable date specified in Part 36 of this chapter, no standard airworthiness certificate is originally issued under this section unless the Administrator finds that the type design complies with the applicable noise requirements of Part 36 of this chapter in addition to the applicable airworthiness requirements in this section. For import airplanes, compliance with this paragraph is shown if the country in which the airplane was manufactured certifies, and the Administrator finds, that the applicable requirements of Part 36 of this chapter (or the applicable airplane noise requirements of the country in which the airplane was manufactured and any other requirements the Administrator may prescribe to provide noise levels no greater than those provided by compliance with the applicable airworthiness requirements of Part 36 of this chapter) are complied with.
§ 21.357 Type certificates—issue.

An applicant is entitled to a type certificate for a product manufactured under a delegation of authority if the Administrator finds that the product meets the applicable airworthiness and noise requirements (including applicable acoustical change requirements in the case of changes in type design).

2. A new § 21.451(d) is added to read as follows:

§ 21.451 Limits of applicability.

(d) Notwithstanding any other provision of this subpart, a DAS may not issue a supplemental type certificate involving the acoustical change requirements of Part 36 of this chapter until the Administrator finds that the requirements are met.

B. Part 36 of the Federal Aviation Regulations is amended as follows:

1. Section 36.1 is amended to read as follows:

§ 36.1 Applicability.

(a) This Part prescribes noise standards for the issue of the following certificates:

(1) Type certificates, and changes to those certificates, and standard airworthiness certificates, for subsonic transport category large airplanes, and for subsonic turbojet powered airplanes regardless of category.

(2) Type certificates and changes to those certificates, and standard airworthiness certificates and restricted category airworthiness certificates, for propeller driven small airplanes, except airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials.

(b) Each person who applies under Part 21 of this chapter for a type or airworthiness certificate specified in this Part to be issued and who complies with the applicable requirements of this Part, in addition to the applicable airworthiness requirements of this chapter.

(c) Each person who applies under Part 21 of this chapter for an acoustical change approval of an acoustical change described in § 21.93(b) of this chapter must show that the airplane complies with § 36.7 of this Part in addition to the applicable airworthiness requirements of this chapter.

(d) Each person who applies for the original issue of a standard airworthiness certificate for a subsonic transport category large airplane or for a turbojet powered airplane under § 21.183, must, regardless of date of application, show compliance with the applicable provisions of this Part, as of December 1, 1969, for airplanes that have not had any flight time before—

(1) December 1, 1973, for airplanes with maximum weights greater than 75,000 lbs., except for airplanes that are powered by Pratt and Whitney Turbo Wasp T7D series engines;

(2) December 31, 1974, for airplanes with maximum weights greater than 75,000 lbs. and that are powered by Pratt and Whitney Turbo Wasp T7D series engines; and

(3) December 31, 1974, for airplanes with maximum weights of 75,000 lbs. and less.

(3) Each person who applies for the original issue of a standard airworthiness certificate under § 21.183, for a propeller driven small airplane that has not had any flight time before January 1, 1966, and that complies with the applicable provisions of this Part.

2. A new § 36.7 is added to read as follows:

§ 36.7 Acoustical change.

(a) Subsonic transport category large airplanes and turbojet powered airplanes. For subsonic transport category large airplanes and turbojet powered airplanes for which an acoustical change approval is applied for under § 21.93(b) of this chapter, the following apply:

1. If the airplane can achieve the noise limits prescribed in § 36.301(b) of that Appendix prior to the change in type design, it may not exceed those limits, measured and corrected as prescribed in Appendix F, after the change in type design.

(2) If the airplane was type certified under Appendix F of this Part prior to the change in type design, it may not exceed the noise limits prescribed in § 36.301(b) of that Appendix prior to the change in type design, measured and corrected as prescribed in Appendix F, after the change in type design.

(3) If the airplane cannot achieve the noise limits prescribed in § 36.301(b) of Appendix F prior to the change in type design, it may not, after the change in type design, exceed the noise levels created prior to the change in type design, measured and corrected as prescribed in Appendix F.

2. A new subpart F is added to read as follows:

Subpart F—Propeller Driven Small Airplanes

§ 36.501 Noise limits.

(a) Compliance with this subpart must be shown for—

1. Propeller driven small airplanes for which application for the issuance
of a type certificate in the normal, utility, acrobatic, transport, or restricted category is issued on or after October 10, 1973; and

(2) Propeller driven small airplanes for which application is made for the original issuance of a standard airworthiness certificate or restricted category airworthiness certificate, and that have not had any flight time before January 1, 1969 (regardless of date of application).

(b) Compliance with this subpart must be shown with noise levels measured and corrected as prescribed in Parts B and C of Appendix F, or under approved equivalent procedures. 

(c) For airplanes covered by this section, it must be shown that the noise level of the airplane is no greater than the applicable limit prescribed in Part D of Appendix F.

5. Subpart G is amended to read as follows:

Subpart G—Operating Limitations and Information

§ 36.1501 Procedures and other information. 

All procedures, and other information for the flight crew, that are employed for obtaining the noise reductions prescribed in this Part must be developed. This must include noise levels achieved during type certification.

§ 36.1501(a) If an Airplane Flight Manual is approved, the approved portion of the Airplane Flight Manual must contain procedures and other information approved under § 36.1501. If an Airplane Flight Manual is not approved, the procedures and information must be furnished in any combination of approved manual material, markings, and placards.

(b) The following statement must be furnished near the listed noise levels:

No determination has been made by the Federal Aviation Administration that the noise levels of this airplane are or should be acceptable or unacceptable for operation at, into, or out of, any airport.

(c) For subsonic transport category large airplanes and turbine powered airplanes, for which the weight used in meeting the takeoff or landing noise requirements of this Part is less than the maximum weight or design landing weight, respectively, established under the applicable airworthiness requirements, those lesser weights must be furnished, as operating limitations, in the operating limitations section of the Airplane Flight Manual.

(d) For propeller driven small airplanes for which the weight used in meeting the flyover noise requirements of this Part is less than the maximum weight by an amount exceeding the amount of fuel needed and consumed in the test, that lesser weight must be furnished, as an operating limitation, in the operating limitations section of an approved Airplane Flight Manual, in approved manual material, or on an approved placard.

(e) Except as provided in paragraphs (c) and (d) of this section, no operating limitations are furnished under this Part.

6. Section C36.7(a) is amended to read as follows:

Section C36.7(a) Takeoff test conditions.

(1) As excepted as provided in § 36.7(c) of this Part, this section applies to all takeoffs conducted in showing compliance with this Part.

7. A new Appendix F is added to Part 38 to read as follows:

APPENDIX F—Noise Requirements for Producers—Driven Small Airplanes

PART A—GENERAL

Section F38.1 Scope. This appendix prescribes limiting noise levels, and procedures for measuring noise and correcting noise data, for the propeller driven airplane specified in § 36.1.

PART B—NOISE MEASUREMENT

Section F36.101 General test conditions.

(a) The test area must be relatively flat terrain having no excessive sound absorption characteristics such as caused by thick, matted, or tall grass, or shrubs, or wooded areas. No obstacles that significantly influence the sound field from the airplane may exist within a conical space above the measurement site within 120 degrees of the point defined by an axis normal to the ground and by a half-angle 75 degrees from this axis.

(b) The flight test procedures, measuring equipment, and noise measurement procedures must be approved by the FAA.

(c) The flight test procedures, measuring equipment, and noise measurement procedures must be approved by the FAA.

(d) Sound pressure level data for noise evaluation purposes must be obtained with acoustical equipment that complies with section F36.103 of this appendix.

Section F36.103 Acoustical measurement system. The acoustical measurement system must consist of a calibrated equipment equivalent to the following:

A microprocessor system with frequency response and analysis system accuracy as prescribed in section F36.105 of this appendix.

Two microphones mounted in a linear microphone array that minimizes interference with the sound being measured.

Recording and reproducing equipment characterized by frequency response, dynamic range, and compatibility with the requirements and accuracy requirements of section F36.105 of this appendix.

(e) Acoustic calibrators using sine wave or broadband noise of known sound pressure level. If broadband noise is used, the signal must be described by the sound pressure level and maximum sound power level.

(f) Measured noise is derived by recording and reproducing equipment.

(g) The noise produced by the airplane must be recorded. A magnetic tape recorder is acceptable.

(h) The characteristics of the system must comply with the recommendations in International Electrotechnical Commission Publication No. 179, dated 1973, concerning microphone and amplifier characteristics. The text and specifications of IEC Publication No. 179, dated 1973, and entitled "International Sound Level Meters" are incorporated by reference into this appendix and are made a part hereof as provided in 5 U.S.C. 552(a) and 1 CFR Part 51. This publication was published in 1955 and revised in 1973 by the Bureau Central de la Commission Electrotechnique Internationale in Geneva, Switzerland. It is available for purchase from the following source: (1) Bureau Central de la Commission Electrotechnique Internationale, 1, rue de Varembé, Geneva, Switzerland; and (2) American National Standards Institute, 1430 Broadway, New York City, New York 10018. The matter is available for inspection at the following locations: (1) FAA Headquarters—DOT Branch Library, and Office of Environmental Quality, 800 Independence Avenue NW., Washington, D.C. (2) FAA Regional Offices, in their respective cities, and (3) Office of the Federal Register, 1100 7th Street NW., Washington, D.C.

(i) The response of the complete system to a steady plane progressive sinusoidal wave of constant amplitude must lie within the tolerances limits specified in International Electrotechnical Commission Publication No. 179, dated 1973, over the frequency range 45 to 11,200 Hz.

(j) If limitations of the dynamic range of the equipment make it necessary, high frequency pre-emphasis must be added to the recording channel with the converse de-emphasis on playback. The pre-emphasis must be applied such that the instantaneous recorded sound pressure level of the noise signal between 800 and 11,200 Hz does not vary more than 20 dB between the maximum and minimum one-third octave bands.

(k) If requested by the FAA, the recorded noise signal must be read through an "A" filter with dynamic characteristics designated "slow," as prescribed in International Electrotechnical Commission Publication No. 179, dated 1973. The output signal from the filter must be fed to a rectifying circuit with equalizing characteristics integrated with time constants for charge and discharge of about 1 second or 500 millisecond.

(l) The equipment must be acoustically calibrated utilizing facilities for acoustic free-field calibration and if analysis of the tape recording is requested by the Administrator, the analysis equipment shall be electronically calibrated by a method approved by the FAA.

(m) A windscreen must be employed with microphone during all measurements of aircraft noise when the wind speed is in excess of 6 knots.

Section F36.107 Noise measurement procedures.

(a) The microphones must be oriented in a known direction so that maximum recorded sound received occurs as nearly as possible in the direction for which the microphones are calibrated. The microphones sensing elements must be approximately 4' above ground.

(b) Immediately prior to and after each test a recorded acoustic calibration of the
PART C—DATA COLLECTION
Section F36.201 Correction of data.
(a) Noise data obtained when the temperature is below the range of 50 degrees F, ±10 degrees F, or the relative humidity is above 90 percent or below 40 percent, must be corrected to 50 degrees F and 60 percent relative humidity by a method approved by the FAA.
(b) The performance correction prescribed in paragraph (c) of this section must be used. It must be determined by the method described in this appendix, and must be added algebraically to the measured value. It is limited to 5 dB(A).
(c) The performance correction must be computed by using the following formula:

$$40 \log \left( \frac{D_0}{D'} \right) \left( \frac{20}{2} \right) \left( \frac{20}{2} \right)$$

Where:
- $D_0$ = Takeoff distance to 50 feet at maximum certificated takeoff weight.
- $D'$ = Certified rate of climb (fpm).
- $V_f$ = Speed for best rate of climb in the same units as rate of climb.

(d) When takeoff distance to 50' is not listed as approved performance information, the figures obtained for single-engine aircraft, airplanes and 1600' for multi-engine airplane must be used.

Section F36.203 Validity of results.
(a) The tests to produce an average dB(A) and its 90 percent confidence limits, the noise level being the arithmetic average of the corrected measurements for all valid test runs over the measuring point.
(b) The samples must be large enough to establish statistically a 90 percent confidence limit not to exceed ±1.5 dB(A). No test result may be omitted from the averaging process, unless omission is approved by the FAA.

PART D—NOISE LIMITS
Section F36.301 Aircraft noise limits.
(a) Compliance with this section must be shown with noise data measured and corrected as prescribed in Parts B and C of this appendix.
(b) For airplanes for which a type certificate is made on or after October 1, 1973, the noise level must not exceed 86 dB(A) up to and including aircraft weights of 1,520 pounds (600 kg). For airplane weights greater than 1,520 pounds up to and including 2,650 pounds (1,600 kg), the limit increases at the rate of 6 dB(A) for each 1,000 pounds (453.6 kg) increment. For airplane weights greater than 2,650 pounds up to and including 12,500 pounds. However, airplanes produced under type certificates covered by this paragraph must also meet paragraph (d) of this section for the original issuance of standard airworthiness certificates or restricted category airworthiness certificates if those airplanes have not had flight time before the date specified in that paragraph.
(c) For airplanes for which application for a type certificate is made on or after January 1, 1980, the noise levels may not exceed the noise limit curve prescribed in paragraph (b) of this section, except that 80 dB(A) may not be exceeded at weights from 1,000 pounds up to and including 2,650 pounds.
d) For airplanes for which application was made prior to 7/7 degrees F, and is not the same certificate or for a restricted category airworthiness certificate, and that have not had any flight time before January 1, 1980, the requirements of paragraph (c) of this section apply, regardless of date of application, to

the original issuance of the certificate for that airplane.

Issued in Washington, D.C. on December 31, 1974.

ALEXANDER P. BUTTERFIELD, Administrator.

Note.—The incorporation by reference provisions in this document were approved by the Director of the Federal Register on November 6, 1974.

[F.R. Doc. 74-5057 Filed 12-31-74; 3:15 pm]

[Airworthiness Docket No. 74-192-64-AD; Amdt. 99-2004]

PART 39—AIRWORTHINESS DIRECTIVES
AiResearch Model GTCP660-4 and -4R Auxiliary Power Units (APU's)

There have been fatigue cracks in the fuel pump body, P/N 968602-2 and -3 of the AiResearch Model GTCP660-4 and -4R Auxiliary Power Units (APU's) which can result in high pressure fuel leakage into the APU case. The operating restriction may be discontinued after completion of the initial inspection of the fuel pump body, and/or the check of the adjustment of the ultimate relief valve based on the number of operating cycles in service. The recurring inspection may be discontinued with the units are modified by the installation of a fuel pump relief bleed-down valve.

Since a situation exists that requires immediate adoption of the 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.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 FR 13897), § 39.13 of Part 39 of the Federal Aviation Regulations is amended as follows:

AIRRESEARCH MANUFACTURING COMPANY OF ARIZONA, Applicant, Model GTCP660-4 (prior to Serial No. 37007) and GTCP660-4R (prior to Serial No. 152) Auxiliary Power Units, installed in, but not limited to, Boeing 707-321 airplanes, certificated in all categories.

To detect fatigue cracks in the fuel pump body, P/N 968602-2 or -3, with less than 7500 operating cycles in service on the effective date of the APU's affected, the following, and provide for replacement of assemblies, accomplish the following:

(a) For APU fuel pump bodies, P/N 968602-2 or -3, with less than 7500 operating cycles in service on the effective date of the APU's affected, the previous paragraph in view of the flight crew to prohibit all taxi and night flight operation of the APU.

Thereafter, the APU may not be used during
rules and regulations

(2) Within 500 APU-operating cycles after the effective date of this AD, check the fuel pump ultimate relief valve set point in accordance with paragraph 2.B. and C. of Airesearch Service Bulletin GTCPE60-49-A3673, dated December 19, 1974, or FAA approved revisions.

Note 1. For the purposes of this AD, a fuel pump body operating cycle is any operation commenced at an AD start and shall end at an AD shutdown. The number of cycles may be determined by actual count, or subject to acceptance by the intended operator, by dividing the total operating time in service by the operator's fleet average APU operating time per cycle. If the actual fuel pump total time is unknown, APU operating time on which this pump is installed may be substituted for this figure.

(3) If the relief valve setting determined in (a) (2) above is in excess of the limits shown on line one, table one, of the above referenced service bulletin, inspect the fuel pump body, P/N 665902-2 or -3, for cracks in accordance with paragraph 2.B. and C. of the above referenced service bulletin.

(4) Units found to be cracked per (a) (3) above must be replaced with a new or serviceable fuel pump body, P/N 665902-2, -3, -4, -6, or -9, of the engine manufacturer as described in paragraph 2.C. of the above referenced service bulletin prior to further operation.

Note 2. The fuel pump body interchangeability restrictions detailed in paragraph 2.D. of the above referenced service bulletin.

(5) Units found to be free of cracks per (a) (3) above may be returned to, or placed in, service after having determined that the ultimate relief valve has been properly set in accordance with paragraph 2.D. of the above referenced service bulletin.

(6) For crack free units returned to service in accordance with (a) (1) above, must be inspected for cracks at or before accumulating 7,500 total cycles, and at or before 2,500 cycle intervals thereafter.

(7) The operating restriction prescribed in (a) (1) above may be discontinued and the placard may be removed when the fuel pump body is changed and the recirculating inspections and operational restrictions required by paragraphs (a) (1) and (a) above may be discontinued, when...

(a) A relief bleed down valve, P/N 6607900-1, is incorporated per Service Bulletin GTCPE60-49-A3673, with either a new fuel pump body or a serviceable fuel pump body which has been inspected and determined to be crack free.

(b) An APU Inspection Narrative describing this modification must be made.

(c) Equivalent procedures may be approved by the Chief, Aircraft Engineering Division, FAA Western Region, upon submission of adequate substantiation data.

(d) Aircraft may be flown to a base for the accomplishment of maintenance required by this AD, for PAA No. 21.197 and 21.199.

This amendment becomes effective January 13, 1975.

(1) [See 31(a), (b) 2 and 3) of the Federal Aviation Act of 1958, as amended (49 U.S.C. section 1431 and 1432) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1056(c))]

Issued in Los Angeles, California on December 27, 1974.

JAMES V. NYELENS, Acting Director, FAA Western Region.

[FR Doc.75-177 Filed 1-3-75; 8:45 am]

AIRWORTHINESS DIRECTIVES

Beach 35 Series Airplanes

There have been exhaust system failures and resultant compartment fires on Beech V25A and V25B airplanes that incorporate turbocharged Continental TSIO-520-D engines. Since this condition is likely to exist or develop in other airplanes of the same design, an airworthiness directive is being issued to require improved exhaust system integrity on Beech 35A, 35D, V35A and V35B airplanes modified in accordance with Supplemental Type Certificate No. SA10016B or Beech Drawing No. 33-910028.

The National Transportation Safety Board has recommended certain action to minimize exhaust failures of this nature. This recommendation, which is included in Safety Recommendation A-72-117 dated December 19, 1974, has been considered by the Federal Aviation Administration. The FAA has determined, however, that additional action is necessary. This Airworthiness Directive, therefore, goes beyond the scope of the NTSB recommendation.

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

The consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13897), § 39.13 of the Federal Aviation Regulations is amended by adding the following airworthiness directives:

2. Applies to Beech Models 35A, 35D, V35A and V35B airplanes certificated in all categories with Continental TSIO-520-D engines installed in accordance with STO SA10016B or Beech Drawing No. 33-910028.

Compliance required as indicated, unless otherwise accomplished.

To minimize exhaust system failures, accomplish the following:

(a) Within the next 10 hours in service after the effective date of this airworthiness directive, conduct a visual inspection of the bellows portion of the exhaust waste gate elbow assembly, AllResearch Part Number 526-033-074-137. If a crack is found, the elbow assembly must be modified per paragraph (b) below prior to further flight.

(b) Within the next 100 hours in service after the effective date of this airworthiness directive, conduct a visual inspection of the bellows portion of the exhaust waste gate elbow assembly, AllResearch Part Number 526-033-074-141. Equivalent modification may be approved by the Chief, Aircraft Engineering Division, FAA Western Region.

Note: For the requirements regarding the listing, collation and method of compliance with this airworthiness directive in the permanent record of the airplane, see FAR 61.173.

This amendment becomes effective January 13, 1975.

(1) [See 31(a) and 33(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1431 and 1432) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1056(c))]

Issued in Los Angeles, California on December 27, 1974.

JAMES V. NYELENS, Acting Director, FAA Western Region.

[FR Doc.75-177 Filed 1-3-75; 8:45 am]
RULES AND REGULATIONS

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (40 FR 354), the Covington, Ky., control zone is amended as follows:

“within 4.5 miles each side of Cincinnati VORTAC 223° radial, extending from the 11.5-mile radius area to the point defined by the point located 10.8 miles south of the Cincinnati VORTAC.” is deleted from the description.

In § 71.181 (40 FR 441), the Cincinnati, Ohio, transition area is amended as follows:

“within 5 miles each side of Cincinnati VORTAC 223° radial, extending from the 11.5-mile radius area to 11.5 miles south of the VORTAC.” is deleted from the description.

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

Issued in East Point, Ga., on December 24, 1974.

PHILLIP M. SWATEK
Director, Southern Region.

[FR Doc.76-162 Filed 1-3-76;8:45 am]

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

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the London, Ky., control zone and transition area.

The London control zone is described in § 71.171 (40 FR 354) and the London transition area is described in § 71.181 (40 FR 441). In each description, reference is made to the Corbin-London War Memorial Airport. Since the name of this airport has been changed to “London-Corbin Airport, Magee Field,” it is necessary to amend the descriptions to reflect this change.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (40 FR 354) and § 71.181 (40 FR 441), the London, Ky., control zone and transition area are amended as follows:

“...Corbin-London War Memorial Airport...” is deleted and “...London-Corbin Airport, Magee Field...” is substituted therefor.

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

Issued in East Point, Ga., on December 24, 1974.

PHILLIP M. SWATEK
Director, Southern Region.

[FR Doc.76-161 Filed 1-3-76;8:45 am]

PART 73—SPECIAL USE AIRSPACE

Revocation of Restricted Area

The purpose of this amendment to Part 73 of the Federal Aviation Regulations is to revoke Restricted Area R-3008 Townsend, Ga.

Revocation of R-3008 is appropriate because the Department of the Navy has determined that it no longer requires the restricted area.

Since this amendment restores airspace to the public use and relieves a restriction, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0001 G.m.t., February 27, 1975, as hereinafter set forth.

In § 73.30 (40 FR 690) Restricted Area R-3008 Townsend, Ga., is revoked.

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

Issued in Washington, D.C., on December 28, 1974.

GORDON E. KEWER
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-160 Filed 1-3-76;8:45 am]
PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS

FLIGHT CREW OF AIRCRAFT

First-Aid Kits

The purpose of this amendment to Appendix A of Part 121 of the Federal Aviation Regulations is to provide for the use of rinseable swabs and the specimen collection vials required in Appendix C of Part 121. This amendment also specifies that a first-aid kit, as defined by Appendix B of Part 121, must contain antiseptic swabs and the proved substitute for any of those items considered unnecessary, since Federal Specification GG-K-591a specifies the minimum portion required for each item set forth in paragraph (4) and each approved substitute for any of those items would also have to meet the same minimum portion requirement.

As explained in the proposal, one purpose of this amendment is to make the provisions of Appendix A more flexible by permitting FAA approved first-aid kit items to be substituted for those specified in paragraph (4) of Appendix A. Interested persons can be assured that appropriate medical advice will be available within the agency for the guidance of FAA personnel in approving items for use in first-aid kits.

Paragraph (5) of the Appendix permits arm and leg splints which do not fit within a first-aid kit to be stowed in a readily accessible location as near as practicable to the kit. While certain comments were opposed to proposed paragraph (5), it has been adopted as proposed, since the FAA believes it will adequately ensure the availability during an emergency of arm and leg splints that cannot be stowed within a kit. These arm and leg splints, as in the case of all other approved first-aid equipment, must be clearly identified, marked, and inspected in accordance with the current provisions of §121.309.

Certain comments recommended the use of inflatable splints. However, as explained in the preamble to Amendment 121-107, consideration was given to permitting the use of inflatable splints, but tests conducted during decompression have revealed that this type of splint can be hazardous for use in airplanes due to changes in the cabin pressure.

Comments were also received which recommended the adoption of requirements for first-aid equipment and crewmember training that are considered outside the scope of the Notice concerning this amendment. However, these comments may be considered in future FAA regulatory action.

Rules and Regulations

1. By revising paragraph (1) to read as follows:

(1) Each first-aid kit must be dust and moisture proof and contain only materials that either meet Federal Specification GG-K-591a, as revised, or are approved.

2. By amending paragraph (2) by striking out the word "cabin" after the phrase "throughout the" and before the word "and" and by substituting therefor the word "aircraft."
cases of interline claims each carrier shall report only the portion of actual shipper loss attributable to its portion of the interline settlement, we have decided to effect this clarification by revising the instructions to Schedule A, rather than by revising the definition of "actual shipper loss.""

Finally, the Board takes this occasion to make two editorial amendments to § 239.7: (1) to conform the column descriptions in paragraphs (d), (e), and (f) of the rule to the heading used in the schedule to which they relate; (2) to require a separate identification by year as well as month in Schedule B; and (3) to amend paragraph (f) by correcting the reference therein from "cargo" to "freight," inasmuch as Part 239 deals only with freight, whereas "cargo" includes mail and express as well.

Since the within amendment affects recordkeeping as well as reporting, it will become applicable only to the first full calendar quarter commencing subsequent to its effective date.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 239 of the Economic Regulations (14 CFR Part 239) effective February 6, 1975, to read as follows:

1. Amend § 239.1, by revising the definition of "Actual shipper loss," the amended definition to read as follows:

§ 239.1 Definitions.

"Actual shipper loss" means the total dollar amount on each claim actually suffered by claimant because of loss, damage, delay, etc., based upon prior reasonable depreciation based upon prior use and age, whichever is greater; or (2) for claims made by an air freight forwarder, the actual shipper loss to be reported by a direct air carrier shall be the amount claimed by the forwarder.

2. Amend § 239.6(1), the amended paragraph to read as follows:

§ 239.6 Schedule A—Report of freight loss and damage claims paid.

(j) Column (20)—For each commodity reported in column (2), show the whole-dollar amounts of the actual shipper losses. For interline claims, each participating direct air carrier shall report such actual shipper losses in the same ratio to the total actual shipper losses as its share in the interline claim settlement bore to the total settlement, computed in the manner described in paragraph (e) of this section.

3. Amend § 239.7 (c), (d), (e) and (f), the amended paragraphs to read as follows:

§ 239.7 Schedule B—Analysis of Shortage.

(c) Columns (1) and (2)—List individually each claim payment during the reporting period in the amount of $100 or more as the result of shortage. Use the commodity code numbers provided in Appendix A in column (1). In column (2), use the carrier claim file number of the reporting carrier. For carriers using airbill/airwaybill numbers as claim file numbers, files shall be maintained in such fashion as to insure retrieval and a later date with minimum effort and time.

(d) Columns (3), (4), (5), (6), and (9), (10), (11), (12)—For each claim reported by a carrier, show the dollar amounts borne by the reporting carrier which are attributable to "Pilferage," "Robbery," "Theft," and "Other Shortage," respectively, and separated as appropriate under Scheduled or Nonscheduled operations.

(e) Columns (7) and (13)—Identify the airport where the shortage occurred using the three-letter airport code shown in the Official Airline Guide. If the airport is not known, allocate claim amount in same proportion as used to allocate to other airports involved in the transportation of the shipment. For example, if Los Angeles and Philadelphia alone were involved, a single commodity entry would show 50 percent of the claim against each.

By the Civil Aeronautics Board.

[SEAL]

EDWIN Z. HOLLAND, Secretary.

[Regulation ER-894, Amdt. 30]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Commercial Fuel Prices Surcharge Provisions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., December 31, 1974.

In accordance with established procedure and methodology, the Board having completed its review of commercial fuel prices for foreign and overseas MAC air transportation services as of December 1, 1974, is herein amending the surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established for those services.

We have compared fuel price information reported as of December 1, 1974, to the base-period fuel costs for the year ended June 30, 1974. Based on the computations set out in Appendices A and B, we will amend the fuel surcharge rates effective December 1, 1974, as follows: the long-range Category B and Category A rate from 6.08 to 6.00 percent, the Pacific interisland short-range Category B rate from 1.79 to 1.75 percent, and the "all other" short-range Category B rates from 3.28 to 3.45 percent.

Under established procedures, the surcharge rates resulting from our monthly review of commodity fuel prices are made effective as adjusted final rates, retroactive to the first day of the month under review, and as temporary surcharge rates (subject to final adjustment) for the period beginning the first day of the following month. Accordingly, we find good cause exists to make the within final and temporary rates effective on less than thirty (30) days' notice.

In consideration of the foregoing, the Board hereby amends Part 288 of its Economic Regulations (14 CFR Part 288) as follows:

1. Amend § 288.7(a) (1) by amending the second proviso following the tables to read as follows:

§ 288.7 Reasonable level of compensation.

(1) * * *

And, provided further, That (1) effective December 1 through December 31, 1974, the total minimum compensation pursuant to the rates specified in subparagraph (1) of this paragraph for (a) services performed with regular jet, wide-bodied jet and DC-8F-61-63 aircraft, (b) Pacific interisland services performed with DC-8F-61-63 aircraft, and (c) all other services performed with B-727 aircraft shall be further increased by surcharges of 6.09 percent, 1.75 percent and 3.45 percent, respectively; and (2) on and after January 1, 1975, the total minimum compensation pursuant to the rates specified on subparagraph (1) of this paragraph for (a) services performed with regular jet, wide-bodied jet and DC-8F-61-63 aircraft, (b) Pacific interisland services performed with B-727 aircraft, and (c) all other services performed with B-727 aircraft shall be further increased by temporary surcharges of 6.09 percent, 1.75 percent and 3.45 percent, respectively, subject to

1. ER-879, effective October 29, 1974.

2. Footnotes filed as part of original document.
On July 2, 1973, the Department of Commerce imposed validated license controls on ferrous scrap to all destinations, including Canada. These controls were imposed to assure adequate availability of scrap for domestic iron and steel production.

Recent surveys indicate that inventories have returned to normal levels, and prices have returned substantially to the level of a year ago. In view of these developments, the legal requirements for short supply export controls on ferrous scrap are no longer present.

Accordingly, § 377.4 and Supplement No. 1 to Part 377 are deleted, and the Commodity Control List (Day 85 - Export Administration Regulations) is revised to delete entry no. 28(1a).

Effective date of action: 12:01 a.m. January 1, 1975.

RAVER H. MEYER, Director, Office of Export Administration.

FEDERAL REGISTER, VOL. 40, NO. 2—MONDAY, JANUARY 6, 1975
RULES AND REGULATIONS

Water Quality for Waters of the Territory of Guam, April 1968," are the approved water quality standards for the Territory of Guam, except as amended as follows:

(a) For clarification purposes, corrected terminology shall be read into the Standards as follows:

(1) References to "the Department of Interior" and "the Water Pollution Control Administration" will be taken to mean "the Environmental Protection Agency."

(2) References to "the Secretary" or "the Secretary of Interior" will be taken to mean "the Administrator of the Environmental Protection Agency."

(3) References to the "Water Pollution Control Commission" or "the Commission" will be taken to mean, as appropriate, "the Guam Environmental Protection Agency" or "the Guam Environmental Protection Board."

(4) References to State and Federal laws will be replaced by references to current equivalent laws.

(b) The first two paragraphs of "WATER USE IDENTIFICATION OF WATER AND BENEFICIAL USES" (pp. 9 and 10 of the Guam standards), shall be replaced with the following paragraph:

Nearshore Coastal Waters. All near-shore coastal waters shall be protected for present and future uses of industrial water supply, propagation of fish and other aquatic life and wildlife (including waters reserved for conservation of native marine biota, shellfish propagation, and commercial and sports fishing), esthetic enjoyment, and recreation. The following near-shore waters will also be protected for uses of navigation in addition to uses listed above: Pago Bay, Ylig Bay, Talofoto Bay, Asfanay Bay, Manel and Mamengo Channel, Port Emruo (Merizo), Umaala Bay, Oter Apra Harbor, Agana Small Craft Harbor, Inner Apra Harbor and the areas immediately adjacent to docks, piers, wharves, and loading facilities. The new near-shore commercial docks, oil and ammunition docks, and PII channel.

(c) Following the provision shall be added to "STANDARDS FOR WATER QUALITY, ADDITIONAL REQUIREMENTS" (p. 0 of the Guam standards):

(6) In all the waters of the Territory at all times, toxic substances shall be kept below levels which are deleterious to human, animal, plant or aquatic life, and in amounts sufficient to interfere with the beneficial uses of the water. The presence of toxic substances in a water shall be evaluated by use of a 24-hour bioassay, guided by the document "Standard Methods for the Examination of Water and Wastewater," 13th edition. The survival of the test organisms shall not be less than that in controls which utilize appropriate experimental water. Experimental water shall be obtained from a nearby location having water quality representative of natural conditions at the test location, or other appropriate experimental water defined by the Territory and concurred in by EPA. Failure to determine presence of toxic substances by this method shall not preclude determination of excessive levels of toxic substances on the basis of other criteria or methods.

(Section 303, Federal Water Pollution Control Act, as amended, 33 U.S.C. 1222 et seq., Pub. L. 94-568.)

Effective date: January 6, 1975.

Issued on: December 30, 1974.

John Quarles, Acting Administrator.

[FR Doc.75-278 Filed 1-5-75; 8:45 am]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDES IN OR ON RAW AGRICULTURAL COMMODITIES

Formaldehyde

A petition (FP 4P1488) was filed (39 FR 23575) by the Celanese Chemical Co., 110 Avenue of the Americas, New York, NY 10036, in accordance with provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 344a), proposing establishment of tolerances for residues of the fungicide formaldehyde in or on the raw agricultural commodities grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermudagrass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, rye grass, soybean hay, sudan grass, timothy, and vetch from postharvest application of formaldehyde or a mixture of methylene bispropionate and oxy(bis(methylene) bispropionate) when used as a fungicide. These raw agricultural commodities are for use only as animal feeds.

1. In Subpart D, by adding a new section as follows:

§ 180.1032 Formaldehyde, exemption from the requirement of a tolerance.

Formaldehyde is exempt from the requirement of a tolerance for residues in or on the raw agricultural commodities grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermudagrass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, rye grass, soybean hay, sudan grass, timothy, and vetch from postharvest application of formaldehyde or a mixture of methylene bispropionate and oxy(bis(methylene) bispropionate) when used as a fungicide. These raw agricultural commodities are for use only as animal feeds.

2. Subsection 180.1032 is revised to read as follows:

§ 180.1032 Propionic acid: exemption from the requirement of a tolerance.

Propionic acid is exempt from the requirement of a tolerance for residues in or on alfalfa, barley grain, Bermudagrass, bluegrass, brome grass, clover, corn grain, soybean hay, sudan grass, timothy, vetch, and vetch from postharvest application of propionic acid or a mixture of methylene bispropionate and oxy(bis(methylene) bispropionate) when used as a fungicide.

Any person who will be adversely affected by the foregoing order may by February 5, 1975 file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets SW, Waterman Building, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections shall be supported by affidavits or other evidence. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective January 6, 1975.
RULES AND REGULATIONS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Paraquat

In response to a petition (PP 5E1549) submitted by Dr. C. C. Compton, Coordinator, Interregional Research Project No. 4, State Agricultural Experiment Station, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Texas and Oklahoma, a notice was published by the Environmental Protection Agency in the Federal Register of October 31, 1974 (39 FR 38394), proposing establishment of a tolerance for residues of the desiccant paraquat (1,1'-dimethyl-4,4'-bipyridinium), from application of the dichloride salt, in or on the raw agricultural commodity guar beans at 0.5 part per million. No comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (39 FR 18805), § 180.205 is amended by revising the paragraph "0.5 part per million * * *" to read as follows:

§ 180.205 Paraquat; tolerances for residues.

0.5 part per million in or on almond hulls, cottonseed, guar beans, potatoes, sugar beets, sugar beet tops, and sugarcane. * * * * *

Any person who will be adversely affected by the foregoing order may at any time by February 5, 1975 file with the Hearing Clerk, Environmental Protection Agency, Room 1010E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed 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. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on January 6, 1975.

LowELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticide Programs.

Dated: December 30, 1974.

[FR Doc.75-274 Filed 1-3-75;8:45 am]
DEPARTMENT OF THE TREASURY
Internal Revenue Service
[26 CFR Parts 1, 301]

SELF-EMPLOYMENT TAX

Inclusion in Estimated Tax and Increase of Applicable Percentage From 70 Percent to 80 Percent

Notice is hereby given that the regulations set forth in tentative form in this document are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:T:FS, Washington, D.C. 20224, by February 5, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d) (9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner, by February 5, 1975. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the Federal Register, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register.

The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 817; 26 U.S.C. 7805).

Donald C. Alexander,
Commissioner of Internal Revenue.

This document contains proposed amendments to the Income Tax regulations (26 CFR Part 1) and the regulations on procedure and administration (26 CFR Part 301) in order to conform such regulations to the provisions of sections 102 and 103 of the Tax Reform Act of 1969 (60 Stat. 62, 64) (relating to the inclusion of the self-employment tax in the estimated tax and relating to the increase of the percentage which estimated tax must be of actual tax in order for an individual to avoid having an underpayment of estimated tax), and to minor amendments made by sections 102(a) and 104(a) of the Revenue and Expenditure Control Act of 1968 (62 Stat. 251, 264); section 301(b) (12) and (13) of the Tax Reform Act of 1969 (62 Stat. 586); section 203(b) (7) of the Act of March 17, 1971 (Pub. L. 92-5, 85 Stat. 11); section 203(b) (7) of the Act of July 1, 1972 (Pub. L. 92-336, 86 Stat. 329); section 203(b) (7) and (d) of the Act of July 9, 1973 (Pub. L. 93-66, 87 Stat. 163), section 5 (b) (7), (d), and (f) of the Act of December 31, 1973 (Pub. L. 93-232, 87 Stat. 692).

Prior to the enactment of the Tax Adjustment Act of 1966 an individual could include payment of his self-employment tax in his estimated tax payment but was not required to do so. The 1966 Act redefined the term "estimated tax" for taxable years beginning after December 31, 1966, to include the amount which an individual estimates as the amount of self-employment tax imposed for the taxable year by chapter 2 of the Internal Revenue Code of 1954. Thus, an individual whose combined estimated income tax and estimated self-employment tax can reasonably be expected to equal or exceed the statutory floor ($100, or, for taxable years beginning before January 1, 1973, $50) is now required to file a declaration if he otherwise meets the requirements of section 6654(a). For example, assume that a self-employed individual (other than a farmer or fisherman) was restricted by the facts shown on the previous year's return but computed on the basis of current rates and current exemptions; (2) the tax based on the facts shown on the previous year's return but computed on the basis of annualized taxable income for the months of the taxable year preceding the month in which the installment is due; or (3) 70 percent of the tax computed on the actual taxable income for the months of the taxable year preceding the month in which the installment is due as if such months constituted the taxable year. The Tax Adjustment Act modified these exceptions to the imposition of an addition to the tax with respect to taxable years beginning after December 31, 1966, to reflect the redefinition of the word "tax" for purposes of section 6654 to include both chapter 1 and chapter 2 taxes and the increase in the percentage referred to in the determination of the amount of any underpayment of estimated tax.

§ 1.170-2 Charitable deductions by individuals; limitations (before amendment by Tax Reform Act of 1969).

(a) Unlimited deduction for individuals—(1) In general. (i) The deduction for charitable contributions made by an individual is not subject to the 10- and 20-percent limitations of section 170(b) if in the taxable year and each of the 10 preceding taxable years the sum of his charitable contributions paid during the year, plus his payments during the year on account of Federal income taxes, is more than 90 percent of his taxable income for the year (or net income, in years governed by the Internal Revenue Code of 1939). In determining the applicable limitations, the 10- and 20-percent limitations of section 170(b) for taxable years beginning after December 31, 1957, there may be substituted, in lieu of the amount of income tax paid during the year, the amount of income tax paid in respect of such year, provided that any amount so included for the year in respect of which payment was made shall not be included for any other year.

(ii) The amount of contributions paid by the taxpayer during the taxable year for which the deductions are claimed shall not be included for any other year.

(iii) For purposes of the first sentence of this paragraph, taxable income under the 1954 Code is determined without regard to the deductions for charitable contributions under section 170, for personal exemptions under section 151, or for a net operating loss carryback under section 172. On the other hand, for this purpose net income under the 1939 Code is computed without the benefit only of the deduction for charitable contributions. See section 120 of the Internal Revenue Code of 1939. The term "income tax" as used in section 170(b) (1) (C) means only Federal income taxes, and does not include the taxes imposed on self-employment income, on employees under the Federal Insurance Contributions Act, and on railroad employees and their representatives under the Railroad Retirement Tax Act by chapters 2, 21, and 22, respectively, or corresponding provisions of the Internal Revenue Code of 1939. For purposes of section 170(b) (1) (C) and this paragraph, the amount of income tax paid during a taxable year shall be determined (except as provided in subsection (a) of this subparagraph) by taking into account payments made by the taxpayer during such taxable year on account of his Federal income taxes (whether for the taxable year or for preceding taxable year). Such payments would include any amount paid during the taxable year as estimated tax (exclusive of any portion of such amount for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for that year, payment of the final installment of estimated tax (exclusive of any portion of such installment for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for the preceding taxable year, final payment for the preceding taxable year, or for any payment of a deficiency for an earlier taxable year, to the extent that such payments do not exceed the tax for the taxable year for which they are made.

(iv) Nonresident aliens. See section 120 of the Internal Revenue Code of 1954 for personal exemptions under section 120, on railroad employees and their representatives under the Railroad Retirement Tax Act, and on railroad employees and their representatives under the Railroad Retirement Tax Act, and on railroad employees and their representatives under the Railroad Retirement Tax Act by chapters 2, 21, and 22, respectively, or corresponding provisions of the Internal Revenue Code of 1939. For purposes of section 170(b) (1) (C) and this paragraph, the amount of income tax paid during a taxable year shall be determined (except as provided in subsection (a) of this subparagraph) by taking into account payments made by the taxpayer during such taxable year on account of his Federal income taxes (whether for the taxable year or for preceding taxable year). Such payments would include any amount paid during the taxable year as estimated tax (exclusive of any portion of such amount for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for that year, payment of the final installment of estimated tax (exclusive of any portion of such installment for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for the preceding taxable year, final payment for the preceding taxable year, or for any payment of a deficiency for an earlier taxable year, to the extent that such payments do not exceed the tax for the taxable year for which they are made. Any such refund or credit received by a nonresident alien for the taxable year shall be included for any other year.

(b) Contributions by individuals. See section 120 of the Internal Revenue Code of 1954 for personal exemptions under section 120, on railroad employees and their representatives under the Railroad Retirement Tax Act, and on railroad employees and their representatives under the Railroad Retirement Tax Act by chapters 2, 21, and 22, respectively, or corresponding provisions of the Internal Revenue Code of 1939. For purposes of section 170(b) (1) (C) and this paragraph, the amount of income tax paid during a taxable year shall be determined (except as provided in subsection (a) of this subparagraph) by taking into account payments made by the taxpayer during such taxable year on account of his Federal income taxes (whether for the taxable year or for preceding taxable year). Such payments would include any amount paid during the taxable year as estimated tax (exclusive of any portion of such amount for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for that year, payment of the final installment of estimated tax (exclusive of any portion of such installment for taxable years beginning after December 31, 1966, which is attributable to the self-employment tax imposed by chapter 2) for the preceding taxable year, final payment for the preceding taxable year, or for any payment of a deficiency for an earlier taxable year, to the extent that such payments do not exceed the tax for the taxable year for which they are made. Any such refund or credit received by a nonresident alien for the taxable year shall be included for any other year.

(c) For purposes relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Pan. 2. Section 1.1403-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6001-1. For provisions relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Pan. 3. Section 1.1403-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6001-1. For provisions relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Pan. 3. Section 1.1403-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6001-1. For provisions relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Pan. 3. Section 1.1403-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6001-1. For provisions relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Pan. 3. Section 1.1403-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6001-1. For provisions relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Pan. 3. Section 1.1403-1 is amended by revising paragraphs (a), (b), and (c). These amended provisions read as follows:

§ 1.1403-1 Cross references.

For provisions relating to the requirement for filing returns with respect to net earnings from self-employment, see § 1.6001-1. For provisions relating to declarations of estimated tax on self-employment income, see § 1.6015(a) to 1.6015(b), inclusive. For other administrative provisions relating to the tax on self-employment income, see the applicable sections of the regulations in this part (§ 1.6001-1 et seq.) and the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).
PROPOSED RULES

the taxable year or may be divided between them in such manner as they may agree. In the event the husband and wife fail to agree to a division, such payments shall be allocated between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 (other than by section 50) shown on the separate return of the taxpayer (plus, for taxable years beginning after December 31, 1966, the amount of tax imposed by chapter 2 shown on the return of the taxpayer) bears to the sum of the taxes imposed by chapter 1 (other than by section 50) shown on the separate returns of the taxpayer and his spouse (plus, for taxable years beginning after December 31, 1966, the sum of the taxes imposed by chapter 2 shown on the return of the taxpayer and his spouse). For example, assume that for calendar year 1972 H and his spouse W make a joint declaration of estimated tax and, pursuant thereto, pay a total of $19,500 of estimated tax. H files a separate return for January 1, 1973 and W files a separate return for January 1, 1973 showing estimated tax imposed by chapter 1 (other than by section 50) in the amount of $11,500 and $8,000, respectively. In addition, H's return shows a tax imposed by chapter 1 in the amount of $500. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is computed as follows:

1. Amount of tax imposed by chapter 1 (other than by section 50) shown on W's return $11,500
2. Total taxes imposed by chapter 1 (other than by section 50) and by chapter 2 shown on W's return $12,000
3. Amount of tax imposed by chapter 1 (other than by section 50) shown on the separate return of the surviving spouse $8,000
4. Total taxes imposed by chapter 1 (other than by section 50) and by chapter 2 shown on both H's and W's returns $20,000
5. Proportion of such taxes shown on H's return to total amount of such taxes shown on both H's and W's returns (12,000 - 20,000) (percent) 20,000
6. Amount of estimated tax payments allocated to H (60% of $19,500) $11,700

Accordingly, H's return would show remaining liability in the amount of $300 ($12,000 taxes shown less $11,700 estimated tax allocated).

(c) Death of spouse. (1) A joint declaration may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse he may, in making a separate declaration for his taxable year which includes the period comprising such last taxable year of his spouse, estimate the amount of the tax imposed by chapter 1 (other than by section 50) on his and his spouse's taxable income on an aggregate basis and compute his estimated tax with respect to such chapter 1 tax in the same manner as though a joint declaration had been made.

(2) If a joint declaration is made by husband and wife and thereafter one spouse dies, no further payments of estimated tax on account of such joint declaration are required from the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax unless an amended declaration setting forth the separate estimated tax for the taxable year is made by such spouse. Such separate estimated tax shall be paid at the times and in the amounts determined under the rules prescribed in section 6153. For purposes of (i) the making of such an amended declaration by the surviving spouse, and (ii) the allocation of payments made pursuant to a joint declaration between the surviving spouse and the legal representative of the decedent in the event a joint return is not filed, the payments made pursuant to the joint declaration may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree. In the event the surviving spouse and the legal representative of the decedent fail to agree to a division, such payments shall be allocated in accordance with the following rule. The portion of such payments to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by chapter 1 (other than by section 50) shown on the separate return of the surviving spouse (plus, for taxable years beginning after December 31, 1966, the sum of the taxes imposed by chapter 1 (other than by section 50) shown on the separate returns of the surviving spouse and of the decedent) and the balance of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (b) of this section and the decedent in this rule to W in that example.

* * * *

Par. 5. Section 1.6015(c) is amended to read as follows:

§ 1.6015(c) Statutory provisions; declaration of estimated income tax by individuals; estimated tax.

Sec. 6015. Declaration of estimated income tax by individuals. * * * *(e) Estimated tax. For purposes of this title, in the case of an individual, the term "estimated tax" means-(1) The amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year (other than the tax imposed by section 60), plus

(2) The amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

(3) The amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

[Sec. 6015(c) as amended by sec. 102(c), Tax Adjustment Act 1969 (60 Stat. 62); sec. 301 (b), Tax Reform Act 1969 (89 Stat. 650)]

Par. 6. Section 1.6015(c)-1 is amended to read as follows:

§ 1.6015(c)-1 Definition of estimated tax.

In the case of an individual, the term "estimated tax" means-(a) The amount which the individual estimates as the amount of the income tax imposed by chapter 1, plus the tax imposed by section 60, for taxable years beginning after December 31, 1966, the sum of the taxes imposed by chapter 2 for the taxable year, and

(b) For taxable years beginning after December 31, 1966, the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, plus

(c) The amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1. These credits are the product of the amount of tax withheld on wages, section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds), section 33 (relating to foreign taxes), section 34 (relating to the credit for dividends received on or before December 31, 1964), section 35 (relating to partially tax-exempt interest), section 36 (relating to retirement income), section 38 (relating to the investment credit), section 39 (relating to certain uses of gasoline, special fuels, and lubricating oils), section 40 (relating to expenses of work incentive programs), section 41 (relating to contributions to candidates), and section 42 (relating to overpayments of tax). An individual who expects to elect to pay the optional tax imposed by section 3, or one who expects to elect to take the standard deduction allowed by section 144, should disregard any credits otherwise allowable under sections 32, 33, and 35 in computing his estimated tax since, if he so elects, these credits are not allowed in computing his tax liability. See section 36.

For example, if a self-employed individual estimates that his liabilities for income tax and self-employment tax for 1973 will be $1,600 and $400, respectively, he is required to declare and pay an estimated tax of $2,000 for that year.
PROPOSED RULES

§ 1.6654 Statutory provisions; failure by individual to pay estimated income tax.

See, 6654, Failure by individual to pay estimated income tax—(a) Addition to the tax.

In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax which would otherwise be paid under chapter 2 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) Amount of underpayment. For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (80% percent in the case of individuals referred to in section 6673 (b), relating to income from farming or fishing) of the tax shown on the return for the taxable year or, if no return was filed, 80 percent (66% percent in the case of individuals referred to in section 6673 (b), relating to income from farming or fishing) of the tax for such year, over

(2) The amount, if any, of the installment paid before the last date prescribed for such payment.

(c) Exception. Notwithstanding the provisions of the preceding subsections, the addition to the tax which would be required to be paid in respect of any installment shall not be imposed if the total amount of all payments of estimated tax made and reported on the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding taxable year was a taxable year of 12 months.

(2) An amount equal to 80 percent (66% percent in the case of individuals referred to in section 6673 (b), relating to income from farming or fishing) of the tax for the taxable year shown on the return for the taxable year or, if no return was filed, 80 percent (66% percent in the case of individuals referred to in section 6673 (b), relating to income from farming or fishing) of the tax for such year, over

(3) The amount, if any, of the installment paid before the last date prescribed for such payment.

(d) Declaration of estimated tax with respect to taxable years beginning after December 31, 1966. For taxable years beginning after December 31, 1966, section 6615 provides that the term “estimated tax” includes the amount which an individual estimates as the amount of self-employment tax imposed by chapter 2 for the taxable year. Thus, in determining whether the amount of self-employment tax imposed by section 1402(a) must be added to the adjusted self-employment income (if the net earnings from self-employment as defined in section 1402(a)) for the taxable year equal or exceed 6600. For purposes of this paragraph—

(1) The amount shall be placed on an annualized basis by

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in which the installment is required to be paid, and by taking into account the adjusted self-employment income (if the net earnings from self-employment as defined in section 1402(a)) for the taxable year equal or exceed 6600.

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment is due or

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year, and all other deductions being determined as of the last date prescribed for payment of the installment.

The individual must file a return showing such tax to the extent the self-employment income exceeds 6600.

(ii) If the net earnings from self-employment (as defined in section 1402(a)) for the future taxable year would be less than 6600. In such case, the individual shall file a return showing such tax to the extent the self-employment income exceeds 6600.

(iii) If the net earnings from self-employment (as defined in section 1402(a)) for the future taxable year would be equal to or exceed 6600. In such case, the individual shall file a return showing such tax to the extent the self-employment income exceeds 6600.
monies in the taxable year ending before the month in which the installment is required to be paid, but not more than—

(II) The excess of (I) an amount equal to the contribution and benefit base (as determined under the Social Security Act) which is effective for the calendar year in which the taxable year begins, over (II) the amount determined by placing the wages (within the meaning of section 6072(b)) for the months in the taxable year ending before the month in which the installment is required to be paid on an annualized basis in a manner consistent with clauses (I) and (II) of subparagraph (A).

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income and the actual self-employment income for the months in the taxable year ending before the month in which the installment is required to be paid as if such months constituted the taxable year.

(4) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 161 for the taxable year, but otherwise on the basis of the facts and circumstances prevailing after the calendar month of December which includes the last day prescribed for payment thereof, and not including the law applicable to the preceding taxable year.

(1) Tax computed after application of credits against tax. For purposes of subsections (b) and (d), the term "tax" means—

(I) the tax imposed by chapter 1 of the Code (other than by section 66 or, for taxable years ending before September 30, 1968, the tax surcharge imposed by section 61), plus

(ii) the amount, if any, of the installment paid on or before the last day prescribed for such payment.

(4) The term "tax" when used in subparagraph (1) of this paragraph shall mean—

(I) The tax imposed by chapter 1 of the Code (other than by section 56 or, for taxable years ending before September 30, 1968, the tax surcharge imposed by section 61), plus

(ii) For taxable years beginning after December 31, 1968, the tax imposed by chapter 2 of the Code, minus

(iii) All credits allowed by part IV of chapter A of the Code, other than credits against the tax provided by section 31 (relating to tax withheld on wages).

(a) In general. (1) Section 6654 imposes an addition to the taxes under chapter 1 and 2 of the Code in the case of any underpayment of estimated tax by an individual (with certain exceptions described in section 6654(d)). This addition to the tax is in addition to any applicable criminal penalties and is imposed whether there was any underpayment attributable cause for the underpayment. The amount of the underpayment for any installment date is the excess of—

(1) The following percentages of the tax shown on the return for the taxable year or, if no return was filed, of the tax for such year, divided by the number of installment dates prescribed for such taxable year:

(A) 80 percent in the case of taxable years beginning after December 31, 1965, of individuals not referred to in section 6072(b) (relating to income from farming or fishing);

(B) 70 percent in the case of taxable years beginning before January 1, 1967, of such individuals;

(C) 66 2/3 percent in the case of individuals referred to in section 6073(b); over

(II) The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(4) Exceptions to imposition of the addition to the tax in the case of individuals referred to in section 6073(b). (A) In general. The addition to the tax under section 6654 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the least of the following amounts:

(1) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were the tax shown on the return for the preceding taxable year which the installment is required to be paid. This amount equals the amount of estimated tax shown on the return for the preceding taxable year which the installment is required to be paid. That percentage is 80 percent in the case of taxable years beginning after December 31, 1968, of such individuals, and 66 2/3 percent in the case of individuals referred to in section 6073(b). With respect to taxable years beginning after December 31, 1968, the adjusted self-employment income shall be taken into account in determining the amount referred to in this subparagraph if net earnings from self-employment is defined in section 1402(a) for the taxable year equal or exceed $400. For purposes of this subparagraph—

(i) Taxable income shall be placed on an annual basis by—

(A) Multiplying by 12 (or the number of months in the taxable year if less than 12) the taxable income (computed without the standard deduction and without the deduction for personal exemptions), or the adjusted gross income (as defined in section 151) of such individuals, and

(ii) Dividing the resulting amount by the number of such calendar months, and

(C) Deducing from such amount the adjusted self-employment income.

(2) Dividing the resulting amount by the number of such calendar months, and

(D) Deducing from such amount the adjusted self-employment income which the installment is required to be paid.

(3) The term "adjusted self-employment income" means—

(4) The term "tax" when used in subparagraph (1) of this paragraph shall mean—

(I) The tax imposed by chapter 1 of the Code (other than by section 56 or, for taxable years ending before the month in which the installment is required to be paid, computed as if such months constituted the taxable year, but not more than
(D) The excess of—

(1) For taxable years beginning after 1966, $8,600,

(2) For taxable years beginning after 1971, $9,000,

(3) For taxable years beginning after 1972, $10,000,

(4) For taxable years beginning after 1973, $12,000 and

(5) For taxable years beginning after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over the amount of the wages (within the meaning of section 1402(b)) for such calendar months, computed as if 12 for the number of months in the taxable year (in the case of a taxable year of less than 12 months) the wages for such calendar months and dividing the resulting amount by the number of such months. 

(3) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual self-employment income for the calendar months in the taxable year ending before the month in which the installment is required to be paid, as if such months constituted the taxable year, but not more than

(II) The excess of—

(A) For taxable years beginning after 1966, $8,600,

(B) For taxable years beginning after 1971, $9,000,

(C) For taxable years beginning after 1972, $10,000,

(D) For taxable years beginning after 1973, $12,000, and

(E) For taxable years beginning after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which the taxable year begins, over the amount of wages (within the meaning of section 1402(b)) for such months.

(4) The amount which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to a tax determined on the basis of the tax rates and the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year, in the case of an individual required to file a return for such preceding taxable year.

In the case of a taxpayer whose taxable year consists of 52 or 53 weeks in accordance with section 441, the rules prescribed by paragraph (b) of §1.441-2 shall apply as if, for the purposes of subparagraph (1) of this paragraph, whether a taxable year was a year of 12 months and, for purposes of subparagraphs (2) and (3) of this paragraph, the number of calendar months in a taxable year preceding the date prescribed for payment of an installment of estimated tax. For the rules to be applied in determining taxable income for any period described in subparagraphs (2) and (3) of this paragraph in the case of a taxpayer who employs accounting periods (e.g., thirteen 4-week periods or four 13-week periods) none of which terminates with the end of the applicable period described in subparagraph (2) or (3) of this paragraph, see paragraph (a) (3) of §1.441-2.

(b) Meaning of terms. As used in this section and §1.6654-3—

(1) The term "tax" means—

(i) The tax imposed by chapter 1 of the Code (other than §443), plus

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) The credits against tax allowed by part IV, subchapter A, chapter 1 of the Code, other than the credit against tax provided by section 31 (relating to tax withheld on wages), and without reduction for any credits estimated tax.

(2) The credits against tax allowed by part IV, subchapter A, chapter 1 of the Code, are—

(i) In the case of the exception described in paragraph (a) (1) of this section, the credits shown on the return for the preceding taxable year,

(ii) In the case of the exceptions described in paragraphs (a) (2) and (3) of this section, the credits shown on the return for the preceding taxable year, except that if the amount of any such credit would be affected by any change in rates or status with respect to personal exemptions, the credits shall be determined by reference to the rates and status applicable to the current taxable year.

A change in rate may be either a change in the rate of tax, such as a change in the rate of tax imposed by section 1 or section 1401, or a change by reason of a percentage affecting the computation of a credit, such as a change in the rate of withholding under chapter 3 of the Code or a change in the rate of the tax on a qualified investment which is specified in section 46 for use in determining the amount of the investment credit allowed by section 38.

(3) The term "return for the preceding taxable year" means the income tax return for such year which is required by section 6012(a) (7) to be filed. In the case of taxable years beginning after December 31, 1966, the self-employment tax return for such year which is required by section 6012.

Example. The following examples illustrate the application of the exceptions to the imposition of the addition to the tax for an underpayment of estimated tax, to the case of an individual whose taxable year is the calendar year.

Example (1). A, a married man with one child and a dependent parent, files a joint return with his spouse, B, for 1963 on April 15, 1965, showing taxable income $64,000 and a tax of $16,760. A and B had filed a joint declaration of estimated tax on April 15, 1963, showing an estimated tax of $10,000 which was paid in four equal installments of $2,500 each on April 15, June 15, and September 15, 1963, and January 15, 1964. The balance of $6,760 was paid with the return. A and B have an underpayment of estimated tax of $442 (9 of 70 percent of $16,760 less $2,500) for each installment date.

The 1964 calendar year return of A and B showed a liability of $10,000. Since the total amount of estimated tax paid was $10,000, the installment due on the return for the preceding year, the exception described in paragraph (a) (2) of this section would not apply. However, A and B are entitled to four exceptions under section 151 for 1965. Taxable income for 1964 based on four exemptions, but otherwise on the basis of the facts shown on the return for the 1954 return, would be $30,000. The tax on such amount in the case of a joint return would be $3,836. Since the total amount of estimated tax paid by each installment date exceeded the amount which would have been required to be paid on or before each such date, the credits shown on the return for such dates if the estimated tax were $9,836, the exception described in paragraph (a) (4) of this section applies and no addition to the tax will be imposed.

Example (2). Assumes the same facts as example (1), except that the joint return of A and B for 1954 showed taxable income of $32,000 and a tax liability of $10,400. Assume that this was the only personal exemption under section 151 for the 1954 return. The exception described in paragraph (a) (1) of this section would not apply. However, A and B are entitled to four exceptions under section 151 for 1955. Taxable income for 1954 based on four exemptions, but otherwise on the basis of the facts shown on the return for the 1954 return, would be $30,000. The tax on such amount in the case of a joint return would be $3,836. Since the total amount of estimated tax paid by each installment date exceeded the amount which would have been required to be paid on or before each such date, the credits shown on the return for such dates if the estimated tax were $9,836, the exception described in paragraph (a) (4) of this section applies and no addition to the tax will be imposed.

Example (3). C, who is self-employed (other than as a farmer or fisherman), has on his return the tax liability for the period January 1, 1967, through August 31, 1967, the income tax on which is $1,171. For the same period his net earnings from self-employment are $5,000 and his wages are $5,000. The estimated tax payments made by C for 1967 on, or before September 15, 1967, total $1,200. For the purposes of the exception described in paragraph (a) (2) of this section, the adjusted self-employment income is $3,520, computed as follows:

(1) Net earnings from self-employment $5,000

(2) State and local income taxes paid $1,000 ($5,000 X .20)

(3) Less of (1) or (2) 3,000

The tax on C's adjusted self-employment income would be $230.40 ($3,520 X 6.4 percent). The tax on the adjusted self-employment income paid on or before September 15, 1967, exceeds $1,171.12, that is, 80 percent of $1,401.40 ($1,171.12 + 230.40), the exception described in paragraph (a) (2) of this section applies and no addition to the tax will be imposed.
PROPOSED RULES

Example (A). D, who is self-employed (other than as a farmer or fisherman), has actual taxable income of $2,000 for the period ending January 1, 1967, through August 31, 1967, the income tax on which is $900. For the same period, net earnings from self-employment are $5,000 and his wages are $3,000. The estimated tax payments made by D for 1967 on or before September 15, 1967, total $900. For the purposes of the exception described in paragraph (a)(3) of this section, the actual self-employment income for this period is $2,000. For the purposes of the exception described in paragraph (a)(2) of this section and no addition to tax will be imposed. Since the amount paid on the joint return for the calendar year 1967 showing a tax liability of $10,000. The liability, attributable primarily to income received during the last year of the calendar year, both income and self-employment tax. Their aggregate payments of estimated tax on or before September 15, 1967, in respect of the first three installment payments totaling $450 paid on each of the first three installment dates prescribed for the taxable year. Since each installment paid, $450, was less than $2,000 (1/4 of $8,000), the exception described in paragraph (a) of this section applies and no addition to tax will be imposed.

Example (B). E and F, his spouse, filed a joint return for the calendar year 1967. For the purpose of the exception described in paragraph (a)(2) of this section, they must be an accurate determination of the amount of income and deductions for the calendar months in the taxable year preceding the installment date as of which the individual is determined, that is, for the period terminating with the last day of the third, fifth, or eighth month of the taxable year. For example, a taxpayer distributes during the calendar year to his employees but does not determine the amount of the bonuses until the last month of the taxable year. He may not deduct any portion of such year-end bonuses in determining his taxable income for the last day of the third, fifth, or eighth month of the taxable year. Since deductions are not allowable until paid or accrued, depending on the taxpayer's method of accounting.

Example (C). G was a married individual, 73 years of age, who filed a joint return with his wife, H, for the calendar year 1966. H, who was 70 years of age, had no income during the year. G had taxable income in the amount of $7,000, determined on the basis of a joint return for the calendar year 1966. G and H are both over 65 years of age. The application of the exception described in paragraph (a)(3) of this section to an underpayment of estimated tax on the September 15th installment date may be illustrated by the following computation:

Example (D). D, who is self-employed (other than as a farmer or fisherman), has actual taxable income of $2,000 for the period ending January 1, 1967, through August 31, 1967, the income tax on which is $900. For the same period, net earnings from self-employment are $5,000 and his wages are $3,000. The estimated tax payments made by D for 1967 on or before September 15, 1967, total $900. For the purposes of the exception described in paragraph (a)(3) of this section, the actual self-employment income for this period is $2,000. For the purposes of the exception described in paragraph (a)(2) of this section and no addition to tax will be imposed.
PROPOSED RULES

Example (1). A, whose taxable year is the calendar year, is a member of a partnership whose taxable year ends on January 31st. A must take into account, in determining his taxable income for the installment due on April 15, 1973, all of his distributive share of partnership items described in section 702(a)(9) of the Code and all guaranteed payments made to him which were deductible by the partnership in the partnership taxable year ending on February 28, 1972. For purposes of determining the applicability of the exceptions described in paragraph (a) (1) and (4) of this section to an underpayment of estimated tax by A for the preceding taxable year, the installment date falls, the partner shall take into account such amounts for the calendar year taxable period which precede the month in which the installment date falls. See section 706(a), section 707(c), paragraph (c) of § 1.1402(c)–1 and § 1.1402(d)–1. In addition, a partner shall include in his taxable income and, for taxable years beginning after December 31, 1956, net earnings from self-employment, for the months in his taxable year which precede the month in which the installment date falls, the partner shall take into account items set forth in sections 702 and 1402(a) (a) for self-employment tax purposes. For special rules used in computing a partner's net earnings from self-employment in the case of the termination of his taxable year as a result of death, see section 1402(c) and § 1.1402(c)–1. In addition, a partner shall include in his taxable income and, for taxable years beginning after December 31, 1956, net earnings from self-employment, for the months in his taxable year which precede the month in which the installment date falls guaranteed payments from the partnership to the extent that such guaranteed payments are includable in his taxable income for such months. See section 706(a), section 707(c), paragraph (c) of § 1.707–1 and section 1402(a).

(iii) The provisions of subdivision (I) (A) and subdivision (II) of this subparagraph may be illustrated by the following examples:

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

(3) Beneficiaries of estates and trusts. In determining the applicability of the exceptions described in paragraph (a) (2) and (3) of this section as of any installment date, the beneficiary of an estate or trust shall be treated as a partner to the extent such amounts are distributable to the beneficiary during such period. In determining the applicability of the exceptions described in paragraph (a) (2) and (3) of this section as of any installment date, the beneficiary of an estate or trust shall be treated as a partner to the extent such amounts are distributable to the beneficiary during such period. See section 707(c) and § 1.1402(c)–1. In addition, a partner shall include in his taxable income and, for taxable years beginning after December 31, 1956, net earnings from self-employment, for the months in his taxable year which precede the month in which the installment date falls guaranteed payments from the partnership to the extent that such guaranteed payments are includable in his taxable income for such months. See section 706(a), section 707(c), paragraph (c) of § 1.707–1 and section 1402(a).

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.

Example (2). Assume that the taxable year of the partnership of which A, a calendar year taxpayer, is a member ends on June 30th. A must take into account in the determination of his taxable income and net earnings from self-employment for the installment due on April 15, 1973, his distributive share of partnership items for the period July 1, 1972, through March 31, 1973; for the installment due on June 15, 1973, he must take into account such amounts for the period April 1, 1973, through June 30, 1973; and for the installment due on September 15, 1973, he must take into account such amounts for the entire partnership taxable year.
Paragraph 17. Section 301.6654 is amended by revising subsections (a), (b), (c), and (d) of section 6654 and by revising the historical note. The amended provision reads as follows:

§ 301.6654 Statutory provisions; failure by individual to pay estimated income tax.

(a) Additon to the tax. In the case of any underpayment of estimated tax by any individual except as provided in subsection (d), there shall be added to the tax under chapter 1 and the tax under chapter 2 of the amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b) for the amount determined under subsection (c)).

(b) Amount of underpayment. For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(i) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66% percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing), over the amount actually on or before the last due date prescribed for such payment.

(ii) The amount, if any, of the installment paid on or before the last due date prescribed for such payment.

(c) Exception. Notwithstanding the provisions of this section, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last due date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such due date if the estimated tax were whichever of the following is the least—

(i) The tax shown on the return of the individual for the preceding taxable year and for purposes of determining the applicability of the exception described in paragraph (a) (i) of this section;

(ii) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66% percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing), over the amount actually paid on or before the last due date prescribed for such payment.

(d) Exception. Notwithstanding the provisions of this section, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last due date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such due date if the estimated tax were whichever of the following is the least—

(i) The tax shown on the return of the individual for the preceding taxable year and for purposes of determining the applicability of the exception described in paragraph (a) (i) of this section;

(ii) The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent (66% percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing), over the amount actually paid on or before the last due date prescribed for such payment.

(iii) The amount, if any, of the installment paid on or before the last due date prescribed for such payment.

(iv) The amount, if any, of the installment paid on or before the last due date prescribed for such payment.

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which the installment is required to be paid and by taking into account the adjusted self-employment income (as defined in section 1402(a) (3) for the taxable year equal or exceed $400). For purposes of this paragraph—

(A) The taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in which the installment is required to be paid and by taking into account the adjusted self-employment income (as defined in section 1402(a) (3) for the taxable year equal or exceed $400). For purposes of this paragraph—

(B) The tax imposed by subtiti A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the installment as is the amount of the interest on obligations described in section 1451.

§ 301.6621 Statutory provision; definition of a deficiency.

Sec. 6621. Definition of a deficiency. ** * *

(b) Rules for application of subsection (a). For purposes of this section—

(i) The tax imposed by subtiti A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the installment as is the amount of the interest on obligations described in section 1451.

** * * * *

[Section 6621 as amended by sec. 102(b) (4), Tax Adjustment Act 1966 (80 Stat 64)]
Amendments made to the program statute by section 824 of the Education Amendments of 1974, Pub. L. 93-380, give rise to the following proposed regulatory changes:

1. Provision for additional bases for institutional eligibility. (§ 189.2(b) and (c))

2. The limitation of eligibility to institutions enrolling at least 25 veterans. (§ 189.2(b))

3. A maximum institutional award of $15,000. (§ 189.3(c))

4. Provision for the distribution of funds which become available as a result of the limitations on payments cited above. (§ 189.3(e))

5. A provision that at least 75% of an institution's award must be used to implement services to veterans. (§ 189.17)

Program experience to date further suggests that provision must be made for full-time equivalent staffing of the office of veterans' affairs for schools enrolling fewer than 1000 students and no more than 70 veterans (see § 189.11(d)) and that several other minor administrative changes be made.

Interested persons are invited to submit written comments, suggestions, or objections regarding this notice to the Veterans' Programs Branch, Office of Postsecondary Education, U.S. Office of Education, ROB #3, Room 4416, 400 Maryland Avenue SW., Washington, D.C. 20202. Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 8:30 a.m. and 4:30 p.m. All relevant material must be received on or before February 5, 1975.

(Draft of Federal Domestic Assistance Program No. 18-540, Higher Education—Cost of Veterans' Instruction (VCI).)


T. H. BELL, U.S. Commissioner of Education.


OBELL W. VAUGHN, Acting Administrator of Veterans' Affairs.

Approved: December 30, 1974.

CAMPBELL W. WEBBER, Secretary of Health, Education, and Welfare.

Part 189 is amended to read as follows:

Subpart A—General Provisions

§ 189.1 Definitions.

§ 189.2 Institutional eligibility.

§ 189.3 Calculation of cost-of-instruction amounts.

§ 189.4 Applicability of civil rights provisions.

Subpart B—Required Services and Use of Funds

§ 189.11 Special definitions.

§ 189.12 Office of veterans' affairs.

§ 189.13 Related veterans' activities.

§ 189.14 Institutions with small number of students and veterans.

§ 189.15 Consortium agreements.

§ 189.16 Criteria for assessing adequacy of veterans' programs.

§ 189.17 Expenditure requirements.
PROPOSED RULES

§ 189.2 Institutional eligibility.

(a) To apply for assistance under this part, an applicant must be an institution of higher education, and must meet the requirements specified in paragraph (b) or (c) of this section.

(b) In order for an institution of higher education to apply for assistance under this part during an academic year following one during which it was not eligible for or did not apply for such assistance, it must have in attendance for a number of undergraduate students (or, where such date falls between 'academic terms of the institution, the end of the previous academic term), a number of undergraduate veteran students receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or who have received benefits under subchapter V or subchapter VI of such chapter 34 while attending such institution during that academic year) equal to at least 25 and to at least (1) 110 percent of the number of undergraduate veteran students who were at the institution on the first counting date adopted under this part for the preceding academic year and were at that time receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or who have received benefits under subchapter V or subchapter VI of such chapter 34 while attending such institution during that academic year), or (2) 10 percent of the number of undergraduate students in attendance at such institution during such current academic year, if such number does not constitute a percent of such undergraduate students which is less than one-half of the institution's normal full-time fee schedule.

§ 189.3 Calculation of cost-of-instruction payment.

(a) To compute an institution's cost-of-instruction payment under this part, the Commissioner of Education shall determine, on the basis of data provided by the institution:

1. The number of undergraduate veteran students in attendance on the applicable dates specified in paragraph (b) of this section who are at those times recipients of vocational rehabilitation assistance under chapter 31 of title 38, United States Code, or of educational assistance under subchapter V or subchapter VI of title 38, United States Code, and to whom the services required by §§ 189.12 and 189.13 will be reasonably accessible, and

2. The number of undergraduate veteran students in attendance on the applicable dates specified in paragraph (b) of this section who have ever received educational assistance under subchapter V or subchapter VI of title 38, United States Code, and to whom the services required by §§ 189.12 and 189.13 will be reasonably accessible.

(b) A cost-of-instruction payment for a given academic year shall, by reason of paragraph (d) of this section, be based on the number of students in attendance on April 16 of the preceding academic year and October 16 and February 16 of the given year for whom such dates fall between academic terms of the institution, the end of the previous academic term, and shall, subject to the availability of funds, be computed at the following annual rate:

1. For students described in paragraph (a) (1) of this section:
   (i) $300 per full-time student;
   (ii) $225 per three-quarter-time student;
   (iii) $150 per half-time student; and
   (iv) No payment for students not enrolled as at least half-time students.

2. For students described in paragraph (a) (2) of this section:
   (i) $150 per full-time student;
   (ii) $112.50 per three-quarter-time student;
   (iii) $75 per half-time student; and
   (iv) No payment for students not enrolled as at least half-time students.

(c) Notwithstanding any other provision of this section, the minimum amount of payments in any fiscal year to any institution of higher education, or any branch thereof which is located in a community which is different from that in which the parent institution is located, shall be $135,000.

(d) Funds which become available as a result of the limitation on payments set forth in subparagraph (c) (1) shall be apportioned in such a manner as will result in the receipt by institutions of a uniform minimum amount of first up to $9,000, and then in excess of $9,000, to the extent that funds remain available, except that no institution shall receive funds in excess of the amounts calculated according to paragraph (b) of this section.

(e) One third the amount of any payments available for a given academic year shall be used for payment to institutions based on enrollment data for April 16 of the preceding academic year. Funds obligated to any institution which
§ 189.4 Applicability of civil rights provisions.

(a) Federal financial assistance under this part is subject to the regulations in part 80 of this title, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of title VI of the Civil Rights Act of 1964 (Pub. L. 88-352).

(b) Federal financial assistance under this part is also subject to the provisions of title IX of the Education Amendments of 1972 (prohibition of sex discrimination) and any regulations issued thereunder.

Subpart B—Required Services and Use of Funds

§ 189.11 Special definitions.

For purposes of this subpart:

(a) "Full-time," with respect to an office of veterans' affairs, means that the office of veterans' affairs (1) is staffed by at least one person who is employed by an institution on a full-time basis and whose sole institutional responsibility is that of coordinating the activities of the office (except that an institution described in §189.15 may employ part-time employees for this purpose who together assume the responsibility of at least one full-time employee) and (2) provides services at times and places convenient to the veterans being served.

(b) "Outreach" means an extensive, coordinated, communitywide program of reaching veterans within the institution's normal service area, determining their needs and making appropriate referral and follow-up arrangements with relevant service agencies.

(c) "Recruitment" means a concerted effort to interest veterans in taking advantage of opportunities for a wide variety of postsecondary training experiences at the institution.

(d) "Special education programs" means specially designed remedial, tutorial, and motivational programs designed to promote success in the postsecondary experience.

(e) "Counseling" means professional assistance available to veterans for counseling on personal, family, educational, and career problems.

§ 189.12 Office of veterans' affairs.

Except as provided in §189.14, an application for assistance under this part shall be approved only if the Commissioner is satisfied that the applicant will maintain, during the period for which the award is made, a full-time office of veterans' affairs with adequate services, in light of the criteria set forth in §189.15, in the areas of outreach, recruitment, special education programs, and counseling.

§ 189.13 Related veterans' services.

Except as provided in §189.14, an application for assistance under this part shall be approved only if the Commissioner is satisfied that the applicant will provide the services described in §189.15, to carry out: (a) Programs designed to prepare educationally disadvantaged veterans for postsecondary education (1) under subchapter V of chapter 34 of title 38, United States Code, and (2) in the case of any institution located near a military installation, under subchapter VI of such chapter 34; (b) Active outreach, recruiting, and counseling services through the use of other funds such as those available under federally assisted work-study programs; and (c) An active tutorial assistance program (including dissemination of information regarding such programs) in order to make maximum use of the benefits available under section 1692 of title 38, United States Code.

§ 189.14 Institutions with small numbers of students and veterans.

An institution with less than 2,500 students and no more than 70 undergraduate veteran students in attendance on April 16 (or, where such date falls between academic terms of the institution, the end of the previous academic term) of an academic year during which assistance under this part is sought, the Commissioner may permit one or more of the functions set forth in §§189.12 and 189.13 to be carried out under a consortium agreement between that institution and one or more other such institutions located within a reasonable commuting distance therefrom if he finds that (a) such function cannot be performed in such institution by itself, and (b) the benefits of such functions will be readily accessible to veterans attending, and to veterans in the community served by, each of the institutions which are parties to the agreement.

§ 189.15 Consortium agreements.

In the case of an institution with less than 2,500 students in attendance on April 16 (or, where such date falls between academic terms of the institution, the end of the previous academic term) of an academic year during which assistance under this part is sought, the Commissioner may permit one or more of the functions set forth in §§189.12 and 189.13 to be carried out under a consortium agreement between that institution and one or more other such institutions located within a reasonable commuting distance therefrom if he finds that (a) such function cannot be performed in such institution by itself, and (b) the benefits of such functions will be readily accessible to veterans attending, and to veterans in the community served by, each of the institutions which are parties to the agreement.

§ 189.16 Criteria for assessing adequacy of veterans' programs.

An applicant institution's assurance pursuant to §189.21 (b) (6), with respect to the requirements of §§189.12 and 189.13 and to the extent that such requirements are not waived pursuant to §189.14, shall be made in light of the following criteria, which criteria shall also be used by the Commissioner in evaluating the adequacy of the institution's veterans' programs:

(a) In general.—(1) Adequate identification and assessment of the veteran population in the institution's normal service area; (2) Appropriate consideration, in terms of programs and services, of the number of veterans enrolled at the institution; (3) The establishment of an advisory mechanism involving community and institutional personnel to assist in the institution's decisionmaking process with respect to veterans' services and through which the institution may become aware of the views of the institution's administrative and academic staff, its veteran student population, and relevant community organizations; (4) The use of qualified Vietnam-era veterans in staffing the institution's office of veterans' affairs and in providing related services; (5) The employment of a sufficient number of qualified staff members in order to adequately support required veterans' activities and services; (6) The provision of adequate, visible and accessible housing for the institution's office of veterans' affairs, in light of the institution's veteran student enrollment and physical environments; and (7) The coordination of veterans' services with other campus services available to veterans, such as admissions, financial aid, counseling, and job placement.

(b) With respect to outreach, the establishment and maintenance of— (1) Contact with veterans in the institution's normal service area; (2) A procedure for assessing veterans' needs, problems, and interests; and (3) A coordinated and extensive referral service involving agencies providing assistance in areas such as housing, employment, health, recreation, vocational and technical training, and financial assistance;
PROPOSED RULES

§ 189.21 Submission of application by individual institutions.

(a) Assistance under this part will be provided only on the basis of an application submitted by an institution which meets the requirements necessary to determine the institution's eligibility and payment amount.

(b) Each application must be submitted on a form provided by the Commissioner and contain the following:

(1) Information necessary to show that the institution is eligible for assistance under this part;

(2) Information necessary to determine the amount of the institution's payment, in accordance with § 189.3;

(c) An assurance that any funds received by the institution under this part which are not required pursuant to § 189.17 to be used solely to defray instructional expenses in academically related programs of the institution;

(d) An assurance that the institution will expend during the period for which the award is made, for all academically related programs of the institution, an amount equal to terms of either total or per student expenditure, at least the average amount so expended during the 3 academic years preceding such period, together with such supporting data as the Commissioner may require;

(e) An assurance that the institution will carry out the required services set forth in §§ 189.12 and 189.13;

(f) An assurance that the institution will submit a proposed budget for the operation of the office of veterans' affairs, not later than 30 days after the date of award notification;

(g) An assurance that the services required by §§ 189.12 and 189.13 will be reasonably accessible to all undergraduates and graduate veteran students on behalf of whom funds are received by the institution under this part;

(h) If the institution is seeking a waiver of any of the required activities specified in §§ 189.12 and 189.13 pursuant to § 189.14, information necessary to show that it has less than 2,500 students and not more than 70 undergraduate veteran students in attendance on April 16 (or, where such date falls between academic terms of the institution, the end of the previous academic term) of the academic year during which assistance under this part is sought.

§ 189.22 Submission of applications by parties to consortium agreements.

Institutions proposing to carry out the activities required under this part through a consortium agreement, pursuant to § 189.15, must submit their applications on a form to be provided by the Commissioner, and each such institution must provide the information required pursuant to § 189.21 as well as information and assurances necessary to a finding by the Commissioner that the conditions for a consortium agreement set forth in § 189.15 have been met.

Subpart D—Fiscal and Reporting Requirements

§ 189.31 Maintenance of records.

(a) Records. Each institution and consortium of institutions shall keep intact and accessible records relating to the receipt and expenditure of Federal funds in accordance with section 434(a) of the General Education Provisions Act, including all accounting records and related original and supporting documents that substantiate direct costs charged to the award. Records shall be maintained so as to reflect all expenditures made for educational costs in academically related programs.

(b) Period of retention. (1) Except as provided in paragraph (a) or (b) or (c) of this section, the records specified in paragraph (a) of this section shall be retained for 3 years after the date of the submission of the fiscal operations report, pursuant to § 189.33, to which they pertain.

(c) Records for noneducable personal property which was acquired with Federal funds shall be retained for 3 years after it is no longer needed for program purposes.

(d) The records involved in any claim or expenditure which has been questioned by Federal audit shall be further retained until resolution of any such audit questions.

(2) Microfilm copies. Institutions may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

§ 189.32 Audits.

(a) Audit and examination. The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to all records required pursuant to § 189.31(a) and to any other pertinent books, documents, papers, and records of the institution or consortium of institutions.

(b) Audit responsibilities. All expenditures by recipient institutions or consortiums thereof shall be audited by the

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
recipent or at the recipient's direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws and regulations. Such audits shall be scheduled with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

(20 U.S.C. 1232c (a), (b) (2).)

§189.33 Fiscal operations reports

(a) In addition to such other accounting as the Commissioner may require, an institution or consortium shall render annually, with respect to the assistance awarded under this part, a full account of funds expended, obligated, and remaining.

(b) A report of such accounting in a format approved by the Commissioner shall be submitted to the Commissioner within 90 days of the expiration of the academic year for which such assistance was awarded, and the institution or consortium shall remit within 30 days of the receipt of a written request therefor any amounts found by the Commissioner to be due. Such period may, upon written request, be extended at the discretion of the Commissioner.

(20 U.S.C. 1232c(b) (3); 31 U.S.C. 628)

§189.34 Limitations on costs

(a) The maximum amount of a payment under this part shall be set forth in the award document. The total payment under this part shall be set forth in Part 74.

(b) Institutions will be governed by the cost principles set forth in Part II of Appendix D of 45 CFR Part 74 (Part II of Appendix C of 45 CFR Subchapter A).


§189.35 Reporting requirements

(a) Institutions of higher education, and consortiums thereof, receiving assistance under this part must submit to the Commissioner no more than 30 days after the close of each academic year, a report describing the manner in which the required veterans' services were provided during such academic year. Such a report shall be in a format approved by the Commissioner and shall make specific reference to the extent to which the criteria set forth in §189.16 of this part have been met.

(b) Interim reports describing the progress being made in the provision of veterans' services required pursuant to §§189.12 and 189.13 of this part shall be submitted if, and at such times as, the Commissioner deems such reports necessary.

(20 U.S.C. 1070a-1)

[FR Doc.75-2468 Filed 1-3-76; 8:45 am]

PROPOSED RULES

Social Security Administration

[20 CFR Part 405]

[Regulations No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Outpatient Physical Therapy and Speech Pathology Services

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553) that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The regulations to the amendments implement sections 251(b) and 283 of Pub. L. 92-603, the Social Security Amendments of 1972, enacted October 30, 1972, to reflect the option available to patients under a home health plan to have speech pathology services reimbursed under either the home health benefit or outpatient speech pathology benefit, just as physical therapy services may be reimbursed under either the outpatient physical therapy benefit or the home health benefit, and set forth physician certification and plan of treatment requirements for outpatient physical therapy services.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, comments, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue, SW, Washington, D.C. 20201, on or before February 5, 1976.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW, Washington, D.C. 20201.


(Catalog of Federal Domestic Assistance Program No. 10.801, Health Insurance for the Aged—Supplemental Medical Insurance.)

Dated: November 13, 1974.

J. B. CARDBYELL,
Commissioner of Social Security.

Approved: December 30, 1974.

CASPER W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Regulations No. 5 of the Social Security Administration (20 CFR Part 405) are further amended as follows:

1. Paragraphs (a) (2) and (a) (5) of §405.230 are revised to read as follows:

§405.230 Supplementary medical insurance benefits.

(a) Benefits provided. Any individual who is enrolled under the supplementary medical insurance plan established by Part B of title XVIII of the Act is, subject to the conditions, limitations, and exclusions described in this Part 405, entitled to have:

(2) Payment made on his behalf, for medical and other health services other than outpatient physical therapy and speech pathology services (see §405.231(e) and (m)) furnished by other than a participating provider of services (in the case of certain non-participating hospitals which have elected to claim payment with respect to emergency outpatient services—see §405.249);


(5) Payment made on his behalf to a participating clinic, rehabilitation agency, public health agency, or other provider of services (see §405.231 (e) and (m)) for outpatient physical therapy services furnished to him after June 30, 1968, and for outpatient speech pathology services furnished to him after December 31, 1971.

2. In §405.231, paragraph (1) is revised and new paragraph (m) is added to read as follows:

§405.231 Medical and other health services; included items and services.

Subject to the conditions, limitations, and exclusions set forth in §405.232, the term "medical and other health services" means the following items or services:

(m) Outpatient physical therapy services which are furnished:

(1) By or under arrangements made by a participating clinic, rehabilitation agency, public health agency (see Subpart Q of this part), or other provider of services (see Subparts J, K, and L of this part), or

(2) After June 30, 1973, by or under the direct supervision of a qualified physical therapist in independent practice in his office or in the individual's home (see §405.232(e) (2)); or

(3) By or under arrangements made by a hospital or other nursing facility (see Subparts J and K of this part) to its inpatients (see §405.232(e) (3)); and

(m) Outpatient speech pathology services which are furnished:

(1) By or under arrangements made by a participating clinic, rehabilitation agency, public health agency (see Subpart Q of this part), or other provider of
§ 405.236 Home health services; items and services included.

Subject to the provisions described in § 405.259, “home health services” mean the following items and services furnished to an individual in accordance with §§ 405.234 and 405.235:

(a) Medical and other health services; conditions, limitations, and exclusions.

3. In § 405.232, paragraph (e) is revised and new paragraph (j) is added to read as follows:

§ 405.232 Medical and other health services; conditions, limitations, and exclusions.

In addition to the general exclusions described in Subpart C of this part, the following conditions, limitations, and exclusions shall apply with respect to the “medical and other health services” described in § 405.231:

(e) Outpatient physical therapy services.

(1) There shall be excluded from the outpatient physical therapy services described in § 405.231(1) any item or service which:

(i) Is furnished before July 1, 1969 (with respect to services furnished before such date, see § 405.231(e)); or

(ii) Would not be included as inpatient hospital services if furnished to an inpatient of a hospital.

(2) The outpatient physical therapy services described in § 405.231(1) shall include only those items and services:

(i) The incurred expenses for which do not exceed $100 in any calendar year; and

(ii) Furnished by a physical therapist in independent practice, i.e., he renders services on his own responsibility and free of the administrative and professional control of an employer; the individuals he treats are his own patients and he has the right to collect the fee or other compensation for the services he renders; he maintains at his own expense an office or office space and the necessary equipment to provide an adequate program of physical therapy; he is engaged in such practice on a regular basis; and

(iii) Furnished by a physical therapist licensed by the State in which the items and services were furnished and who meets the other qualifications set out in § 405.1720(e).

(3) There shall be excluded from the outpatient physical therapy services described in § 405.231(1) any item or service which is furnished before October 30, 1972.

(j) Outpatient speech pathology services.

There shall be excluded from the outpatient speech pathology services described in § 405.231(1) any item or service which:

(1) Is furnished before January 1, 1973 (with respect to services furnished before such date—see § 405.231(e)); or

(2) Would not be included as inpatient hospital services if furnished to an inpatient of a hospital.

4. Paragraph (b) of § 405.336 is revised to read as follows:

§ 405.239 Option available to patients under a home health plan who require physical therapy or speech therapy services.

A patient under a home health plan may require physical or speech therapy services furnished by participating provider.

(b) Physical, occupational, or speech therapy (see § 405.239);
PROPOSED RULES

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room G-46, 4600 Whipple Street, East Point, Ga.

The Fort Myers control zone described in § 71.171 (40 FR 354) would be amended as follows:

"**VORTAC 062**" would be deleted and ""**VORTAC 062**"" and "**southwest**" would be substituted therefor.

The Fort Myers transition area described in § 71.161 (40 FR 441) would be amended as follows:

All after "southwest of the RBN" would be deleted and "within 3.5 miles each side of Fort Myers VORTAC 062" radial, extending from the 8.5-mile radius area to 10 miles northeast of the VORTAC; within 3 miles each side of the 22° bearing from the RBN, extending from the 9.2-mile radius area to 8.5 miles southwest of the RBN," would be substituted therefor.

The proposed alterations are required to provide controlled airspace protection for IFR aircraft executing the new VOR RWY 23 Instrument Approach Procedure; revoke controlled airspace designated to protect IFR aircraft executing the VOR RWY 21 Instrument Approach Procedure, which is to be cancelled concurrent with the publication of the new procedure, and adjust controlled airspace designated to protect IFR aircraft executing VOR RWY 5 and 13 Instrument Approach Procedures.

The proposed alterations are considered under the provisions of 49 CFR Part 105, as applicable.

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Jacksonville, Illinois.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southern Region, Air Traffic Division, P.O. Box 20366, Atlanta, Ga. 30320. All communications received February 5, 1975, will be considered before action is taken on the proposed amendment.

As a result of a general aviation meeting, the following changes to the TCA configuration are proposed as means of providing some relief to the user.

---

**TERMINAL CONTROL AREA**

**Proposed Alteration at St. Louis, Missouri**


---

**CONTROL ZONE AND TRANSITION AREA**

**Proposed Alteration**

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Fort Myers, Fla., control zone and transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southern Region, Air Traffic Division, P.O. Box 20366, Atlanta, Ga. 30320. All communications received February 5, 1975, will be considered before action is taken on the proposed amendment.

As a result of a general aviation meeting, the following changes to the TCA configuration are proposed as means of providing some relief to the user.

---

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**[14 CFR Part 71]**

**[Airspace Docket No. 74-WA-98]**

**TERMINAL CONTROL AREA**

**Proposed Alteration**

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the St. Louis, Mo., Terminal Control Area (TCA) by redesignating existing TCA zones and transition areas.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Air Traffic Division, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Mo. 64106. All communications received or before February 5, 1975, 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.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, contain the following information: Docket No. 5060, Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Pilots flying under this same plan of treatment for a period of time, a recertification of the continued need for such services is required. The recertification statement should contain the following information: (i) that there is a continuing need for such services; and (ii) an estimate of how long the services will be required. The physician must recertify at intervals of at least once every 30 days and the recertification should be made at the same time the plan of treatment is reviewed.

The same physician who reviews the plan of treatment must sign the recertification.

(c) Certification with respect to the medical and other health services described in § 405.231(c) and (k) is not required for such services furnished on or after June 30, 1968.

---

**PHILIP M. SWATER, Director, Southern Region.**

**[14 CFR Part 71]**

**[Airspace Docket No. 74-SO-118]**

**TRANSITION AREA**

**Proposed Alteration**

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Jacksonville, Illinois.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Southern Region, Air Traffic Division, P.O. Box 20366, Atlanta, Ga. 30320. All communications received February 5, 1975, will be considered before action is taken on the proposed amendment.

As a result of a general aviation meeting, the following changes to the TCA configuration are proposed as means of providing some relief to the user.

---

**PROPOSED RULES**

It is proposed to enlarge the Area C floor to include that area south of the Maryland Heights 257° radial presently located in Area E.

The Area B would release to the user an additional thousand feet of altitude in an area of considerable size.

In consideration of the foregoing, and for reasons stated in Docket No. 5060, Federal Aviation Regulations so as to altered the Fort Myers, Fla., control zone and transition area, extending from the 8.5-mile radius area to 10 miles northeast of the VORTAC; within 3 miles each side of the 22° bearing from the RBN, extending from the 9.2-mile radius area to 8.5 miles southwest of the RBN," would be substituted therefor.

---

**FEDERAL REGISTER, VOL. 40, NO. 2—MONDAY, JANUARY 6, 1975**
views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new instrument approach procedure has been developed for the Jacksonville Municipal Airport, Jacksonville, Illinois. Accordingly, additional controlled airspace is required to protect the aircraft executing this new instrument approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is amended to read:

JACKSONVILLE, ILLINOIS

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Jacksonville Municipal Airport (Latitude 30°54'35" N., Longitude 85°19'35" W.); within 3 miles each side of the 311° bearing from the airport, extending from the 3 mile radius area to 6 miles northwest of the airport; and within 3 miles each side of the 136° bearing from the airport, extending from the 5 mile radius area to 6 miles southeast of the airport.

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

Issued in Des Plaines, Illinois, on December 12, 1974.

R. O. Ziegler,
Acting Director, Great Lakes Region.

[F.R. Doc. 75-185 Filed 1-3-75; 8:45 am]

[14 CFR Part 71]

Airspace Docket No. 74-GL-43

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering extending Part 71 of the Federal Aviation Regulations so as to alter the transition area at New Castle, Indiana.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 5, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration.

The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Two new instrument approach procedures have been developed for the Lamont Airport, Deckerville, Michigan. Consequently, it is necessary to provide controlled airspace protection for aircraft executing these new approach procedures by designating a transition area at Deckerville, Michigan.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (39 FR 440), the following transition area is added:

DECKERVILLE, MICHIGAN

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Lamont Airport (Latitude 43°34'26" N., Longitude 85°30'10" W.); within 3 miles each side of the 060° bearing from the airport, extending from the 5.5-mile radius area to 8.5 miles east of the airport; within 3 miles each side of the 285° bearing from the airport, extending from the 5.5-mile radius area to 8.5 miles west of the airport.

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

Issued in Des Plaines, Illinois, on December 12, 1974.

R. O. Ziegler,
Acting Director, Great Lakes Region.

[F.R. Doc. 75-186 Filed 1-3-75; 8:45 am]

[14 CFR Part 71]

Airspace Docket No. 74-GL-50

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Deckerville, Michigan.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 5, 1975, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would realign V-37 from Erie, Pa., to Ash, Ontario, Canada. Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before February 5, 1975, 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.

An official docket will be available for examination by interested persons at the

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, 800 Independence Avenue SW, Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would realign V-170 from Worthington, Minn., to Fairmont, Minn., via the DTT of Worthington 06°F (056°M) and Fairmont 288°/278° M radials.

The proposed alternate airway would decrease traffic delays and ease traffic control in the vicinity area.

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

Issued in Washington, D.C., on December 26, 1974.

GORDON E. KEWER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 75-187 Filed 1-5-76; 8:45 am]

[14 CFR Parts 71 ]

VOR FEDERAL AIRWAY

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of V-170 Airway by the addition of a north alternate between Worthington, Minn., and Fairmont, Minn.

Interested persons are invited to participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2500 East Devon, Des Plaines, Ill.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2500 East Devon, Des Plaines, Ill.

Proposed Regulations Submitted to the FAA by the Environmental Protection Agency

This notice of proposed rule making contains proposed regulations submitted by the Environmental Protection Agency (EPA) to the Federal Aviation Administration (FAA) pursuant to § 611(e) (1) of the Federal Aviation Act of 1958, as amended by the Noise Control Act of 1972 (Pub. L. 92-584). Section 611(c) (1) of the Federal Aviation Act of 1958 provides that EPA shall submit to the FAA proposed regulations to provide for the protection of the public health and welfare. That section also provides that the FAA "shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of its submission to the FAA, publish the proposed regulations in a Notice of Proposed Rule Making." This Notice is published pursuant to this provision of law.

The EPA proposes contained herein would prescribe noise standards for the issue of normal, utility, acrobatic, transport, and restricted category type certificated for propeller driven small airplanes; prescribe noise standards for the issue of standard airworthiness certificated and restricted category airworthiness certificated for newly produced propeller driven small airplanes; prescribe noise standards for the type design of those airplanes, that increase their noise levels beyond specified limits.

More than a year prior to receiving these proposals from EPA, FAA issued a notice of proposed rule making covering the same aircraft (Notice 73-26, published in the Federal Register on October 10, 1973 (38 FR 28016)). Since then, the FAA has completed an exhaustive review of comments received in response to Notice 73-26 (including comments submitted by EPA for the regulatory docket), and, by the time that the EPA proposals contained herein were received, had prepared a final regulation covering the issue of new certificated driven small airplanes. Since receiving the EPA proposals, the FAA has conducted a comparative study of the FAA regulatory costs developed and the Notice 73-26 and those now proposed by EPA. This study was conducted to determine whether promulgation of the FAA regulations at this time would be in any manner commit the FAA to a course of action that would conflict with an objective review of the EPA proposals under the procedures prescribed in section 611(e) of the Federal Aviation Act of 1958. Based on this review, the FAA is considering there is not the prohibition of the EPA proposals that could not be adopted later, as an amendment to a FAA regulation based on notice 73-26, if justified on the basis of public participation and comment in response to the instant notice of proposed rule making. The FAA has also considered the importance of timely regulatory action to solution of the noise problem associated with propeller driven small airplanes. Considering the public need for rapid action and the fact that all of the provisions of the EPA proposals contained herein that are shown to be valid can be fully and objectively considered for subsequent FAA rule making, the FAA believes that it would be contrary to the public interest, and to the intent of the Noise Control Act of 1972, to delay the immediately available regulatory relief until the regulatory process prescribed in section 611(c) is completed after consideration with respect to the recent EPA proposals. Accordingly, the FAA is issuing its final regulation simultaneously with the issuance of this notice. Under that amendment states, the issuance of that amendment was coordinated with EPA, and while EPA do not concur in all respects in the substance of that amendment, it has no objection to its issuance at this time.

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Director, Standards and Regulations Division, Office of the Chief Counsel, Attention: Rules Docket, AGC-24. Comments on the overall environmental aspects of the proposed rules are specifically invited. All communications received by the FAA on or before March 7, 1975, will be considered by the FAA Administrator before taking action upon the proposed rules. The proposals contained in this notice are intended to be considered in the light of comments received. All comments will be available, both before and after the closing date for comments, in the FAA Rules Docket for examination by interested persons. EPA has also indicated that information copies of public comments may be sent to: Director, Standards and Regulations Division, Office of Noise Abatement and Control (AW-571), U.S. Environmental Protection Agency.

Pursuant to section 611(c) of the Federal Aviation Act of 1958, the FAA will hold one or more hearings and make such findings as may be necessary to the proposals contained in this notice. A separate notice of hearing will be published in the Federal Register in the near future. As required by section 611(c), these hearings will be held no later than March 7, 1975.

The following EPA opinions, conclusions, and proposed regulatory language are published verbatim as received by the FAA on December 6, 1974.
PROPOSED RULES

EPA Proposal to FAA

Under the requirements of section 7(a) of the Noise Control Act of 1972 (Pub. L. 92-574, 86 Stat. 1234) the Administrator of the Environmental Protection Agency conducted a study of aircraft and airport noise and submitted a report thereon to the Congress. (Report on Aircraft/Airport Noise, Mitigation of Public Works, Serial No. 93–3, Aug. 1973.) Under section 611 of the Federal Aviation Act, as amended by the Noise Control Act of 1972, the Administrator of the EPA is also required, not earlier than the date of submission of his report to the Congress, to submit to the Federal Aviation Administration proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement of aircraft noise through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as the Administrator of the EPA determines is necessary to protect the health and welfare. In accordance with the foregoing requirement, the EPA published in the Federal Register on February 19, 1974 (39 FR 6128), a notice of public comment period containing a synopsis of the proposed rules. It is considering to achieve a satisfactory level of aircraft noise control and abatement for the protection of the public health and welfare.

The proposed rules and the type of control which each rule would implement are as follows:

Flight procedures noise control

(1) Takeoff procedures.
(2) Approach procedures.
(3) Minimum altitudes.

Source noise control

(4) Retrofit/test noise level.
(5) Supersonic civil aircraft noise.
(6) Modifications to Part 36 of the Federal Aviation Regulations.
(7) Propeller driven small airplanes.
(8) Short haul aircraft.

Airport operations noise control

(9) Airport goals, mechanisms and processes by which noise exposure of communities around airports can be limited to levels consistent with public health and welfare requirements.

This proposed rule, identified as Item (7), is one of the five whose purpose is to implement engineering noise control at the source. As proposed herein the EPA believes that the rule, if adopted, would control the noise of propeller driven small airplanes to levels as low as is consistent with safe technological capability, without (1) imposing unreasonable economic burdens on the users of those airplanes, (2) degrading the environment in any manner, and (3) any significant increase in fuel consumption. In substance, the proposed rule would provide for the following changes in the aircraft noise standards of Part 36 of the Federal Aviation Regulations:

(1) Noise standards for propeller driven small airplanes in the normal, utility, acrobatic, transport and restricted categories would be added to that Part. Agricultural and firefighting airplanes, however, would be excluded from the standards when operated in compliance with a current noise abatement flight plan.

(2) The noise evaluation requirement for the standards would be Effective Perceived Noise Level (EPNL) in units of EPNdB, as now required under Part 36 for transport category airplanes and turbojet powered airplanes.

(3) Compliance with the noise limits prescribed in this proposed rule would be achieved in the following stages based upon implementation of the current, available, and future noise control technology:

(a) Current technology. An application for a type certificate on or after the date of publication of NPRM 73–26 on October 10, 1973, would be subject to the current technology noise standards.

(b) Available technology. An application for a type certificate on or after January 1, 1975, would be subject to the available technology noise standards.

These standards would also apply to an airplane of an older type design manufactured on or after January 1, 1977.

(c) Future technology. An application for a type certificate on or after January 1, 1980, would be subject to the future technology standards.

A. Regulatory Background. Part 36, “Noise Standards: Aircraft Type Certification,” was effective on Dec. 1, 1969, (34 FR 18355), prescribing noise measurement, noise evaluation, and noise levels for the type certification, and changes to those certificates, for subsonic transport category airplanes, and for supersonic turbojet powered airplanes regardless of category. Although propeller driven small airplanes (as defined in Part 1 a small airplane means an aircraft of 12,500 pounds or less, maximum certificated takeoff weight) have not created noise problems as severe as that of the turbojet or large transport category airplanes, it was deemed appropriate to take regulatory action to prevent any future noise impact from this segment of aviation. Accordingly, on October 9, 1973, the FAA issued NPRM 73–26 (38 FR 38010) proposing standards and compliance requirements changing the noise levels for propeller driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories. However, in response to the invitation for comments to the NPRM, the EPA advised the FAA that it did not concur with some of the provisions of that proposal and recommended specific changes. Consequently, modifications affect four elements of the proposed rule. They are, in general; (1) the noise evaluation measure, (2) the noise compliance levels, (3) the performance correction factor, and (4) the noise data sample size. The substance of these key issues may be summarized as follows:

(1) Flight procedures. A minimum of only four horizontal flight max-
PROPOSED RULES


(13) "Results of Noise Surveys of Seventeen General Aviation Type Aircrafts," FAA Report FER 70-2, 1 December 1972.


C. Introduction. As previously stated, the rules proposed herein, are based primarily upon recommendations submitted by the EPA pursuant to the mandate of the Federal Aviation Act. It is to be noted that these rules parallel, in many respects, the provisions contained in the FAA NPRM 73-26. However, since they contain differences from that NPRM in regard to the key elements of noise evaluation measures, noise compliance levels, performance correction, and flight procedures, each of these elements is discussed herein under a separate heading.

Initially, it should be noted that these rules are applicable to rotorcraft, balloons, dirigibles, or gliders since these aircraft are not classified as airplanes. Agricultural and firefighting airplanes would also be excluded under certain conditions from the proposed noise limit levels. The retrofit of existing airplanes would not be required. Only those airplanes manufactured in the future would be required to be noisier controlled under the rule as proposed.

The EPA believes that the noise standards proposed herein will prevent an escalation of noise from propeller driven small airplanes, substantially reduce the noise for continued production of many existing models, and set standards for original type certification of future airplanes in the U.S. to achieve the protection of the public health and welfare from aircraft generated noise.

D. Flight procedures. Under NFRM 73-26, the three point (sideline, takeoff, and climb) flight procedure prescribed in Appendix C of Part 36 would be replaced with a single point, level flight procedure at maximum continuous power. This simplified flight procedure would require only four level flights over the measuring station at a height of 1,000 feet ±30 feet and ±10 degrees from the zenith when passing over the measuring station.

The EPA believes that an aircraft certification concept should have two principal objectives. First, it should require that the latest state of the art of technologically practicable and economically reasonable noise control is utilized. Second, it should provide baseline noise levels suitable for use by airport and community planners and architects in Part 36 planning and for designing noise compatible land usage, and designing noise insulated structures. The ideal way of achieving these objectives would be to conduct sufficient noise measurements under real flight conditions at the appropriate flight levels over the noise measuring stations for all the potential operating modes of the aircraft. In lieu of the ideal, three strategically located noise certification points are necessary and sufficient to define a rectangular boundary or box which would contain an equal noise level contour. Ordinarily a noise certification procedure following this ideal will not provide adequate information to make a judgment as to whether the airplane and power plant combination is optimally matched for minimum noise exposure. However, if the particular aircraft has operational or noise characteristics wherein either one operational mode provides the major source of noise generation and the other relatively minor, or the noise control devices or procedures effective for the major operational noise mode are equally effective for all the modes, then simpler test procedures may be adequate. The EPA believes that the propeller driven small airplane has such characteristics, and for these reasons (not those stated in NFRM 73-26) the simpler flight procedures would be acceptable.

Another important operational procedure to be considered is the choice of maximum continuous power instead of takeoff power. Takeoff power is very close to maximum continuous power in terms of noise generation, and for many of the small airplanes it is the same. Furthermore, takeoff power is used, when available, for a relatively short portion of the climb performance data. A simplification of the climb performance data, the climb path. After cleanup (landing gear and flaps) the airplane is operated at maximum continuous power. Consequently, the use of maximum continuous power in a horizontal flight procedure would over a measuring station to make a judgment as to whether the airplane is optimally matched for minimum noise exposure on the ground while climbing. To correct this deficiency the EPA recommends that performance correction factors including such as proposed in NFRM 73-26 (with certain minor changes) and another to account for differences in test and takeoff speeds be used. These factors are more fully discussed in paragraph E, below.

Although it is difficult to precisely predict the exact number of test flights needed to make a proper evaluation of a particular type of airplane, the EPA believes that there is no evidence to indicate that the minimum of six flights now required under NFRM 73-26 is too much. The simplified flight procedure is used. Accordingly, the procedures proposed herein would require a minimum of six flights over the noise measuring station.

A measure of the capability of an airplane to expose communities beyond the end of the takeoff runway to noise in excess of a specified level, is the land area contained within the boundary of the noise contour. As the noise radius equal noise contour is the locus of points on the ground which are exposed to a particular level of noise.) The size of the contour area is dependent upon both the noise energy and the climb performance of the aircraft. The noise energy generated will be constant for a given engine power setting (such as takeoff or maximum continuous) but the noise radiated over the climb path. At a given point on the extended centerline of the runway, the steeper the climb, the higher the airplane, and the lower the noise level.
The simplified horizontal flight noise certification procedure of the type proposed in NPRM 73-26, by itself, will not provide sufficient information to make a judgment on the relationship between airplane climb performance and noise exposure on the ground. For example, two airplanes could be expected to produce about the same noise level over the measuring station at a height of 1,000 feet, even though the total weight of one may be substantially greater than the other. However, the higher performance airplane (greater horsepower/weight ratio) would be expected to have the capability to produce smaller contour areas and, hence, less community noise degradation.

To compensate for this deficiency in the simple flyover certification procedure, as compared with the three point procedure contained in Appendix C of Part 36, NPRM 73-20, the climb performance correction methodology* intended to penalize airplanes with poor climb performance. As stated in the preamble to the proposed documentation, "reflects the importance of good climb performance in removing the airplane as a noise source from the airport environs as rapidly as possible*. As proposed in the noise concept, the climb performance correction factor would be computed by using the following formula:

\[ C = 60 - 20 \log \left\{ \frac{41530 - D50}{R/C} \right\} \]  \( C \geq 0 \) (1)

Where: \( C \) is the correction that must be added algebraically to the noise level found by the simple procedure, but limited to ± 5 dB; \( D50 \) is the takeoff distance in feet to a point at which the airplane is at a height of 50 feet; \( R/C \) is the certificated takeoff weight; \( R/C \) is the certificated climb rate of climb in feet per minute; and \( VY \) is the airplane speed in feet per minute corresponding to the best rate of climb. When \( D50 \) is not listed as approved performance information, it must be taken as 1,375 and 1,600 feet for single engine and multi-engine airplanes, respectively.

The EPA believes that a climb performance correction factor proposed in NPRM 73-26, is a sound concept and with the minor changes proposed herein could be converted into a regulatory requirement which will insure that all future types of propeller driven small airplanes have climb capability and, therefore, community noise reduction capability at least as good as the best of the existing types.

The climb performance correction factor, however, can be made more meaningful with only a very slight change. It can be made to yield a noise incremental value which, when added algebraically to the measured noise level at 1,000 feet, estimates the noise level at a specified reference distance from brake release, assuming a normal climb.

The reference distance assumed in Equation (1) is 11,500 ft, which has no apparent significance, except perhaps as a poor approximation to the reference distance of 3,500 meters proposed by the International Civil Aviation Organization (ICAO) in Annex 16 (Reference 1). The concept of a reference distance is a good one because it can provide useful information for planning purposes. The particular distance, however, is not too meaningful and ICAO recommends that the reference distance be rounded off to 11,500 feet, which is a closer approximation of the 3,500 meters proposed by ICAO. This is a very slight modification that would change the correction values only a small fraction of a decibel from those computed by means of Equation (1). The revised formula is given in Equation (2) and plotted in attached Figure 1.

\[ C = 60 - 20 \log \left\{ \frac{11,500 - D50}{\sin a + 50} \right\} \]  \( C \geq 0 \) (2)

Where:

\[ \sin a = \arcsin \left\{ \frac{R/C}{VY} \right\} \]

All airplane manufacturers should be encouraged to list the takeoff distance at maximum certificated weight from brake release to a point on the ground at which the airplane will clear an obstacle of 50 ft. in height (D50). Those manufacturers who do not choose to list this distance would be required by NPRM 73-26 to use 1,375 ft. for single engine airplanes and 1,600 ft. for multi-engine airplanes. The EPA believes that those distances are too liberal to encourage manufacturers of low performance airplanes to choose not to list the D50 distances. Therefore, in order to encourage the manufacturers to list these distances, the distances should be increased to 2,000 feet for single engine airplanes and 3,000 feet for multi-engine airplanes as plotted in Figure 1.

Also it is noted that the airplane under test conditions (horizontal flight, maximum continuous power at 1,000 feet above the test site) can be expected to fly over the test site at a speed greater than the takeoff, climb speed. Therefore, the duration of the sound, a factor to be considered in human subjec- tive reaction to new environments under test conditions than the duration of the sound experienced under or along- side the climb path. In order to make a proper assessment of noise measured under the simplified test conditions, the noise level corrected for climb performance must be further corrected to ac- count for the change in noise duration. The speed correction factor appropriate for this purpose is:

\[ S = 10 \log \left( \frac{VH}{VY} \right) \]

Where:

\[ VH = \text{maximum speed in horizontal flight with maximum continuous power of maximum test speed in horizontal flight over the noise measuring points averaged for all test angles, whichever is less} \]

\[ VY = \text{climb rate of climb at maximum takeoff weight, rpm} \]

Thus the total correction formula, including the climb performance factor and the test speed correction factor is proposed to be:

\[ F = F + S \text{ or} \]

\[ F = 60 - 20 \log \left( \frac{11,500 - D50}{\sin a + 50} \right) + 10 \log \left( \frac{VH}{VY} \right) \]  \( F \geq 0 \) (3)

*Instantaneous Perceived Noise Level (PNL) corrected for the presence of the maximum (one and the flyover duration. Both PNL and the A-weighted Level (AL) are methods for weighting the noise spectrum by deemphasizing the low and emphasizing the high frequency contributions. However, AL provides more suppression for the low and less amplification for the high frequencies than does PNL. Consequently, AL is less stringent in rating noise than is PNL, and therefore, instantaneously noise levels, even before tone and duration corrections are added to PNL to form EPNL.

Most propeller driven small airplanes operating today have minimal high fre- quency tones that would require about the same tone correction (one or two decibels at most), and have about the same noise duration time. On the surface, it appears as though it is not very important whether EPNL or AL is used for evaluating these current aircraft types because the compliance levels, in terms of either measure, could be adjusted to adequately control the noise. However, an analysis of the effects of various noise weighting factors on the noise signatures of this type of aircraft indicates that the use of the A-weighted measure, because of the massive de-emphasis of the low frequency components of the noise, may actually discourage noise reduction of propeller and engine noises. In addition, it is important that the sound concept was chosen for a certification be versatile in the sense that it not only recognizes the annoyance effects (or any other health and welfare effects) for current aircraft, but is available (and capable of modifi- cation or refinement) for potentially ob- noxious noise of future aircraft. EPNL is such a unit; not complete and not exact, but the best available at the present time. Furthermore, it is not too complex for use with modern electronic computational equipment and will be allowed, when desired and requested, by member states in International agreements (Reference 1, above).

The concept or rationale for maintaining two different aircraft noise measures (one for certification and one for community exposure or monitoring) was con- sidered in depth by the EPA (References 8, 9 and 10, above). In the report to Congress (Reference 8), the EPA recom- mended a cumulative noise exposure measure which is based upon AL with the following caveat:

*The use of an A-weighted sound level pre- cedes the assessment of penalties for the
PROPOSED RULES

existence of tones in the noise in the interest of simplifying the measure procedure. When appropriate, tones and other signature components should be made in source regulations such as FARs.

In reference to the problem of choosing an appropriate noise measure that would evaluate engine noise levels and other signature components, the report of EPA Task Group 3 in Reference (10), above, made the following pertinent conclusion:

After consideration of this problem, the Task Group concluded that the presence of a tone penalty in certification procedures effectively encourages a manufacturer to minimize tones in the sound of aircraft. Thus, certification requirements will minimize the need to consider tones in an environmental context. As long as tonal effects are properly considered under source certification, neglecting these characteristics in the proposed measure makes their control by other means necessary (emission/certification standards).

The absence of a pure tone penalty in the basic measure for average sound level... is based on the assumption that pure tones components are primarily to be controlled by noise emission control standards. As long as such standards are not effective in or cases where, for technical or other reasons, significant pure tones remain, it advisable to consider them in the detailed prediction and use planning procedures...

If tones or other aircraft noise signature anomalies are not evaluated and controlled by noise certification standards, then simplified measures using the A-weighted noise level will not be effective for use in environmental cumulative noise exposure methodologies and monitoring procedures. In that event, the EPA believes that other, more complex, methodologies such as noise exposure forecast (NEF) will be necessary to insure maximum protection to the public health and welfare.

The EPA has devoted considerable effort to the thorough study and analysis of the various noise evaluation measures. As a result of these studies, the noise evaluation measure proposed herein is Effective Perceived Noise Level (EPN). This measure, now required in Part 36 for transport category (including large passenger driven airplanes) and turbojet-powered airplanes, would also apply to passenger driven small airplanes. The procedure in Appendix of Part 26 would remain as the standard for converting the measured noise into EPNdB.

G. Noise Compliance Limits. Under NPRM 73-26, Appendix F of Part 36 would be amended to require measured noise levels corrected for climb performance of passenger driven small airplanes to comply with the following noise limits and related effective dates:

1. Type certificate application or after 10 October 1973
   (a) 68 AdB up to airplane weights of 1,300 lbs.
   (b) 1 dB/165 lbs. up to 82 AdB at 3,630 lbs.
   (c) 82 AdB up to and including 12,500 lbs.

2. Type certificate application or or after 1 January 1980
   (a) 80 AdB up to and including 12,500 lbs.
   (b) 1 dB/165 lbs. up to 82 AdB at 3,630 lbs.
   (c) 82 AdB up to and including 12,500 lbs.

3. New airplanes or on or after 1 January 1980
   (a) 80 AdB up to and including 12,500 lbs.
   (b) 1 dB/165 lbs. up to 82 AdB at 3,630 lbs.
   (c) 82 AdB up to and including 12,500 lbs.

The attached Figure 2, which compares the compliance noise levels proposed in NPRM 73-26 with a wide variety of existing passenger driven airplanes, clearly indicates that the compliance levels do not represent the quieter airplanes. As a matter of fact, a large number of the existing passenger driven small airplanes are capable of producing significantly lower noise levels than those proposed for future types in NPRM 73-26. This, in spite of the fact that the Noise Control Act of 1972 requires aircraft noise regulations to protect the public health and welfare by decreasing or controlling the noise emissions to the highest degree possible within the regulatory constraints of safety, economics, and technology.

The attached Figure 3 shows the compliance levels of this proposal compared with the current noise levels. There is an 11-dB numerical difference between the two. The upper compliance level shown in Figure 3 is 79 EPNdB which is the Part 36 requirement for all turbojet and large passenger airplane up to 75,000 pounds maximum weight. There is no reason why propeller driven small airplanes of 12,500 pounds or less, maximum weight, should not be permitted to exceed that level. It must be clearly understood that the compliance levels for the propeller driven small airplanes refer to a 1,000 ft. horizontal plane. The Part 36 levels refer to a measuring point 3.5 nautical miles from brake release. However, for many large turbojets and propeller driven large airplanes, the measuring point will be between 700 and 1,500 feet, or close enough to 1,000 ft. to make reasonable comparisons.

In addition to the foregoing current technology, considerable research effort is in progress on the development of quieter propeller propulsion systems and the results indicate that safe and economical technology should be available, some in the near future and a great deal more by 1980 (Reference Nos. 11 through 17 listed above). Accordingly, the EPA recommends adoption of lower noise compliance levels for future technology standards. In this respect, the EPA assumes that those airplanes shown in Figure 2 with the lowest noise levels have utilized all or at least some of the available noise control technology (engine covers, mufflers, reduced propeller tip speed, increased propeller efficiency, etc.) to achieve those levels. In addition, it may also be assumed that the airplanes meet the appropriate airworthiness standards of the state of registry and are competing economically in the marketplace with other passenger driven small airplanes with higher noise levels. Since these airplanes more properly reflect the requirements of the Noise Act, the lower noise levels which they have achieved should be used to the extent practicable as the starting point, or upper limit, for future passenger driven small airplanes.

The attached Figure 4 illustrates the noise compliance levels proposed in this rule for current, available, and future noise technology and are proposed to be applied as follows:

1. Current. For propeller driven small airplane type designs for which an application for a type certificate is made from October 10, 1972, to January 1, 1975, inclusive, the noise level must not exceed 79 EPNdB for airplane weights up to and including 1,320 pounds. The noise level limit increases from 79 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,320 pounds for airplane weights greater than 1,320 pounds, up to and including 3,630 pounds. However, the noise level limit remains constant at 79 EPNdB for EPNdB aircraft weights of 3,630 pounds or more, up to and including 12,500 pounds.

2. Available. For propeller driven small airplane type designs for which an application for a type certificate is made from January 2, 1975, to January 1, 1980, inclusive, and for newly produced propeller driven small airplanes manufactured on or after January 2, 1977, the noise level must not exceed 79 EPNdB for airplane weights up to and including 1,320 pounds. The noise level limit increases from 79 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,320 pounds for airplane weights greater than 1,320 pounds, up to and including 3,630 pounds. However, the noise level limit remains constant at 79 EPNdB for airplane weights of 3,630 pounds or more, up to and including 12,500 pounds.

3. Future. For propeller driven small airplane type designs for which an application for type certificate is made on or after January 2, 1980, the noise level limit is prescribed by the following formula:

\[
\text{EPNdB} = 89 - 10 \log \left( \frac{W}{12.5} \right)
\]

Where: \( W \) = airplane maximum certificated takeoff weight in thousands of pounds.

H. Economic Considerations. As previously stated, aircraft noise control regulations must provide protection to the public health and welfare at the highest degree possible within the regulatory constraints of safety, economics and technology. Accordingly, the EPA believes that those regulations are expected to reflect the current and future state of the art of safe technology without a prohibitive impairment of aircraft performance in regard to range, payload, field length, etc. Regulations based upon the foregoing policy are needed to assure that future community noise due to the
PROPOSED RULES

operation of propeller driven small aircraft will be reduced to the lowest feasible levels and smallest practical areas commensurate with the state of the art.

As proposed, these rules will not require a retrofit of existing propeller driven small airplanes. However, the rules would prohibit any acoustical changes to those airplanes that would increase noise. Additional costs to the aircraft manufacturers for the inclusion of the existing "white noise" reduction technology into newly designed airplanes, in some cases, may mean only the cost of the addition of mufflers; in others it may mean the cost of decreasing the propeller tip speed and changing or adding propeller blades. In some cases, it may also mean new design changes or the redesign of muffler and exhaust systems and propellers. In the case of turbocharged engines for which mufflers are not feasible, perhaps smaller diameter, more efficient propellers may be appropriate. An additional cost would also be incurred because of unique configuration and propeller driven small aircraft type certification of the particular airplane in accordance with the procedures and standards proposed in this notice.

It is estimated that the cost of the type certification and the modifications needed for compliance with his proposal would range from $300 to $3,500 depending upon the type of airplane and the production run. This increase for an airplane ranging in price from $14,000 to $25,000 appears economically reasonable for the reduced noise benefits to be derived. In this regard, the EPA believes that the existing noise reduction technology included on some airplanes has not had a detrimental impact on the competitiveness of such airplanes.

Although it further appears that, in some cases, compliance with the noise standards contained in this proposal could result in a fuel consumption penalty, the penalties may be slight.

1. Proposed amendments. Many of the amendments required by the implementa-
tion of this proposal are similar to those proposed in NPRM 73-26. The principal elements of the proposal as they appear in these amendments are summarized for convenient reference. However, in order to avoid any misunderstanding, the language of each amendment to the Federal Aviation Regulations is repeated in its entirety.

1. Part 36. (a) The noise evaluation measure for propeller driven small airplanes would be Effective Perceived Noise Level, EPNL, in units of EPNDb as presently required in Appendix B for large transport category airplanes and turbojet powered airplanes, regardless of category.

(b) The aircraft noise evaluation procedures presently required in Appendix B would remain the standard for converting the noise measured into EPNDb units.

(c) A single point flight noise certification procedure at maximum continuous power as proposed in NPRM 73-28 is also proposed in this notice. However, a performance correction factor as proposed in Part C of Appendix F would be required for the tests.

(d) The noise compliance levels and the effective dates for their implementation would be changed to conform with current, available and future technology in the following manner:

1) Class B would remain the standard for commuter class small airplanes. In the case of turbojet and turbocharged engines for which mufflers are not feasible, perhaps smaller diameter, more efficient propellers may be appropriate. However, in order to avoid any misunderstanding, the language of each amendment to the Federal Aviation Regulations as follows:

2) Subpart F. As proposed herein a new Subpart F would be added to Part 36 to prescribe noise limits for propeller driven small airplanes. The technical details of the proposed noise standards would be placed in a new Appendix F and would make mandatory a reference in proposed §36.501 of the subpart.

Paraphrase (c) of §36.501 would as proposed in NPRM 73-26, also except agricultural and firefighting airplanes from Part 36 noise limit requirements of Part D of Appendix F, but not the noise measurement and correction requirements needed to furnish noise levels under §36.1501. An airplane excepted from the foregoing requirement would be required, however, to have a noise abatement operating limitation issued for it under proposed §36.1583(c). This requirement would ensure that as of those airplanes from the noise requirements do not create a class of noise-exempt airplanes and thus defeat the purpose of the exception.

The remaining provisions of the new Subpart F as proposed in NPRM 73-26 and for the reasons stated therein are included in this proposal.

3. Appendix F. As proposed in NPRM 73-26, an Appendix F to Part 36 would contain the detailed noise measurement, data correction, and noise limit requirements for propeller driven small airplanes. As distinguished from the provisions in NPRM 73-26, however, §36.109 of the Appendix proposed herein would not provide for deviations in the data recording, reporting and approval requirements. A minimum of six B-weighted level since EPNdL would be the unit of measurement.

Proposed §36.111 would require at least six level flights over the measurement station instead of 4 flights as proposed in NPRM 73-26.

Part C of the Appendix F proposed herein would contain a revised correction formula recommended by the EPA to compensate for the simplified flyover procedures for propeller driven small airplanes authorized in this proposal.

The noise levels proposed in §36.301 would be based upon three categories of noise technology and would be applicable to all propeller driven small airplanes, except as provided in Subpart F for agricultural and firefighting airplanes. The noise levels for each category are also graphically depicted (Figure 4).

4. Part 21. It is to be noted that as proposed herein a new §21.93(b)(5) would also be used to classify the changes in the type design of a propeller driven small airplane which would constitute an "acoustical change" in addition to a minor or major change in the type design. As distinguished from turbojet powered and large transport category airplanes, acoustical changes for propeller driven small airplanes would be expressly limited to such changes as a change to or removal of a muffler or other component designed for noise con-

control. The proposed amendments to Part 21 support the substantive amendments proposed in Part 36 and Appendix F to that Part. Since they do not differ from those discussed in NPRM 73-26, any further discussion of those amendments appears repetitive and unnecessary.

In consideration of the foregoing, it is proposed to amend Parts 21 and 36 of the Federal Aviation Regulations as follows:

A. Part 21 of the Federal Aviation Regulations would be amended as follows:

1. Section 21.17(a) (Introductory clause) would be amended to read as follows:

§21.17 Designation of applicable regulations.

(a) Except as provided in §25.3 and in Part 36 of this Chapter, an applicant for a type certificate must show that the aircraft, engine, or propeller concerned meets-

* * * * *

2. Section 21.25(a) (Introductory clause) would be amended to read as follows:

§21.25 Issue of type certificate; restricted category aircraft.

(a) An applicant is entitled to a type certificate for an aircraft in the restricted category for which an application is authorized in this proposal.

If he shows compliance with the applicable noise requirements of Part 36 of this Chapter, and if he shows that no feature or characteristic of the aircraft makes it unsafe when it is operated under the limitations prescribed for its intended use, and that the aircraft—* * * * *
3. Section 21.93(b) would be amended to read as follows:

§ 21.93 Classification of changes in type design.

(a) For the purpose of complying with Part 25 of this chapter, any voluntary change in the type design of an airplane that may increase the noise levels of that airplane is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following airplanes:

(1) Subsonic transport category large airplanes.

(2) Subsonic turbojet powered airplanes (regardless of category).

(3) Propeller-driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials, and for which the operating limitation prescribed in § 36.1583(c) of this chapter is issued). For those airplanes, "acoustical changes" are limited to the following type design changes:

(i) Any change to, or removal of, a muffler or other component designed for noise control; and

(ii) Any change to, or installation of, a power plant or propeller that increases maximum continuous power or thrust at sea level, or increases the propeller tip speed at that power or thrust, over that previously approved for the airplane.

4. Section 21.101(a) (Introductory clause) would be amended to read as follows:

§ 21.101 Designation of applicable regulations.

(a) Except as provided in § 25.2 and Part 36 of this chapter, an applicant for a change to a type certificate must comply with either—

5. Section 21.115 (section heading and paragraph (a)) would be amended to read as follows:

§ 21.115 Applicable requirements.

(a) Each applicant for a supplemental type certificate must show that the alternate product meets applicable airworthiness requirements as specified in paragraphs (a) and (b) of § 21.101 and, in the case of an acoustical change described in § 21.93(b), show compliance with the applicable noise requirements of § 36.1(c) of this chapter.

6. Section 21.183 would be amended by redesignating paragraph (e) as paragraph (d) and adding a new paragraph (e) and (f) to read as follows:

§ 21.183 Issue of airworthiness certificates for restricted category aircraft.

(a) Noise requirements. For propeller-driven small airplanes (except airplanes designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials, and for which the operating limitation prescribed in § 36.1583(c) of this chapter is issued) that have not had any flight time before the applicable date specified in Part 36 of this chapter, the applicable airworthiness certificate is issued under this section unless the Administrator finds that those requirements are met.

(b) Issue of airworthiness certificate for a product manufactured under a delegation option authorization if the Administrator finds that those requirements are met.

(c) A new § 21.451(d) would be added to read as follows:

§ 21.451 Limits of applicability.

(d) Notwithstanding any other provision of this part, a type certificate involving the acoustical change requirements of Part 36 of this chapter may be issued under the authority of the Administrator if those requirements are met.

E. Part 36 of the Federal Aviation Regulations would be amended as follows:

1. Section 36.1 would be amended to read as follows:

§ 36.1 Applicability.

(a) This part prescribes noise standards for the issuance of type certificates and changes to type certificates, and for the issuance of certain airworthiness certificates, for the aircraft specified in paragraph (b) of this section.

(b) In addition to the applicable airworthiness requirements of this chapter, the following provisions of this part must be complied with by each person who applies under Part 21 of this chapter for the issuance of the following certificates:

(1) This subpart, and Subparts B, C, and G of this part must be complied with for the issuance of type certificates for subsonic transport category large airplanes and subsonic turbojet powered airplanes regardless of category.

(2) Each person who applies for the original issue of Standard Airworthiness Certificates under § 21.183, must, regardless of date of application, show compliance with this Part (including Appendix C), as effective on December 1, 1969, for airplanes that have not had any flight time before—

(i) December 1, 1973, for airplanes with maximum weights greater than 75,000 lbs., except for airplanes that are powered by Pratt and Whitney Turbo Wasp JT3D series engines;

(ii) December 1, 1974, for airplanes with maximum weights greater than 75,000 lbs. and that are powered by Pratt and Whitney Turbo Wasp JT3D series engines; and

(iii) December 1, 1974, for airplanes with maximum weights of 75,000 lbs. and less.

3. Section 21.257 would be amended to read as follows:

§ 21.257 Type certificates; issue.

An applicant is entitled to a type certificate for a product manufactured under a delegation option authorization if the Administrator finds that the product requirements of the applicable airworthiness certificates and noise requirements (including applicable acoustical change requirements in the case of amended type certificates).
(d) Standard airworthiness certificates and restricted category airworthiness certificates for propeller-driven small airplanes.

(c) Each person who applies under Part 21 of this chapter for an approval of an acoustical change described in § 36.103(b) of this chapter must show that the airplane meets the following requirements in addition to the applicable airworthiness requirements of this chapter.

1. For subsonic transport category large airplanes and turbojet powered airplanes that can achieve the applicable noise limits prescribed in Appendix C of this part prior to the change in type design, the noise levels created by the airplane prior to the change in type design, measured and evaluated as prescribed in Appendixes A and B of this part, may not be exceeded.

2. On or after January 2, 1975, for propeller-driven small airplanes in the normal, utility, acrobatic, transport, and restricted categories that can achieve the applicable noise limit prescribed in Appendix F of this part (or a lower noise level) prior to the change in type design, that limit may not be exceeded. For airplanes that cannot achieve the applicable noise limit prescribed in Appendix F of this part prior to the change in type design, the noise limit that was applied to that airplane prior to the change in type design must be measured and evaluated as prescribed in Parts B and C of Appendix F, may not be exceeded. The noise limit prescribed in Appendix F of this part (or a lower noise level) may not be exceeded. For other airplanes, the noise limit prescribed in Appendix F of this part (or a lower noise level) prior to the change in type design, that limit may not be exceeded.

3. For airplanes that cannot achieve the applicable noise limit prescribed in Appendix F of this part prior to the change in type design, the noise level created by the airplane prior to the change in type design, measured and corrected as prescribed in Parts B and C of Appendix F, may not be exceeded. For airplanes that cannot achieve the applicable noise limit prescribed in Appendix F of this part prior to the change in type design, the noise level created by the airplane prior to the change in type design, measured and corrected as prescribed in Parts B and C of Appendix F, may not be exceeded.

4. A new § 36.1583 would be added to read as follows:

§ 36.1583 Operating limitations.

(a) Operating limitations prescribed in this section must be furnished in the form and manner prescribed for operating limitations in the applicable airworthiness regulations of this chapter. Except as provided in this section, no operating limitations are prescribed under this part.

(b) If a weight used in showing compliance with this part is less than a limiting weight established under the applicable airworthiness requirements of this chapter, that lesser weight must be furnished as an operating limitation.

(c) For airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter as effective on January 1, 1966, or for dispensing fire-fighting materials, and that do not comply with the noise limits in Part D of Appendix F, the following operating limitation must be furnished:

This airplane does not comply with the applicable noise limits in Part 36 of the Federal Aviation Regulations and may not be operated, for any purpose, except in compliance with a current noise abatement flight plan and noise route approved by the FAA and issued to the operator.

A new Appendix F would be added to read as follows:

Appendix F—Noise Requirements for Propeller-Driven Small Airplanes

Part A—General

Section F36.1 Scope. This appendix prescribes limiting noise levels, and procedures for measuring noise and correcting noise data, for propeller-driven small airplanes.

Part B—Noise Measurement

Section F36.101 General test conditions.

(a) The test area must be composed of relatively flat terrain having no excessive sound absorption characteristics such as may be caused by thick, matted, or tufted grass, by shrubs, by trees, by weeds, or by mounds. No obstructions which significantly influence the sound field from the airplane must be within a conical space above the measurement position, the cone being defined by a line normal to the ground and by a half-angle of 75° from this axis.

(b) The tests must be carried out under the following atmospheric conditions:

(1) There may be no precipitation.

(2) Relative humidity may not be higher than 90 percent or lower than 30 percent.

(3) Ambient temperature may not be above 86°F or below 41°F at 33° above ground. If the measurement site is within 1 n.m. of an airport anemometer, the airport reported wind may be used.

(4) Reported wind may not be above 10 knots at 33° above ground. The measurement site is within 1 n.m. of an airport anemometer, the airport reported wind may be used.

(5) There may be no temperature inversion or anomalous wind conditions that would significantly affect the noise level of the airplane when the noise is recorded at the required measuring point.

(6) The flight test sources, measuring equipment, and noise measurement procedures must be approved by the FAA.

(7) Sound pressure level data for noise evaluation purposes must be obtained with acoustical equipment and measurement procedures that comply with section F36.103 of this appendix.

Section F36.103 Acoustical measurement system. The acoustical measurement system must consist of approved equipment equivalent to the following:

(a) A microphone system with frequency response compatible with measurement and analysis system accuracy as prescribed in section F36.105 of this appendix.

(b) Tripods or similar microphone mountings which minimize interference with the sound being measured.

(c) Sound recording and reproducing equipment characteristics, frequency response, and dynamic range compatible with the response and accuracy requirements of section F36.105 of this appendix.

(d) Acoustic calibrators using sine wave or broad band noise of known sound pressure level. If frequency response or signal level deviation is prescribed, the signal must be described in terms of its average and maximum root-mean-square (rms) value for nonconverted signal level.

Section F36.105 Sensing, recording, and reproducing equipment. (a) The noise produced by the airplane must be recorded. A magnetic tape recorder is acceptable.

(b) The characteristics of the system must comply with the requirements of the International Electrotechnical Commission (IEC) Publication No. 119 (as amended) concerning microphone and amplifier characteristics. (Copies of this publication are available for examination at the DOT Technical Library, Federal Office Building, 10A, and at the Office of Environmental Quality, both under the heading General Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20561. Copies are also available for examination at the Regional Office of the FAA.)

(c) The response of the complete system to a noise plane progressive sinusoidal wave of constant amplitude must lie within...
PROPOSED RULES

the tolerance limits specified in IEC Publication No. 179 (as amended) over the fre-

quency range 45 to 11,200 Hz.

the dynamic range of the equipment make it necessary, high frequency pre-emphasis must be added to the recording channel with the converse de-

emphasis removed from the playback channel. These functions must be applied such that the instantaneous recorded sound pressure level of the noise source will be increased by at least 11,200 Hz. Due to the variation of more than 20 dB between the maximum and minimum one-third octave bands.

The equipment must be acoustically calibrated using facilities for acoustic fre-

field calibration and electronically calibrated by the method specified in section F36.107.(b).

A windscreen must be employed with the microphone during all measurements of aircraft noise when the wind speed exceeds 6 knots. Corrections for any insertion loss produced by the windscreen, as a function of frequency, must be applied to the measured data. These corrections are:


d = Distance to observer in feet.

The noise level limit in--

Where: W=Airplane maximum certificated takeoff weight, pounds.

D=Takeoff distance to 50' at maximum certificated takeoff weight, feet.

R=Certification best rate of climb, fpm.

V=Climb speed corresponding to certification best rate of climb, fpm.

VH=Maximum speed in horizontal flight with maximum continuous power or maximum test speed in horizontal flight over the noise measuring point averaged for all test flights, whichever is greater.

c=Arcsine (R/O)/V=Angle of climb, degrees.

The noise level limit in--

When D50 is not listed as approved performance information, it must be taken as 2,000 and 3,000 feet for single engine and multiengine airplanes, respectively.

Section F36.203 Performance Data (a) The test results must produce an average EPNdB and its 90 percent confidence limits, the noise level being the arithmetic average of the corrected acoustical measurements for all valid test runs over the measuring point.

(b) The samples must be large enough to establish statistically a 90 percent confidence limit not exceeding ±1.5 EPNdB. The minimum sample size acceptable is six. If more than one acoustical measurement system is used at the measurement location, the reporting data for each test flight must be averaged as a single measurement. No test result may be omitted from the averaging process, unless omission is approved by the Administrator.

PART B--NOISE LIMITS

Section F36.201 Aircraft noise limits, (a) Compliance with this section must be shown with noise data measured and corrected as prescribed in this section and evaluated in accordance with Appendix B.

(b) For propeller driven small airplane type designs for which an application for a type certificate is made from October 10, 1973, to January 1, 1975, inclusive, the noise level limit must not exceed 70 EPNdB for airplane weights up to and including 1,200 pounds (545 Kg) and 79 EPNdB for airplane weights greater than 1,200 pounds, up to and including 7,500 pounds (3,402 Kg). However, the noise level limit remains constant at 93 EPNdB for airplane weights of 3,000 pounds or more, up to and including 12,500 pounds (6707 Kg).

For propeller driven small airplane type designs for which an application for a type certificate is made after January 1, 1980, inclusive, and for newly produced propeller driven small airplane manufacturer on or after January 2, 1975, the noise level limit must exceed 70 EPNdB for airplane weights up to and including 1,620 pounds (735 Kg), the noise level limit increases from 80 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,250 pounds to 93 EPNdB for airplane weights greater than 1,620 pounds, up to and including 3,500 pounds (1638 Kg). However, the noise level limit remains constant at 93 EPNdB for airplane weights of 3,500 pounds or more, up to and including 12,500 pounds.

(d) For propeller driven small airplane type designs for which an application for a type certificate is made on or after January 2, 1975, to January 1, 1980, inclusive, and for newly produced propeller driven small airplane manufacturer on or after January 2, 1975, the noise level limit must not exceed 70 EPNdB for airplane weights up to and including 1,620 pounds (735 Kg), the noise level limit increases from 80 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,250 pounds to 93 EPNdB for airplane weights greater than 1,620 pounds, up to and including 3,500 pounds (1638 Kg). However, the noise level limit remains constant at 93 EPNdB for airplane weights of 3,500 pounds or more, up to and including 12,500 pounds.

(f) For propeller driven small airplane type designs for which an application for a type certificate is made on or after January 2, 1975, to January 1, 1980, inclusive, and for newly produced propeller driven small airplane manufacturer on or after January 2, 1975, the noise level limit must not exceed 70 EPNdB for airplane weights up to and including 1,620 pounds (735 Kg), the noise level limit increases from 80 EPNdB at a rate of 1 EPNdB/165 pounds of weight in excess of 1,250 pounds to 93 EPNdB for airplane weights greater than 1,620 pounds, up to and including 3,500 pounds (1638 Kg). However, the noise level limit remains constant at 93 EPNdB for airplane weights of 3,500 pounds or more, up to and including 12,500 pounds.

(g) This section does not apply to airplanes that are designed for "agricultural aircraft operation" as defined in §1323 of this chapter as effective on January 1, 1956, or for dispensing to fire fighters and for which the operating limitation prescribed in §1323.160(c) is issued.

Issued in Washington, D.C. on December 31, 1974.

CARL B. FOOTE,
Director, Office of Environmental Quality.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
PROPOSED RULES

\[ C = 60 - 20 \log [(11500 - D50) \sin \alpha + 50] \]

WHERE \( \alpha = \arcsin \left( \frac{R}{C} \right) / (VY) \)

FIGURE 1. CLIMB CORRECTION FOR PROPELLER AIRPLANE NOISE
PROPOSED RULES

FIGURE 2. NOISE COMPLIANCE LEVELS PROPOSED BY NPRM 73-26 FOR PROPELLER DRIVEN SMALL AIRPLANES

FIGURE 3. NOISE COMPLIANCE LEVELS IN TERMS OF EFFECTIVE PERCEIVED NOISE LEVEL (EPNL) AND A-WEIGHTED LEVEL (AL)

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
The following EPA opinions, conclusions, and proposed regulatory language are published verbatim as received by the FAA on December 6, 1974.

**EPA Proposal to FAA**

In accordance with the provisions of section 7(a) of the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234) the Administrator of the Environmental Protection Agency conducted a study of aircraft and airport noise and submitted a report thereon to the Congress. (Report on Aircraft/Airport Noise, Senate Committee on Public Works, Serial No. 93–6, Aug. 1973.) Under Section 611 of the Federal Aviation Act, as amended by the Noise Control Act of 1972 (Pub. L. 92–574; 86 Stat. 1234; 49 U.S.C. 1431) the Administrator of the EPA is also required, not earlier than the date of submission of his report to the Congress, to submit to the Federal Aviation Administration proposed regulations to provide for the control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as the Administrator of the EPA determines is necessary to protect the public health and welfare. This proposed regulation presenting minimum altitudes for terminal areas is the final regulation submitted to the FAA in accordance with the requirements of section 611 as so amended.

In the report submitted to the Congress under section 7(a) of the Noise Control Act, the Administrator of the EPA discussed, among other things, the adequacy of FAA aircraft noise regulations and made a tentative assessment therein of some of the regulatory actions that could effectively control aircraft noise. Based upon a study of the regulatory actions discussed in that report the Administrator of the EPA has determined that an effective program to protect the public health and welfare from aircraft noise requires the implementation of one of the following options of regulatory control:

1. **Engineering application of noise control techniques at the source.** This control of aircraft noise consists of the application of basic design principles or special hardware to the aircraft engine or airplane, or both, to minimize the generation and radiation of noise.

2. **Noise control by use of flight procedures.** This control of aircraft noise consists of flight procedures to minimize the generation and propagation of noise from the aircraft in flight.

3. **Airport operations control.** This control of aircraft noise consists of the application of restrictions on the type and use of aircraft at the airport to minimize community noise exposure.

4. **Land use control.** This control of community noise due to aircraft consists of developing or modifying airport surroundings to optimally control usage in the aircraft noise environment.
The primary approach for aircraft noise abatement is to attempt to control the noise at the source to the extent that an aircraft would be non-operational or non-operating at any airports as well as during enroute flight. In principle, aircraft noise can be controlled at the source by massive implementation of available technologies; however, complete source control by noise control of the airplane as a source, would discourage further development of new aircraft and might effectively ground the existing civil fleet.

Flight procedures control of an aircraft can also be applied as an effective option for a substantial reduction of aircraft noise. This type of control can be combined with source control to help protect the public health and welfare from aircraft noise. However, complete noise abatement by flight procedures only would relegate transportation by civil aircraft to flights conducted between airports located at, or within, isolated areas. Therefore, such regulations alone are not practicable. Since civil aircraft can be flown in modes that produce a wide range of noise exposure, it appears that those modes that minimize the generation and propagation of noise should be identified and utilized for the protection of the public health and welfare. For example, the EPA believes that the flight procedures used to demonstrate compliance with source control regulations (type certification shall represent the upper limit for noise generation and propagation and utilized whenever practicable.

Control of community noise from aircraft by airport regulation is practicable only if all feasible source and flight procedures controls have been implemented by appropriate regulations. Unless this has been accomplished, regulations intended for health and welfare from aircraft noise by means of airport restrictions only may result in unnecessary burdens on the local and national economy.

After these source control measures have been exercised by the application of aircraft design, treatment, or modification, by operational control measures such as minimum altitudes and air traffic control procedures, and by airport control such as proper design, location and use of airports, the level of the aircraft noise may still have an adverse effect upon health and welfare at some locations. Should that problem occur, it appears that land use control is the only remaining option. However, a land use control program is more easily exercised at new airports than as a remedial measure for noise impacted communities at existing airports. Moreover, since the costs of land use control at airports would be exorbitant, maximum effort should first be devoted to the practical implementation of the source, flight procedures, and airport control options. The extent to which each of the foregoing control options must be implemented to achieve a satisfactory level of cumulative noise exposure is dependent upon the requirements of the public health and welfare.

Although the Administrator of the FAA has adopted regulations for the re-duction or abatement of aircraft noise, they have been constrained by reasons of safety, economics, and technology. Under the Noise Control Act of 1974, the Administrator of the EPA is directed to propose for adoption by the FAA those regulations he determines are necessary to protect the public health and welfare, for noise produced by aircraft, through the exercise of the FAA’s regulatory authority.

If it could be established that some particular design change or retrofit hard-ware for airplanes operating rule could completely satisfy the requirements for protection (from airplane noise) to the public health and welfare, then that specific method should be used. It is unlikely, however, that any single measure, within the legislative constraints, could completely satisfy the requirements for such protection. Consequently, a systems implementation, employing each noise control option available within its area of optimal application, should be considered as the most feasible method for accomplishing the desired objectives. A cost-effective program enhances safety and affords significant noise relief to the airport neighbors. The EPA agrees that the program is capable of providing a significant noise relief in the vicinity of airports, but believes that it must be made mandatory for all turbojet powered airplanes to achieve its purpose in regard to noise relief.

As proposed herein, the rule would make the following provisions of Advisory Circular 90-59 mandatory for turbojet powered civil airplanes operating within the terminal area of an airport:

1. Enter the terminal area at 10,000 feet AGL, and remain at that altitude until descent therefrom is required for a safe landing.
2. Descend below 5,000 feet AGL after entering the descent area established by ATC for the direction of the landing runway.
3. Enter the runway below 3,000 feet AGL at the rate of descent now prescribed in § 91.87(d) (2) and (3) for such airplanes.

In the case of an airplane landing under visual flight rules (VFR) on a runway not served by an instrument landing system (ILS) or a visual approach slope indicator (VASI), the proposed regulation would require the rate of descent to be not less than that associated with a 3° glide angle.

By far the highest noise levels due to the aircraft occur in the vicinity of those airports serving air carrier aircraft. This is due mainly to the landing approach and takeoff noise from turbo-jet powered airplanes (including subsonic engines) used by those carriers. Consequently, the flight procedures for...
noise reduction and abatement proposed herein are directed toward the operation of turbojet powered airplanes only. Since the takeoff area comprising a terminal area is dependent upon the facilities and procedures established for the control of air traffic at the airport in which it is located, the rule as proposed authorizes ATC to designate the boundaries of the terminal area to accommodate the flight procedures needed for operations to or from a particular airport.

It is to be noted that the rule as proposed herein does not include a provision similar to that contained in AC 90-59 requiring a departing airplane to climb to the highest altitude filed by the pilot as soon as possible after takeoff. The appropriate provisions for takeoff will be included in a separate rule proposing takeoff procedures and published in the Federal Register in the near future. In the meantime, the climb procedure prescribed in §91.87(1) remains applicable as prescribed in that section.

One of the basic features of this proposed regulation is that each turbojet powered airplane shall intercept the glideslope at an elevation of 3,000 feet AGL. In the case of a straight-in approach it has been shown that an area exposed to noise will be reduced by at least 25 percent and the flight track EPNdB reduced by up to 9 EPNdB under the flight path if the glide slope intercept altitude is increased to 3,000 feet as shown in the attached Figures 1, 2 and 3. This represents a sizeable initial reduction in the level of environmental noise associated with adverse effects on the public health and welfare in the vicinity of airports.

It is to be noted that a field evaluation of a 3,000 foot glideslope intercept was sponsored by the FAA at Detroit Metropolitan and Tampa International airports during the summer of 1971. (Report No. FAA-AT-72-1, March 1972.) The evaluation included three variations of the 3,000 foot glideslope intercept concept, an airport capacity impact study and an economic analysis of the program. The field test results indicated that, as distances greater than nine nautical miles from runway touchdown, significant noise benefits (9 EPNdB projected) can be attained by requiring all aircraft to remain at 3,000 feet AGL until glideslope intercept versus a 1,500 feet AGL intercept.

The report made the following conclusions in regard to the economic impact of each phase of the program on the airport capacities, cost per flight and flight as a result of requiring an intercept of the glideslope at the increased altitudes:

1. The greatest impact on annual airport capacity and cost per flight occurred when all aircraft were vectored so as to intercept the glideslope at an altitude of at least 3,000 feet AGL. Under Phase A of the program, there was a 2 percent reduction of the practical annual capacity of the airport and an increase in the direct aircraft operating costs of $8.10 for each flight. (This estimate is based upon the total cost divided by the estimated number of operations for each aircraft type as provided in the FAA report.)

2. The foregoing impact was significantly decreased when only turbojet aircraft were vectored to intercept the glideslope under the Federal Register, Phase B of the program. Under this phase, there was an estimated 0.8 percent reduction of the practical annual capacity and an increase of $0.95 in the operating cost for each flight affected.

3. The smallest impact occurred under Phase C when "all aircraft" operating under instrument flight rules were required to maintain at least 3,000 feet AGL until five flight path miles from an optimum turnon point. Under that phase, the FAA report estimates a reduction of less than 0.5 percent in the annual airport capacity and an average increase of $3.13 in the operating cost per flight. (The average operating cost increase, counting only the airplanes which followed that procedure, was $8.55 per flight.)

Since the turbojet airplane is the noise dominating airplane, the EPA has determined that a glide slope intercept altitude of 3,000 feet AGL should be made mandatory for those airplanes as soon as possible for the protection of the public health and welfare of those persons living in the vicinity of airports. Moreover, it should be made applicable to those airplanes regardless of whether they are operated under VFR or IFR. Otherwise, the purpose of this requirement could be defeated by canceling an IFR flight plan and conducting the approach and landing under VFR without regard to the minimum altitude requirements of this proposal.

It is estimated that the application of this requirement to turbojet powered airplanes only would cause the least impact upon airport capacity and cost as compared to (1) enter the terminal area at an altitude of 10,000 feet AGL and remain at that altitude until further descent is required for a safe landing, (2) descend below an altitude of 5,000 feet AGL into the descent area established by ATC for the direction of the landing runway, (3) maintain an altitude of not less than 3,000 feet AGL until intercepting the glideslope, (4) descend below an altitude of 3,000 feet AGL at the rate of descent prescribed in paragraphs (d) (3) or (d) (4) of this section for the type of landing facility used, or (5) descend to an altitude of 3,000 feet AGL at the rate of descent shall not be less than 3° for operation under VFR when a runway is served by an ILS or VASI. The words "turbojet powered airplane" or "large airplane" appearing in the redesignated subparagraph (2) to read as follows: "turbojet powered airplane or large airplane in operation under IFR."
PROPOSED RULES


J. J. Regan,
Acting Director,
Air Traffic Service.

Figure 1. Noise Data for 1500 and 3000 FT Intercept Altitudes
The Federal Railroad Administration (FRA) is considering an amendment to Part 213, Track Safety Standards, to delete the provision in § 213.233(b) that track inspection devices "approved by the Federal Railroad Administrator" may be used to supplement visual inspection.

Deletion of this provision would not change in any way the mandatory procedures or frequency of visual track inspections prescribed in § 213.233; it merely removes the present requirement for FRA approval of track inspection devices before these devices may be used to supplement the required visual track inspections. FRA believes that this requirement is unnecessary and may inhibit the voluntary development, testing, and use of mechanical, electrical, and other track inspection devices by the railroad industry.

Interested persons are invited to participate in the making of this proposed amendment by submitting written data, views, or comments. Communications should identify the docket number and notice number and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Communications received by February 17, 1975 will be considered by FRA before final action is taken on the proposed amendment. Comments received after that date will be considered to the extent practical. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available for examination by interested persons dur-

FIGURE 2. NOISE PROFILES FOR VARIOUS APPROACHES: 707 AIRPLANE

FIGURE 3. 90 EPNOB CONTOURS FOR VARIOUS APPROACHES: 707 AIRPLANE

Federal Register, Vol. 40, No. 3—Monday, January 6, 1975
PROPOSED RULES

Loan System (12 CFR Part 545) in order to regulate conflicts of interest more effectively. Notice of such proposed rule making was published in the Federal Register on December 5, 1974 (39 FR 45385-81; FR Doc. No. 74-28611), and interested persons were invited to submit written data, views and arguments to the Board by January 21, 1975. It has come to the Board's attention that the time necessary to print and mail copies to all insured institutions of these proposed amendments, which are 49 typed pages in length, was such as to delay their mailing until December 20, 1974. As a result insured institutions will not have had as much time in which to study the proposed amendments as was intended. Therefore, the Federal Home Loan Bank Board hereby extends the public comment period on the amendments proposed by Board Resolution No. 74-1215 until February 20, 1975.


By the Federal Home Loan Board.

[SEAL] GRENVILLE L. MILLARD, JR., Assistant Secretary.

[FR Doc.75-583 Filed 1-3-75; 8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Parts 1, 3 ]

Docket No. RM75-15

REQUESTS FOR PUBLIC INFORMATION

Timetables and Procedures

JANUARY 2, 1975.


A. Certain subsections of § 1.36 Public Information and requests, Chapter I, Title 18, CFR.

B. A subsection of § 3.102 Public Information requests, and assistance; miscellaneous charges, Chapter I, Title 18, CFR.

It is the purpose of the amendments, as proposed herein, to conform the Commission's Rules to the new requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended, by the passage of H.R. 12471, Pub. L. No. 93-502. Among other things, the proposed revisions would delineate the specific timetables and procedures to be followed in the event the Commission withholds information requested under the Freedom of Information Act, the procedure to be followed for the search and duplication of requested documents; and the maintenance and dissemination of a current index of public information. Through competitive procurement procedures, the Commission each year awards an exclusive contract to a firm for the search and duplication of copies of material contained in the public files of the Commission. The invitation for bidding is made through formal advertising and the contract is awarded to the lowest price responsible bidder. The contract is awarded annually for work to begin July 1. All monies paid for services rendered under the contract are paid directly to the person who would suggest to the request. The Attorney General also recommends that the regulations give notice to the extent to which such communications might also include a provision for estimates of fees, and the circumstances in which payment of estimated or incurred fees will be requested before the work is done or the materials transmitted. The regulations could include a provision to the effect that, unless the request specifically states that the enforcement of which is likely to be acceptable or acceptable up to a specific limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of a certain amount will not be honored to have been received until the requester is advised promptly of the anticipated cost and agrees to bear it. The regulations could also include a provision that a deposit of a certain proportion of the amount must be made when the anticipated fees exceed a certain amount. The Attorney General also recommends that the regulations give notice that a deposit may be made for unsuccessful or unproductive searches of documents.

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, to be received no later than January 21, 1975, data, views, comments, or suggestions in writing concerning any or part of the proposals herein. An original and 14 copies of any written submission should be filed with the Secretary of the Commission.

Submit to the Commission should indicate the name, title, mailing address, and telephone number of the person whose comments are submitted.


A. The following are proposed amendments and revisions to § 1.36 and 3.102 would be issued under the authority of the Federal Power Commission by the Federal Power Act, particularly section 309 (49 Stat. 858-859; 16 U.S.C. 825h), by the Natural Gas Act, particularly Section 16 (52 Stat. 830; 15 U.S.C. 717o), and by Pub. L. No. 93-502 (88 Stat. 1561, amending 5 U.S.C. 552).

Amend paragraph (c) by revising the first paragraph, revising paragraph (c) (14) (1), and (c) (14) (iv), redesignating (c) (15) as (c) (16) and inserting a new paragraph (c) (15). Revise paragraph (c), redesignating paragraph (f) as paragraph (g) and insert a new paragraph (f).
(f) The revised and redesignated paragraphs should read as set forth below:
§ 1.36 Public information requests.

(c) Public records. The public records of the Commission, available for inspection and copying upon a request reasonably describing the document, during regular business hours in the public reference room maintained by the Office of Public Information, include:

- * * *

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to applicable law enforcement purposes, but only to the extent that the production of such records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, or reveal confidential identity of a confidential source and, in the case of a record compiled for law enforcement purposes, but only to the extent that the disclosure of information relating to such source would be likely to endanger the life or physical safety of law enforcement personnel.

- * * *

(vii) Investigatory records compiled pursuant to an execution of personal privacy, disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority for law enforcement purposes, but only to the extent that the disclosure of information relating to such source would be likely to endanger the life or physical safety of law enforcement personnel.

- * * *

(15) Any reasonably segregable portion of a record after deletion of the portions which are exempt under this section.

- * * *

(e) Index of public records. The Secretary will maintain and make available for public inspection and copying upon a request reasonably describing the document, during regular business hours in the public reference room maintained by the Office of Public Information, include:

- * * *

(f) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(4) If the Commission fails to comply with the applicable time limit provisions of this subsection, the Commission can make a supplemental request for additional time to complete its review of the records by showing that exceptional circumstances exist and that it is exercising due diligence in responding to the request.

(5) Any notification of denial of a request under this subsection will set forth the names and titles or positions of each person responsible for the denial of such request.

(6) Upon any determination to comply with a request for records, the records will be made promptly available to such person making such request.

(g) Procedure in event of subpoena

- * * *

B. The following is the proposed revision of § 3.102, Part 3, Chapter I, Title 18 of the Code of Federal Regulations:

1. Revise subsection (b) so that it will read as follows:

§ 3.102 Public information requests, and assistance; miscellaneous charges.

- * * *

(b) During the Commission's regular business hours, the public may examine in the Office of Public Information in Washington, D.C., copies of public information filed with the Commission. Pursuant to the competitive advertised procurement procedure of the Federal Power Commission, responsibility for the search and duplication of public documents is contracted out each year, and a new schedule of fees is prescribed. Any person may obtain a copy of the schedule of fees by writing to the Chairman of the Office of Public Information, by telephone or by mail. Where practicable, self-service duplication of requested documents may also be made in the Office on duplicating machines by the person requesting the documents. Where data has been extracted from the Commission's public records on magnetic tape, copies of the tape files may be secured on a reimbursable basis, upon a written request to the Office of Public Information. The fee will vary for each requirement, depending on size and complexity. Documents will be furnished without charge or at a reduced charge where the Secretary determines that waiver or reduction of the fee is in the public interest. Except for requests made by Government agencies certification of copies of any official Commission record shall be accompanied by a fee of $2. Inquiries and orders may be made to that office personally, by telephone, or by mail.

The Secretary shall cause prompt publication of this notice to be made in the Federal Register.

By direction of the Commission.

KENNETH F. PLUM, Secretary.

[FR Doc. 73-551 Filed 1-3-75; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 210]

[Release Nos. 33-5548, 34-11183, 36-17805, 19-8515]

CONSOLIDATED FINANCIAL STATEMENTS

Disclosure Provisions for Subsidiary Companies

Since the adoption in April of Rule 4-03(c) and (e) and the rescission of Rule 4-07 of Regulation S-X [17 CFR 210.4-03(c) and 210.4-07], relating to the inclusion of subsidiaries engaged in certain financial activities in consolidated financial statements, economic and financial developments together with our experience in examining statements filed under the revised rules indicate a need for further consideration of the extent of disclosure of information about subsidiaries engaged in the financial area. Of particular concern are developments in banking and other regulated financial businesses in which there is regulation for the interests of depositors and insureds apart from the interests of stockholders.

In April of this year in amending Rule 4-02 the Commission included as subparagraph (e) (1) (17 CFR 210.4-02) a provision that a requirement for separate financial statements for considered subsidiaries engaged in certain financial activities was not applicable to a consolidated subsidiary or group of subsidiaries in which registrant’s share of assets or sales and revenues exceeds 90 percent of the corresponding consolidated amounts. Consideration of this alternative of assets or sales and revenues shows that its application may result in omission of separate financial statements of consolidated subsidiaries for a limited time. For those situations, how-never, in which the subsidiary has a loss as against income being reported on the consolidated statements (or the reverse) the paragraph would not permit omission of separate subsidiary statements. Such a provision appears appropriate in a situation where the 90 percent tests as to assets and sales and revenues are met in view of the disproportionate income and loss relationship as against the assets and sales/revenues relationship.

Current developments in banking indicate that the interests of investors in bank holding companies may be better served by a clearer delineation between bank subsidiaries and other subsidiaries even though the latter group may include companies engaged in “bank related finance activities” which modifies “banking” as a line of business for which separate statements are required to “including subsidiaries of banks.”

The April amendment of Rule 4-02 provided in subparagraph (e) (2) (17 CFR 210.4-02) that separate financial statements could be omitted for a nonsignificant subsidiary or group of subsidiaries. In view of the increasing number of financial investments in nonregulated financial activities an amendment is now proposed to exclude from this exemption such nonsignificant subsidiaries when the parent company’s investment exceeds 10 percent of total assets as shown on the parent’s balance sheet. This proposed change reflects, for example, the situation observed in a recently filed registration statement in which an otherwise nonsignificant group of bank related subsidiaries represented over 50 percent of total assets of the parent and had been the recipient of advances made in subsidiaries by the parent during the last two years. Commission action: The Commission hereby proposes to amend § 210.4-02(c) of 17 CFR Chapter II. As amended, the material would read as follows:

§ 210.4-02 Consolidated financial statements of the registrant and its subsidiaries.

Separate financial statements shall be presented for each subsidiary or group of subsidiaries engaged in the business of life insurance, fire and casualty insurance, securities broker-dealer, finance (including similar activities such as leasing, factoring and mortgage banking), savings and loan or banking, including subsidiaries of banks; provided, however, that separate financial statements may be omitted:

(1) For a consolidated subsidiary or group of subsidiaries in the same business if the registrant’s and registrant’s other subsidiaries’ proportionate share of the income (or losses) of (i) total assets (after intercompany eliminations), (ii) total sales and revenues (after intercompany eliminations), and (iii) income (or loss) before income taxes and extraordinary items of each subsidiary or group of subsidiaries each exceeds 90 percent of the corresponding amounts on the consolidated financial statements.

(2) For a nonsignificant consolidated subsidiary which is registrant’s only subsidiary in a business, or for a group of consolidated subsidiaries constituting all of registrant’s subsidiaries in the same business which if considered in the aggregate would not constitute a significant subsidiary, except when registrant’s investments (including current and not current advances) in all nonsignificant subsidiaries exceeds 10 percent of total assets on registrant’s balance sheet.

For a consolidated subsidiary or group of subsidiaries in the same business if in excess of 90 percent of their sales and revenues are derived from registrant and registrant’s other subsidiaries’ business, this exemption would not be adopted pursuant to sections 7, 8, 10 and 19(a) of the Securities Act of 1933; sections 13, 16(a) and 23(a) of the Securities Exchange Act of 1934; sections 5(b), 14 and 20(a) of the Public Utility Holding Company Act of 1935; and sections 6, 39, 31(c) and 39(a) of the Investment Company Act of 1940.

All interested persons are invited to submit their views and comments on this proposal concerning Rule 4-02 of Regulation S-X in writing to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before February 14, 1975. Such communications should refer to File No. 67-540. All such communications will be available for public inspection.

By the Commission.

[Seal] GEORGE A. FITZSIMMONS, Secretary.

DECEMBER 11, 1974.

[FR Doc. 75-503 Filed 1-3-75; 8:45 am]

INTERIM FINANCIAL DATA

Proposals To Increase Disclosure

General Comments: Financial reporting is designed to reflect the progress of a business enterprise over time. This is achieved through a series of regular periodic reports which describe financial position at various dates and results of operations for various periods, and by periodic reporting of significant events and transactions. This reporting framework is intended to enable users of reports to achieve a better understanding and evaluate business operations so that they can make rational investment decisions.

A major part of the evaluation process requires an analysis of trends in a business so that reasonable expectations about future performance can be drawn. Actual results can then be compared with past expectations and revised estimates of the future made. This process of analysis must necessarily be ongoing and dynamic if our capital market mechanism is to be effective in allocating capital resources to their most productive use in a rapidly changing economy.

Timely reporting is essential to this system. Investors must have information available to them on a prompt basis and in sufficient detail to reflect significant operating trends. To these ends, the Commission has taken several steps in recent years. Form 10-Q (17 CFR 249.308a) was adopted in 1970 to require summarized quarterly reporting throughout the year. Accounting Series Release No. 138 (39 FR 24461) was issued.
in 1973 to require full and timely disclosure of material unusual charges to income.

While, however, quarterly data have been reported on an extremely abbreviated basis and annual financial statements have generally been presented without regard for or disclosure of trends occurring within a year, the Commission believes that these deficiencies in the financial reporting framework and it is proposing new requirements herein to improve quarterly financial reporting.

The Commission also believes that it is useful to investors to have the reporting expertise of independent public accountants drawn upon in the preparation of quarterly reports. In addition, it feels that the involvement of the independent accountant will increase the reliability of such reports even though no audit opinion is issued on the interim financial report. Accordingly, the rules proposed herein encourages this involvement on a timely basis and require an after the fact review of limited interim data at the time of the amendments to the Form 10-Q. The proposed amendments to Form 10-Q require that comparative income statements, balance sheets and statements of source and application of funds be furnished on a quarterly basis. The income statement is proposed to be required on a quarterly and year-to-date basis for the current and the previous year, the balance sheet at the end of the quarter for both years and the source and application of funds statement on a comparative year-to-date basis.

These financial statements are to be prepared in accordance with the general form of presentation set forth in Regulation S-X (17 CFR Part 210), except that the requirement for a summary of accounting policies and other requirements for detailed footnote disclosure do not apply unless such disclosure is required to make the financial statements not misleading. The Commission believes that it is reasonable to assume that users of interim statements will be familiar with or have access to the most recent annual financial statements and the repetition of annual footnote information is not essential to investors. In addition, the Commission is aware that the gathering of detailed footnote information would entail significant costs and might delay interim reports.

The financial statements are also to be prepared in conformity with the standards of accounting measurement set forth in Accounting Principles Board Opinion No. 28 (APB 28) and any amendments thereto adopted by the Financial Accounting Standards Board. In this connection, the Commission endorses the view set forth in that Opinion that "each interim period should be viewed primarily as an integral part of an annual period." It recognizes that interim data are necessarily more tentative than annual financial statements since these data are usually quickly prepared without the information and documentation normally available during the preparation of annual statements.

The APB 28 requirements for disclosing accounting changes are expanded in two respects by the proposed rule. First, the registrant must state the date of the change and the effect of making the change. This is already required under Form 10-Q. Second, the proposed rule would require the registrant to furnish as an exhibit to the Form 10-Q a letter from its independent public accountant indicating whether or not the accounting change is to an alternative principle which in his judgment is preferable under the circumstances. This is a change from the present letter requirement.

This letter is required since Accounting Principles Board Opinion No. 20 dealing with accounting changes provides that such changes may be made only "if the enterprise justifies the use of an alternative acceptable accounting principle on the basis that it is preferable." The Commission believes the management of the enterprise has maintained this burden of justification only if it has convinced its independent public accountant that the new principle is preferable under the circumstances.

The proposed rule also would require disclosure of pro forma data in connection with business combinations accounted for on a purchase basis similar to that now required in annual statements by Accounting Principles Board Opinion No. 16.

In addition to the financial statement requirements, the proposed rule would require that the registrant provide a narrative analysis of the results of operations. This analysis should follow the guidelines set forth in Guide 1 of "Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934" (Accounting Series Release No. 13) (39 FR 13032). The Commission does not believe that these proposed extended Form 10-Q disclosure requirements should preclude management from publishing more abbreviated quarterly results to its shareholders, nor should management be discouraged from making more frequent interim reports when the circumstances warrant it. Many companies in certain industries now publish sales and, in a limited number of cases, income data on a monthly basis. The Commission believes that when a few months are particularly important in determining annual results or when results within a normal interim reporting period indicate major changes in business trends, registrants should make every effort to publish such results in the most timely fashion possible. Failure to do so in some circumstances may result in misleading investors.

Where abbreviated quarterly reports are sent to all shareholders, the Commission encourages the practice of including in these reports a statement that a more detailed presentation of quarterly results is available in the annual report and will be furnished to stockholders on request.

Proposed Amendments to Regulation S-X to Require Inclusion of Interim Financial Data in Notes to Annual Financial Statements. Financial statements have traditionally been presented for a fiscal period of a year. It has been generally recognized that a year is an arbitrary period selected for convenience to permit all companies to report on a comparable period even though natural operating cycles for businesses may vary widely and in the case of most businesses, the length of time it takes the earth to circle the sun has little relevance to operations. The establishment of such a period is necessary and desirable. It must be recognized that business trends do not revolve around it.

In analyzing business results, therefore, an investor must be able to determine the pattern of events within a year as well as examining aggregate annual results. In trying to draw implications about the future, an investor might come to significantly different conclusions in the case of an enterprise which reported steadily improving operations within a fiscal year as compared to one whose operations varied randomly or seasonally from quarter to quarter. It is clear, therefore, that an understanding of pattern of performance within a year may be of vital importance in interpreting the significance of a full year's results. Annual statements, however, have not traditionally included such data and the investor seeking this information must find other sources.

In addition, reported interim results have frequently included adjustments which would distort trends, particularly in the final quarter of a fiscal year. The Commission believes that this information deficiency can be remedied and that the reliability of quarterly reports can be enhanced by requiring the inclusion of selected quarterly data in the footnotes to the annual financial statements, and accordingly, it is proposing herein to amend Regulation S-X to require such disclosure.

The proposed amendment would require registrants to disclose net sales, gross profit, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each quarter of the year for the two most recent years for which Income statements are presented.

When these data supplied in the annual statements are different from those previously reported on Form 10-Q, the difference must be reconciled. In addition, to the extent that there are any unusual items or adjustments in the quarterly data which would significantly affect the reader's business trends, these must be disclosed.
PROPOSED RULES

In proposing this rule, the Commission does not propose to require registrants to restate retroactively quarterly results at the end of the year to reflect quarterly earnings as seen for the preceding four quarters of the year. The Commission endorses the approach to interim reporting set forth in paragraph 26 of APB 28 which requires changes in accounting estimates to be accounted for in the period in which the change in estimate is made. The Opinion does require disclosure of the effect on earnings of a change in estimate. If registrants believe that the trend of business operations would be more easily understood by showing in columnar form the amounts originally reported, adjustments based on subsequent events and pro forma adjusted figures for each quarter, they may do so.

The Role of the Independent Public Accountant. The Commission recognizes that by requiring the proposed disclosure in a note to the annual financial statements, it is involving the independent public accountant in the reported interim results. The Commission notes that, insofar as it can determine, the New York Stock Exchange also endorsed the involvement of auditors with interim reporting in its 1973 White Paper. It also notes that the large public accounting firm of KPMG Peat Marwick has recently announced that it will encourage AudSEC to expand this project. While this proposal does not require registrants to make the disclosures herein proposed, it does encourage AudSEC to expand this project to cover all of its members.

The Commission notes that the New York Stock Exchange also endorsed the involvement of auditors with interim reporting in its 1973 White Paper. It also notes that the large public accounting firm of KPMG Peat Marwick has recently announced that it will encourage AudSEC to expand this project. While this proposal does not require registrants to make the disclosures herein proposed, it does encourage AudSEC to expand this project to cover all of its members.

The Communications should be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should be referred to File No. ST-542. All comments will be available for public inspection.

By the Commission.
[Seal] GEORGE A. FITZSIMMONS,
Secretary.
DECEMBER 19, 1974.

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Part 210 (Regulation S-X) is proposed to be amended to add a new subsection (v) to § 210.3-16 and to revise § 210.11A-.01.

§ 210.3-16 General notes to financial statements. (See Release No. AS-4.)

(v) Disclosure of selected quarterly financial data in notes to annual financial statements.

(1) Disclosure shall be made in a note to the annual financial statements of net sales, gross profits, and expenses associated directly with or allocated to products sold or services rendered, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each quarter of the year for the two most recent years for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

STAGEMENT OF SOURCE AND APPLICATION OF FUNDS (Article 11A-.01)

§ 210.11A-.01 Application of §§ 210-.11A-.01 to 210.11A-.02.

This article shall be applicable to statements of source and application of funds filed pursuant to requirements in registration and reporting forms under the Securities Act of 1933 and the Securities Exchange Act of 1934.

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

Part 240 is proposed to be amended to revoke subparagraph (b) (2) of § 240.12a-.13, § 240.12a-.16, subparagraph (b) (2) of § 240.15d-.15, and § 240.15d-.15.
§ 240.13a–13 [Amended]

1. In § 240.13a–13 subparagraph (b) (2) is deleted and subparagraphs (b) (3), (4), and (5) are redesignated as subparagraphs (b) (2), (3) and (4), respectively.

§ 240.13a–15 [Deleted]

Section 240.13a–15 is deleted.

§ 240.154–13 [Amended]

In § 240.154–13 subparagraph (b) and subparagraphs (b) (3), (4) and (5) are redesignated as subparagraphs (b) (2), (3) and (4), respectively.

§ 240.154–15 [Deleted]

Section 240.154–15 is deleted.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Part 249 is proposed to be amended to revise Form 10-Q [§ 249.308a], as given below.

§ 249.308a Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

H. Presentation of Financial Information.

(a) The registrant shall furnish an income statement, balance sheet and statement of source and application of funds following the general form of presentation set forth in Regulation S–X; 17 CFR Part 210, except that Rules 3–08 and 3–16 (17 CFR 210.3-08 and 210.3-16), and other requirements which call for detailed footnote disclosure and the presentation of schedules shall not apply other than as required by (g) below. In addition, the registrant shall provide a narrative analysis of the results of operations following the guidelines set forth in Guide 1 of “Guides for Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934.” [89 FR 31884] A company in the promotional or development stage to which paragraph (b) of Rule 9A–01 or Article 5A of Regulation S–X [17 CFR 210.5A–01] is applicable shall furnish the information specified in Rules 5A–29, 5A–30, 5A–04 and 5A–05 of Regulation S–X [17 CFR 210.5A–29, 210.5A–30, 210.5A–04, and 210.5A–05] in lieu of the above financial statement requirements.

(b) The financial statements and narrative requirements shall be provided for periods set forth below:

1. The income statement shall be presented for the most recent fiscal quarter, for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for corresponding periods of the preceding fiscal year.

2. The balance sheet shall be presented as of the end of the most recent fiscal quarter and for the end of the corresponding period of the preceding fiscal year.

3. The statement of source and application of funds shall be presented for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year.

(c) If, during the current period specified in (b) above, the registrant or any of its consolidated subsidiaries, entered into a business combination treated for accounting purposes as a pooling of interests, the statements of interim financial statements for both the current year and the preceding year shall reflect on a pro forma basis as a business combination the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to acquisition shall be given, with appropriate explanations.

(d) In case the registrant has disposed of any significant portion of its business or any material business combination, it shall explain in a footnote the consideration received for such disposal, the company’s reasons for making such disposal, the effect thereof on revenues and net income—total and per share—for all periods shall be disclosed.

(e) In the event a material business combination accounted for as a purchase has occurred during the current fiscal year, disclosure shall be made of the results of operations for the current year up to the date of the end of the most recent fiscal quarter and for the comparable period in the preceding year on a pro forma basis as though the companies had combined at the beginning of the current fiscal year, except that the pro forma information should reflect the minimum change in income before extraordinary items and the cumulative effect of accounting changes, such income on a per share basis and net income.

(f) The financial statements to be included in the report shall be presented in conformity with the standards of accounting measurement set forth in Accounting Principles Board Opinion no. 28 and the amendments thereto adopted by the Financial Accounting Standards Board. In addition to meeting the reporting requirements set forth herein, the registrant shall state the date of any change and the reasons for making it. In addition, when any material business combination accounted for as a purchase has occurred during the current fiscal year, the balance sheet and statement of income shall include a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly set forth in the report.

J. Sales of Unregistered Securities (Debt or Equity).

The information called for herein shall be given as to the conditions as defined in section 2(2) of the Securities Act of 1933. If the information called for has been previously reported on another form, it may be incorporated by a specific reference to the previous filing.

Give the following information as to all securities of the registrant sold by the registrant during the fiscal quarter, which were not registered under the Securities Act of 1933, in reliance upon an exemption from registration provided by section 4(3) of that Act. Include sales of the registrant’s acquired securities as well as new issues, securities issued in exchange for property, services or other securities, and new securities resulting from the modification of outstanding securities:

1. Give the date of sale, the title and amount of the registrant’s securities sold;

2. Give the market price on the date of sale, if applicable;

3. Give the names of the brokers, underwriters or finders, if any. As to any securities sold but which were underwritten by a public offering, name the persons or identify the class of persons to whom the securities were sold;

4. As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts, brokerage commissions, or finder’s fees, if any, to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant;

5. Indicate the effect of the Act or rule of the Commission under which exemption from registration was claimed, and state briefly the facts relied upon to make the exemption available; and

6. State whether the securities have been legended and stop-transfer instructions given in connection therewith, and, if not, state the reasons why not.

K. Signature and Filing of Report.

Copies of the report shall be filed with the Commission. At least one copy of the report shall be filed with each exchange to which any class of securities of the registrant is subject by filing thereof with the Commission. A copy of the report shall be filed with the Commission and one copy filed with each such exchange and each transfer agent, registrar, trustee or other securities intermediaries, on behalf of a duly authorized officer of the registrant. Copies not manually signed shall be typed or printed in such manner as to be legible.

A. Summarized Financial Information. (Existing Part A to be deleted.)

B. Capitalization and Stockholders’ Equity. (Existing Part B to be deleted.)

C. Sales of Unregistered Securities (Debt or Equity). (Part C is proposed to be Inclusion.)

Signatures. No change in this section.

[FR Doc. 76–197 Filed 1–3–75; 8:45 am]
proposed rules under section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 697) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved under section 19(c) of the Act and Part 1902 of this chapter. On September 12, 1973, a notice was published in the Federal Register of the approval of the Colorado plan and of the adoption of Subpart M of Part 1952 containing the decision (38 FR 25173). On November 18, 1974, the State of Colorado submitted supplements to the plan involving developmental changes (see Subpart B of 29 CFR Part 1953). The supplements consist of various rules and regulations promulgated by the State designee.

The decision approving the Colorado plan incorporated several assurances from the State on the promulgation or adoption of administrative regulations (See 38 FR 25174). In response to that commitment, the State has promulgated procedural regulations, effective in October 1974, for the following components of its occupational safety and health program: Variances (Colorado Occupational Safety and Health (hereinafter referred to as COSH) Rule 4-101 et seq.); Inspections, Citations and Proposed Penalties (COSH Rule 5-101 et seq.); Recording and Reporting Occupational Injuries and Illnesses (COSH Rule 6-101 et seq.); and Rules of Procedure for Colorado Occupational Safety and Health Hearing and Appeals (COSH Rule 7-101 et seq.). The Assistant Secretary has preliminarily reviewed the supplements and hereby gives notice that their approval is in issue before him.

3. Location of the supplements for inspection and copying. A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room 850, 1726 M Street, NW., Washington, D.C. 20210; Occupational Safety and Health Administration, Room 15010, Federal Building, 1961 Stout Street, Denver, Colorado 80202; Director, Division of Labor, Department of Labor and Employment, 200 East Ninth Avenue, Denver, Colorado 80203.

4. Public participation. Interested persons are hereby given until February 5, 1975, in which to submit written data, views and arguments concerning whether the supplement should be approved. Such submissions are to be addressed to the Associate Assistant Secretary for Regional Programs at his address as set forth above where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplements, by filing particularized written objections with respect thereto within the time allowed for comments with the Associate Assistant Secretary for Regional Programs. If in the opinion of the Assistant Secretary substantial objections are filed, which warrant further public discussion, a formal or informal hearing on the subjects and issues involved may be held.

The Assistant Secretary shall consider all relevant comments, arguments and requests submitted in accordance with this notice and shall thereafter issue his decision as to approval or disapproval of the supplements, make appropriate amendments to Subpart M of Part 1952 and initiate appropriate further proceedings if necessary.

Signed at Washington, D.C. this 24th day of December, 1974.

JOHN STEEDER,
Assistant Secretary of Labor.
DEPARTMENT OF THE TREASURY
Office of the Secretary

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Transfer of Functions

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in Reorganization Plan No. 26 of 1950, it is ordered that:

1. There is hereby transferred, as specified herein, the functions, powers, and duties of the Internal Revenue Service arising under laws relating to wagering, to the Bureau of Alcohol, Tobacco and Firearms (hereinafter referred to as the "Bureau").

2. The Director of the Bureau shall perform the functions, exercise the powers, and carry out the duties of the Secretary in the administration and enforcement of the following provisions of law: Chapters 26 through 35 and 51 through 60, inclusive, of the Internal Revenue Code of 1954 insofar as they relate to activities administered and enforced with respect to Chapter 26.

3. All functions, powers and duties of the Secretary which relate to the administration and enforcement of the laws specified in paragraph 2 hereof are delegated to the Director. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by him with the approval of the Secretary.

4. All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the laws specified in paragraph 2 hereof, which are in effect on the effective date of this Order, including amendments thereto, shall continue in effect as regulations, rules, instructions and forms of the Bureau until superseded or revised.

5. All existing activities relating to the assessment, collection, processing, depositing, or accounting for taxes (including penalties and interest), under the laws specified in paragraph 2 hereof, shall continue to be performed by the Commissioner of Internal Revenue until the Director shall otherwise provide with the approval of the Secretary.

6. (a) The term "Commissioner of Internal Revenue" whenever used in regulations, rules, instructions, and forms issued or adopted for the administration and enforcement of the laws specified in paragraph 2 hereof, which are in effect or in use on the effective date of this Order, shall be held to mean the Director.

(b) The term "internal revenue officer" and "officer, employee, or agent of the internal revenue" wherever used in such regulations, rules, instructions and forms, in any law specified in paragraph 2 above, and in 18 U.S.C. 1114, shall include all officers and employees of the United States engaged in the administration and enforcement of the laws administered by the Bureau, who are appointed or employed by, or pursuant to the authority of, or who are subject to the directions, instructions or orders of, the Secretary.

7. All delegations inconsistent with this Order are revoked.

8. This Order shall be effective immediately.

Dated: December 24, 1974.

[SEAL]

WILLIAM E. SIMON,
Secretary of the Treasury.

[FR Doc. 75-608 Filed 1-3-75; 8:45 am]

LOCK-IN AMPLIFIERS AND PARTS THEREOF FROM THE UNITED KINGDOM

Withholding of Appraisement Notice

Information was received on April 17, 1974, that lock-in amplifiers from the United Kingdom were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the Federal Register of May 17, 1974, on page 17570.

The term "lock-in amplifiers" refers to electrical measuring instruments for isolating and amplifying alternating current signals. The Antidumping Proceeding Notice indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.48), the Secretary of the Treasury may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW, Washington, D.C. 20229, in time to be received by his office on or before January 16, 1975. Such requests must be accompanied by a statement outlining the issues wished to be discussed.


[SEAL]

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc. 75-312 Filed 1-3-75; 8:45 am]

TREASURY ADVISORY COMMITTEES

Public Availability of Reports on the Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C.
App. I (Pub.L. 92-463), and OMB Circular A-69 of March 27, 1974, those Advisory Committees of the Department of the Treasury which held closed, or partially closed, meetings through October 31, 1974, have prepared summary reports on the activities of those meetings. Copies of the reports have been filed and are available for public inspection at two locations: The Library of Congress Room 256, Main Building 10 First Street, NE. Washington, D.C. The Department of the Treasury Main Library Room 5038, Main Treasury Building 15th and Pennsylvania Avenue, NW. Washington, D.C.

The following committees filed summary reports:

Advisory Committee on Explosives Tagging
Advisory Committee on Reform of the International Monetary System
American Bankers Association Government Borrowing Committee
Art Advisory Panel of the Commissioner of Internal Revenue
Consulting Committee on Bank Economics
National Advisory Committees on Banking Pollides and Practices
Regional Advisory Committee on Banking Pollides and Practices (one committee for each of the fourteen National Bank Regions)
Securities Industry Association

The following committee filed a summary report:

American Bankers Association Government Borrowing Committee

By letter of December 10, 1974, Logan A. Webster, Chief Probation Officer of the United States District Court for the Western District of Pennsylvania, drew the attention of the Administrator of the Drug Enforcement Administration to certain apparent inaccuracies in a Federal Register publication of July 23, 1974 (Vol. 39, No. 142).

They are as follows:

1. In the fourth paragraph of the first column, headed “Discussion of Evidence,” the word “barbiturates” should be substituted for the word “amphetamines” after the number 20,000.

2. Dr. Higgins did not admit that on January 8, 1973, he sold Corporal Prandy 700 amphetamines for $150, as stated in the fourth paragraph of the first column. He did admit the sale of barbiturates. Consequently, the sentence in question should be amended to read:

"In addition, during the instant proceedings Dr. Higgins has admitted that on January 8, 1973, he sold Corporal Prandy 40 barbiturates for $400 and that on January 12, 1973, he sold Corporal Prandy 20,000 barbiturates for $2,409."

Any references to convictions arising from illicit transactions involving amphetamines should be deleted.

Finally, Mr. Webster’s letter points out that, during the criminal proceedings against Dr. Higgins in the United States District Court for the Western District of Pennsylvania, Mr. Webster’s office prepared a presentation report in which references is made to Dr. Higgins’ allegations of coercion during the illicit transactions to which he subsequently pleaded guilty. This report, however, was not a part of the record in the administrative proceedings which resulted in the revocation of Dr. Higgins’ registration under the Controlled Substances Act of 1970.

The Administrator appreciates Mr. Webster’s attention to this matter and hereby orders the correction of the record described above. These corrections do not affect the order published in the Federal Register on July 23, 1973, in this matter.

Dated: December 30, 1974.

GUY M. AUTORE, M.D.

Revocation of Registration

On August 9, 1974, a hearing was held before Administrative Law Judge George A. Koutras on the issues raised by an Order to Show Cause directed to Guy M. Autore, M.D., as to why his DEA registration A0091885 should not be revoked. The Order to Show Cause was predicated on a finding that Dr. Autore had been convicted of a felony relating to a controlled substance.

Judge Koutras found as a matter of law that the record of the hearing proceedings indicated that the registrant had been convicted of a felony relating to a controlled substance. The Administrator concurs in that finding.

At the hearing, Dr. Autore argued that his criminal conviction was not final since his appeal from the convictions was still pending. Judge Koutras found as a matter of law that a conviction within the meaning of the Act, even though an appeal may be pending, is sufficient to show conviction.

The Administrator concurs in that finding. (See In the Matter of Leonard S. Cohen, 33 F.R. 5532, April 17, 1973; In the Matter of Dr. Carl Oslin Hanson, 36 F.R. 24077, December 18, 1971). Judge Koutras found as a matter of law that the record of the hearing provides a rational basis for the Administrator to suspend or revoke Dr. Autore’s registration.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
NOTICES

Federal Bureau of Investigation
NATIONAL CRIME INFORMATION CENTER
ADVISORY POLICY BOARD

Renewal

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 93-181, as amended) by Title 28 of Federal Regulations, the Administrator hereby orders that the Certificate of Registration of Guy M. Autore, M.D. (DEA Registration AA0011569) be, and hereby is, revoked, effective January 6, 1975.

Dated: December 30, 1974.
JOHN R. BARELS, JR.,
Administrator,
Drug Enforcement Administration.

[FR Doc.75-232 Filed 1-3-75;8:45 am]

INTERIM MANUFACTURING QUOTAS

Schedule I and II Controlled Substances

Section 305 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II by July 1 of each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28, Code of Federal Regulations.

Therefore, pursuant to section 305 and 21 CFR 1303.11 and 1303.21, any currently registered bulk manufacturer who received a manufacturing quota for 1974 for a basic class of Schedule I or II controlled substance and who has applied for a 1975 manufacturing quota for said substance, may manufacture, effective January 1, 1975, up to 95 percent of his 1974 bulk manufacturing quota. This notice is given to insure uninterrupted manufacture of Schedule I and II controlled substances pending publication of the 1975 manufacturing quotas.

Dated: December 30, 1974.
JOHN R. BARELS, JR.,
Administrator,
Drug Enforcement Administration.

[FR Doc.75-232 Filed 1-3-75;8:45 am]
NOTICES

1057

(30.5 cm.) in height with the name of the operator, the OCS lease number, the name of the area, the block number, and the platform or structure designation. The information may be abbreviated as in the following example:

The Blank Oil Company operates "C" platform on lease OCS-A 1000 in Block 108 of Icy Bay Area.

The identifying sign on the platform would show:

BOC-OCS-A 1000-1-3.8-108-C.

The identifying sign on the platform in the following example:

name of the area, the block number, and completed wells each completion shall be in-

fused to the vessel with the name of the lease less than 12 inches

floating drilling-ships shall be identified and structures.

BOC-OCS-A

2. Identification of mobile platforms and structures. Floating semi-submersible platforms, bottom-setting mobile and floating drilling-ships shall be identified by one sign with letters and figures not less than 12 inches (30.5 cm.) in height with the name of the lease operator, the OCS lease number, and the name of the area, and the block number.

3. Identification of individual wells. The OCS lease and well number shall be painted on, or affixed to, each well singly completed well. In multiple completed wells each completion shall be individually identified at the wellhead. All identifying signs shall be maintained in a legible condition.

ROBERT A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

RUSSELL C. WAYLAND,
Chief, Conservation Division.

GULF OF ALASKA
[OCS ORDER NO. 2]

DRILLING PROCEDURES

This Order is established pursuant to the authority prescribed in 30 CFR 250.11. All exploratory and development wells drilled for oil and gas shall be drilled in accordance with 30 CFR 250.12(b), 250.41, 250.91, and the provisions of this Order which shall continue in effect until field drilling rules are issued. When sufficient geological and engineering information is available, operators may make application or the Supervisor may require an application for the establishment of field drilling rules. After field drilling rules have been established by the Supervisor, development wells shall be drilled in accordance with such rules.

All wells drilled under the provisions of the Order shall have been included in an exploratory or development plan of the driller's log and used to determine the depth of and maximum mud weight to be used in the intermediate hole.

1. Well casing and cementing. All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.11.14(a) (1), and the Application for Permit to Drill (Form 9-331C) shall include the following information and as amended by Order No. 30 CFR 250.91, and shall include a notation of any proposed departures from the requirements of this Order. All departures from the above requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(d).

The Operator shall comply with the following requirements. All applications for approval under the provisions of the Order shall be submitted to the Supervisor.

1. Well casing and cementing. All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.11.14(a) (1), and the Application for Permit to Drill (Form 9-331C) shall include the following information and as amended by Order No. 30 CFR 250.91, and shall include a notation of any proposed departures from the requirements of this Order. All departures from the above requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(d).

The Operator shall comply with the following requirements. All applications for approval under the provisions of the Order shall be submitted to the Supervisor.

1. Well casing and cementing. All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.11.14(a) (1), and the Application for Permit to Drill (Form 9-331C) shall include the following information and as amended by Order No. 30 CFR 250.91, and shall include a notation of any proposed departures from the requirements of this Order. All departures from the above requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(d).

The Operator shall comply with the following requirements. All applications for approval under the provisions of the Order shall be submitted to the Supervisor.

FEDERAL REGISTER, VOL 40, NO. 3—MONDAY, JANUARY 6, 1975
In any case, a calculated volume sufficient to fill the annular space at least 500 feet (152.4 metres) above the uppermost producible hydrocarbon zone must be used. When a liner is used as production casing, it shall have a minimum lap length of 200 feet (61.0 metres). The testing shall be conducted as indicated in the table below. The test pressure shall not exceed the internal yield pressure of the casing. The surface casing shall be tested, with water in the top 100 feet (30.5 metres) of the casing. If the pressure declines more than 10 percent in 30 minutes, or if there are indications of a leak, corrective measures shall be taken until a satisfactory test is obtained.

**Casing**
- **Minimum surface pressure**
  - **Conductor**: 200 (13.6 atm).
  - **Surface**: 1,000 (68 atm).
  - **Intermediate**: 1,200 (80 atm) or 0.2 lb/ft² (0.045 atm /ft³), whichever is greater.
  - **Liner**: 1,500 (102 atm) or 0.2 lb/ft² (0.045 atm /ft³), whichever is greater.
  - **Production**: 1,500 (102 atm) or 0.2 lb/ft² (0.045 atm /ft³), whichever is greater.

After cementing any of the above strings, drilling shall not be commenced until a time lapse of eight hours under pressure for conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are employed and are shown to be holding the cement in the place for the duration of holding pressure are used. All casing pressure tests shall be recorded on the driller’s log.

**Directional surveys.** Wells are considered vertical if inclination does not exceed an average of three degrees from the vertical. Inclination surveys shall be obtained on all vertical wells at intervals not exceeding 500 feet (152.4 metres) during the normal course of drilling.

Wells are considered directional if inclination exceeds an average of three degrees from the vertical. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 100 feet (30.5 metres) in all angle change portions of the hole.

On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 500 feet (152.4 metres) prior to, or upon, setting surface or intermediate casing, liners, and at total depth. Complete directional surveys shall be filed with the Supervisor. The interval shown will be from the bottom of conductor casing, or, in the absence of conductor casing, from the bottom of drive, structural casing to total depth. An error in calculating all surveys, a correction from true north to Lambert-Grid north shall be made after making the magnetic to true north correction. Where the inclination and azimuth is obtained at wells at intervals not exceeding 500 feet (152.4 metres), a directional survey giving both inclination and azimuth shall be obtained at intervals not exceeding 500 feet (152.4 metres) or 0.2 lb/ft² (0.045 atm /ft³), whichever is greater, unless otherwise approved by the Supervisor.

3. **Blowout prevention equipment.** Blowout preventers and related well-control equipment shall be installed, tested, and inspected in a manner to prevent blowouts. Prior to drilling below the drive pipe or structural casing and until drilling operations are completed, blowout prevention equipment shall be installed and maintained ready for use as follows:

- **Drive pipe or structural casing.** Before drilling below this string, at least one remotely controlled, annular-type blowout preventer or pressure-rotating, pack-off-type head and equipment for circulating the drilling fluid to the structural casing shall be installed.

4. **Pressure testing of casing.** Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure-tested as shown in the above table. The back pressure test shall be conducted as in the case of intermediate liners. This test shall be recorded on the driller’s log.

5. **Testing.**

- **Pressure test.** Annular-type blowout preventers and related well-control equipment shall be tested with water in the top 100 feet (30.5 metres) of the casing. The test pressure shall not exceed an average of three degrees from the vertical.

6. **Blowout prevention drill pipe.** Blowout preventers shall be installed in the drill pipe as follows:

- (1) four remote-controlled, hydraulically operated blowout preventers with a working pressure which exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams, and one annular type; (2) a drilling spool with side outlets, if side outlets are not provided in the blowout preventer body; (3) a choke line and manifold; (4) a kill line separate from choke line; and (5) a fill-up line.

7. **Testing.**

- **Blowout prevention equipment.** Preventer shall be actuated to test proper functioning on each trip, but in no event less than once each day. The annular-type blowout preventer shall be tested to 70 percent of the rated working pressure. They shall be tested as follows:

  - Prior to drilling, (b) before drilling out after each string of casing is set, (c) not less than once each week from each of the control stations, and (d) following repairs that require disconnecting a pressure seal in the assembly.

8. **Drills.** A blowout prevention drill shall be conducted weekly for each drill crew to insur that all equipment is operational and that crews are properly trained to carry out emergency duties.

9. **Records.** All blowout preventer tests and crew drills shall be recorded on the driller’s log.

**NOTICES**

1. **Conductor casing.** Before drilling below this string, at least one remotely controlled, annular-type blowout preventer and equipment for circulating the drilling fluid to the structural casing to total depth. A diverter system shall be installed. The diverter system shall be submitted with the application for Permit to Drill (Form S-525) to the Supervisor for approval.

In drilling operations where a floating or semisubmersible type of drilling vessel is used and formation competency at the structural casing setting depth is not adequate to permit circulation of drilling fluids to the vessel while drilling conductor hole, a program which provides for safety in these operations shall be described and submitted to the Supervisor for approval. This program shall include all known pertinent and relevant information, including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, equivalent circulating density from rotary table to proposed conductor casing seat, and contingency plan for moving off location. Where drilling fluids are not circulated to the vessel, small diameter internal pilot hole shall be drilled from the bottom of the drive or structural casing to the proposed conductor casing seat to minimize hazards from shallow hydrocarbons.

2. **Intermediate casing.** Before drilling below this string, the blowout prevention equipment shall include a minimum of: (1) four remote-controlled, hydraulically operated blowout preventers with a working pressure which exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams, and one annular type; (2) a drilling spool with side outlets, if side outlets are not provided in the blowout preventer body; (3) a choke line and manifold; (4) a kill line separate from choke line; and (5) a fill-up line.

3. **Testing.** Annular-type blowout preventers and related well-control equipment shall be tested with water to the rated working pressure of the stack, assembly, with the exception of the annular-type preventer, which shall be tested to 70 percent of the rated working pressure. They shall be tested as follows:

- (1) Prior to drilling, (b) before drilling out after each string of casing is set, (c) not less than once each week from each of the control stations, and (d) following repairs that require disconnecting a pressure seal in the assembly.

4. **Drills.** A blowout prevention drill shall be conducted weekly for each drill crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties.

5. **Records.** All blowout preventer tests and crew drills shall be recorded on the driller’s log.

6. **Other equipment.** An inside blowout-preventer assembly (bump-pressure valve) and an annular-type blowout preventer shall be installed in the drill-string safety valve in the open position. This valve shall be maintained on the rig floor to fit all pipe in the drill string. A locking device shall be installed below the swivel, and an essentially full-opening...
kelly cock of such design that it can be run through the blowout preventers shall be installed at the bottom of the kelly.

4. Mud program. The characteristics, use, and testing of drilling mud and the conduct of drilling operations shall be such as are necessary to prevent the blowout of any well. Quantities of mud materials sufficient to insure well control shall be maintained readily accessible for use.

A. Mud control. Before starting out of the hole with drill pipe, the mud shall be properly conditioned by circulating with the drill pipe just off bottom until the annular volume is displaced, unless it is documented in the driller's log that: (1) there was no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole, (2) the weight of the returning mud is not less than the weight of the mud entering the hole, and (3) other mud properties recorded on the daily drilling log are within the specified ranges at the stage of drilling the hole to perform their required functions. In those cases when the hole is circulated, the driller's log shall be so noted.

When coming out of the hole with drill pipe, the annulus shall be filled with mud before the mud level drops 100 feet (30.5 m). A device for measuring the amount of mud required to fill the hole shall be utilized, and any time there is an indication of swabbing, or influx of formation fluids, the necessary safety devices and action shall be employed to control the well. The mud shall not be circulated and conditioned, except on or near bottom, unless well conditions prevent running the drill pipe back to bottom. The mud in the hole shall be circulated or reverse-circulated prior to pulling drill-stem test tools from the hole.

The hole shall be filled by accurately measured volumes of mud. The number of stands of drill pipe and drill collars that may be pulled between the times of filling the hole shall be calculated and posted. The minimum pressure of barrels and strokes required to fill the hole for this designated number of stands of drill pipe and drill collars shall be posted. For each casing string, the maximum pressure which may be applied to the blowout preventer before controlling excess pressure by bleeding through the choke, shall be posted at the driller's station. Drill pipe pressure shall be monitored during the bleeding procedure for well control.

An operable degasser shall be installed in the mud system prior to the commencement of the drilling operation, and shall be maintained in use throughout the drilling and completion of the well.

B. Mud system equipment. Mud testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed at least once every eight hours, or more frequently as conditions warrant. Mud testing shall be conducted to determine the physical properties of the mud to measure proper well control. Such tests shall be conducted in accordance with procedures outlined in API RP-13B, February 1974, and the results recorded and maintained at the drill site. The following mud system monitoring equipment shall be installed (with derrick floor instruments) and used at that time in the drilling operation when mud returns are first established and throughout subsequent drilling operations:

1. Recording mud pit level indicator to determine mud pit volume gains and losses. This indicator shall include a visual and audio warning device.

2. Mud volume measuring device for accurately determining mud volumes required to fill the hole on trips.

3. Mud return indicator to determine that returns essentially equal the pump discharge rate.

4. Gas-detecting equipment to monitor the drilling mud returns.

5. Hydrogen sulfide (H₂S) sensing equipment capable of sensing a minimum of 5 parts per million of H₂S in air to monitor the drilling mud returns.

C. Mud quantities. The operator shall state in the Application for Permit to Drill, the minimum quantities of mud material, including weighting material, to be maintained at the drill site. For emergency use daily inventories shall be recorded and maintained at the drill site. If the mud material is suspended in the absence of approved minimum quantities of mud materials.

- 5. Supervision, surveillance and training.

A. Supervision. The operator shall provide continuous company supervision of drilling operations on a 24-hour basis.

B. Surveillance. From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the pusher shall maintain rig floor surveillance at all times.

C. Training. Company and drilling contractor supervisory personnel including drillers shall be trained in and qualified for present-day well control. Records of such training shall be maintained at the drill site. Training shall include, but is not limited to:

1. Abnormal pressure detection methods.

2. Well control methods and procedures.

6. Hydrogen Sulfide. When drilling operations are undertaken to penetrate reservoirs known or expected to contain hydrogen sulfide (H₂S), or, if unknown, upon encountering H₂S, the following preventive measures shall be taken to control the effects of the toxicity, flammability, and corrosive characteristics of H₂S. Alternative equipment or procedures that achieve the same or greater levels of safety may be approved by the Supervisor. When sulfur dioxide (SO₂), a product of combustion of H₂S, is present, the procedures outlined in the approved contingency plan required in paragraph 6A(3) of this Order shall be followed.

A. Personnel safety and protection.

(1) Training Program. (a) All personnel, whether regularly assigned, contracted, or employed on an unscheduled basis, shall be informed as to the hazards of H₂S gas. They shall be instructed in the proper use of personal safety equipment and informed of H₂S detectors and alarms. Ventilation equipment, prevailing winds, briefing areas, warning systems, and evacuation procedures.

(b) Information relating to these safety measures shall be prominently posted on the drilling facility and on vessels in the immediate vicinity which are serving the drilling facility.

(c) To promote efficient safety procedures, an on-site H₂S safety program, which includes a weekly drill and training session, shall be established. Records of attendance shall be maintained on the drilling facility.

(d) Anyone in the working crew shall have been indoctrinated in basic first-aid procedures applicable to victims of H₂S exposure. During subsequent on-site training sessions and drills, emphasis shall be placed upon rescue and first aid for H₂S victims. Each drilling facility shall have the following equipment, and each crew member shall be thoroughly indoctrinated in its use and the location and use of these items:

1. A first-aid kit.

2. Reuscitators, complete with face masks, oxygen bottles, and spare oxygen bottles.

3. A Stokes litter or equivalent.

(e) One person, who regularly performs duties on the drilling facility, shall be responsible for the overall operation of the on-site safety and training program.

(2) Visible warning system. Wind direction equipment shall be installed at prominent locations to indicate to all personnel, or in the immediate vicinity of the facility, the wind direction at all times for determining safe upwind areas. The equipment shall be operable in the event that H₂S is present in the atmosphere.

Operational danger signs shall be displayed from each side of the drilling ship or platform, and a number of rectangular red flags shall be hoisted in a manner visible to watercraft and aircraft. Each flag shall be of a minimum width of three feet (0.9 metres) and a minimum height of two feet (0.6 metres). Each sign shall have a minimum width of eight feet (2.4 metres) and a minimum height of four feet (1.2 metres), and shall be painted a high-visibility color with black lettering of a minimum of 12 inches (30.5 cm) in height. All signs and flags shall be illuminated under conditions of poor visibility and at night when in use. These signs and flags shall be displayed to indicate the following operational conditions and requirements:

(a) Moderate danger. When the threshold limit value of H₂S (10 parts per million) is reached, the sign shall be displayed. If the concentration of H₂S reaches 20 parts per million, protective
Notices.

1090

breathing apparatus shall be worn by all personnel, and all non-working personnel shall proceed to the safe briefing areas.

(b) Extreme danger. When H2S is determined to have reached the injurious level (50 parts per million), the flags shall be hoisted in addition to the displayed signs. All nonessential personnel or all personnel, as appropriate, shall be evacuated at this time. Radio communications shall be used to alert all known air- and watercraft in the immediate vicinity of the drilling facility.

(3) Contingency plan. A contingency plan shall be developed prior to the commencement of drilling operations and submitted to the Supervisor for approval. The plan shall include the following:

(a) General information and physiological response to H2S and SO2 exposure.
(b) Safety procedures, equipment, training, and smoking rules.
(c) Procedures for operating conditions:
   (i) Moderate danger to life.
   (ii) Extreme danger to life.
   (iii) Responsibilities and duties of personnel for each operating condition.
   (d) Designation of briefing areas as locations from which personnel will evacuate during Extreme Danger condition. At least two briefing areas shall be established on each drilling facility. Of these two areas, the one upwind at any given time is the safe briefing area.
   (e) Evacuation plan.
   (f) Agencies to be notified in case of an emergency.
   (g) A list of medical personnel and facilities, including addresses and telephone numbers.
   (h) H2S detection and monitoring equipment. Each drilling facility shall have an H2S detection and monitoring system which activates audible and visible alarms before the concentration of H2S exceeds its threshold limit value of 10 parts per million in air. This equipment shall be capable of sensing a minimum of five parts per million H2S in air, with sensing points located at the bell nipple, shale shaker, dripper's stand, living quarters, and other areas where H2S might accumulate in hazardous quantities.
   (i) H2S detector amplifiers shall be available for use by all working personnel. After H2S has been initially detected by any device, frequent inspections of all areas of poor ventilation shall be made with portable H2S-detector instruments.
   (j) Personnel protective equipment.
      (i) All personnel on a drilling facility or aboard marine vessels serving the facility shall be equipped with proper personnel protective breathing apparatus. The protective-breathing apparatus used in an H2S environment shall conform to all applicable Occupational Safety and Health Administration regulations and American National Standards Institute standards. Optional equipment, such as nose cups and spectacle kits, shall be available for use as needed.
      (ii) The location of protective-breathing apparatus shall be such that they are quickly and easily available to all personnel. Storage locations shall include the following:
         (I) Rig floor.
         (ii) Any working area above the rig floor.
         (iii) Mud-logging facility.
         (iv) Shale-shaker area.
         (v) Mud storage area.
         (vi) Pump rooms (mud and cement).
         (vii) Crew quarters.
         (viii) Each briefing area.
         (x) Heliport.
      (c) A system of breathing-air manifolds, hoes, and masks shall be provided on the rig floor and the briefing areas. A cascade air-bottle system shall be provided to refill individual protective-breathing apparatus bottles. The cascade air-bottle system may be recharged by a high-pressure compressor suitable for providing breathing-quality air, provided the compressor suction is located in an uncontaminated atmosphere. All breathing-air bottles shall be labeled as containing breathing-quality air fit for human usage.
      (d) Workboats attendant to rig operations shall be equipped with protective breathing apparatus for all workboat crew members. Pressure-demand or demand-type masks, connected to a breathing-air manifold, and additional protective breathing apparatus shall be available for reserves. Whenever possible, boats shall be stationed upwind.
      (e) Helicopters attendant to rig operations shall be equipped with a protective breathing apparatus for the pilot.
      (f) The following additional personnel safety equipment shall be available for use as needed:
         (i) Portable H2S detectors.
         (ii) Retrieval ropes with safety harnesses to retrieve incapacitated personnel from contaminated areas.
         (iii) Chalk boards and note pads located on the rig floor, in the shale-shaker area, and in the cement pump rooms for communication purposes.
         (iv) Bull horns and flashing lights.
         (v) Resuscitators.
      (g) Ventilation equipment. All ventilation devices shall be explosion-proof and situated in areas where H2S or SO2 may accumulate. Mobile ventilation devices shall be provided in work areas and be multidirectional and capable of dispersing H2S or SO2 vapors away from working personnel.
      (h) Notification of regulatory agencies. The following agencies shall be immediately notified under the alert conditions indicated:
         (i) Moderate danger.
         (ii) U.S. Geological Survey.
         (iii) U.S. Coast Guard.
         (b) Extreme danger.
         (i) U.S. Geological Survey.
         (ii) U.S. Coast Guard.
         (iii) Appropriate State agencies.
   B. Metallurgical equipment considerations. Equipment used when drilling zones bearing H2S shall be constructed of materials which, according to design principles, will be able to resist damage from the phenomena known variously as sulfide stress cracking, hydrogen embrittlement, or stress corrosion cracking. Such equipment includes drill pipes, casing, casing heads, blowout-preventer stack assemblies, kill lines, choke manifolds, and other related equipment. A knowledge of the various interrelationships between stress, environment, and the metallurgy employed is required for successful operation in H2S environments. The following general practices are required for acceptable performance:
      (1) Drill string. Drill strings shall be designed consistent with the anticipated depth, conditions of the hole and reservoir environment to be encountered. Care shall be taken to minimize exposure of the drill string to high stresses as much as is practical and consistent with the anticipated hole conditions to be encountered.
      (2) Casing. Casing, couplings, flanges, and related equipment shall be designed for H2S service. Field welding on casing, tubing, or drillpipe excepted. Special procedures shall be designed in accordance with criteria evolved through technology of the latest state-of-the-art for H2S service. Surface equipment, such as choke lines, choke manifold, kill lines, bolting, weldments, and other related well-killing equipment shall be designed and fabricated utilizing the most advanced technology concerning sulfide stress cracking. Elasticity, packing, and similar inner parts exposed to H2S shall be resistant at the maximum anticipated temperature of exposure.
   C. Mud program.
      (1) Either water-base or oil-base muds are suitable for use in drilling formations containing H2S. Disposal of drilling mud and cuttings shall be in accordance with OCS Order No. 7.
      (2) A pH of 10.0 or above shall be maintained in a water-base mud system to control corrosion and prevent sulfide stress cracking.
      (3) H2S scavengers shall be used as needed in both water- and oil-base mud systems.
   D. Sufficient quantities of additives shall be maintained on location for addition to the mud system as needed to neutralize H2S picked up by the mud when drilling in formations containing H2S.
   E. The application of corrosion inhibitors to the drill pipe to afford a protective coating or their addition to the mud system may be used as an additional safeguard to the normal protection of the metal by pH control and the scavengers mentioned above.
   F. Drilling mud containing H2S gas shall be degassed at the optimum location for the particular rig configuration employed. The gases so removed shall be piped into a closed flare system and burned at a suitable remote stack.
D. General operations. All personnel in the working area shall utilize H2S protective-breathing apparatus when required, as specified in paragraph 6A(4). The normal fixed-point monitor system in paragraph 6A(4) may be supplemented with portable H2S detectors as conditions warrant.

(1) Drilling or fishing operations. Every effort shall be made to pull a dry drill string while maintaining well control. If it is necessary to pull a wet drill string, after penetration of an H2S-bearing zone, increased monitoring of the working area shall be provided and protective-breathing apparatus shall be worn under conditions as outlined in paragraph 6A(2)(a).

(2) Circulating bottoms-up from a drilling break, cementing operations, logging operations, or well circulation while not drilling. After penetration of an H2S-bearing zone, protective-breathing apparatus shall be worn by personnel in the working area in advance of circulating or when H2S is indicated by the system in quantities sufficient to require protective-breathing apparatus under paragraph 6A(2)(a), should this condition occur earlier.

(3) Coring operations in H2S-bearing zones. Personnel protective-breathing apparatus shall be worn 10–20 stands in advance of retrieving the core barrel.

(4) Abandonment or temporary abandonment operations. Internal well abandonment equipment shall be designed for H2S service.

(5) Logging operations after penetration of known or suspected H2S-bearing zones. Mud in use for logging operations shall be conditioned and treated to minimize the effects of H2S on the logging equipment.

(6) Stripping operations. Displaced mud returns shall be monitored and protective-breathing apparatus worn if H2S is detected at levels outlined for protective-breathing apparatus under paragraph 6A(2)(a).

(7) Gas-cut mud or well kick from H2S-bearing zones. Protective-breathing apparatus shall be worn when an H2S concentration of 20 parts per million is detected. Should a decision be made to circulate out a kick, protective-breathing apparatus shall be worn prior to and subsequent to bottoms-up, and at any time during an extended kill operation that the concentration of H2S becomes hazardous as defined in paragraph 6A(2)(a).

(8) Drill string precautions. Precautions shall be taken to minimize drill string-induced conditions such as excessive dogleg severity, improper stiffness ratios, improper torque, whip, abrasive wear on tool joints, and joint imbalance. API RP 7G (April 1974) shall be used as a guideline for drill string precautions. Tool joint compounds containing free sulphur shall be employed to minimize notchling, stress concentrations, and possible drill pipe failures.

(9) Flare system. The flare system shall be designed to safely gather and burn H2S gas. Flare lines shall be located as far as feasible from the drilling area in a manner to compensate for wind changes. The flare system shall be equipped with a pilot and an automatic igniter. Backup ignition for each flare shall be provided by the Supervisor. The water curtain shall be thoroughly inhibited in order to prevent H2S corrosion. The test string shall be flushed with treated fluid for the same purpose after completion of the test.

(10) Tubing which meets the requirements for H2S service shall be used for drill-stem testing. Drill pipe shall not be used for drill-stem tests without prior approval of the Supervisor. The water curtain shall be thoroughly inhibited in order to prevent H2S corrosion. The test string shall be flushed with treated fluid for the same purpose after completion of the test.

(11) All surface test units and related equipment shall be designed for H2S service. Only competent personnel who are trained in the use and operation of the hazardous effects of H2S shall be utilized in these tests.

R. A. Smith,
Oil and Gas Supervisor,
Alaska Area.

R. C. Wayland,
Chief, Conservation Division.

Gulf of Alaska
[OGS Order No. 9]

PLUGGING AND ABANDONMENT OF WELLS

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.10. The operator shall comply with the following minimum plugging and abandonment procedures which have general application to all wells drilled for oil and gas. Plugging and abandonment operations shall be commenced prior to obtaining approval from an authorized representative of the Geological Survey. Oral approvals shall be in compliance with 30 CFR 250.13. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

1. Permanent Abandonment. A. Isolation in uncased hole. In uncased portions of wells, cement plugs shall be spaced to extend 100 feet (30.5 metres) below the bottom to 100 feet (30.5 metres) above the top of any oil, gas, or water zones so as to isolate them from strata in which they are found and to prevent them from escaping into other strata. Additional cement plugs may be required to protect other minerals. Below 5500 feet (1675.5 metres) of uncased hole shall be left without a cement plug of at least 100 feet (30.5 metres) in length.

B. Isolation of open hole. Where there is an open hole (uncased and open into the casing string above) below the casing, a cement plug shall be placed in the deepest casing string by (1) or (2) below. In the event lost circulation conditions exist or are anticipated, the plug may be placed in accordance with (3) below:

(1) A cement plug placed by displacement method so as to extend a minimum of 100 feet (30.5 metres) above and 100 feet (30.5 metres) below the casing shoe.

(2) A cement plug placed by pressurizing the annulus with a back pressure or pressure differential sufficient to displace the cement or other material below 50 feet (15.2 metres) nor more than 100 feet (30.5 metres) from the cement string. The cement shall be placed in accordance with OASIS PLUG 250.11.

JANUARY 6, 1975

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.12(d) (1). An OCS lease provides for extension beyond its primary term for as long as oil or gas may be produced from the lease in paying quantities. The term “paying quantities” as used herein means production in quantities sufficient to yield a return in excess of operating costs. An OCS lease may be maintained beyond the primary term, in the absence of actual production, when a suspension of production has been approved. Any application for suspension of production for an initial period shall be submitted prior to the expiration of the term of a lease. The Supervisor may approve a suspension of production provided at least one well has been drilled on the lease and is capable of being produced in paying quantities. The temporary or permanent abandonment of a well will not preclude approval of a subsequent period of production as provided in 30 CFR 250.12(d). All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

To provide data necessary to determine that a well may be capable of production in paying quantities, the following are minimum requirements:

1. Oil wells. A production test of at least two hours duration after the well flow has stabilized.

2. Gas wells. A deliverability test of at least two hours duration after the well flow has stabilized, or a four point back pressure test.

3. Well data. All pertinent engineering, geologic and economic data shall be submitted to the Supervisor and will be considered in determining whether a well is capable of being produced in paying quantities.

4. Witnessing and results. All tests must be witnessed by an authorized representative of the Geological Survey. Test data submitted to the operator’s affidavit, or third-party test data, may be accepted in lieu of a witnessed test provided prior approval is obtained.

RODDY A. SMITH, Oil and Gas Supervisor, Alaska Area.

RUSSELL G. WAYLAND, Chief, Conservation Division.
NOTICES

RP 14 B, October 1978, Design, Installation, and Operation of Subsurface Safety Valve Systems, which contain procedures for design calculations, safe installation, and operating and testing. Each surface-controlled subsurface safety device installed in a well shall be tested in place for proper operation when installed and thereafter at intervals not exceeding 30 days. If the device does not operate properly, it shall be repaired, replaced, and reinstalled or replaced and tested to insure proper operation.

3. Tubing plugs. A shut-in well equipped with a tubing plug shall be inspected for leakage by opening the well to the possible flow at intervals not exceeding six months. If a test indicates leakage, the plug shall be removed, repaired, and reinstalled or an additional tubing plug installed to prevent leakage.

3. Temporary removal. Each wireline- or pumpdown-retrievable subsurface safety device may be removed, without further notice, for a routine operation which does not require approval of a Sunday Notice and Report on Wells (Form 9-331) for a period not to exceed 30 days. The well shall be clearly identified as being without a subsurface safety device and shall not be left unattended while open to production.

4. Additional protective equipment. All tubing installations in which a wireline- or pumpdown-retrievable subsurface safety device is to be installed shall be equipped with a landing nipple, with flow couplings or other protective equipment above and below, to provide for setting of the subsurface safety device. All wells in which a subsurface safety device or tubing plug is installed shall have the tubing-casing annulus packed off above the uppermost open casing perforations. The control system for all surface-controlled subsurface safety devices shall be an integral part of the platform shut-in system.

5. Emergency action. All tubing installations open to hydrocarbon-bearing zones and not equipped with a subsurface safety device permitted by this Order shall be clearly identified as not being so equipped, and a subsurface safety device or tubing plug shall be available at the field location. In the event of an emergency, such device or plug shall be promptly installed with due consideration being given to personnel safety.

6. Records. The operator shall maintain the following records for a minimum period of one year for each subsurface safety device and tubing plug installed, which records shall be available to any authorized representative of the Geological Survey:

A. Field records. Individual well records shall be maintained at or near the field and shall include, as a minimum, the following information:

(1) A record which will give design and other information; i.e., make, model, size, etc.

(2) Verification of assembly by a qualified person in charge of installing the device and installation date.

B. Testing procedure. Any wells showing sustained pressure on the casinghead, or leaking gas or oil between the production casing and the next larger casing string, shall be tested in the following manner: The well shall be killed with water or mud and pump pressure applied to the production casing string. Should the pressure at the casinghead reflect the applied pressure, corrective measures shall be taken and the casing string and tubing string be tested in the same manner. This testing procedure shall be used when the origin of the pressure cannot be determined otherwise.

2. Multiple or tubingless completions.-A Multiple completions.

(1) Information shall be submitted on, or attached to, Form 9-331 showing top and bottom of all zones proposed for completion or alternate completion, including a partial electric log and a diagrammatic sketch showing such zones and equipment to be used.

(2) When zones approved for multiple completion become interconnected the lessee shall immediately repair and separate the zones after approval is obtained.

B. Tubingless completions.

(1) All tubing strings in a multiple completed well shall be run to the same depth below the deepest productive zone.

(2) The tubing string(s) shall be new pipe or modified by the lessee or operator, if it has been tested to insure that it will meet AIP Standards for new pipe. The tubing shall be cemented with a sufficient volume to extend another 100 feet (305 metres) below the uppermost productive zone.

(3) Information shall be submitted on, or attached to, Form 9-331 showing the top and bottom of all zones proposed for completion or alternate completion, including a partial electric log and a diagrammatic sketch showing such zones and equipment to be used.

Russell G. Wayland,
Chief, Conservation Division.

GULF OF ALASKA [OCS Order No. 6]

COMPLETION OF OIL AND GAS WELLS

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.92. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12 (b).

1. Wellhead equipment and testing.

A. Wellhead equipment. All completed wells shall be equipped with wellheads, wellhead fittings, valves, and connections with a rated working pressure equal to or greater than the surface shut-in pressure of the well. Connections and valves shall be designed and installed to permit fluid to be pumped between any two strings of casing. Two masters valves shall be installed on the tubing in all wells, and additional valves shall be assembled and tested, prior to installation, by a fluid pressure which shall be equal to 1.5 times the rated working pressure of the fitting to be installed.

B. Testing procedure. Any wells showing sustained pressure on the casinghead, or leaking gas or oil between the production casing and the next larger casing string, shall be tested in the following manner: The well shall be killed with water or mud and pump pressure applied to the production casing string. Should the pressure at the casinghead reflect the applied pressure, corrective measures shall be taken and the casing string and tubing string be tested in the same manner. This testing procedure shall be used when the origin of the pressure cannot be determined otherwise.

FEDERAL REGISTER, VOL 40, NO. 3—MONDAY, JANUARY 6, 1975

1093
Lessee without delay to the supervisor and to the Coast Guard and the Regional Director of the Federal Water Pollution Control Administration. All spills or leakage of oil or waste materials of a size or quantity specified by the designee under the pollution contingency plan shall also be reported by the lessee without delay to such designee. If the waters of the sea are polluted by the drilling or production operations conducted by or on behalf of the lessee, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant, where necessary, promptly resulting therefrom shall be at the expense of the lessee. Upon failure of the lessee to control and remove the pollutant, the supervisor, in cooperation with other appropriate agencies of the Federal, State and local governments, or in cooperation with the lessee, or both, shall have the right to accomplish the control and removal of the pollutant in accordance with any established contingency plan for control and removal, by such means at the cost of the lessee. Such action shall not relieve the lessee of any responsibility as provided herein.

The lessee's liability to third persons, other than for cleaning up the pollutant in accordance with subsection (b) above, shall be governed by applicable law.

Noise.—In paragraph (a) above, the Regional Director of the Federal Water Pollution Control Administration has been replaced by the Regional Administrator, Environmental Protection Agency, as appropriate agencies.

All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b).

1. Pollution prevention. The disposal of waste materials into ocean waters shall not create conditions which will adversely affect the public health, life or property, aquatic life or wildlife, recreation, navigation, or other uses of the ocean waters. All applicable waste disposal regulations under the Environmental Protection Agency shall be complied with in all cases where such regulations are more stringent than the requirements of this Order. The lessee shall be thoroughly instructed in the techniques of equipment maintenance and operation for the prevention of pollution. The operator shall comply with the following pollution prevention requirements:

A. Liquid disposal.
(1) Drilling mud containing oil shall not be disposed of into the ocean water. Drilling mud containing toxic substances shall be neutralized prior to disposal.
(2) All platforms and structures shall be cured and connected by drains to a collecting tank or sump unless drip pans, or equivalents, are placed under equipment and piped to a tank or sump as provided in OCS Order No. 8.

The following requirements shall apply to the handling and disposal of all produced water discharged into the ocean water. The disposal of water other than into the ocean water shall have the method and location approved by the Supervisor.

(a) Produced waste water disposal systems shall be designed and maintained so that the oil content of the effluent shall not exceed 50 mg/l determined by averaging the four samples required in (b) below. The oil content shall be determined by titrimetric or fluorimetric method. A copy of the method to be used shall be submitted to the Supervisor for approval. The Supervisor may approve the use of other methods, if the method to be used at a location is shown to be reliable under the conditions existing at that location.

(b) Produced water discharged into the ocean shall be sampled, analyzed, and the results of the analysis recorded once each month to determine if the requirements of subparagraph 1A(3) (a) above is fulfilled. Testing and reporting procedures are as follows:

(i) Four samples shall be collected over a 24-hour period. At least two hours must elapse between grabbed samples, however, grab samples may be obtained in lieu of grabbed samples. Sample, grab or continuous, shall be taken at a point prior to contact with seawater and shall be as nearly representative of the discharge stream as possible.

(ii) Analysis of the effluent sample shall be completed within two weeks of collection, or a new set of samples must be taken.

(iii) When the sample is taken, the date, time of day, temperature of discharge, pH, and discharge in bbl/day shall be recorded. This information, along with the analysis results, shall be reported on Form — "Quality Measurement of Discharged Produced Water." 

(iv) A copy of the latest analysis results shall be maintained at the discharge site or field production headquarters.

A copy of the method to be used at a location is shown to be reliable under subparagraph 1B(3) (a) above are being met.

(i) The effluent shall be sampled and analyzed, and the results recorded semi-monthly to determine compliance of the requirements of subparagraph 1B(3) (a) above, as applicable.

(ii) A copy of the most recent laboratory analysis of the effluent shall be maintained at the field headquarters or at the discharge site.

(iii) The semi-annual effluent analysis results shall be submitted to the Supervisor in January and July of each calendar year.

(iv) Should analysis indicate that the effluent does not meet the requirements of paragraph 1B(3) (a) above, immediate corrective action shall be taken.

2. Inspections and reports. The operator shall comply with the following pollution inspection and reporting requirements and with Orders issued by the Supervisor for the control or removal of pollutants:

A. Pollution inspections. All drilling and production facilities shall be inspected or checked at least once every 12 months, or any time repairs are necessary to prevent pollution of ocean water shall immediately be performed.

B. Pollution reports.

(1) All spills of oil and liquid pollutants shall be recorded showing the cause, size of spill, and action taken, and the record shall be maintained and available for inspection by the Supervisor. All spills of less than 15 barrels (2.1 metric tons) shall be reported orally to the Supervisor within 12 hours and shall be confirmed in writing.

(2) All spills of oil and liquid pollutants of 15 to 50 barrels (2.1 to 7.1 metric tons) shall be reported orally to the Supervisor immediately and shall be confirmed in writing.

(3) All spills of oil and liquid pollutants of a substantial size or quantity, which is defined as more than 50 barrels (7.1 metric tons), or any spill of any size or quantity which cannot be immediately controlled, shall be reported orally with a cut delay to the Supervisor, the Coast Guard, and the Regional Administrator,
Environmental Protection Agency. All oral reports shall be confirmed in writing.

(4) Operators shall notify each other upon observation of equipment malfunction or pollution resulting from another's operation.

3. Control and removal.—A. Corrective action. Immediate corrective action shall be taken in all cases where pollution has occurred. Each operator shall have an emergency plan for each lease under the plan shall be subject to modification when directed by the Supervisor.

B. Equipment. Standby pollution control equipment and materials shall be maintained by, or shall be available to, each operator at an offshore or onshore location. This shall include containment booms, skimming apparatus, clean-up materials and chemical agents, and shall be available prior to the commencement of operations. No chemicals shall be used without prior approval of the Supervisor. A list of equipment, material, their location, and the time required for deployment shall be kept on file at the site by the operator. The equipment and materials shall be inspected monthly and maintained in good condition for use. The results of the inspections shall be recorded and maintained at the site.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.
RUSSELL G. WAYLAND,
Chief, Conservation Division.

U.S.G.S. OIL AND GAS CONSERVATION DIVISION

| OPERATOR: |        |        |
| LOCATION: |        |        |
| OCS LEASE # |        | OCS BLOCK AND AREA |
| FIELD NAME: |        | PLATFORM NAME |

| COLLECTION | 1 | 2 | 3 | 4 |
| DATE | m | d | y | m | d | y | m | d | y |
| 24 HRS |        |        |        |        |        |        |
| DISCHARGE GALLONS/HR |        |        |        |        |

| ANALYSIS | 1 | 2 | 3 | 4 |
| DATE | m | d | y | m | d | y | m | d | y |
| METHOD |        |        |        |        |
| PARAMETER RESULTS |        |        |        |        |
| TEMP. °F |        |        |        |        |
| pH |        |        |        |        |
| VOL. cL |        |        |        |        |
| OIL CONTENT mg/l |        |        |        |        |
| AVERAGE mg/l |        |        |        |        |

INSTRUCTIONS:
GULF OF ALASKA
[OCS ORDER NO. 8]

PLATFORMS, STRUCTURES AND ASSOCIATED EQUIPMENT

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.19(a). Section 250.19(a) provides as follows:

(a) The operator shall be responsible for compliance with the requirements of this Order in the installation and operation of all platforms and structures, including all facilities installed on a platform or structure, whether or not operated or owned by the operator. All depictions from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(b). All applications for approval under the provisions of this Order shall be submitted to the Supervisor. References in this Order to approvals, determinations, or requirements are to those given or made by the Supervisor or his delegated representative.

1. Design, application and certification.—A. General design. A platform or structure shall be designed for safe installation and operation for its intended use and service life at a specific site. Steel structures shall be designed in accordance with the provisions of API RP 2A, January 1974, Planning Designing and Constructing Fixed Offshore Platforms, that are not in conflict with this Order. The design of structures other than platforms and structures shall be evaluated on an individual basis. Consideration shall be given to conditions which may contribute to structural damage such as:

(a) Wind, wave, tidal, current, ice, and seismic forces and other environmental loading forces.

(b) Functional loading conditions including the weight of the structure and all permanently fixed equipment, the effects of static and dynamic functional load conditions during installation and the designed operational service period.

(c) Water depth, topography, surface and subsurface soil conditions, slope stability, scour conditions and other pertinent geologic conditions based on information from on-site investigations.

2. Isolation of facilities. All platforms and structures shall be designed to isolate and protect living quarters from well and production facilities.

B. Application. Prior to construction of a fixed platform or structure, the operator shall submit for approval, in duplicate, an application showing all essential features of the platform or structure and supporting design information including the following:

1. General Information:

(a) Identification data, which shall include the platform or structure designation, lease number, area name, block number, and operator.

(b) Location data including plat with coordinates in longitude and universal transverse mercator coordinates and the distance from the nearest block and lease lines.

(c) Primary use and other intended functions including planning, drilling and production operations, storage, etc.

(d) Personnel facilities, personnel access of transfer and material handling.
(a) A description of the critical design loading and design criteria taking into consideration maximum environmental and operational loading conditions expected over the service life of the platform or structure. This shall include those conditions considered under paragraph 1. A. (1), (b), and (c), above.

(b) For steel structures, a description of the materials, specification, strength analyses, and allowable stresses over the design service life.

(c) For concrete structures, a description of the materials, specification, strength and serviceability requirements and analysis of the reinforcing systems.

(d) An analysis of slope and soil stability in relation to the foundation and the foundation design loads.

(e) Method of corrosion protection.

C. Certification.

(1) Detailed structural plans certified by a registered professional engineer shall be on file and maintained by the operator or his designee.

(2) The following certifications, signed and dated by a company representative shall accompany the application.

(a) Operator certifies that this platform has been certified by a registered professional engineer and the structure will be designed and installed under the supervision of a registered professional engineer. Maintenance of these systems will be by qualified personnel.

D. Design features of production facilities.

Information relative to design features as follows shall be submitted in due course prior to installation.

(1) A flow schematic showing size, capacity, and design working pressure of separators, treaters, storage tanks, compressors, pipeline pumps, and metering devices.

(2) A schematic diagram showing pollution and safety control equipment identified according to nomenclature (Definition Symbols and Identification) contained in API RP 14C, June 1974, Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms, accompanied by an explanation as to the function and sequence of operation.

(3) A schematic piping diagram showing the size and design working pressure with reference to welding specification(s) or code(s) used.

(4) A diagram of the fire-fighting system.

(5) Electrical system information shall include the following:

(a) Plan view of each platform deck outlining any nonhazardous area—areas which are unclassified with respect to electrical equipment installations, and areas in which potential ignition sources, other than electrical are to be installed. The area outline should include the following:

1. Any surrounding production or other hydrocarbon source and a description of deck, overhead and firewalls.

2. Location of generators, control rooms, panel boards, major cabling—circuit routes and identification of wiring method.

(b) One line electrical schematic which includes the following information:

1. Type, rating and the operating and safety controls of generators and prime movers.

2. Main generator switchboard including interlocks, controls and indicators.

3. Forced draft branch circuits, including circuit load, wire type and size, motor running protection and circuit breaker setting.

(c) Elementary electrical schematic of any platform safety-shutdown system with functional legend.

2. Operations on platforms and structures.

A. Safety and Pollution Control Equipment and Procedures. Operators of fixed platforms and structures shall comply with the following requirements. Any device on wells, vessels, or flowlines temporarily out of service shall be flagged. Safety devices and systems on wells which are capable of producing shall not be bypassed or locked out of service unless necessary during start-up or maintenance operations, and then only with personnel on duty aboard the platform.

(1) Shut-in devices. The following shut-in devices shall be installed and maintained in an operating condition on all vessels and water separation facilities when such vessels and separation facilities are in service.

(a) All separators shall be equipped with high and low pressure shut-in sensors and a relief valve. Vessels connected together by a system of adequate piping not containing valves which can isolate any vessel may be considered as one unit having an effective working pressure equal to the lowest rated working pressure of the vessels.

(b) All pressure surge tanks shall be equipped with high and low pressure shut-in sensors, a high liquid level shut-in control, flare line, and relief valve.

(c) All atmospheric tanks that may contain possible pollutants, including oil production tanks, surge tanks, etc., shall be equipped with high and low liquid shut-in control. When two or more tanks are connected in series or parallel and the operating levels are equalized, only one high liquid level shut-in control is installed, providing it is isolated. It cannot be isolated from any tank and will provide adequate high-level protection for all tanks.

(d) All other hydrocarbon-handling pressure vessels shall be equipped with high and low pressure shut-in sensors and relief valves. Vessels connected together by a system of adequate piping not containing valves which can isolate any vessel may be considered as one unit having an effective working pressure equal to the lowest rated working pressure of any component. In addition, each pressure vessel shall be equipped with high and low liquid level shut-in controls.

(e) The following requirements shall apply to all gas-fired production vessels:

1. Fuel supply lines to the main and pilot burners shall be equipped with manually operated shut-off valves.

2. A flame detector or heat sensor to determine if the pilot is adequate to light the main burner shall be installed; and, on vessels on which the main burner is continuously lighted, shall indicate a main burner flame failure.

3. The exhaust stack of natural draft heaters shall be equipped with spark arresters.

4. Natural draft air intakes shall be equipped with a flame arrester.

5. Forced draft burners shall be equipped with a low pressure or low flow rate shut-in sensor.

6. Vessels in which the media in contact with the fire tubes is not the primary product to be heated shall be protected by high temperature and low level shut-in sensors in the heat exchange media stream.

7. Pressure relief valves shall be depicted, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII of the ASME Boiler and Pressure Vessel Code, July 1, 1974. All relief valves and vents shall be piped in such a way as to minimize the possibility of fluid striking personnel or ignition sources.

8. Required sensors and monitors will respond to an abnormal condition in...
the vessel by automatically: (1) shutting off fuel supply and (2) shutting off combustible media inflow to the vessel. However, in closed head-transfer systems where the heated media is temperature degradable and flows through tubes located in the fired chamber, circulation of the media shall continue until the heat exchange area has cooled below the temperature at which the media degrades.

ix. Steam generators shall be equipped with low water levels controls in accordance with applicable provisions of sections I and IV of the ASME Boiler and Pressure Vessel Code, July 1, 1974.

x. An operating procedure shall be posted in a prominent location near the controls of the unit, and personnel responsible for the unit’s operation shall be properly trained.

(2) All relief valves shall be set to start relieving at the design working pressure of the vessel and shall be sized to prevent the pressure from rising more than 10 percent above the design working pressure of the vessel. The valve shall be sized to prevent the vessel from exceeding the pressure at which the vessel in a prominent place. The vessel is installed. Uncoded vessels shall be equipped with fusible material located on the helicopter deck and on all other approved location other than into the departing pipeline.

* (g) Pressure sensors may be of the automatic or nonautomatic reset type, but where the automatic reset types are used, nonautomatic reset relays must be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

(h) All flare lines shall be equipped with a scrubber with a high level shut-in control.

(i) Surge tanks and all hydrocarbon storage tanks shall be equipped with an automatic close-off shut-in valve located in the purge line as close to the tank as practical. Such valve is to be activated by pump shut-down controls and the platform emergency shutdown system.

(2) Wellhead and flowline safety devices. The following safety devices shall be installed and maintained in an operating condition at all times. When wells are disconnected from producing facilities and blindedfaced or equipped with a tubing plug, compliance with subparagraphs (a), (b), and (c) below is not required.

(a) All wellhead assemblies shall be equipped with an automatic fail-close surface safety valve installed in the vertical run of the christmas tree.

(b) All flowlines from wells shall be equipped with high and low pressure shut-in sensors located downstream of the well choke. If there is more than 10 feet (3.1 metres) of line between the wellhead wing valve and the primary choke, an additional high pressure shut-in sensor shall be installed in this section. The high pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the line, but in no case shall it exceed 60 percent of the shut-in pressure and the well or the gas lift supply pressure. The low pressure shut-in sensor shall be set no lower than 10 percent or 5 psi (0.34 atm.), whichever is greater, below the lowest pressure in the operating range. The vessel is installed. Uncoded vessels shall be equipped with fusible material located on the helicopter deck and on all other approved location other than into the departing pipeline.

* (g) Pressure sensors may be of the automatic or nonautomatic reset type, but where the automatic reset types are used, nonautomatic reset relays must be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

(h) All flare lines shall be equipped with a scrubber with a high level shut-in control.

(i) Surge tanks and all hydrocarbon storage tanks shall be equipped with an automatic close-off shut-in valve located in the purge line as close to the tank as practical. Such valve is to be activated by pump shut-down controls and the platform emergency shutdown system.

(2) Wellhead and flowline safety devices. The following safety devices shall be installed and maintained in an operating condition at all times. When wells are disconnected from producing facilities and blindedfaced or equipped with a tubing plug, compliance with subparagraphs (a), (b), and (c) below is not required.

(a) All wellhead assemblies shall be equipped with an automatic fail-close surface safety valve installed in the vertical run of the christmas tree.

(b) All flowlines from wells shall be equipped with high and low pressure shut-in sensors located downstream of the well choke. If there is more than 10 feet (3.1 metres) of line between the wellhead wing valve and the primary choke, an additional high pressure shut-in sensor shall be installed in this section. The high pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the line, but in no case shall it exceed 60 percent of the shut-in pressure and the well or the gas lift supply pressure. The low pressure shut-in sensor shall be set no lower than 10 percent or 5 psi (0.34 atm.), whichever is greater, below the lowest pressure in the operating range. The vessel is installed. Uncoded vessels shall be equipped with fusible material located on the helicopter deck and on all other approved location other than into the departing pipeline.

* (g) Pressure sensors may be of the automatic or nonautomatic reset type, but where the automatic reset types are used, nonautomatic reset relays must be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

(h) All flare lines shall be equipped with a scrubber with a high level shut-in control.

(i) Surge tanks and all hydrocarbon storage tanks shall be equipped with an automatic close-off shut-in valve located in the purge line as close to the tank as practical. Such valve is to be activated by pump shut-down controls and the platform emergency shutdown system.

(2) Wellhead and flowline safety devices. The following safety devices shall be installed and maintained in an operating condition at all times. When wells are disconnected from producing facilities and blindedfaced or equipped with a tubing plug, compliance with subparagraphs (a), (b), and (c) below is not required.

(a) All wellhead assemblies shall be equipped with an automatic fail-close surface safety valve installed in the vertical run of the christmas tree.

(b) All flowlines from wells shall be equipped with high and low pressure shut-in sensors located downstream of the well choke. If there is more than 10 feet (3.1 metres) of line between the wellhead wing valve and the primary choke, an additional high pressure shut-in sensor shall be installed in this section. The high pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the line, but in no case shall it exceed 60 percent of the shut-in pressure and the well or the gas lift supply pressure. The low pressure shut-in sensor shall be set no lower than 10 percent or 5 psi (0.34 atm.), whichever is greater, below the lowest pressure in the operating range. The vessel is installed. Uncoded vessels shall be equipped with fusible material located on the helicopter deck and on all other approved location other than into the departing pipeline.

* (g) Pressure sensors may be of the automatic or nonautomatic reset type, but where the automatic reset types are used, nonautomatic reset relays must be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

(h) All flare lines shall be equipped with a scrubber with a high level shut-in control.

(i) Surge tanks and all hydrocarbon storage tanks shall be equipped with an automatic close-off shut-in valve located in the purge line as close to the tank as practical. Such valve is to be activated by pump shut-down controls and the platform emergency shutdown system.
(a) A firewater system of rigid pipe with fire hose stations shall be installed and may include a fixed water spray system. The system shall be designed and installed in a manner necessary to provide needed protection in enclosed well bay areas and areas where production-handling equipment is located. A fire-fighting system, using water as the primary fire suppression medium, may be used in lieu of a firewater system if determined to provide equivalent fire protection control.

(b) Pumps for the firewater systems shall be inspected and tested operated weekly. A record of the tests shall be maintained at the field headquarters for a period of one year. An alternative fuel power source shall be installed to provide continued pump operation during platform shutdown, unless an alternative fire-fighting system is provided. Portable fire extinguishers shall be located in the living quarters and in other strategic areas.

(c) All automatic wellhead safety valves and check valves on all flowlines shall be checked for operation and holding pressure once each calendar month, but at no time shall more than six weeks elapse between tests. Any sensor which consistently varies more than ±5 percent from its set pressure shall be repaired or replaced.

(d) All liquid level shut-in controls shall be tested at least once within each calendar month, but at no time shall more than six weeks elapse between tests. These tests shall be conducted by raising or lowering the liquid level across the level control detector. Automatic inlet shut-off valves actuated by a sensor on a vessel or a compressor shall be tested for operation at least once within each calendar month, but at no time shall more than six weeks elapse between tests. Any valve which these monthly tests indicate a shorter time interval is needed, such shorter interval shall be instituted. If any wellhead safety valve indicates leakage, it shall be repaired or replaced. A check valve sustaining a liquid flow in excess of 400 cu. ft./min. gas flow exceeding 15 cubic ft./min. (0.42 cubic metres/min.) shall be repaired or replaced.

(e) All automatic wellhead safety valves shall be bench-tested for operation annually. Pressure relief valves shall either be bench-tested or equipped to permit testing with an external pressure source. Bench tests not witnessed by Geological Survey personnel must be certified by a third party.

(f) All pressure sensors shall be tested at least once each calendar month, but at no time shall more than six weeks elapse between tests. Any sensor which consistently varies more than ±5 percent from its set pressure shall be repaired or replaced.

(g) Heat, infra-red or other fire sensing devices shall be installed in all enclosed areas containing production facilities. These devices shall be capable of continuous monitoring for the presence of fire or open flare and shall be used for platform shut-in sequences and the operations of emergency equipment.

(h) A diagram of the fire-fighting system showing the location of all equipment shall be posted in a prominent place on the platform or structure.

(i) Automatic gas detectors. An automatic gas detector and alarm system shall be installed and maintained in an operating condition in accordance with the following:

   (a) Gas detection systems shall be installed in all enclosed areas containing production facilities or equipment. Gas detectors shall be installed in all enclosed areas where fuel gas is used; the use of fuel gas odorant is an acceptable alternate.

   (b) Gas detection systems shall be capable of continuously monitoring for the presence of combustible gas in the areas in which the detection devices are located. The gas detector power supply must be from a continually energized power source.

   (c) The central control shall be capable of giving an alarm at a point not greater than 25 percent of the lower explosive limit of the gas or vapor being monitored.

   (d) A high level setting of not more than 75 percent of the lower explosive limit of the gas or vapor being monitored shall be used for platform shut-in sequences and the operations of emergency equipment.

   (e) Records of maintenance and calibration shall be maintained in the field headquarters for a period of one year and made available to any authorized representative of the Geological Survey. The system shall be tested for operation and reclassified semi-annually.

   (f) An application for the installation and maintenance of any gas detection system shall be filed with the Supervisor for approval. The application shall include the following:

      1. Type, location, and number of detector heads.

      2. Type and kind of alarm, including emergency equipment to be activated.

      3. Method used for detection of combustible gases.

      4. Method and frequency of calibration.

      5. A functional block diagram of the gas detection system, including the electric power supply.

(v) Electrical equipment. The following requirements shall be applicable to all electrical equipment and systems installed:

   (a) All engines shall be equipped with a low tension ignition system of a low fire hazard-type and shall be designed and maintained to minimize release of sufficient electrical energy to cause ignition of an external combustible mixture.

   (b) All electrical generators, motors, and lighting systems shall be installed, protected, and maintained in accordance with the edition of the National Electrical Code and API RP 500 in effect at the time of installation are acceptable.

   (c) Wiring Methods which conform to the National Electrical Code or IEEE 40 in effect at the time of installation are acceptable.

   (d) An auxiliary power supply shall be installed to provide emergency power capable of operating all electrical equipment.

   (e) All equipment required to maintain the integrity of operations in the event of a failure in the primary electrical power supply.

   (f) A program of erosion control shall be in effect for wells having a history of sand production. The erosion control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. A report on the results of the program shall be submitted annually to the Supervisor.

B. Simultaneous facility operation. Prior to conducting activities on a facility simultaneously with production operations, which could increase the possibility of undesirable events occurring such as damage to equipment, harm to personnel or the environment, a plan shall be filed and approved by the Supervisor which will provide for the mitigation of such events. Activities requiring a plan are drilling, workover, wireline, and major construction operations. Such plans submitted for approval may cover sequential
or individual operations. The plan shall include:

1. Description of operations.
2. Schematic plans showing areas of activities.
3. Identification of critical areas or simultaneous activities.
4. Plan for mitigation of potential undesirable effects including provisions for coordination and supervision of activities such that all persons involved will be informed as to all activities and be aware of critical areas.

C. Welding practices and procedures.

The following requirements shall apply to all platforms and structures, including mobile drilling and workover structures. The period of time during which these requirements are considered applicable to mobile drilling structures is the interval from the drilling out of the drive pipe or structural casing until the BOP stack and riser are pulled in the final abandonment, suspension, or completion. These requirements shall apply to workover rigs when such rigs are performing remedial work on any wells open to hydrocarbon zones.

For the purpose of this Order, the term "burning and welding" is defined to include arc or acetylene cutting and arc or acetylene welding.

Each operator shall prepare and submit to the Supervisor for approval a Welding and Burning Safe Practices and Procedures Plan, which includes company qualification standards or requirements for welders. Any person designated as a welding supervisor must be thoroughly familiar with this plan.

Prior to burning or welding operations, the operator shall establish approved welding areas. Such areas shall be constructed or noncombustible or fire resistant materials free of combustible or flammable contents and be suitable segregated from adjacent areas. NFPA Bulletin No. 51B, Cutting and Welding Processes, 1971, shall be used as a guide to designate these areas.

The requirements of Paragraphs 2A(5), 2A(8), and 2C above shall apply to all mobile drilling structures used to conduct drilling or workover operations on Federal leases in the Alaska Area.

RODNEY A. SMITH,
Oil and Gas Supervisor,
Alaska Area.

Appended:
WAYLAND, C.
Chief, Conservation Division.

GULF OF ALASKA [OCS ORDER NO. 9]
APPROVAL PROCEDURE FOR OIL AND GAS PIPELINES

This Order is established pursuant to the authority prescribed in 30 CFR 250.11 and in accordance with 30 CFR 250.19(b).

Section 250.19(b) provides as follows:

(b) The supervisor is authorized to approve the design, other features, and plan of installation of all pipelines for which a right of way or easement has been granted under paragraph (e) of 1203.16 or authorized under any lease issued or maintained under the Act, including those portions of such lines which are on platforms or in areas other than the Outer Continental Shelf.

The operator shall comply with the following requirements. All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.12(c). References in this Order to approvals, determinations, or requirements are to those given or made by the Operator or his delegated representative.

1. Definition of terms. As used in this Order, the following terms shall have the meanings indicated:

A. Pipeline. Lines installed for the purpose of transporting oil, gas, water, sulphur, or other minerals, including lines sometimes referred to as flow or gathering lines, but excluding lines confined to a platform or structure.

B. Internal pressure at specified minimum yield strength (IPSYMS). Internal Pressure at specified minimum yield strength shall be calculated by the use of equations accepted as having an established engineering basis. The Barlow equation, as referenced in Section 314.1 of ANSI Code B 31.8-1969 Petroleum Refinery Piping, shall be used for a more accurate representation of actual stress due to internal pressure:

\[ \text{IPSYMS} = \frac{t \times D}{s \times L} \]

Where:
- \( t \) = Thickness of pipe, as determined by the operator or by the authorized representative.
- \( D \) = Diameter of pipe, as determined by the operator or by the authorized representative.
- \( s \) = The specified minimum yield strength of pipe material, as determined by the operator or by the authorized representative.
- \( L \) = Temperature derating factor, as determined by the operator or by the authorized representative.

C. Maximum allowable pressure (MAP). The MAP is either 60 percent or 72 percent (dictated by location) of the IPSYM. The applicable MAP is the maximum pressure to which a pipeline or segment of pipeline shall be subjected under maximum source pressure conditions. MAP is calculated as follows:

1. For that portion of the pipeline located on platforms, for pipeline risers, and for submerged pipelines within 300 feet (91.4 metres) of the risers:

\[ \text{MAP} = 0.60 \times \text{IPSYMS} \]

2. For submerged pipelines extending beyond 300 feet (91.4 metres) from the riser:

\[ \text{MAP} = 0.72 \times \text{IPSYMS} \]

D. Maximum source pressure (MSP). The source pressure to which the pipeline or segment of pipeline could be subjected in the event of a safety system malfunction. For a pipeline receiving production from a separator, the rated maximum working pressure of the vessel will be considered the maximum pressure that vessel can impress upon the pipeline, pumps, compressors, and other pipelines, the maximum pressure which can be exerted by the source or sources will be considered the MSP. The shut-in tubing pressure of a well producing directly into a pipeline will be considered the MSP of that pipeline. When a pipeline is used to transport production from more than one well, the well with the...
highest shut-in tubing pressure will constitute the MSP.

E. Maximum operating pressure (MOP). The maximum pressure to which the pipeline will be subjected over a period of time under normal operations with fluid flow. The MOP shall not exceed the MAP.

F. Minimum operating pressure. The minimum pressure to which the pipeline will be subjected over a period of time under normal operations with fluid flow. The minimum pressure to which the pipeline will be subjected over a period of time under normal conditions. The chart recordings will be retained in the field office.

2. Requirements. All pipelines shall be designed, installed, maintained and abandoned in accordance with the following:

A. Safety equipment. The operator shall be responsible for the installation of the following control devices on all oil and gas pipelines connected to a platform or structure, including such pipelines which are not operated or owned by the operator. Operators of the pipelines or structures shall comply with the requirements of paragraph 2A(1) with regard to required check valves on pipelines departing platforms or structures. Any check valve to be installed, including valves, fittings, flanges, bolting, and other required equipment, shall be determined by the anticipated volumes and pressures pursuant to paragraphs 1A, 1B, 1C, 1D, and 2D of this Order. The MAP shall be greater than the MSP unless the system is protected by an additional independently controlled safety shut-in system. In no case shall MOP exceed the MAP.

B. Hydrostatic testing requirements. All pipelines shall be designed to allow, for hydrostatic testing with water, to be tested at a rate of four times the MSP at a maximum pressure of 90 percent of the IP @ SMYS. The Metropolitan Submarine Pipeline System shall not be tested with a pressure in excess of the greatest of the IP @ SMYS. The Supervisor may approve a higher test pressure when specially requested and justification is submitted by the operator.

C. Corrosion protection. All pipelines shall be protected against loss of metal due to corrosion using such methods as protective coatings and cathodic protection in accordance with the most current National Association of Corrosion Engineers Recommended Practice entitled, "Control of Corrosion of Offshore Steel Pipelines," and as follows:

(1) All pipelines shall be provided with external protective coating capable of minimizing underfilm corrosion. This coating shall have sufficient ductility to resist cracking in required service. All pipe coating shall be inspected on the lay barge prior to installation of the pipe, and any coating damage shall be repaired to maintain overall coating integrity.

(2) All pipelines shall have a cathodic protection system designed to mitigate corrosion. This system shall be designed based on a minimum of two percent holidays in the protective coating and a current density of a five milliamperes per square foot (54.7 milliamperes/square meter). The cathodic protection lifetime shall be based on a minimum of 20-year design.

(3) The cathodic protection system of a pipeline protected by sacrificial anodes attached directly to the pipeline shall be designed as if the pipeline were insulated at each end.

(4) All pipelines cathodically protected by a rectifier shall be equipped with a visual, audible, or recorded signal to alarm personnel that the rectifier is not functioning. Electrical measurements and inspections shall be conducted bi-monthly to assure the system is operating properly and the conditions affecting the system have not changed.

(5) All pipelines shall be designed to facilitate the installation of internal corrosion monitoring and control devices at both ends of the pipeline where accessible.

(6) All pipelines, with the exception of pipelines transporting production from four or less wells, shall be designed for the installation of pig launchers and receivers. Pipelines transporting production from four or less wells shall be designed as if the pipeline were insulated at each end.

D. Hydrostatic testing requirements. All pipelines shall be designed to allow, for hydrostatic testing with water, to be tested at a rate of four times the MSP at a maximum pressure of 90 percent of the IP @ SMYS. The Supervisor may approve a higher test pressure when specially requested and justification is submitted by the operator.

(1) Prior to placing a new pipeline in service, the pipeline shall be hydrostatically tested to at least 1.35 times the MSP for a minimum period of eight hours. The deletion of safety equipment shall be permitted in accordance with the following:

(1) All pipelines boarding a platform or structure shall be equipped with a check valve to prevent backflow. All pipelines departing a platform or structure shall be equipped with a check valve to prevent backflow.

(2) All pipeline pumps and compressors shall be equipped with high and low pressure shut-in sensing devices which when activated shall shut-in the pumps or compressors. The low pressure sensor must be located upstream of any check valves. Time delay devices are permissible for low pressure sensors provided the settings are based on continuous chart recordings that demonstrate the variance in pipeline pressures under normal conditions. The chart recordings shall be filed. The recording of these charts shall be retained in the field office.

(3) All pipelines departing a platform or structure and which do not receive production from any boarding pipeline shall be equipped with high and low pressure sensors, located upstream of any check valves on any departing line, to directly or indirectly shut-in the wells on the platform or structure.

(4) All pipelines departing a platform or structure and which do not receive production from the platform or structure, shall be equipped with high and low pressure sensors at the departing locale, located upstream of any check valve on the departing pipeline to activate an automatic fail-close valve to be located in the upstream portion of the pipeline boarding the platform or structure. This automatic fail-close valve shall be operated by either the platform or structure automatic and manual emergency shut-in system or by an independent automatic and manual emergency shut-in system.

(5) All pipelines departing a platform or structure receiving production from the platform or structure, shall be equipped with an automatic fail-close valve located on the boarding pipeline and directly or indirectly shut-in the wells on the platform or structure. This automatic fail-close valve on the boarding pipeline shall be operated by either the platform or structure automatic and manual emergency shut-in system or by an independent automatic and manual emergency shut-in system.

(6) All pipelines boarding a platform or structure and delivering production to production vessels on the platform or structure shall be equipped with an automatic fail-close valve located on the boarding pipeline and the vessel by the manual emergency shut-in system.

(7) All pipelines boarding a platform or structure delivering production to a departing pipeline that does not receive production from the platform or structure shall be equipped with an automatic fail-close valve operated by high and low pressure sensors on the departing pipeline and a manual emergency shut-in system.

(8) The deletion of safety equipment is allowed on a gas pipeline supplying gas lift gas line shall have a check valve and high and low pressure sensors to shut off the gas supply at the source in case of a malfunction.

(9) Where bidirectional gas flow is necessary for gas lift or compressor suction, deletion of check valves on departing or boarding pipelines is allowed provided high and low pressure sensors and an automatic fail-close valve are installed on or near each pipeline riser.

(10) All pressure sensors shall be equipped to permit external testing.

E. General requirements.

1. The size, weight, and grade of all pipe to be installed, including valves, fittings, flanges, bolting, and other required equipment, shall be determined by the anticipated volumes and pressures pursuant to paragraphs 1A, 1B, 1C, 1D, and 2D of this Order. The MAP shall be greater than the MSP unless the system is protected by an additional independently controlled safety shut-in system. In no case shall MOP exceed the MAP.

2. All pipelines shall be designed for the protection of the pipeline against water currents, storm scouring, soft bottoms, and other environmental factors.

3. Pipeline risers installed on the outer portion of platform legs and braces, which could reasonably be exposed to vessel damage by virtue of proximity to normal deck facilities, shall be protected by bumper guards or similar devices.
(2) Prior to returning a pipeline to service after repair of a leak caused by corrosion due to exposure of the pipeline to the ocean floor, the pipeline shall be hydrostatically tested to at least 1.25 times the MSP for a minimum period of 24 hours. The Supervisor may approve either alternate methods of testing or the continuance of the pipeline service after repair of a leak caused by corrosion due to exposure of the pipeline to the ocean floor for a period of five years. The pipeline operator shall submit to the Supervisor a description of any alternate methods of testing agreed to by the Supervisor.

(3) Prior to returning a pipeline to service after repair of a leak caused by damage due to foreign objects, storms, hurricanes, or earthquakes or other unusual conditions, the pipeline shall be hydrostatically tested to at least 1.25 times the MSP for a minimum period of 24 hours. The Supervisor may approve alternate methods of testing.

(4) Lines shall be cut and closed below the mud line on each end if the line is to be permanently abandoned.

(5) A location plat describing the pipeline segment to be abandoned in such a manner as to be identifiable for reference purposes shall be submitted to the Supervisor. The report shall include: (a) Pipeline safety equipment and the manner in which the equipment functions. (b) Sensing devices with associated pressure-control lines. (c) Automatic fail-close valves. (d) Check valves. (e) Vessels. (f) Manifolds. (g) The rated working pressure of all valves and fittings.

This schematic drawing or an additional drawing shall also show the placement of corrosion monitoring equipment.

(6) General Information including:
(a) Product or products to be transported by the pipeline.
(b) Size, weight, grade, and class of the pipe and risers.
(c) Length in metres (feet) of the line.
(d) Maximum and minimum water depth.
(e) Description of cathodic protection system.

If sacrificial anodes are used on the pipeline or platform, specify the type, size, weight, and spacing of anodes. Provide calculations used in designing the sacrificial anode system, including anticipated life of the line. If a rectifier is to be used, include size of unit or units, voltage and ampere rating and pipelines and platforms or structures to be protected. Provide calculations used in designing the size of unit or units and maximum capacity.

(f) Description of external pipeline coating system and type coating.
(g) Description of internal protective coating, including internal coating and provision for corrosion inhibition program.

(h) Specific gravity of the empty pipe.
(i) Anticipated gravity or density of the product or products.
(j) Maximum and minimum operating pressure.
(k) Maximum source pressure.

Notices of pipeline abandonment shall include:
(1) The proposed procedure for compliance with paragraph 2G of this Order.
(2) A location plat describing the line as to be abandoned in such a manner as to be identifiable for reference purposes.

4. Operational test and reporting requirements—A. New pipeline completion report. The pipeline operator shall submit a report to the Supervisor when installation of a pipeline is completed. The report shall include a drawing or plat, with a scale of 1" = 2,000" (1 cm = 240 m), showing the location of the line as installed and the hydrostatic test data required in paragraph 2D.

B. Pipeline damage report. Pipeline operators shall immediately report orally to the Supervisor any indication of leak or separation, restriction or stoppage, or any other indicated damage due to the following: corrosion, stuck plug, paraffin, sticking, flattening or nondestructive testing. Proposed methods of repair may be requested and approvals granted orally subject to written confirmation as required in paragraph 3D.

C. Pipeline repair report. This report shall be submitted to the Supervisor within a week after completion of the repairs. The report shall include:
(1) Location of pipeline.
(2) Location of leak.
(3) Detailed description of cause.
(4) Detailed description of remedial action.
(5) Hydrostatic test results.
(6) Date returned to service.

D. Equipment testing. The high and low pressure sensors and shut-in valves required in paragraph 2A of this Order shall be tested for operation and maintenance from each calendar month but at no time shall more than six weeks elapse between

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
tests. Check valves shall be tested periodically when operationally convenient but at intervals not to exceed a period of one year. Records of these tests shall be maintained at the field headquarters showing the present status and past history of each device including dates and details of inspection, testing, repairing, adjustments, and reinstatement.

E. Pipeline abandonment report. The operator shall submit written notification to the Supervisor of the date the abandonment is completed and confirm that the pipeline was abandoned as approved.

F. Corrosion detection test and report. All pipelines shall be tested on both ends for the possible existence of internal corrosion. This determination may be by the use of coupons, probes, water analysis (iron count, pH, and scale), or CO₂ (partial pressure) at a minimum of six-month intervals. Lines handling dry hydrocarbons (less than 1 lb. H₂O/MMcf (0.11 kg/MMCM) for gas and less than one percent BS&W for oil) may be excluded from this requirement. The results and conclusions shall be submitted to the Supervisor during February of each year.

5. Inspection and reporting requirements. A. Visual inspection. All pipelines shall be inspected monthly for indication of leakage, using aircraft, floating equipment, or other methods. The results of the inspection will be retained in the company field office for one year.

B. Hazard damage corrective action report. If the hazards of storm scouring, soft bottoms, and other environmental factors are observed to be detrimentally affecting the pipeline, the operator shall return the pipeline to an acceptable condition and submit a report of the remedial action taken to the Supervisor.

C. Pipeline failure investigation. All pipeline operators shall inspect and analyze every pipeline failure and, where necessary, select samples of the failed section for laboratory examination for the purpose of determining the cause. A comprehensive written report of the information obtained shall be submitted to the Supervisor as soon as available.

D. Cathodic protection report. All pipeline cathodic protection facilities shall be inspected and tested to determine potential measurements conducted at a minimum of six-month intervals to assure their proper operation and maintenance. The results and conclusions shall be submitted to the Supervisor during February of each year.

E. Internal corrosion inspection. (1) All pipelines requiring pig launchers and receivers under 2000 (g) shall be pigged on a regular basis. These pipelines shall be treated with inhibitors as indicated by the results of corrosion detection tests specified in paragraph 4F. A record of pigging runs and inhibitor treatment shall be submitted to the Supervisor during February of each year.

(2) In the event a pipeline operator elects to run an instrumented pig, the Supervisor shall be notified in ample time to witness the test. The operator shall submit the results and conclusions from the data obtained to the Supervisor within two months after completion and assimilation.

F. Riser inspection and reports. All pipeline risers shall be visually inspected annually for physical and corrosion damage in the splash zone. If damage is observed on protected risers, an inspection using mechanical devices, such as callipers, pit gauges, etc., radiographic or ultrasonic inspection shall be conducted. The pipe shall either be inspected to determine the wall thickness and repaired or replaced. All bare risers shall be similarly inspected annually to determine wall thickness and, if necessary, repaired or replaced. The safe operating wall thickness shall be determined by the following formula and the measured thickness compared to the calculated minimum acceptable thickness:

\[
t = \frac{t_{min}}{C} \times \frac{S}{S_{max}} = \frac{DP/12.5}{S_{max}}
\]

Where: 
- \( t \) = minimum acceptable thickness for the riser to remain in service
- \( D \) = nominal outside diameter, in inches
- \( P \) = maximum correctable pressure, in psi, on the pipelines at time of inspection of the riser
- \( C \) = longitudinal joint factor obtained from Appendix A
- \( S \) = specified minimum yield strength of the pipe material, in psi.

A report of all riser inspections shall be retained in the field office for two years.

If physical or corrosive damage has occurred, necessitating repair or replacement, an application shall be submitted pursuant to paragraphs 4B and 4C.

Approved:

RUSSELL G. WAYLAND,
Chief, Conservation Division.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
timely initiate enhanced recovery operations where such methods would result in an increased ultimate recovery of oil or gas or enhanced economic and economic principles. Enhanced recovery operations refers to pressure maintenance operations, secondary and tertiary recovery cycles, and similar recovery operations which alter the natural forces in a reservoir to increase the ultimate recovery of oil or gas.

2. Classification of reservoirs.—A. Initial classification. Each producing reservoir shall be classified by the operator subject to approval by the Supervisor, as an oil reservoir, an oil reservoir with an associated gas cap, or a gas reservoir. The initial classification of each reservoir shall be submitted for approval with the initial submission of MER data for the reservoir.

B. Reclassification. A reservoir may be reclassified by the Supervisor, on his own initiative or upon application of an operator, during its productive life when information becomes available showing that such reclassification is warranted.

3. Oil and gas shutoffs. A reservoir shall be a.

A. Maximum efficient rate (MER). The operator shall propose a maximum efficient rate (MER) for each producing reservoir based on sound engineering and economic principles. When approved at the proposed or other rate, such rate shall not be exceeded, except as provided in paragraph 4 of this Order.

(1) Effective date of MER. The effective date of a MER shall be the first day following the test period. If test period specified in paragraph 3 of this Order. Ex- tention of the 30-day test period may be granted. The effective date for any approved increased or reworked well completions, or any approved extensions thereof, the operator may produce a new or reworked well completion at rates not to exceed the approved rates until the operator shall submit a Re- quest for Reservoir MER (Form 8–1966) with the appropriate supporting information.

(2) Revision of MER. The operator may request a revision of an MER by submitting the proposed revision to the Supervisor on a Request for Reservoir MER (Form 8–1966) with appropriate supporting information. The operator shall obtain approval to produce at test rates which exceed an approved MER when such testing is necessary to substantiate an increase in the MER.

(3) Review of MER. The MER for each reservoir shall be reviewed by the operator annually, or at such other required or appro- priate time as the operator shall consider necessary. The boundaries of the reservoir shall be considered property lines. The boundaries of any pod or field shall be considered property lines for the purpose of this Order.

B. Repeal. A reservoir that contains hydrocarbons predominantly in a liquid or liquid-gas phase state.

C. Oil well completion. A well completed in an oil reservoir or in the oil accumulation of an oil reservoir with an associated gas cap.

D. Gas reservoir. A reservoir that contains hydrocarbons predominantly in a gas phase (single-phase) state.

E. Gas well completion. A well completed in a gas reservoir or in the gas cap of an oil reservoir with an associated gas cap.

F. Oil reservoir with an associated gas cap. A reservoir that contains hydrocarbons in both a liquid and a gaseous state (two-phase).

G. Produktive well completion. A well which is capable of producing hydrocarbons and which is shut-in at the wellhead or at the surface, but not necessarily connected to production facilities, and from which the operator plans future production.

H. Coordinative rights. The opportunity afforded each lessee or operator to produce without waste his just and equi- tant position of the well with respect to gas-oil or water-oil contacts; (5) position of perforated interval within total produc- ing section; and (6) engineering practices. The MFR established for each well completion shall not exceed 110 per- cent of the rate demonstrated by a well completion justified by supporting information.

(1) Submittal of initial MPR. The operator shall have 90 days from the date of first continuous production with- out restriction to submit an application as specified under subparagraphs 5B and 6B of this Order, on all new and reworked well completions. Within 15 days after the date of the potential test, the oper-
MPR will be established automatically for that well completion equal to 110 percent of the test rate submitted. The effective date for the new MPR for such well completion shall be the first day of the quarter following the required date of submittal of test results under subparagraphs 5.C and 6.C of this Order. Also, the operator may notify the Supervisor on a Request for Well Maximum Production Rate (MPR) (Form 9-1867). Effective for such test results under subparagraphs 5.C and 6.C of this Order. Also, the operator may notify the Supervisor on a Request for Well Maximum Production Rate (MPR) (Form 9-1867) of, or the Supervisor may require, a downward revision of a well MPR at any time when the well is no longer capable of producing its approved MPR on a sustained basis. The effective date for such reduced MPR for a well completion shall be the first day of the month following the date of notification.

4. Continuation of MPR. If submittal of the results of a quarterly well test for an oil completion or a semiannual well test for a gas well completion, as provided for in paragraphs 5.C and 6.C of this Order, timely establishes the potential or periodic production of under the last approved MPR for the well may be authorized, provided an extension of time in which to submit the test results is requested in advance.

5. Cancellation of MPR. When a well completion ceases to produce, is shut in pending workover, or any other condition exists which causes the assigned MPR to be no longer appropriate, the operator shall notify the Supervisor accordingly on a Request for Well Maximum Production Rate (MPR) (Form 9-1867), indicating the date of last production from the well, and the MPR will be canceled. Reporting of temporary shut-ins by the operator for well maintenance, safety conditions, or other normal operating conditions is not required, except as is necessary for completion of the Monthly Report of Operations (Form 9-152).

6. MER and MPR relationship. The withdrawal rate from a reservoir shall not exceed the approved MER and may be produced from any combination of well completions subject to any limitations imposed by the MPR established for each well completion. The rate of production from the reservoir shall not exceed the MER although the summation of individual well MR's may be greater than the MER.

B. Balancing periods. As of the first day of the month following the month in which this Order becomes effective, all reservoirs shall be considered in balance. Balancing periods for overproduction of a reservoir under the approved MER shall be as follows:

- **Balancing of Production.**—A. Production variances. Temporary well production rates, resulting from normal variations and fluctuations exceeding a well MPR or reservoir MER shall not be considered a violation of this Order, and such production may be sold or transferred pursuant to paragraph 6 of this Order. However, when normal variations and fluctuations result in production in excess of a reservoir MER, any operator who is overproducing shall balance such production in accordance with sub-paragraph 4. The operator shall advise the Supervisor of the amount of such excess production from the reservoir for the month at the same time as Form 9-152 is filed for that month.

   - **Balancing periods for an oil well completion:**
     - 6-month test period shall begin on January 1, April 1, July 1, and October 1 of each year. If a reservoir is produced at a rate in excess of the MER for any month, the operator who is overproducing shall take steps to balance production during the next succeeding month. In any event, all overproduction shall be balanced by the end of the next succeeding quarter following the quarter in which the overproduction occurred. The operator shall notify the Supervisor at the end of the month in which he has balanced the production from an overproduced reservoir.
     - **G. Shut-in for overproduction.** Any operator in an overproduction status in any reservoir for two successive quarters which has not been brought into balance within the balancing period shall be shut-in from the reservoir and MPR. The actual production equals that which would have occurred under the approved MER.

   - **D. Temporary shut-in.** If, as a result of a storm or emergency conditions peculiar to offshore operations, an operator is forced to curtail or shut in production from a reservoir, the Supervisor may, on request, approve makeup of all or part of this production.

5C. **Oil Well testing procedures.**

   - **A. General.** Tests shall be conducted for not less than four consecutive hours. Immediately prior to the 4-hour test period, the well shall have produced under stabilized conditions for a period of not less than six consecutive hours. The 6-hour pretest period shall not begin until after recovery of a volume of fluid equivalent to the amount of fluids introduced into the formation for any purpose. Measured gas volumes shall be adjusted to the standard conditions of 15.025°F and 14.7 psia. When orifice meters are used, a specific gravity shall be obtained or estimated for the gas and a specific gravity correction factor applied to the orifice coefficient. Gas test results shall be obtained or estimated from bottom hole pressures using the method of other similar method found in the Interstate Oil Compact Commission (IOCC) Manual of Back-Pressure Testing of gas wells. The results of all back-pressure tests conducted by the operator shall be filed with the Supervisor, including all basic data used in determining the test results.

   - **D. Back-pressure tests.** A multi-point back-pressure test to determine the theoretical open-flow potential of gas wells shall be conducted within thirty days after connection to a pipeline. If bottom-hole pressures are not measured, such pressures shall be calculated from surface pressures using the method of other similar method found in the Interstate Oil Compact Commission (IOCC) Manual of Back-Pressure Testing of gas wells. The results of all back-pressure tests conducted by the operator shall be filed with the Supervisor, including all basic data used in determining the test results.

   - **G. Shut-in for overproduction.** The operator shall notify the Supervisor at the end of the month in which he has balanced the production from an overproduced reservoir.

In summary, there shall be a minimum of 45 days between quarterly tests for an oil well completion. The effective date for the new MPR for such well completion shall be the first day of the quarter following the required date of submittal of test results under subparagraphs 5.C and 6.C of this Order. Also, the operator may notify the Supervisor on a Request for Well Maximum Production Rate (MPR) (Form 9-1867) of, or the Supervisor may require, a downward revision of a well MPR at any time when the well is no longer capable of producing its approved MPR on a sustained basis. The effective date for such reduced MPR for a well completion shall be the first day of the month following the date of notification.
9. Bottom-hole pressure tests. Static bottom-hole pressure test shall be conducted annually on sufficient key wells to establish the reservoir pressure in each producing reservoir unless a different frequency is approved. The Operator may be required to test specific wells. Bottom-hole pressure tests shall be conducted within 60 days after the date of the test.

10. Flaring and venting of gas. Oil- and gas-well gas shall not be flared or vented, except as provided herein.

A. Small-volume or short-term flaring or venting. Oil- and gas-well gas may be flared or vented in small volumes or temporarily without the approval of the Supervisor in the following situations:

(1) Gas vapors. When gas vapors are released from storage and other low pressure production vessels if such gas vapors cannot be economically recovered or retained.

(2) Emergencies. During temporary emergency situations, such as compressor or well failure, or the relief of abnormal system pressures.

(3) Well purging and evaluation tests. During the unloading or cleaning up of a well and during drillstem, producing, or other well evaluation tests not exceeding a period of 24 hours.

B. Approval for routine or special well tests. Oil- and gas-well gas may be flared or vented during routine and special well tests, other than those described in paragraph A above, only after approval of the Supervisor.

C. Gas-well gas. Except as provided in A and B above, gas-well gas shall not be flared or vented.

D. Oil-well gas. Except as provided in A and B above, oil-well gas shall not be flared or vented unless approved by the Supervisor.

The Supervisor may approve an application for flaring or venting of oil-well gas for periods not exceeding one year if (1) the operator has initiated positive action which will eliminate flaring or venting, or (2) the operator has submitted an evaluation supported by engineering, geologic, and economic data indicating that rejection of an application to flare or vent the gas will result in an ultimate greater loss of equivalent total energy than could be recovered for beneficial use from the lease if flaring or venting were approved.

E. Content of application. Applications under paragraph D(2) above shall include all appropriate engineering, geologic, and economic data in an evaluation showing that absence of approval to flare or vent the gas will result in premature abandonment of oil and gas production and that abandonment will be to the detriment or irreparable injury to the property owner or the public, and which shall contain a statement of the amount and value of the oil and gas reserves that will not be recovered if the application to flare or vent were rejected and an estimate of the total amount of oil to be recovered and associated gas that would be flared or vented if the application were approved.

11. Disposition of gas. The disposition of all gas produced from each lease shall be reported monthly on, or attached to, Form 9-152. The report shall be submitted in the following manner:

<table>
<thead>
<tr>
<th>Oil Well Gas</th>
<th>Gas Well Gas (thousand cubic feet)</th>
<th>Gas Well Gas (thousand cubic feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field</td>
<td>Injected</td>
<td>Flared</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ventured</td>
</tr>
<tr>
<td>Supervised</td>
<td></td>
<td>Other</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Gas produced from the lease and injected in or off the lease.

12. Multiple and selective completions.

A. Number of Completions. A well bore may contain any number of producible completions when justified and approved.

B. Numbering well completions. Well completions shall be designated using numerical and alphabetical nomenclature. Once designated as a reservoir completion, the well completion number shall not change. Appendix A contains a detailed explanation of procedures for naming well completions.

C. Packer tests. Multiple and selective completions shall be equipped to isolate the respective producing reservoirs. A packer test or other appropriate reservoir isolation test shall be conducted to determine or verify gas production and annually thereafter on all multiply completed wells. Should the reservoirs in any multiply completed well become intercommunicative the operator shall make repairs and again conduct reservoir isolation tests unless some other operational procedure is approved. The results of all tests shall be submitted on a Packer Test (Form 8-1871) within 30 days after the date of the test.

D. Selective completions. Completion equipment may be installed to permit selective reservoir isolation or exposure in a well bore through wireline or other operations. All selective completions shall be designated in accordance with subparagraph 12.B when the application for approval of such completion is filed.

E. Commingle. Commingle of production from two or more separate reservoirs within a common well bore may be permitted if it is determined that, collectively, the ultimate recovery will not be decreased. An application to commingle hydrocarbons from multiple reservoirs within a common well bore shall be submitted for approval and shall include all pertinent well information, geologic and reservoir engineering data, and a schematic diagram of well equipment. For all competitive reservoirs, notice of the application shall be sent by the applicant to all other operators of interest in the reservoirs prior to submitting the application to the Supervisor. The application shall specify the well completion number to be used for subsequent reporting purposes.

F. Gas-cap well completions. All wells completed in the gas cap of a reservoir which has been characterized and approved as an associated oil reservoir shall be shut in until such time as the oil is depleted or the reservoir is reclassified as a gas reservoir; provided, however, that production from such wells shall be shut in prior to such reclassification or reclassification when justified and approved when (1) it can be shown that such gas-cap production would not lead to waste of oil and gas, or (2) when necessary to protect correlative rights of other operators. Such wells shall be in accordance with approved programs and plans required in 30 CFR 250.17 and 250.34. Such location and spacing shall be determined independently for each lease or reservoir in a manner which will locate wells in the optimum structural position for the most effective production of reservoir fluids and to avoid the drilling of unnecessary wells.

G. Distance from property line. An operator may drill exploratory or development wells at any location on a lease in accordance with approved plans; provided, that no well will be directionally or vertically drilled and completed after the date of this order in which the completed interval is less than 200 feet (61 meters) from a property line shall be produced unless approved by the Supervisor. For wells drilled as vertical holes, the surface location of the well shall be considered as the location of the completed interval but shall be subject to the provisions of 30 CFR 250.40(b). An operator requesting approval to produce a directionally drilled well in which the completed interval is less than 200 feet (61 meters) from a property line, or approval to produce a vertically drilled well with a surface location closer than 200 feet (61 meters) from a property line, shall furnish the Supervisor with letters expressing acceptance or objection from operators of offset properties.

H. Enhanced oil and gas recovery operations. Operators shall timely initiate enhanced oil and gas recovery operations for all competitive and noncompetitive reservoirs where such operations would result in an increased ultimate recovery of oil or gas or under sound engineering and economic principles. A plan for such operations shall be submitted with the results of the annual MER review as required in paragraph 3A(3) of this Order.

I. Competitive reservoir operations. Development and production operations in a competitive reservoir may be required to be conducted under either pooling and drilling agreements or unitization agreements when the Conservation Manager determines that pooling and unitization would be in the interest of conservation. The Supervisor shall notify the operators when he has made a preliminary determination that such agreements are practicable and necessary or advisable and in the interest of conservation.

J. Competitive reservoir determination. The Supervisor shall notify the operators when he has made a preliminary determination that such agreements are practicable as defined in this Order. An operator may request at any time that
the Supervisor make a preliminary determination as to whether a reservoir is competitive. The operator, within thirty (30) days of such preliminary notification or such extension of time as approved by the Supervisor, shall advise of their determination to the Supervisor, or submit objections with supporting evidence. The Supervisor will make a final determination and notify the operators.

B. Development and production plans. When drilling and/or producing operations are conducted in a competitive reservoir, the operators shall submit for approval a plan governing the applicable operations. The plan shall be submitted within ninety (90) days after a determination by the Supervisor that a reservoir is competitive or within such extended period of time as approved by the Supervisor. The plan shall provide for the development and/or production of the reservoir, and may provide for the submission of supplemental plans for approval by the Supervisor.

. (1) Development plan. When a competitive reservoir is still being developed or future development is contemplated, a development plan may be required in addition to a production plan. This plan shall include the information required in 30 CFR 250.34. If agreement to a joint development is reached by the operators, each shall submit a separate plan and any differences may be resolved in accordance with paragraph 17 of this Order.

(2) Production plan. A joint production plan is required for each competitive reservoir. This plan shall include (a) the proposed MER for the reservoir; (b) the proposed MPR for each completion in the reservoir; (c) the percentage allocation of reservoir MER for each lessee involved; and

(d) plans for secondary recovery or pressure maintenance operations. If agreement to a joint production plan cannot be reached by the operators, each shall submit a separate plan, and any differences may be resolved in accordance with paragraph 17 of this Order.

C. Unitization. The Conservation Manager shall determine when conservation will be best served by unitization of a competitive reservoir, or any reservoir reasonably delineated and determined to be productive, in lieu of a development and/or production plan or when the operators and lessees involved have been unable to voluntarily effect unitization. In such cases, the Conservation Manager may require that development and production operations be conducted under an approved unitization plan. When operators fail to cooperate, notification by the Conservation Manager that such a unit plan is required, or within such extended period of time as approved by the Conservation Manager, the lessees and operators shall submit a proposed unit plan for designation of the unit area and approval of the form of agreement pursuant to 30 CFR 250.34.

11. Conferences, decisions and appeals. Conferences with interested parties may be held to discuss matters relating to applications and statements of position filed by the parties relating to operations conducted pursuant to this Order. The Supervisor or Conservation Manager may call a conference with one or more parties or, in the case of his own initiative or at the request of any interested party. All interested parties shall be served with copies of the Supervisor's or Conservation Manager's decisions. Any interested party may appeal decisions of the Supervisor or Conservation Manager pursuant to 30 CFR 250.81. Decisions of the Supervisor or Conservation Manager shall remain in effect and shall not be suspended by reason of any appeal, except as provided in that regulation.

RODNEY A. SMITH, Oil and Gas Supervisor, Alaska Area.

APPENDIX A

Subparagraph 12.B "Numbering Well Completions. Well completions made under this Order shall be subject to the numerical and alphabetical nomenclature. Once designated as a reservoir completion, the well completion number shall not change. The intent of this Subparagraph is to ensure that a completion in a given reservoir and a specific well bore will be assigned a unique name and will retain that name permanently. For further clarification, the following guidelines and examples are offered:

1. Each well bore will have a distinct, permanent number.

2. Each reservoir completion in a well bore will have a unique permanent designation which includes the well bore number in its nomenclature.

3. For the purpose of this Subparagraph, a "completion" is defined as all perforations in a given reservoir in a specific well bore and is not necessarily associated with a tubing string or strings.

4. If more than one completion is made in a well bore, an alphabetical suffix must be used in the nomenclature to differentiate between completions.

5. An alphabetical prefix may be utilized to designate the platform from which the well will be produced.

Example No. 1: The first well drilled from the A Platform is a single completion. Well No. A-1. (Should an operator wish to use an alphabetical suffix with a single completion, he may do so.)

Example No. 2: A well drilled by a mobile rig need not carry an alphabetical suffix. Well No. 1. (If the well is later connected to and produced from a production platform, the well shall be redesignated to reflect an alphabetical prefix.)

Example No. 3: The second well drilled from the A Platform is a triple completion. First Completion—A-1; Second Completion—A-2; Third Completion—A-2-T. (In the above example, the letters "D" and "E" were used in naming the second and third completions utilizing current industry practice, although the intent is not to restrict operators to the use of these particular alphabetical suffixes. Any alphabetical suffix may be used as long as it is unique to the completion in that reservoir.)

Example No. 4: The drawing is shown to illustrate the fact that once a completion in a given reservoir is designated as both tubular and plugged off and the completion made to the 7,000' sand, the completion in the 7,000' sand would be designated A-2-A (or some other alphabetical suffix other than the "D" or "E" prefix utilized with previous completions.)

The Sunday notice (Form 0-331) submitted to obtain approval for the workover shall be the vehicle for naming the new completion.

Example No. 5: If the A-2 completion in Example No. 4 had been recompleted from the 10,000' sand to the 9,000' sand (where the A-2-M is currently completed), the recompletion would still be named A-2-D as both tubing string numbers would be considered one completion for purposes of this Order.

EQUIPMENT.
categories of records from the general requirement but does not require the withholding from inspection of all records which may fall within the categories exempted. Accordingly, no request made of a field office to inspect a record shall be denied unless the head of the office or such higher field authority as the head of the bureau may designate shall determine (1) that the record falls within one or more of the categories exempted and (2) either that disclosure is prohibited by statute or Executive Order or that sound grounds exist which require the invocation of the exemption. A request to inspect a record located in the headquarters office of a bureau shall not be denied except on the basis of a similar determination made by the head of the bureau or his designee, and a request made to inspect a record located in a major organization unit of the Office of the Secretary shall not be denied except on the basis of a similar determination by the head of that unit. Officers and employees of the Department shall be guided by General Orders and the Administrative Procedure Act of June, 1967.

A. Form 9-152—Monthly report of operations. All information contained on this form shall be available except the information required in the Remarks column.

B. Form 9-330—Well completion or recompletion report and log. All information contained on this form shall be available, except Item 1a, Type of Well; Item 4, Location of Well; at top prod. interval reported below; Item 22, If Multiple Compl.; how many; Item 24, Producing Interval; Item 26, Type Electric and Other Logs Run; Item 28, Casing Record; Item 29, Liner Record; Item 30, Tubing Record; Item 31, Perforation Record; Item 32, Acid, Shot, Fracture, Cement Squeeze, etc.; Item 33, Production; Item 37, Summary of Porous Zones; and Item 38, Geologic Markers.

C. Form 9-331—Application for permit to drill, deepen or plug back. All information contained on this form shall be available, except Item 4, Location of Well, at top prod. Interval; and Item 17, Describe Proposed or Completed Operations.

D. Form 9-331C—Application for permit to conduct operations, all information contained on this form shall be available, except Item 4, Location of Well, at top prod. Interval; and Item 17, Describe Proposed or Completed Operations.

E. Form 9-1870—Semi-annual progress report. All information contained on this form shall be available.

F. Form 9-1871—Semi-annual well test report. All information contained on this form shall be available.

G. Multi-point back pressure test report. All information contained on the form used to report the results of required multi-point back pressure test of gas wells shall be available.

H. Sales of lease production. Information contained on monthly Geological Survey Computer Printouts showing sales volumes, value, and royalty of production of oil, condensate, gas and liquid products, by lease, shall be made available.

2. Fill in any blanks on Forms 9-152, 9-330, 9-331, 9-1871, 9-1870, and the forms used to report the results of multi-point back pressure tests, shall be filled in accordance with the following requirements:

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Anakchak Caldera National Monument in Alaska. The proposal is made in accordance with the Alaska Native Claims Settlement Act of
NOTICES

1971. The environmental statement considers the legislative establishment of the Aniakchak Caldera National Monument and its management by the agency indicated below.

Proposal recommends that: Approximately 440,000 acres of public lands on the Alaska Peninsula be designated by Congress as the Aniakchak Caldera National Monument, and that the entire Aniakchak River be designated a Wild River in accordance with the National Wild and Scenic Rivers Act of 1968. Management by: National Park Service.

The final environmental statement is available for inspection at the following locations:

North Atlantic Regional Office
National Park Service
150 Causeway Street
Boston, Massachusetts 02114

Southwest Regional Office
National Park Service
3401 Whipple Avenue
Atlanta, Georgia 30344

Rocky Mountain Regional Office
National Park Service
645-655 Parfit Avenue
Denver, Colorado 80219

Western Regional Office
National Park Service
450 Golden Gate Avenue
San Francisco, California 94103

Fish and Wildlife Service
Federal Building
1600 Plaza Building, Room 238
Albuquerque, New Mexico 87109

Fish and Wildlife Service
Federal Building—Fort Snelling
Room 660
Twin Cities, Minnesota 55111

Mid-Atlantic Regional Office
National Park Service
143 South Third Street
Philadelphia, Pennsylvania 19103

Midwest Regional Office
National Park Service
1700 Jackson Street
Omaha, Nebraska 68102

Southwest Regional Office
National Park Service
P.O. Box 728
Santa Fe, New Mexico 87501

Pacific Northwest Regional Office
National Park Service
Room 691, 4th and Pike Building
1204 Fourth Avenue
Seattle, Washington 98101

Fish and Wildlife Service
500 Gold Avenue, SW.
Room 3019
P.O. Box 1300
Albuquerque, New Mexico 87103

Fish and Wildlife Service
17 Executive Park Drive, NE.
Room 411
Atlanta, Georgia 30329

Fish and Wildlife Service
John W. McCormack P.O. and Courthouse
Boston, Massachusetts 02109

U.S. Forest Service
Federal Building
Missoula, Montana 59801

U.S. Forest Service
Federal Building
517 Gold Avenue, SW.
Albuquerque, New Mexico 87101

U.S. Forest Service
San Francisco, California 94111

U.S. Forest Service
1520 Peachtree Road, NW.
Atlanta, Georgia 30309

U.S. Forest Service
Denver, Colorado 80222

Bureau of Land Management
Federal Building
350 Booth Street
Boca, Nevada 89402

Bureau of Land Management
Federal Building, Room 330
550 W. Fort Street
Boise, Idaho 83702

Bureau of Land Management
2120 Capitol Avenue
P.O. Box, Arizona
Cheyenne, Wyoming 82001

Fish and Wildlife Service
10397 West Sixth Avenue
Denver, Colorado 80225

U.S. Forest Service
Denver Federal Building
Denver, Colorado 80225

Bureau of Land Management
Federal Building
324 26th Street
Ogden, Utah 84401

U.S. Forest Service
Federal Building
Room 302
Portland, Oregon 97208

U.S. Forest Service
633 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

Bureau of Land Management
Federal Building
132 South State Street
Salt Lake City, Utah 84111

Bureau of Land Management
Federal Building
Room 3023
Phoenix, Arizona 85025

Bureau of Land Management
Federal Building
P.O. Box 1649
Santa Fe, New Mexico 87501

Bureau of Land Management
2600 Cottage Way
Room E-3041
Sacramento, California 95835

Bureau of Land Management
Federal Building
319 North 30th Street
Billings, Montana 59101

Bureau of Land Management
Robin Building
7061 Eastern Avenue
Silver Spring, Maryland 20910

Southeast Regional Office
Bureau of Outdoor Recreation
148 Calk Street
Atlanta, Georgia 30303

Mid-Continent Regional Office
Bureau of Outdoor Recreation
Denver Federal Center
Building 41, P.O. Box 29907
Denver, Colorado 80225

Northwest Regional Office
Bureau of Outdoor Recreation
1000 2nd Avenue
Seattle, Washington 98104

Bureau of Land Management
729 Northeast Oregon Street
P.O. Box 2065
Portland, Oregon 97208

Northwest Regional Office
Bureau of Outdoor Recreation
900 Arch Street
Philadelphia, Pennsylvania 19106

Lake Central Regional Office
Bureau of Outdoor Recreation
3853 Research Park Drive
Ann Arbor, Michigan 48104

South Central Regional Office
Bureau of Outdoor Recreation
5500 Marble Avenue, NE.
Albuquerque, New Mexico 87110

Pacific Southwest Regional Office
Bureau of Outdoor Recreation
450 Golden Gate Avenue
San Francisco, California 94102

A limited number of single copies of the final environmental statement is available from the following:

Department of the Interior
Alaska Planning Group
Washington, D.C. 20240

Department of the Interior
National Park Service
524 W. Sixth Avenue
Room 201
Anchorage, Alaska 99501

Department of the Interior
Fish and Wildlife Service
813 D Street
Anchorage, Alaska 99501


STANLEY D. DORENS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-250 Filed 1-3-76;8:45 am]

[INF FES 74-73]

BEAVER CREEK NATIONAL WILD RIVER, ALASKA

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Beaver Creek National Wild River in Alaska. The proposal is made in accordance with the Alaska Native Claims Settlement Act of 1971. The environmental statement considers the legislative establishment of the Beaver Creek National Wild River and its management by the agency indicated below.

Proposal recommends that: A 135-mile segment of Beaver Creek and 300,000 acres of adjacent public lands in Interior Alaska be designated by Congress as the Beaver Creek National Wild River.

Management by: Bureau of Land Management.

The final environmental statement is available for inspection at the following locations:

North Atlantic Regional Office
National Park Service
150 Causeway Street
Boston, Massachusetts 02109

Southwest Regional Office
National Park Service
143 South Third Street
Philadelphia, Pennsylvania 19103

Western Regional Office
National Park Service
450 Golden Gate Avenue
San Francisco, California 94103

Southeast Regional Office
National Park Service
450 Golden Gate Avenue
San Francisco, California 94103

FEDERAL REGISTER, VOL 40, NO. 3—MONDAY, JANUARY 6, 1975
NOTICES

1109

Department of the Interior
Fish and Wildlife Service
813 D Street
Anchorage, Alaska 99501


STANLEY D. DORENUS,
Deputy Assistant
Secretary of the Interior.

[FR Doc. 75-251 Filed 1-3-75; 8:45 am]

NEWLANDS RECLAMATION PROJECT, NEVADA

Operating Criteria and Procedures: Truckee and Carson Rivers


The criteria specifically apply to the operation of the Newlands Reclamation Project from March 1973 until October 31, 1974. However, in its memorandum, the court stated:

While some adjustments in operating criteria may be necessary after October 31, 1974, to accommodate changing conditions, there is no reason to believe from the record before the court that the general standards established by the court's judgment and order should otherwise change.

Accordingly, the operating criteria and procedures for the Newlands Reclamation Project prescribed by the court in the above case for the period ending October 31, 1974, shall, until further notice, continue in effect for the period ending October 31, 1975, subject to the following adjustments:

1. In said operating criteria and procedures, time references relating to cyclical activities, which can be expected to recur from operating period to operating period, shall be updated by 1 year.

2. Where Truckee–Carson Irrigation District was required by said operating criteria and procedures to have performed certain actions of a noncyclical and nonrecurring nature and has failed to do so, it shall perform such actions forthwith. This shall not be deemed to waive the responsibility of the Truckee–Carson Irrigation District to have complied with said operating criteria and procedures for previous years.

3. Section c(3) is modified to provide for the installation of measuring devices on at least 20 percent of the turnouts by October 31, 1975.

JOHN C. WETTAKER,
Under Secretary of the Interior.

DECEMBER 27, 1974.

WATCHES AND WATCH MOVEMENTS

Allocation of Quotas

Cross Reference: For a document relating to rules for allocation of quotas

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
NOTICES

KANSAS

Prolonged drought from June 1 to November 1, 1974, caused damages and losses to the following 22 counties in Kansas:

- Bourbon
- Brown
- Cherokee
- Clay
- Cofey
- Crawford
- Franklin
- Greenwood
- Jackson
- Jefferson
- Laine
- Lyon

Also, damages and losses occurred from severe storm (hail, wind, and rain) August 17, 1974, in the following 6 counties:

- Butler
- Clay
- Cowley
- Graham
- Labette
- Linn

Therefore, the Secretary has designated these areas as eligible for Emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Robert B. Docking that such designation be made.

Done at Washington, D.C., this 17th day of December, 1974.

FRANK B. ELLIOTT, Administrator, Farmers Home Administration.
NOTICES

1111

93-237, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Patrick J. Lucey that such designation be made.

Applications for Emergency loans must be received by this Department no later than February 18, 1975, for physical losses and September 18, 1975, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice or proposed rule making and invite public participation.

Done at Washington, D.C., this 30th day of December, 1974.

FRANK B. ELLIOTT, Administrator, Farmers Home Administration.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

DHEW-FDA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Import Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3872 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 75-00070-33-46040.

Applicant: Department of Health, Education, and Welfare, Food and Drug Administration, Bureau of Radiological Health, P.O. Box 50382, MD 20852. Article: Electron Microscope, Model JEM 100C. Manufacturer: Jeol Ltd., Japan. Intended use of article: The article is intended to be used for the examination of cultured cells following exposure to ionizing radiation with attention paid to the fibrous nature of chromosomes and how such fibrous structure is important in the formation of chromosomal aberration such as breaks, gaps, and translocations.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article measures fluorescent and absorption signals simultaneously and possess a high energy illumination system for higher optical sensitivity. The most closely comparable domestic instrument is the Durrum D115 system. The Durrum D115 system does not provide equal sensitivity and does not permit detection of absorption and fluorescence measurement. The Department of Health, Education, and Welfare advises in its memorandum dated November 21, 1974, that the capabilities of the article described above are pertinent to the purposes for which the article is intended to be used. For these reasons, we find the Durrum D115 system does not provide equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

A. H. STUART, Director, Special Import Programs Division.

UNIVERSITY OF MIAMI

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Import Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3872 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 75-00053-33-10100.

Applicant: University of Miami School of Medicine, Department of Pharmacology, P.O. Box 520875, Biscayne Annex, 1600 NW 10th Ave., 4th Flr., Miami, Florida 33155. Article: Temperature Jump Apparatus. Manufacturer: Bodo Schmidt, West Germany. Intended use of article: Article is intended to be used as a service instrument for low and high resolution spectrometry of compounds submitted by the faculty members and their students. Secondly, it will be used as a teaching instrument in a Modern Analytical course, and finally it will be used by graduate students for special long term studies in organic and biological chemistry. Some of the types of compounds and more specific application which will be encountered in the use of the article are:

(1) Isotopic scrambling of oxygen-18 used as a mechanistic probe in model systems for enzymatic reactions.

FEDERAL REGISTER, VOL. 40, NO. 2—MONDAY, JANUARY 6, 1975
(2) The reaction of the diradical species SO with an unconjugated olefin producing a mixture of complex products often in low yields;
(3) Structural elucidation of the compounds, F-5-3 and F-5-4, which are related to zearalenone;
(4) Determination of location and extent of incorporation of the label by examining the isotopic patterns of fragment peaks in the labeled and unlabeled compounds of the Cinchona alkaloids;
(5) Study of the scope and mechanism of the rearrangement of substituted 5-nitronorbornenes and 2-nitronorbornanes under the Nef reaction conditions.

The article will also be used extensively for teaching as well as for research analysis in association with graduate research programs.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides an automatic sensitivity control. The most closely comparable domestic instrument, the Model Nemours and Co. foreign article provides an automatic sensitivity control. The most closely comparable domestic instrument, the Model 21-492, manufactured by E. I. Dupont De Nemours and Co. (Dupont), does not provide an automatic sensitivity control. We are advised by the National Bureau of Standards (NBS) in its memorandum dated December 4, 1974, that the automatic sensitivity control is pertinent to the applicant's isotope measurement work and to measurements for which only one spectrum can be obtained. NBS also advises that it knows of no domestic mass spectrometer of equivalent scientific value to the foreign article for the applicant's intended use.

University of Wisconsin

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (39 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230. Docket Number: 75-00078-00-46040. Applicant: University of Wisconsin, High Voltage Microscope Facility, 1715 Observatory Drive, Madison, Wisconsin 53706. Article: Double Tilting Side Entry Cold Stage for High Voltage Microscope. Manufacturer: Comco Co., United Kingdom. Intended use of Article: The article is intended to be used with a high voltage electron microscope for studies of frozen sections of biological materials.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Special Import Programs Division.)

A. H. Stewart, Director, Special Import Programs Division.

[FR Doc.75-205 Filed 1-3-75; 8:45 am]

NOTICES

University of Pennsylvania

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (39 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Office of Import Programs, Department of Commerce, Washington, D.C. 20230. Docket Number: 75-00079-33-9000. Applicant: University of Pennsylvania, Johnson Research Foundation, School of Medicine, Philadelphia, Pa. 19174. Article: GX-6 Rotating Anode X-ray Generator. Manufacturer: Marconi-Elliott Avionic Systems Ltd., United Kingdom. Intended Use of Article: The article is intended to be used in the investigation of the dynamic structure (molecular) of biological membranes to determine structure-function relationships in biological membranes.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Special Import Programs Division.)

A. H. Stewart, Director, Special Import Programs Division.

[FR Doc.75-205 Filed 1-3-75; 8:45 am]

SOUTHWEST FISHERIES CENTER

Modification of Permit

Notice is hereby given that, pursuant to the provisions of §§ 216.33(d) and (o) of the regulations governing the taking and importing of marine mammals (39 FR 1851, January 15, 1974), the Scientific Research Permit issued to the Southwest Fisheries Center, National Marine Fisheries Service, on December 11, 1974, is modified in the following manner:

The marine mammals authorized by the permit to be taken, tagged and released, may be taken either from a commercial tuna fishing vessel engaged in commercial fishing operations, a research vessel chartered for this purpose, or a research vessel of opportunity which would otherwise be engaged in research activities in the Eastern Tropical Pacific Ocean; rather than solely from a commercial tuna fishing vessel as originally specified in the Permit.

This modification is effective on January 6, 1975.

The Permit, as modified, and documentation pertaining to the modification, is available for review in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235 and the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 200 South Ferris Street, Terminal Island, California 90731.


Jack W. Gehriender, Acting Director, National Marine Fisheries Service.

[FR Doc.76-205 Filed 1-3-75; 8:45 am]
NOTICES

Office of the Secretary

WATChES AND WATCH MOVEMENTS

Rules for Allocation of Quotas for Calendar Year 1975 Among Producers Located in the Virgin Islands, Guam and American Samoa

On December 10, 1974, the Department of Commerce, and the Interior published a notice of proposed rule making under Pub. L. 89-805, setting out the proposed formula for allocation of 1975 watch quotas among producers located in the Virgin Islands, Guam and American Samoa (39 FR 43096 et seq.). Interested parties were invited to participate in proposed rule making by submitting their written views on or before December 26, 1974.

There follows a summary of the substantive comments received by the Department with respect to the proposed rules:

1. Section 4 should be clarified to indicate that only income taxes actually paid to the Virgin Islands government be credited to producers for quota calculation purposes.

2. In the event quota becomes available under section 2 of the regulations, whether through issuance by the Department of a short period, the voluntary relinquishment or through the involuntary relinquishment of quota, the available quota should be reallocated among established producers rather than being made the basis for inviting applications from "new firms".

The Department does not believe the proposed rules should be modified based on the above comments, for the following reasons:

1. Virgin Islands law allows firms to use either a fiscal year or calendar year basis for the purpose of computing their income taxes, which determines when the taxes are actually paid.

2. The Department does not believe the proposed rules should be modified based on the above comments, for the following reasons:

1. On or before April 1, 1975, each producer located in the Virgin Islands, Guam, and American Samoa which received a duty-free watch quota allocation for calendar year 1974, will receive an initial quota allocation for calendar year 1975 equal to 60 percent of the number of watch movements assembled by such producer in the particular territory and entered duty-free into the customs territories of the United States during the last ten months of calendar year 1974.

2. Each producer to which an initial quota has been granted must submit to the Department an application for reallocation of any unused portion of its initial quota allocations. The Department may also issue a notice of proposed reallocation, providing for a period of not less than 90 days for the filing of an application for a watch quota on Form DIB-354-P (see section 8, below).

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975

1113
NOTICES

Sec. 3. Application forms will be mailed to recipients of initial quota allocations as soon as practicable and must be filed with the Department of Commerce, Washington, D.C. 20234, on or about January 1, 1975, and not later than March 15, 1975. All data required must be supplied at the time of filing, and in the order listed. Failure to file an application form within the prescribed time limits will result in the application being treated as not having been filed and in such cases the Secretary will be entitled to take all further actions provided for in current regulations and in the Act, and as soon as practicable after April 1, 1975. At the time of filing, the Secretary may determine the number of units of each type of watch and movement allocated to each producer in the territory and enter into the customs territory of the United States, during calendar year 1975, for duty-free entry into the customs territory. All data required must be supplied at the time each producer applies for a total dollar amount of income taxes applicable to, its Headnote 3(a) watch assembly operation. In making allocations under this formula, an equal weight of 40 percent will be assigned to the production and shipment history, and to wages subject to FICA taxes, and a weight of 20 percent will be assigned to the total amount of income taxes applicable to, its Headnote 3(a) watch assembly operations.

Sec. 4. (Virgin Islands only) The annual quotas for calendar year 1975 for the Virgin Islands will be issued as soon as possible after April 1, 1975. The quotas are to be filed with the Secretary of Commerce, Department of the Interior, Building 33098, Washington, D.C., on or about February 15, 1975, in the form of an annual watch quota for calendar year 1975. The Secretary will be authorized to transfer all or part of the quota to other producers in the territory in accordance with the regulations. The quotas are to be reported on or about February 15, 1975, and shall be entered by the producer in the territory into the customs territory for purposes of shipment. The quotas are to be entered into the customs territory by the producer in the territory during calendar year 1975 for persons whose pay was attributable to the production and shipment history, and to the wages subject to FICA taxes, and to the total dollar amount of income taxes applicable to, its Headnote 3(a) watch assembly operations.

Sec. 5. (Guam only) The annual quota for calendar year 1975 for Guam will be allocated as soon as practicable after April 1, 1975, on the basis of the number of units assembled by each producer in the territory and entered into the customs territory of the United States during calendar year 1974, and the total dollar amount of income taxes applicable to, its Headnote 3(a) watch assembly operation. In making allocations under this formula, an equal weight will be assigned to the production and shipment history, and to wages subject to FICA taxes, and a weight of 20 percent will be assigned to the total amount of income taxes applicable to, its Headnote 3(a) watch assembly operations.

Sec. 6. (Guam and Virgin Islands) For purposes of allocating watch quotas for calendar year 1975, under Sections 4 and 5, any watches or watch movements shipped from the Virgin Islands or Guam during calendar year 1974 and 1975 shall be entered into the customs territory of the United States against a producer's 1975 watch quota, and which were lost prior to entry into the customs territory of the United States, shall nevertheless be considered as having been entered into the customs territory for purposes of quota fulfillment.

Provided, That the Departments have been satisfied that shipment was in fact made but lost prior to entry into the customs territory.

Sec. 7. (American Samoa only) The annual quota for calendar year 1975 will be allocated to the producer in the territory as soon as practicable after April 1, 1975. Policies relative to the allocation of quotas in American Samoa will be open to the public. Attendance may be arranged and pertinent to the Secretary of Commerce, Department of the Interior, Bethesda, Maryland, Building 31, Conference Room 10, on January 7, 1975, on or before 12:30 p.m., on the basis of the number of units assembled by each producer in the territory and entered into the customs territory of the United States during calendar year 1974.

Sec. 8. (American Samoa only) The rules restricting transfers of duty-free quotas issued on January 29, 1975, and published in the Federal Register on January 31, 1975 (33 FR 2399), are hereby incorporated by reference as applicable to transfers of quota issued during calendar year 1975 except that detailed reporting of ownership and control will be reported on an annual basis. The transfers will be entered into the customs territory at the time the producer applies for an annual duty-free watch quota for calendar year 1975. Subsequent changes in ownership and control will be reported on an annual basis. The transfers will be entered into the customs territory at the time the producer applies for an annual duty-free watch quota for calendar year 1975. Subsequent changes in ownership and control will be reported on an annual basis.


STANLEY S. CARPENTER,
Director, Office of Territorial Affairs, Department of the Interior.

[FR Doc. 74-29553 Filed 12-31-74; 1:46 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

NATIONAL CANCER INSTITUTE

Meeting

Notice is hereby given of a change in the Workshop on Evaluation of the State in Bioassay Design and Potency Carcinogenicity of Pesticides January 7, 1975, from 9 a.m., to 5 p.m., and January 8, 1975, from 9 a.m. to 12:30 p.m., at the National Institutes of Health, Bethesda, Maryland, Building 31, Conference Room 10. Notice was published in the Federal Register on December 10, 1974 (39 FR 49093).

This Workshop was to have convened on January 7, 1975, at 9 a.m. but has been changed to January 29, 1975, from 9 a.m., to 5 p.m., and January 30, 1975, from 9 a.m. to 12:30 p.m. at the Landow Building, 7910 Woodmont Avenue, Room C418, Bethesda, Maryland. The entire meeting will be open to the public. Attendance will be limited to space available.

For further information, Dr. Thomas P. Cameron, NCI, Landow Building, Room C319, phone 496-4976, and Dr. H. F. Kraybill, NCI, Landow Building, Room C377, phone 496-1621, may be contacted.


ALAN POLANSKY,
Acting Deputy Assistant Secretary for Resources and Trade Assistance, Department of Commerce.

FEDERAL REGISTER on November 17, 1975 (32 FR 15918).

NOTICES

Social and Rehabilitation Service

RESEARCH AND DEMONSTRATIONS OFFICE

Statement of Organization, Functions, and Delegation of Authority

Part 5 of the Statement of Organization, Functions, and Delegation of Authority for the Department of Health, Education, and Welfare, Social and Rehabilitation Service (44 FR 12758, January 28, 1979, as amended), is hereby further amended to reflect establishment of Divisions in the Office of Research and Demonstrations, Office of Planning, Research, Evaluation. For such purposes, section 5-K is amended as follows:

Following "Office of Research and Demonstrations" (39 FR 16914, May 10, 1974), inserting the following:

Division of Health Services Research and Demonstrations. Responsible for initiating, directing, and coordinating all social service research and demonstration projects in the area of health care services to the poor as authorized under sections 1110 and 1115 of the Social Security Act, as amended. Designs and develops research projects geared to resolve major national problems encompassing the delivery of health care services to the poor and the operation of the Medicaid program, and provides technical assistance in formulating and designing international projects involving the delivery of health care services to low-income populations. The research program is designed to carry out the overall agency mission of providing needed health care services to low-income medicare-eligible populations and reducing dependency and promoting human welfare through the provision of essential health care services.

Division of Income Maintenance Research and Demonstrations. Responsible for initiating, directing, and coordinating all social and rehabilitation service research and demonstration projects in the area of social services to the poor as authorized under sections 1110 and 1115 of the Social Security Act, and Title IV-A as amended, pertaining to the AFDC program. Designs and develops domestic projects and provides relevant research assistance to the formulation of international projects authorized under the Special Foreign Currency Program in income maintenance. The research and demonstration projects are designed to carry out the overall agency mission of providing needed income maintenance to the AFDC population and improve the effectiveness and efficiency of the AFDC program.

Division of Social Services Research and Demonstration Program. Responsible for initiating, directing, and coordinating all social and rehabilitation service research and demonstration projects in the area of social services to the poor as authorized under sections 1110 and 1115 of the Social Security Act, as amended, and pertaining to social services.
Designs and develops domestic projects and provides relevant technical research assistance to the formulation of international projects which are related to the social service programs. The research and financing, organization, and delivery of demonstration programs are designed to carry out the overall agency mission of providing needed social services to low-income or otherwise eligible populations to help reduce dependency and promote human welfare through the provision of essential social services.

Dated: December 24, 1974.

JOHN OETZ, Assistant Secretary for Administration and Management.
[FR Doc.75-109 Filed 1-3-75; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
[Docket No. N 74-257]
NATIONAL MOBILE HOME ADVISORY COUNCIL

Nominations

Pursuant to the provisions of section 665, Title VI of Pub. L. 93-383, notice is hereby given that members of the public wishing to nominate persons for appointment to the National Mobile Home Advisory Council should submit such nominations in writing to David M. deWilde, Acting Assistant Secretary, Room 6100, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, on or before January 30, 1975.

Title VI of Pub. L. 93-383 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to establish Federal Construction and Safety Standards for Mobile Homes. The Act provides for the appointment by the Secretary of a National Mobile Home Advisory Council with the following composition: eight members selected from among consumer organizations, community organizations, and recognized consumer leaders; eight members from the mobile home industry and related groups including at least one representative of small business; and eight members selected from government agencies including Federal, State and local governments. The National Mobile Home Advisory Council will provide advice to the Secretary on initial standards, and on changes to or revocation of standards established pursuant to Title VI (Pub. L. 93-383). Compensation shall not exceed $100 per day (including travel time) while engaged in actual duties of the Advisory Council.

Nominations may be made for representative of consumer, industry and Governmental viewpoints.

Nominations should include the following information:

1. Name of Nominee
2. Home address and telephone number of Nominee
3. Business address and telephone number of Nominee
4. Sector (i.e., consumer, industry or Government) that Nominee represents
5. Occupation, business or profession of Nominee
6. Pertinent experience and/or background of Nominee that is believed to qualify the Nominee as an appropriate member of the Advisory Council
7. Name of group or person(s) making nomination if other than Nominee
8. The following additional data should be furnished for these nominated as official representatives of organized consumers, or industrial groups or associations:
   a. Name and address of organization
   b. Number of official members in organization
   c. Nominee's position in organization
   d. The name of the Government agency, its location and the Nominee's position or title should be provided for these nominated to represent Governmental agencies.

The nominees selected by the Secretary will be announced by publication in the Federal Register at a later date but prior to the first meeting and annually thereafter.


DAVID M. deWilde, Acting Assistant Secretary-Commissioner.
[FR Doc.75-228 Filed 1-3-75; 8:45 am]

DEPARTMENT OF TRANSPORTATION
Coast Guard

COAST GUARD ACADEMY ADVISORY COMMITTEE

Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, that the United States Coast Guard Academy Advisory Committee has been renewed by the Secretary of Transportation for a two year period beginning January 16, 1975 through January 16, 1977.

The Academy Advisory Committee was originally established in 1937. Its purpose is to advise the Coast Guard on matters relating to the courses of instruction given at the Academy and give advice and guidance for the improvement of the curriculum to maintain the Academy's academic standards and needs.

Interested persons may seek additional information by writing:
Capt. R. E. Schroeder, USCG
Executive Secretary
USCG Academy Advisory Committee
C/o Commandant (G-PTE/72)
U.S. Coast Guard
Washington, D.C. 20590
or by calling: 202-426-1381.

Dated: December 24, 1974.

C. W. Dunfee, Chief, Office of Personnel.
[FR Doc.75-241 Filed 1-3-75; 8:45 am]

HOUSTON-GALVESTON VESSEL TRAFFIC SYSTEM - Operating Manual

The Coast Guard is establishing a voluntary Vessel Traffic System in the Houston-Galveston area effective February 4, 1975.

The voluntary Vessel Traffic System is a vessel movement reporting system the Coast Guard is undertaking on a provisional basis for a period of procedural testing and evaluation. It will use a VHF-FM communication network manned continuously by personnel in the Coast Guard Vessel Traffic Center in Houston, Texas. The Center will process information received from vessels which provide voluntary reports and will disseminate information to other participating vessels operating in the vessel traffic system area. The goal of the system is to improve vessel transit safety by providing participating vessels advance information of other vessel movements occurring within the area of the vessel traffic system.

An Operating Manual, to provide the user with information necessary to participate in the system, is being prepared by the Commander, Eighth Coast Guard District.
NOTICES

Copies of this Operating Manual will be available at the following Coast Guard offices:

Commander (m)
Eighth Coast Guard District
Custachiecn Rum
New Orleans, La. 70110
U.S. Coast Guard
Houston-Galveston VTS
9040 Clinton Drive
Galena Park, Texas
U.S. Coast Guard
Captain of the Port
Coast Guard Base
Galveston, Texas
Commanding Officer
CMX
700 Wingate Street
Houston, Texas
Commanding Officer
CMX
Room 201
Customhouse
Galveston, Texas

Dated: December 26, 1974.

R. L. Price,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc.75-239 Filed 1-3-75; 8:45 am]

NATIONAL BOATING SAFETY ADVISORY COUNCIL

Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, that the National Boating Safety Advisory Council has been renewed by the Secretary of Transportation for a two year period beginning December 20, 1974 through December 20, 1976.

The National Boating Safety Advisory Council was established under section 33 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1482) to advise the Secretary on any police matters relating to recreational boating safety.

Interested persons may seek additional information by writing:

Capt. David E. Metz, UECG
Executive Director, National Boating Safety Advisory Council
131 7th Street, NW
Washington, D.C. 20590

or by calling: 202-426-4176.

Dated: December 26, 1974.

JOHN F. THOMPSON,
Rear Admiral, U.S. Coast Guard
Chief, Office of Boating Safety.

[FR Doc.75-239 Filed 1-3-75; 8:45 am]

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PUBLIC INFORMATION

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) and section 800.5(c) of the Advisory Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR 800) that on January 21, 1975, at 7:30 p.m., a public information meeting will be held at the Charleston Municipal Auditorium, 77 Calhoun Street, Charleston, South Carolina, so that representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens can receive information and express their views on a proposed undertaking of the Federal Highway Administration that will have an adverse effect upon properties that are included in or that may be eligible for inclusion in the National Register of Historic Places. The proposed undertaking is the construction of the James Island Expressway and Bridge extending easterly from the proposed Inner Belt Freeway on James Island, South Carolina, across the Ashley River via a fixed span bridge terminating at Calhoun Street in Charleston, South Carolina. The property included in the National Register is the Charleston Historic District, the property that may be eligible for inclusion in the National Register is the area north of the existing Charleston Historic District.

A summary of the agenda of the public information meeting follows:

I. Explanation of the procedures and purposes of the meeting by representatives of the Executive Director of the Advisory Council.

II. Explanation of the project by representatives of the Federal Highway Administration.

III. Statement by the South Carolina Historic Preservation Officer on the project.

IV. Statements from the public on the project.

Speakers will be permitted to present their views on the project and should limit their statements to approximately ten minutes. Statements should be limited to the undertaking, its effects on historic and cultural properties, and alternative courses of action. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting and for two weeks thereafter. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1323 K Street, NW, Washington, D.C. 20005. (202-354-3974)

Dated: January 2, 1975.

ROBERT R. GARVEY, Jr.

[FR Doc.75-422 Filed 1-3-75; 8:45 am]

ATOMIC ENERGY COMMISSION

HANFORD WASTE MANAGEMENT OPERATIONS

Public Hearings Concerning Draft Environmental Impact Statement and Further Extension of Comment Period

On Monday, September 30, 1974, the Atomic Energy Commission (AEC) announced in the Federal Register (39 FR 35190) the issuance of its draft environmental impact statement (DES), WASH-1538, entitled "Waste Management Operations, Hanford Reservation, Richland, Washington." That notice requested that comments concerning the DES from interested individuals, organizations and governmental agencies be sent to the AEC by November 26, 1974, and announced that a public hearing would be conducted in connection with the DES in Richland, Washington, on December 10, 1974. A subsequent Federal Register notice (39 FR 42 411, Thursday, December 5, 1974) postponed the hearing in order to provide additional time for public review of the DES and for appointment of a hearing panel.

Additional comments on the draft statement are requested from interested individuals, organizations and governmental agencies and the period for receipt of comments is hereby extended until January 23, 1975. Comments received by close of business on that date will receive careful consideration in the preparation of the final environmental impact statement. Comments should be sent to the Assistant General Manager for Biomedical and Environmental Research and Safety Programs, U.S. Atomic Energy Commission, Washington, D.C. 20548 or submitted at the hearings mentioned hereafter. Single copies of the draft statement may be obtained from the same address.

As comments are received, copies will be available for inspection at the Public Document Room, 1717 H Street, NW, Washington, D.C.; the Richland Operations Office, Federal Building, Richland, Washington; the Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho; the Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina; and the San Francisco Operations Office, 1333 Broadway, Oakland, California. Copies of the draft statement are also available for inspection in Richland, Washington.

Additionally, due to numerous requests from interested persons and organizations, a second hearing will be conducted, beginning at 9 a.m. on January 21, 1975, at the Hanford House, 802 George Washington Way, Richland, Washington.

The purpose of the hearings is to afford further opportunity for public comment regarding the draft statement and for the furnishing of any additional information which will assist the Agency in
NOTICES

1117

URANIUM HEXAFLUORIDE

Charges, Enriching Services, Specifications, and Packaging


AEC planning of uranium enrichment operations contemplates a two-step increase in the transaction tails assay from the present 0.20 weight percent U-235 to 0.25 weight percent U-235 on July 1, 1976, and (2) another increase to 0.30 weight percent U-235 on July 1, 1981. The increased natural uranium enrichment capacity and the accompanying increases in prices resulting from these increases in transaction tails assay will enhance the enrichment customers from the AEC's enriched uranium reserve stockpile and, by the resulting increase in the market for natural uranium, will help encourage further exploration and development of additional uranium resources. The proposed revision of the Standard Table of Enriching Services to become effective on July 1, 1976 is based on a transaction tails assay of 0.275 weight percent U-235; the planned subsequent revision, to be effective July 1, 1981, is based on a transaction tails assay of 0.30 weight percent U-235. The Commission is seeking any comments on these proposed and planned changes in the Standard Table of Enriching Services from its enrichment service customers, the uranium producing industry and others.

In the future, with the establishment of adequate new domestic enrichment capacity, there would be an opportunity to reduce the presently planned 0.30 weight percent U-235 transaction tails assay to the steady-state condition. The Commission would be interested in receiving views from the affected industry and others on the appropriate ultimate transaction tails assay on which planning should be based; such views will be considered carefully by the AEC in developing its own future plans.

The Commission is also planning to consider the possibility of offering to the AEC Gaseous Diffusion Plant customers holding fixed-commitment contracts some degree of flexibility in selecting the transaction tails assay applicable to their enriching services transactions, after steady-state operation of the AEC enriching plants has reached the intended 0.30 weight percent U-235 tails assay. Under this approach, the toll enriching customer would be allowed, within defined limits, to use the speculative work specified in Appendix A of the toll enriching contract to produce more or less enriched uranium. The Commission desires comments from the affected industry on the desirability of this concept and suggestions as to how...
it might be implemented: e.g., the desired range of possible tails assays considered to be realistic. The Commission would also be interested in knowing the extent to which industry views on this concept would be affected by whether present AEC policies regarding return of tails and assay of such tails are continued in effect.

The proposed revision of the Standard Table of Enriching Services to become effective on July 1, 1976, is as follows. Table 1 of the notice is deleted and the following Table 1 is substituted in lieu thereof:

All interested persons who desire to submit written comments for consideration in connection with the proposed and planned revisions of the notice, as well as the other subjects discussed herein, should send them to the Secretary, U.S. Atomic Energy Commission, Washington, DC, 20545, on or before March 7, 1976. Unless suspended or rescinded within 60 days after the period provided for public comments as a consequence of any substantive comment received, the proposed revision will become effective on July 1, 1976. Public comments received after the aforementioned comment period will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

Dated at Germantown, Maryland this 31st day of December 1974.

GORDON M. GRANT, Assistant Secretary of the Commission.

### Table 1—Standard table of enriching services

<table>
<thead>
<tr>
<th>Assay (weight percent U-235)</th>
<th>Feed component</th>
<th>Separative work component (SW)</th>
<th>Assay (weight percent U-235)</th>
<th>Feed component</th>
<th>Separative work component (SW)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(normal kilograms uranium feed)</td>
<td>(U/kg uranium product)</td>
<td></td>
<td>(normal kilograms uranium feed)</td>
<td>(U/kg uranium product)</td>
</tr>
<tr>
<td>0.275</td>
<td>0</td>
<td>0</td>
<td>0.40</td>
<td>4.784</td>
<td>2.562</td>
</tr>
<tr>
<td>0.30</td>
<td>0.07</td>
<td>0.004</td>
<td>0.60</td>
<td>7.293</td>
<td>3.364</td>
</tr>
<tr>
<td>0.25</td>
<td>0.12</td>
<td>0.012</td>
<td>0.80</td>
<td>9.911</td>
<td>4.835</td>
</tr>
<tr>
<td>0.20</td>
<td>0.17</td>
<td>0.017</td>
<td>1.00</td>
<td>11.666</td>
<td>5.579</td>
</tr>
<tr>
<td>0.15</td>
<td>0.22</td>
<td>0.022</td>
<td>1.20</td>
<td>13.125</td>
<td>6.299</td>
</tr>
<tr>
<td>0.10</td>
<td>0.27</td>
<td>0.027</td>
<td>1.40</td>
<td>14.583</td>
<td>7.094</td>
</tr>
<tr>
<td>0.05</td>
<td>0.323</td>
<td>0.032</td>
<td>1.60</td>
<td>16.039</td>
<td>7.892</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1.80</td>
<td>17.502</td>
<td>8.692</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2.00</td>
<td>19.026</td>
<td>9.492</td>
</tr>
</tbody>
</table>

All values are computed on the bases of taking normal uranium, having a assay of 0.711 weight percent U-235, to a zero separative work component, and on the bases of a tails (waive) assay of 0.272 weight percent U-235.

The feed and separative work components for assays not shown will be determined by linear interpolation between the nearest assays listed above.

Endnotes concerning the availability, feed component and separative work components of material of specified assays above 0.272 weight percent U-235 should be addressed to the Chief, Toll Enriching Branch, USAEC, Oak Ridge Operations Office, Post Office Box 34, Oak Ridge, Tennessee 37830.

---

**CIVIL AERONAUTICS BOARD**

[Docket No. 26943]

AEROAMERICA, INC., GAC CORPORATION, AND MODERN AIR TRANSPORT, INC.

Acquisition Agreement: Postponement of Hearing

Notice is given that the hearing now scheduled for January 7, 1975 (39 FR 42940, December 9, 1974), is hereby postponed to January 8, 1975 at 10 a.m. (local time) in Room 911, Universal Building, 1825 Connecticut Avenue NW, Washington, D.C. before the undersigned.


**FR Doc.75-768 Filed 1-7-75;8:45 am**

**ALLEGHENY AIRLINES, INC., ET AL.**

Order Authorizing Discussions Regarding Pricing Policies and Practices of Fuel Suppliers

Correction

In FR Doc. 74-30366 appearing in the issue of Monday, December 30, 1974, make the following changes:

1. The docket number should read as set forth above.
2. In the second line of the second column on page 45065 the number reading "309" should read "3099".

[Docket No. 27255, 27353, 27409; Order 74-13-198]

**AMERICAN AIRLINES, INC., ET AL.**

Order of Suspension Regarding Domestic Air Freight Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 31st day of December, 1974.

By tariff revisions variously posted and issued and marked to become effective January 1, 15, or 16, 1975, American Airlines, Inc. (American), Eastern Air Lines, Inc. (Eastern), Trans World Airlines, Inc. (TWA), and United Air Lines, Inc. (United) propose, if allowed, to revise domestic air freight rates as follows:

American:
1. Increase bulk and container general and specific commodity rates, as well as bulk minimum charges between 5 and 12 percent, varying by direction and distance; and
2. Cancel the current exception rating on human remains and establish specific commodity rates reflecting lower levels.

Eastern:
1. Increase minimum charges per shipment between $1.00 and $3.00, up to $15.00;
2. Increase bulk and container general and specific commodity rates by between 5 and 15 percent; and
3. Cancel a number of specific commodity rates.

TWA:
1. Increase minimum charges per shipment by $1.00, up to $16.00;
2. Increase all general commodity bulk and container minimum charges between 5 and 12 percent;
3. Increase specific commodity and freight container rates by 10 percent; and
4. Increase small package charges by $5.00 per shipment.

[FR Doc.74-30366 Filed 1-7-75;8:45 am]

**FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975**
1. Increase minimum charges per shipment by $1.00, up to $16.00 ($17.00).
2. Increase general commodity bulk and container rates between 8 and 15 percent, varying by market, direction, and length of haul;
3. Increase specific commodity rates by 10 percent; and
4. Increase small package charges by $3.00 per shipment.

Complaints requesting suspension pending investigation have been directed specifically against United's filing by the Hawaii Air Cargo Shipper Association (HACSA) and The National Small Shippers Traffic Conference (NSSTC). HACSA's complaint is directed specifically against United's increases from and to Hawaii. HACSA alleges, inter alia, that the proposed 15 percent increase in the Hawaiian market is far larger than proposed in any other market, and consequently, discriminates against shippers to and from Hawaii; that general freight rate increases already permitted during 1974 have already accounted for substantial increases for Hawaiian shippers; that large volume shippers, forwarders, and shippers' associations would bear almost the total cost of the proposed increases applicable to higher weight-break bulk rates and container rates; that no reason is suggested why Hawaii is treated differently from other markets; that if rapid cost escalations, especially fuel, require a rate increase, such an increase should be borne equally by all shippers; that the proposal will divert air freight to surface; and that United's support is based upon all-cargo operations which the Board has said is not representative of current conditions in the industry.

NSSTC's complaint alleges that United's support based on all-cargo operations is not sufficient, since few commodities receive all-cargo service and most are in combination aircraft. In support of the proposed increases, American, TWA, and United all essentially assert that the proposals are consistent with rates and charges approved for The Flying Tiger Line Inc. (Tiger) in Order 74-411-63 and reflect increases in industry-average costs of approximately 17.9 percent over those forecast in the Domestic Air Freight Rate Investigation (DAFRI). The carriers' justifications are outlined below:

American:
1. Its own costs were 28 cents per revenue ton-mile, or 19.4 percent over that forecast in DAFRI, and
2. It estimates that this proposal will result in $5 million in revenues, or an 8.2 percent increase in total domestic revenue.

Eastern:
1. The general increases proposed herein are within the cost of providing the service. The rates in medium and long-haul markets reflect the cost levels that have been recognized by the Board in its recent evaluation of freight rate tariff proposals, with a 5 percent escalation factor added to compensate for upward and expense adjustments; and
2. Eastern will increase its proposed rates, which will merely reduce losses on freight operations, but not achieve a break-even situation; and
3. As a matter of proposal, Eastern estimates that it will receive $4.2 million additional revenue annually.

TWA:
1. The proposed increases are necessary as interim relief from continued freighter losses and unit cost increases; and
2. The proposal is expected to produce approximately $5.7 million in additional freight revenues annually, and the increase is estimated to reduce the all-cargo operating loss from $14.3 million to $11.0 million.

United:
1. United's cost formula is based upon the Bureau's underlying cost criteria with an adjustment for fuel and non-fuel related capacity cost increases; and
2. United complies with Order 74-7-120, which specified that BE's criteria would be applied by the Board in evaluating interim rate increases pending the issuance of a decision in DAFRI.

3. The carrier's all-cargo operations have not produced an annual return on investment since 1968.
4. While during the first and second quarters of 1974, load factors were up, increased utilization has not and will not alleviate the basic problem of below-cost rates; and
5. For the 12 months ended June 1974, United had an operating loss of $7.1 million in all-cargo operations, and it estimates that this filing will increase freight revenues by $11.6 million, or 7.1 percent.

HACSA's complaint is directed specifically against United's increases from and to Hawaii. HACSA alleges, inter alia, that the proposed 15 percent increase in the Hawaiian market is far larger than proposed in any other market, and consequently, discriminates against shippers to and from Hawaii; that general freight rate increases already permitted during 1974 have already accounted for substantial increases for Hawaiian shippers; that large volume shippers, forwarders, and shippers' associations would bear almost the total cost of the proposed increases applicable to higher weight-break bulk rates and container rates; that no reason is suggested why Hawaii is treated differently from other markets; that if rapid cost escalations, especially fuel, require a rate increase, such an increase should be borne equally by all shippers; that the proposal will divert air freight to surface; and that United's support is based upon all-cargo operations which the Board has said is not representative of current conditions in the industry.

NSSTC's complaint alleges that United's support based on all-cargo operations is not sufficient, since few commodities receive all-cargo service and most are in combination aircraft. In support of the proposed increases, American, TWA, and United all essentially assert that the proposals are consistent with rates and charges approved for The Flying Tiger Line Inc. (Tiger) in Order 74-411-63 and reflect increases in industry-average costs of approximately 17.9 percent over those forecast in the Domestic Air Freight Rate Investigation (DAFRI). The carriers' justifications are outlined below:

American:
1. Its own costs were 28 cents per revenue ton-mile, or 19.4 percent over that forecast in DAFRI, and
2. It estimates that this proposal will result in $5 million in revenues, or an 8.2 percent increase in total domestic revenue.

Eastern:
1. The general increases proposed herein are within the cost of providing the service. The rates in medium and long-haul markets reflect the cost levels that have been recognized by the Board in its recent evaluation of freight rate tariff proposals, with a 5 percent escalation factor added to compensate for upward and expense adjustments; and
2. Eastern will increase its proposed rates, which will merely reduce losses on freight operations, but not achieve a break-even situation; and
3. As a matter of proposal, Eastern estimates that it will receive $4.2 million additional revenue annually.

TWA:
1. The proposed increases are necessary as interim relief from continued freighter losses and unit cost increases; and
2. The proposal is expected to produce approximately $5.7 million in additional freight revenues annually, and the increase is estimated to reduce the all-cargo operating loss from $14.3 million to $11.0 million.

United:
1. United's cost formula is based upon the Bureau's underlying cost criteria with an adjustment for fuel and non-fuel related capacity cost increases; and
2. United complies with Order 74-7-120, which specified that BE's criteria would be applied by the Board in evaluating interim rate increases pending the issuance of a decision in DAFRI.

3. The carrier's all-cargo operations have not produced an annual return on investment since 1968.
4. While during the first and second quarters of 1974, load factors were up, increased utilization has not and will not alleviate the basic problem of below-cost rates; and
5. For the 12 months ended June 1974, United had an operating loss of $7.1 million in all-cargo operations, and it estimates that this filing will increase freight revenues by $11.6 million, or 7.1 percent.

*For a haul of 2,600 miles, approximately the distance between Hawaii and the West Coast, the average industry costs for all types of aircraft is only 3 percent below the all-cargo costs. (Note: The average costs for both types of aircraft are estimated to be $3.00 per ton mile, or $3.20 per ton mile of costs by the percentage of tons explained by each type.)
FEDERAL REGISTER.

[Page 8238, 27247; Order 74-12-126]

DELTA AIR LINES, INC.

Priority Reserved Air Freight Rates

Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 31st day of December 1974.

By tariff revisions bearing a posting date of December 2, 1974, and marked to become effective December 16, 1974, Delta Air Lines, Inc. (Delta) proposes to establish premium rates for a new on-line "air express service." The proposed rates amount to 150 percent of the applicable general or specific commodity rate or minimum charge.

Under the proposal, air express shipments will be given boarding priority over all other shipments of air freight, except those transported under Delta's expedited small-package service. The air express shipments must be tendered to the carrier at the air freight terminal at the point of origin and must be at least 90 minutes prior to the scheduled departure of the flight on which the shipper requests that the shipment be transported. At the time of tender of the shipment, the shipper shall notify the carrier as to the flight on which he requests reserved space for transportation of the shipment from the point of origin. The carrier shall record on the airbill at the time of acceptance of the shipment, the flight and date on which reserved space is confirmed by the carrier for transportation of the shipment from point of origin.

If the shipment is not delivered on the specified flight on which the reservation is made, the carrier will refund to the shipper the difference between the proposed rates and charges and the applicable rates and charges for standard service, unless such misdelivery is caused by weather conditions, mechanical delay of the aircraft, or other occurrences not under the direct control of Delta.

The proposal bears an expiring date of May 31, 1975.

A complaint requesting suspension and investigation of Delta's proposed rates has been filed by The National Small Shippers Traffic Conference, a national association of shippers of air freight, Delta has presented evidence at the hearing. Both the Civil Aeronautics Board (CAB) and the National Small Shippers Traffic Conference (NSSTC) have received sworn financial and cost data. However, an examination of these cost data reveals serious deficiencies. For example, in comparing the relative traffic serviced cost of air express and air freight, Delta assumes a shutdown cost of 28.3 million additional annual revenue, the additional costs involved in taking over the functions now handled by REA will more than offset the additional revenues, and the new service will be operated at a loss initially. Delta anticipates, however, that this problem will be resolved as a result of the current Domestic Air Freight Regulatory Enforcement and Fair Rates (DAFRED), and that after the decision in that case, air express can be provided on a profitable basis.

Upon consideration of all relevant factors, the Board finds that the tariff proposal may be unjust, unreasonable, unduly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the tariff should be suspended pending investigation.

In support of its contention that the costs of its proposed air express service are 85 percent greater than for air freight, Delta has presented capacity and non-capacity cost data. An examination of these cost data reveals serious deficiencies. For example, in computing the relative traffic serviced cost of air express and air freight, Delta assumes a shutdown cost of 28.3 million additional annual revenue, the additional costs involved in taking over the functions now handled by REA will more than offset the additional revenues, and the new service will be operated at a loss initially. Delta anticipates, however, that this problem will be resolved as a result of the current Domestic Air Freight Regulatory Enforcement and Fair Rates (DAFRED), and that after the decision in that case, air express can be provided on a profitable basis.

We do not believe, however, that comparing the costs per pound of a 28.3-pound air freight shipment with a 28.3-pound air express shipment represents a valid comparison. As indicated in Delta's comparison, certain unit handling costs are the same for both sizes of shipments per pound. Certain costs are the same per piece, and certain costs are the same per shipment. But since the smaller shipment has fewer pounds the total handling costs as computed by Delta on a per-pound basis will be placed in favor of the larger size shipment.
The Board notes Delta's statement that a number of its proposed rates are below the rates in effect for REA Express, Inc. We cannot find that this comparison supports the premium proposed by Delta. The rate structure upon which Delta's premium rates are based is significantly different from the REA rate structure, reflecting a different operation, and a number of Delta's proposed rates are above REA rates. As indicated, the operations are different, with the REA service involving inter-line carriage and ground services, which are generally performed by the indirect carrier.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. An investigation is instituted to determine whether the rates, charges, and provisions for account of the carrier "DL" in Rule No. 72 on 5th, 6th, and 7th Revised Pages 38–E of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 169, and rules, regulations, or practices affecting such rates, charges, and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to determine and prescribe the lawful charges and provisions, and rules, regulations, or practices affecting such charges and provisions;

2. Pending hearing and decision by the Board, the rates, charges, and provisions for account of the carrier "DL" in Rule No. 72 on 5th, 6th, and 7th Revised Pages 38–E of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 169, are suspended and their use deferred to and including April 15, 1975, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension, except by order or special permission of the Board;

3. The investigation instituted herein is hereby consolidated into the Priority Reserved Air Freight Rates Investigation, Docket 26838;

4. Except to the extent granted herein, the complaint of the National Small Shipments Traffic Conference, Inc. In Docket 27247 is hereby dismissed; and

5. Copies of this order shall be served upon Delta Air Lines, Inc. which is hereby made a party to Docket 26898.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, Secretary.

[FED. REG. 7-39 Pldg. 1-3-75: 8:45 am]

[Docket 27330; Order 74-12-111]

DOMESTIC COMMON FARES

Order of Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of December, 1974.

Phase 9 of the Domestic Passenger Fare Investigation (Docket 21856–9) concerns the relationships among normal fares in the various markets within the 48 contiguous states. While the principal controverses in that case were the proper formula for computing common-fare and the relationship between coach fares and fares for other classes of service, there was a number of other questions at issue, including what consideration should be given to common-faring.

By Order 74–3–82, the Board issued its opinion in Phase 9, in which it found that fares should generally be based on a formula applied to the carrier's shortest authorized mileage for each pair of points. Certain exceptions were allowed, however, which can result in the common--faring of two or more points. First, in cases where two or more points are within a single metropolitan area (e.g., San Francisco and Oakland), the Board's order provided that the fare to those points from another point should be based on the geographic mid-point between the airports. Secondly, the Board's order permitted, subject to complaint, common-faring in instances where a carrier provided service to a point by way of an intermediate point which is more distant from the origin; such common fares are to be based on the mileage to the common-fared point. Finally, the Board determined that in the case of other common-fared points, the fare to such points should be based on the traffic-weighted average mileage to/from the common-fared points. This latter category of common-faring is typified by the carriers' practice of common-faring points along the West Coast with respect to various points in the Northwest quadrant of the United States. The Board found that the permissibility of such common-faring should be considered on an ad hoc basis, and the Board did not pass upon the lawfulness of existing common-faring practices. In our Opinion and Order on Reconsideration in Phase 9, however, we have determined, for the reasons given therein, that a separate investigation of the latter type of common-faring is necessary. This order implements that determination.

The parties in this investigation direct their attention to the traditional common-faring practices, i.e., to existing common-fares other than those permitted pursuant to footnote 94 and the first paragraph of paragraph 2 in our Phase 9 Opinion and Order on Reconsideration. In addition, we have determined to include in the proper method of computing common-fares since the lawfulness of common-faring particular points may be affected by the basis on which those common-fares are computed.

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly Sections 204(a), 403, 404, and 1002 thereof;

It is ordered that: 1. An investigation be and it is hereby instituted to determine whether the fares charged for air transportation within the 48 contiguous states and the District of Columbia to/from common-fared points (other than common-fares permissible pursuant to paragraph 2 of Order 74–12–109), and rules, regulations or practices affecting such fares and provisions, are or will be, or unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. The Investigation ordered herein be and it is hereby assigned before an Administrative Law Judge of the Board, to be held at such time and place hereafter to be designated; and


This order will be published in the Federal Register.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, Secretary.

[FED. REG. 7-39 Pldg. 1-3-75: 8:45 am]

[Docket 26568; Order 74–12–124]

HUGHES AIR CORP. ET AL

Order Regarding Liability Rules of Domestic-Certificated Carriers Pursuant to the Carriage of Live Animals as Baggage

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 31st day of December, 1974.

By order 74–4–20, dated April 4, 1974, the Board tentatively found that certain tariff provisions 1 of various certified

1 Order 74–12–109. That order is being issued simultaneously herewith.

1 These tariff provisions are listed in Appendix A to Order 74–4–20.
NOTICES

air carriers, which purport to exclude carriers from liability for their own negligence in the carriage of live animals as baggage, were held under the Board's decision in Docket 21474, and were therefore unlawful. The Board further tentatively found that hearing was not required, as all of the issues relevant to a determination of the lawfulness of the liability rules in question were fully and thoroughly litigated in Docket 21474, and that all air carriers had been parties to that investigation. The Board therefore directed the air carriers and all interested parties to show cause why the Board should not make final its tentative findings and conclusions, and upon such order the carriers to cancel the tariffs in question. Responses were directed to be filed within twenty days following service of the order.

The objections of Delta to the Order to Show Cause have been received from Delta Air Lines, Inc. (Delta), North Central Airlines, Inc. (North Central), Reeve Aleutian Airways, Inc. (Reeve), and United Air Lines, Inc. (United).

Delta does not object to the Board's findings insofar as they apply to those portions of the tariff rules which operate to relieve the carrier from liability for its own negligence. Delta contends, however, that the rules in question contain matters other than exemption from liability, and that the Board may unreasonably apply its findings of unlawfulness to those elements as well.

In a similar tone, North Central states that it is filing its petition solely to obtain clarification of the intended reach of the Board's Order to Show Cause. North Central requests that the Board make it clear that only those portions of the rules providing for carrier exclusion from liability are unlawful, and that those parts which pertain to other matters may remain in effect. North Central specifically requests that the Board make it clear that the carriers may refile their rules if “purged of the offensive language.”

United objects to the tentative finding that Rule 345(D) (4) is unlawful. United contends that this rule does not exclude the carrier from any liability for its own negligence, but merely serves to impose upon the carrier the obligation to comply with all applicable government regulations and restrictions.

Reeve objects to the Board's tentative finding that its liability rules for live animals moving as baggage are inconsistent with the law. First, Reeve points out that it was not a party to Docket 21474, and that the Board's findings in that case were not based on a record containing evidence as to the application of the liability rules to its operations. Second, Reeve claims that the "unique nature" of its operations, Reeve's liability rule for live animals moving as baggage is not unlawful. Reeve points out that the severe weather conditions, and the fact that there are no veterinary facilities anywhere in the Aleutians, makes them particularly vulnerable to injury and death claims.

The objections of Delta and North Central raise no material issues of fact, and are merely a request that the Board clarify an otherwise ambiguous provision in the rules. Our Order to Show Cause clearly pointed out that the tariff provisions in question are unlawful to the extent they exculpate carriers from liability for their own negligence. We recognize that these tariff rules contain additional matter, and we do not comment on the lawfulness of such provisions at this time. Of course, the carriers remain free to amend or refile their rules, so long as the provisions are consistent with this order.

The Board does not agree with United's contention that rule 345(D) (4) does not exculpate carriers from liability for their own negligence. We have no problem with the first sentence of this rule, which plainly upon the pet owner the burden of complying with the necessary governmental regulations, such as the obtaining of a health certificate. However, under the terms of the second sentence, the carrier could be liable if the pet were refused entrance into any country, state, or territory; even if such refusal is attributable to the negligence of the carrier. This second provision is far too broad, and instances might arise whereby it could operate to absolve the carrier from liability for negligence. For example, the pet owner may have secured all proper governmental permits, but the carrier's negligence causes these permits to be misplaced. In addition, this rule might be interpreted to allow the carrier to act with impunity with regard to the welfare of the animal in the event passage of the animal into another state or country is refused. Further, we note that even if United's interpretation of the rule is correct, i.e., it does not operate to absolve the carrier from liability for its own negligence, our action has not prejudiced United, but merely serves to clarify the Board's finding of unlawful provision of the tariff. Under these circumstances, United has not raised a material issue of fact which would preclude finalization of the Order to Show Cause.

Reeve isauthorized to file in this proceeding that it was not a party to Docket 21474, it has presented no material reason why the finding in that case should not be made applicable to its liability rule. The Board's decision that a carrier rule exculpating itself from liability for its own negligence is unlawful on its face is consistent with long established legal principles, and Reeve has presented no reason why the Board should depart from these principles. Reeve's argument that the severe weather conditions and lack of veterinary facilities makes it particularly vulnerable to injury or death claims is not relevant to our finding. The order to show cause does not make the carriers absolutely liable for loss, but merely provides that they shall be liable for the consequences of their own negligence. In the case of a less altered by severe weather conditions, we do not comment from proving that it was not negligent and therefore should not be liable. Reeve has presented no material issue of fact preventing us from finalizing our tentative finding that its liability rule, to the extent it absolves Reeve from liability for negligence, is unlawful.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, and 404 thereof, It is ordered, That:


2. The carrier parties named in ordering paragraph 1 above, upon not less than thirty days written notice to the Board, may file objections to this order within thirty days from the date hereof.
than 30 days notice to the Board and to the general public, shall publish, post, and file tariffs to be effective within 45 days after service of this order, canceling all tariffs inconsistent with this order: Provided, however, That, instead of canceling said tariffs, the carriers may, within the time provided, publish, post, and file tariffs modifying their tariffs to conform with the decision herein; and

3. Copies of this order will be served upon the carriers listed in ordering paragraph 1 hereof.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board.

[Seal]

Edwin Z. Holland, Secretary.

[F.R. Doc.75-301 Filed 1-3-75;8:45 am]

[Docket 24934 Agreement C.A.B. 24818
Agreement C.A.B. 24821; Order 74-12-91]

INTERNATIONAL AIR TRANSPORT ASSOCIATION
North Central Pacific and Intra-Pacific Air Fares
Issued under delegated authority December 23, 1974.

Agreements have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreements, proposed to be effective April 1, 1976 through March 31, 1976 would establish fares over the North/Central Pacific and within the Pacific.

The agreements would increase all fares for U.S. originating travel over the North/Central Pacific and within the Pacific by eight percent; eliminate stopover restrictions on various promotional fares not otherwise restricted. Free stopovers in connection with individual excursion fares, affinity group fares, and group inclusive tour fares would be limited to a total of four, with additional stopovers available at a charge of $15 each.

The purpose of this order is to establish dates for the submission of carrier justifications in support of the subject agreements, and comments from other interested persons. The carriers' justifications should include historical data, as reported to the Board in Form 41 reports by functional account, for total Pacific services for the year ended September 30, 1974, adjusted to exclude charter and cargo operations, so as to establish the present economic status of passenger services in the areas covered by the subject agreements. The carriers

will also be expected to include a forecast for the year ending March 31, 1978, both including and excluding the increased fares, for which they seek approval. Although Northwest Air Lines is not a party to the IATA agreement, we will nevertheless expect it to provide data comparable to that requested from the U.S. IATA members.

In addition to the above information, we request that the North/Central Pacific carriers also address the question of fare structures on this route; including proposed continuation of a number of promotional fares at discounts in excess of 50 percent, the relatively high yields from Alaska-Pacific fares, and the rationale for the cancellation of the individual inclusive tour fares.

Accordingly, it is ordered that, (1) All United States air carrier members of the International Air Transport Association shall file within twenty days after the date of service of this order, full documentation and economic justification (as described above) in support of the subject agreement;

2. Northwest Airlines, Inc. shall file within twenty days after the date of service of this order, data similar to that required of the IATA carriers;

3. Comments and/or objections from interested persons shall be submitted within thirty days after the date of service of this order; and

4. Tariffs implementing the subject agreements shall not be filed in advance of Board action on the subject agreements.

This order will be published in the Federal Register.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Economics.

[Seal]

Edwin Z. Holland, Secretary.

[F.R. Doc.75-3-76 Filed 1-3-75;8:45 am]

[Docket 24934; Agreement C.A.B. 24832, 24833, 24835, 24843, 24846 (Agreement B-1)]

INTERNATIONAL AIR TRANSPORT ASSOCIATION
Order
Issued under delegated authority December 26, 1974.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreements, adopted at the 1964 San Diego Conference and published hereunder, 24850 would have the effect of waiving the existing excursion fare between Los Angeles and Santiago.

We are approving Agreements C.A.B. 24832 and 24854 as they would directly apply in air transportation as defined by the Act. They are essentially clarifying or technical in nature and are not found to be adverse to the public interest or in violation of the Act. We will disclaim jurisdiction on Agreement C.A.B. 24853 as it does not affect air transportation within the meaning of the Act.

Accordingly, it is ordered that: 1. Agreements C.A.B. 24832 and 24854 be and hereby are approved; and

2. Jurisdiction is disclaimed with respect to Agreement C.A.B. 24853.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 355.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be placed in the Federal Register.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Economics.

[Seal]

Edwin Z. Holland, Secretary.

[F.R. Doc.75-33 Filed 1-3-75;8:45 am]

[Docket 24924 Agreement C.A.B. 24834 R-1 through R-4; Order 74-12-101]

INTERNATIONAL AIR TRANSPORT ASSOCIATION
Passenger Fares
Issued under delegated authority December 29, 1974.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted at the 1964 San Diego Conference Passenger Traffic Conference, has been assigned the above C.A.B. agreement number.

The agreement will revalidate by means of standard resolution two transpacific construction rules governing round or circle trip journeys and permitting adjustment of transpacific fares and practices in response to changes in fares and/or practices within other conference areas in order to maintain pre-existing historical relationships or prevent undercutting, as well as a resolution governing individual fares for ship's crews. Additionally, the agreement

1. The resolution governing individual fares for ship's crews was not to apply in air transportation.
NOTICES

Adopts two new resolutions: (1) Enables the carriers to meet new, unopened Narita airport in Japan, and (2) governing construction of fares around the Pacific, including a Japanese transit point. The agreement would preclude absorption of certain en route expenses for passengers traveling on a transpacific inclusive tour based on a special fare.

We will approve the revalidating resolution, subject to any applicable conditions previously imposed by the Board.

<table>
<thead>
<tr>
<th>Agreement CAB</th>
<th>IATA NO.</th>
<th>Title</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>24834</td>
<td>R-1</td>
<td>Standard Revalidation Resolution</td>
<td>30</td>
</tr>
<tr>
<td>24834</td>
<td>R-2</td>
<td>Fares Adjustment — Opening of Narita</td>
<td>30</td>
</tr>
<tr>
<td>24834</td>
<td>R-3</td>
<td>Construction Rules for FTA (now)</td>
<td>30</td>
</tr>
<tr>
<td>24834</td>
<td>R-4</td>
<td>Passenger Expenses on Route (amending)</td>
<td>30</td>
</tr>
</tbody>
</table>

Accordingly, it is ordered that: Those portions of Agreement CAB 24834, R-1 through R-4 specified in the finding paragraph above be and hereby are approved subject to any applicable conditions previously imposed by the Board.

Persons entitled to file such petitions within ten days after the date of service of this order.

This order shall be effective and become the act of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the Federal Register.

By James L. Deegan, Chief, Passenger and Cargo Rates Division, Bureau of Economics.

[SMM] Edwin Z. Holland, Secretary.

[Docket 26940; Agreement CAB 24805 R-1 and R-2; Order 74-12-105]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares and Currency Matters

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted at the 1974 San Diego Composite Passenger Traffic Conference, has been assigned the above C.A.B. agreement number.

In general, the agreement would validate by means of standard revalidation resolutions numerous resolutions governing passenger and currency matters among and within the various conference areas. Additionally, there are a number of technical, clarifying or editorial changes to and revalidations of resolutions governing conference procedures, currency conversion and adjustment and filing requirements. More specifically, the agreement adds or deletes numerous city-pairs to that part of the IATA Mileage Manual listing non-IATA sectors; it adds the definition of European territories/jurisdictional relationships; public new rates of exchange for the Argentinean peso for purposes of conversion of local sector and/or non-IATA fares into basic currency, as well as new rates for the Venezuelan bolivar and amended rates for currencies tied to the Australian dollar reflecting the increased value of those currencies against the U.S. dollar; and adds a new rate governing conversion of U.S. dollars into Thai baht for dollar sales in Thailand. Further, the agreement adds numerous examples of currency conversion procedures set forth in Resolution 021L to reflect current currency surcharge percentages; establishes new procedures governing application of surcharges on fares determined as a percentage of a normal full fare and conversion of minimum tour price/
HOLDING PRICES FOR GIT OR IIT FARES EXPRESSED IN BASIC CURRENCY INTO LOCAL SELLING PRICES AND AMENDS A RESOLUTION GOVERNING FILING OF GOVERNMENT REQUIREMENTS AND AUTHORIZATIONS TO SPECIFY THAT ANY SUCH NOTICES NOT REFILED AS OF FEBRUARY 1, 1972 SHALL BE DEEMED NOT EFFECTIVE.

WE WILL APPROVE, THOSE PORTIONS OF THE AGREEMENT WHICH ARE CONSISTENT WITH PAST BOARD ACTIONS SUBJECT TO ANY APPLICABLE CONDITIONS PREVIOUSLY IMPOSED BY THE BOARD. HOWEVER, WE WILL DISAPPROVE THAT PORTION OF THE AGREEMENT WHICH REFERS TO THE THREE PERCENT CURRENCY SURCHARGE ON U.S.-ORIGINATING TRAVEL OVER THE NORTH/CENTRAL PACIFIC AND WITHIN THE PACIFIC EXCEPT AMERICAN SAMOA.

ACCORDINGLY, IT IS ORDERED, THAT:

1. THOSE PORTIONS OF AGREEMENT CAB 24823 SET FORTH IN FINDING PARAGRAPH 1 ABOVE BE AND HEREBY ARE APPROVED; SUBJECT, WHERE APPLICABLE, TO CONDITIONS PREVIOUSLY IMPOSED BY THE BOARD; AND

2. THOSE PORTIONS OF AGREEMENT CAB 24823 NOT SET FORTH IN FINDING PARAGRAPH 1 ABOVE BE AND HEREBY ARE DISAPPROVED.

PERSONS ENTITLED TO PETITION THE BOARD FOR REVIEW OF THIS ORDER PUBLISH THE BOARD'S REGULATIONS, 14 CFR 385.50, MAY FILE SUCH PetITIONS WITHIN TEN DAYS AFTER THE DATE OF SERVICE OF THIS ORDER.

THIS ORDER SHALL BE EFFECTIVE AND BECOME THE ACTION OF THE CIVIL AERONAUTICS BOARD UPON EXPIRATION OF THE ABOVE PERIOD, UNLESS WITHIN SUCH PERIOD A PETITION FOR REVIEW IS FILED OR THE BOARD GIVES NOTICE THAT IT WILL REVIEW THIS ORDER ON ITS OWN MOTION.

ACCORDINGLY, IT IS ORDERED, THAT:

1. THOSE PORTIONS OF AGREEMENT CAB 24823 SET FORTH IN FINDING PARAGRAPH 1 ABOVE BE AND HEREBY ARE APPROVED; SUBJECT, WHERE APPLICABLE, TO CONDITIONS PREVIOUSLY IMPOSED BY THE BOARD; AND

2. THOSE PORTIONS OF AGREEMENT CAB 24823 NOT SET FORTH IN FINDING PARAGRAPH 1 ABOVE BE AND HEREBY ARE DISAPPROVED.

PERSONS ENTITLED TO PETITION THE BOARD FOR REVIEW OF THIS ORDER PUBLISH THE BOARD'S REGULATIONS, 14 CFR 385.50, MAY FILE SUCH PetITIONS WITHIN TEN DAYS AFTER THE DATE OF SERVICE OF THIS ORDER.

THIS ORDER SHALL BE EFFECTIVE AND BECOME THE ACTION OF THE CIVIL AERONAUTICS BOARD UPON EXPIRATION OF THE ABOVE PERIOD, UNLESS WITHIN SUCH PERIOD A PETITION FOR REVIEW IS FILED OR THE BOARD GIVES NOTICE THAT IT WILL REVIEW THIS ORDER ON ITS OWN MOTION.

ACCORDINGLY, IT IS ORDERED, THAT:

1. THOSE PORTIONS OF AGREEMENT CAB 24823 SET FORTH IN FINDING PARAGRAPH 1 ABOVE BE AND HEREBY ARE APPROVED; SUBJECT, WHERE APPLICABLE, TO CONDITIONS PREVIOUSLY IMPOSED BY THE BOARD; AND

2. THOSE PORTIONS OF AGREEMENT CAB 24823 NOT SET FORTH IN FINDING PARAGRAPH 1 ABOVE BE AND HEREBY ARE DISAPPROVED.

PERSONS ENTITLED TO PETITION THE BOARD FOR REVIEW OF THIS ORDER PUBLISH THE BOARD'S REGULATIONS, 14 CFR 385.50, MAY FILE SUCH PetITIONS WITHIN TEN DAYS AFTER THE DATE OF SERVICE OF THIS ORDER.

THIS ORDER SHALL BE EFFECTIVE AND BECOME THE ACTION OF THE CIVIL AERONAUTICS BOARD UPON EXPIRATION OF THE ABOVE PERIOD, UNLESS WITHIN SUCH PERIOD A PETITION FOR REVIEW IS FILED OR THE BOARD GIVES NOTICE THAT IT WILL REVIEW THIS ORDER ON ITS OWN MOTION.
Federal Aviation Act of 1958 (the Act) and Part 228 of the Board's Economic Regulations

The agreement names additional specific commodity rates, as set forth below, reflecting reductions from general cargo rates, and were adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated December 12, 1974.

The Board's Economic Regulations Part 228, Embargoes On Property (14 CFR Part 228) provide, inter alia, that "embargo" means the temporary refusal by an air carrier to accept for transportation property where because of lack of facilities, personnel, other priority requirements in other compelling reasons not within the control of the carrier, it is temporarily unable to perform all of the transportation services requested of it. The reason advanced in support of the embargo on certain specified shipments of live animals, clearly fails to meet any of the foregoing criteria and is inconsistent with the Board's Economic Regulations. The embargo is simply being used as a device to refuse shipments which are tendered in accordance with Ozark's presently effective tariff on file with this Board.

Further comment is warranted as to why the Board cannot find that it should accept an embargo of the type filed, Section 228.2(c) provides that the embargo regulations shall not be construed as relieving any carrier of any duty otherwise imposed upon it to furnish transportation service or to observe all requirements of the Federal Aviation Act, and the rules and regulations thereunder. Thus Ozark has not been relieved of its obligations to provide service under its certificate authority. We believe that Ozark's common carrier responsibilities require that it accept all live animal shipments in accordance with its tariff rules presently in effect and on file with this Board.

In this regard, we should like to point out that the Board has endeavored to help Ozark meet its common carrier responsibilities and has made subsidy payments to Ozark over the past five years totaling in excess of twenty-nine million dollars. In the most recent twelve-month period above (October 1, 1973 through September 30, 1974), the Board has made subsidy payments in excess of eight million dollars.

Upon consideration of the reason advanced in support of the embargo notice and relevant materials, the Board finds that the public interest requires that it reject Ozark's embargo notice as being inconsistent with the Federal Aviation Act of 1958 and the Board's Embargo Regulations.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly Sections 204(a), and 404 and the provisions of Part 228 of the Board's Economic Regulations (14 CFR 228), it is ordered that:

1. Embargo Notice No. 74-11 filed by Ozark Air Lines, Inc. is hereby rejected;

2. A copy of this order be served upon Ozark Air Lines, Inc.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND, Secretary.

[FR Doc.75-47 Filed 1-3-75;8:45 am]

TRANSATLANTIC, TRANSPACIFIC AND LATIN AMERICAN SERVICE MAIL RATES INVESTIGATION

Reassignment of Proceeding

This proceeding is hereby reassigned from Administrative Law Judge Harry S. Schneider to Administrative Law Judge Arthur S. Present. Future communications should be addressed to Judge Present.


[FR Doc.75-200 Filed 1-3-75;6:14 am]

THE COMMISSION ON FINE ARTS

MEETING

DECEMBER 27, 1974

The Commission on Fine Arts will meet on Wednesday, January 15, 1975, at 11:30 a.m. in the Commission offices at 708 Jackson Place NW, Washington, D.C. 20506 to discuss various public projects affecting the appearance of Washington, D.C. Inquiries regarding the agenda and requests to submit written or verbal statements should be addressed to Charles H. Atherton, Secretary, Commission on Fine Arts, at the above address.

CHARLES H. ATHERTON, Secretary.

[FR Doc.75-201 Filed 1-3-75;6:45 am]

ENVIRONMENTAL PROTECTION AGENCY

STAGE II VAPOR RECOVERY REGULATIONS

Deferral of Certain Incremental Dates

This order defers until further notice the January 1, 1975, date for submittal of control plans, and the March 1, 1976, date for signing contracts and the May 1, 1976, issue date.

[FR Doc.75-35 Filed 1-3-75;6:45 am]

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
NOTICES

STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY

Effluent Limitations and Guidelines and New Source Performance Standards

On October 8, 1974, the Agency published a notice of regulations establishing effluent limitations and guidelines and new source performance standards for the steam electric power generating point source category (39 FR 36165). Reference was made in the preamble to that notice of a technical report prepared by the Agency in connection with the development of these regulations.


The Agency anticipates that printed copies of the Development Document will be available in approximately four to six months. A copy will be sent to the Government Printing Office, Washington, D.C. 20402.


JAMES L. AGEE, Water Administrator.

[FR Doc. 76-277 Filed 3-7-76; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CPI MICROWAVE, INC. ET AL.

[Doet No. 21019]

Instituting Investigation & Hearing

1. We instituted the above-captioned proceeding pursuant to section 201(a) of the Communications Act by our memo- 

randum Opinion and Order adopted on October 29, 1974 and released on October 3, 1974, F.C.C. 74-1023 (Designa-

tion Order). At paragraph 8 of our Designation Order we set forth the following issue for investigation:

a. Whether it is necessary or desirable to the public interest to establish physical connections between CPI and MRC facilities on the one hand, and AT&T facilities on the other hand, to establish through routes and charges applicable thereto and the division of such charges, and to establish and provide facilities and regulations for operating such through routes, within the meaning of section 201(a) of the Act, and, if so, what connections, through routes, charges, divisions, facilities, and regulations should be established.

b. Whether such connections, through routes, charges, divisions, facilities, and regulations should be established.

In addition to naming Midwestem Radio Corporation (MRC), CPI Microwave, Inc. (CPI) and the various Bell companies (hereinafter referred to as AT&T) as parties we also named Western Telecommunications, Inc. (WTCI) at paragraph 13 of our Designation Order as a party.

The interconnected, contemplated connections of the program transmission facilities of CPI, MRC and WTCI with similar facilities of AT&T.

2. We now have before us numerous petitions for leave to intervene in this proceeding filed by other communica-
tions common carriers contending primarily that such intervention is appro-
priate because they provide, or intend to provide, program transmission services and therefore are, or will be, subject to the same alleged restrictions' that concern CPI, MRC, and WTCI. We also have before us AT&T's oppositions to all the various petitions. In opposing such petitions, AT&T stresses the speculative nature of many of the petitioners' interests and the adverse impact their intervention would have on the ongoing negotiations in the proceeding conducted under the aegis of the Chief, Common Carrier Bureau.

3. Our original intention in instituting this proceeding was to resolve the specific and immediate operational concerns that existed between CPI, MRC, and WTCI on the one hand, and AT&T on the other hand. With this purpose in mind the aforementioned negotiations were initiated. It now appears that a question exists as to whether AT&T's intermediate link and point of connection tariff provisions are lawful within the meaning of section 201(b) of the Communications Act. Further, it appears that questions exist regarding the relationship that obtains between the miscellaneous common carriers and AT&T on the one hand in the provision of program transmission services, and the relationship between the specialized and domestic satellite communications common carriers and AT&T on the other hand in the provision of such services.

4. Petitions were filed by RCA Global Communications, Inc. (RCA Globecom), The Western Union Telecommunications Company (West-

ern Union), United Video, Inc. (United) and Microwave Transmission Corporation (MTC). MTC's petition was improperly addressed to the Administrative Law Judge but we shall consider it upon our own motion herein.

5. See Section 304(2) (b) (a) of the AT&T Tariff F.C.C.O. No. 280.

6. By order adopted on November 7, 1974, and released on November 11, 1974, the Chief, Common Carrier Bureau postponed immediately the procedural dates in this Docket. We have also received replies to the oppositions of AT&T from RCA Globecom, Western Union, United, ABO, MTC, CBS, and NBO.

7. See supra, note 4.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
tariff or contract. The impact such relationships may have on the users of program transmission services is also a matter of concern. Since it is clear that a resolution of the issues arising in Docket No. 20199 will affect directly other communications common carriers providing, or intending to provide, program transmission services, it is appropriate that such other carriers participate in the resolution of such issues under consideration in Docket No. 20199. Likewise, the parties to major television negotiations, as significant users of program transmission services, should participate in the resolution of such issues. Therefore, we shall grant all petitions to intervene.

In regard to those specific and immediate operational concerns voiced by the original parties, and which prompted the institution of this proceeding, we encourage the parties in the further proceedings of this Docket to give primacy to the resolution of such immediate operational concerns. In order to encourage a resolution of matters that will directly affect the negotiations presently underway, we point out that any further postponement of such negotiations will result in an undesirable situation in view of the further postponement of such matters. Of course, we recognize the necessity of the resolution of such matters, as well as matters concerning the operations of the AT&T program transmission facilities on the one hand, and the division of such charges, and to establish and provide facilities and regulations for operating such through routes, within the meaning of Sections 201(a) or 202(a) of the Communications Act, if so, what connections, through routes, charges, facilities, and regulations should be established.

In regard to those specific and major telecommunication matters concerning all parties, thereby making unnecessary any further proceedings, we stress that it is appropriate that such other carriers participate in the resolution of such matters concerning all parties, thereby making unnecessary any further proceedings.

Order are modified to the extent indicated hereinafter.

1. It is further ordered, That, pursuant to the provisions of 3.2.7(B) of AT&T's Tariff F.C.C. No. 260, all carriers shall be established on the terms and conditions set forth herein on or before a date to be designated by the Chief, Common Carrier Bureau.

2. It is further ordered, That, pursuant to the provisions of Section 201(a) or 202(a) of the Communications Act, AT&T program transmission facilities on the one hand, and the division of such charges, and to establish and provide facilities and regulations for operating such through routes, within the meaning of Sections 201(a) or 202(a) of the Communications Act, if so, what connections, through routes, charges, facilities, and regulations should be established.

3. It is further ordered, That, without in anyway limiting the scope of the investigation, this revised proceeding shall include inquiry into the following:

   (1) Whether it is necessary or desirable in the public interest to establish physical connections between CPI, MRC, AT&T program transmission facilities on the one hand, and the division of such charges, and to establish and provide facilities and regulations for operating such through routes, within the meaning of Section 201(a) of the Act; and, if so, what connections, through routes, charges, facilities, and regulations should be established.

   (2) Whether section 3.2.7(B) of AT&T's Tariff F.C.C. No. 260, including any cancellations, amendments, or re-issues thereof, is unlawful within the meaning of sections 201(a) or 202(a) of the Communications Act.

4. In regard to those specific and major telecommunication matters concerning all parties, thereby making unnecessary any further proceedings, we stress that it is appropriate that such other carriers participate in the resolution of such matters concerning all parties, thereby making unnecessary any further proceedings.

The next scheduled meeting in Docket No. 20199 is on December 17, 1974, at the place designated by the Chief, Common Carrier Bureau regarding the matters set forth in paragraph 4 herein.

12. It is further ordered, That the parties herein shall file comments as set forth in paragraph 6 herein on or before a date to be designated by the Chief, Common Carrier Bureau.

13. It is further ordered, That the petition for clarification of AT&T is granted to the extent indicated herein and is otherwise denied.

14. It is further ordered, That interested persons wishing to intervene in this proceeding shall file with the Commission a notice of intent to participate within 15 days of the release date of this order.

15. It is further ordered, That the Secretary of the Commission shall send copies of this order by certified mail, return receipt requested to all parties specified in paragraphs 9 and 10 herein as well as CPI, MRC, AT&T and the Trial Staff of the Common Carrier Bureau.

Adopted: December 9, 1974.

Released: December 18, 1974.

FEDERAL COMMUNICATIONS COMMISSION.

VINCENT J. MULLIN,
Secretary.
delegated authority, has under consider-
ation, the above-captioned applications
which are mutually exclusive in that
they seek the same frequency in the
same community.
2. Except as indicated by the issues
specified below, the applicants are qual-
ified to construct and operate as pro-
posed. However, since the proposals are
mutually exclusive, they must be de-
gratized for hearing in a consolidated pro-
sceeding on the issues specified below.
3. Accordingly, it is ordered, That,
pursuant to section 309(c) of the Com-
munications Act of 1934, as amended,
the applications are designated for hear-
ing in a consolidated proceeding, at a
time and place to be specified in a sub-
sequent Order, upon the following is-
uess:
a. To determine which of the pro-
posals would, on a comparative basis,
better serve the public interest.
b. To determine, in light of the evi-
dence adduced in the application to the for-
gotten issue, which, if either, of the ap-
lications should be granted.
4. It is further ordered, That, to avail
themselves of the opportunity to be
heard, the applicants herein, pursuant to
section 1.231(c) of the Commission's
rules, in person or by attorney, shall,
within 20 days of the mailing of this
Order, file with the Commission in tripli-
cate, 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.
5. It is further ordered, That the ap-
licants herein shall, pursuant to section
311(a)(2) of the Communications Act of
1934, as amended, and § 1.594 of the
Commission's rules, give notice of
the hearing, either individually or, if
feasible, and consistent with the rules,
jointly, within the time and in the man-
ner prescribed in such rule, and shall
advise the Commission of the publication
of such notice as required by section 1.594(g) of the rules.
Adopted: December 20, 1974.
Released: December 27, 1974.
FEDERAL COMMUNICATIONS
Commission,
[Seal] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.
[FR Doc. 75-31 Filed 1-30-75; 8:45 am]
FEDERAL POWER COMMISSION
[Docket No. CP75-172]
MICHIGAN WISCONSIN PIPELINE CO.
Application
DECEMBER 23, 1974.
Take notice that on December 13, 1974, Michigan Wisconsin Pipeline Company (Applicant), one Woodward Avenue,
Detroit, Michigan 48226, filed in Docket
No. CP75-172 an application pursuant to
section 7(b) of the Natural Gas Act for
permission and approval to abandon a
natural gas exchange service with Ten-
nessee Gas Pipeline Company, a Division
of Tennesco Inc. (Tennessee), along with
attendant facilities, all as more fully
set forth in the application, which is on
file with the Commission and open to
public inspection.
Applicant proposes to abandon the ex-
change with Tennessee authorized by the
Commission order issued July 16, 1971, in Docket No. CP71-249 as an interim measure for permitting Ap-
plicant to make available, independently to its natural gas from Block 71, West Cameron area, off-
shore Louisiana.
Applicant states that it was authorized
in the July 16, 1971 order to construct
16.5 miles of 30-inch pipeline from a
point on the 20-inch West Cameron
Block 68 pipeline of Tennessee in Cameron Parish, Louisiana, to the
Block 71 Field as the first step of a pipe-
line project capable of transporting large
additional volumes of natural gas from
other offshore blocks onshore. Applicant
states that by order issued July 17, 1972, in Docket No. CP72-125 (Phase II) it was authorized to construct and
operate facilities to connect Applicant's
offshore reserves, including the Block 71
pipeline system, to the transmission system on a permanent basis. Applicant,
therefore, states that the need for the
interim exchange agreement with Ten-
nessee is obviated and that it terminated
the agreement, according to the agree-
ment's terms, on November 1, 1972.
In conjunction with the abandonment
of the exchange with Tennessee, Applicant proposes to abandon and remove
and salvage two 12-inch meter runs with
related and appurtenant facilities at Ap-
plicant's West Cameron check meter sta-
tion. These meter runs were used in
measuring the subject exchange gas.
Applicant further states that Tennes-
see has filed in Docket No. CP71-290 an application for authorization to abandon the exchange of gas with Applicant
and that termination of said exchange did
not adversely affect Tennessee, since the
termination was in accordance with the
terms of the exchange agreement.
Any person desiring to be heard or to
make any protest with reference to said
application should file on or before Jan-
uary 13, 1975, file with the Federal Power
Commission, Washington, D.C. 20426, a
petition to intervene in accordance with
the requirements of the Commission's
rules of practice and procedure (18 CFR
1.10). All protests filed with the Commiss-
ion will be considered by it in determin-
ing the appropriate action to be taken
but will not serve to make the protestants parties to the proceeding.
Any person wishing to become a party
to a proceeding or to participate as a
party in any hearing therein must file a
petition to intervene in accordance with
the Commission's rules.
Take further notice that, pursuant to
the authority contained in and subject
to the provisions of the Natural Gas Act
and the Commission's rules of practice and
procedure, a hearing will be held with-
out further notice before the Commiss-
ion on this application if no petition to
intervene is filed within the time re-
mquired herein, if the Commission on its
own motion believes that a formal hearing is required, further notice of such hearing will be duly given.
Under the procedure herein provided
for, unless otherwise advised, it will be
unnecessary for Applicant to appear or
be represented at the hearing.
Kenneth F. Plummer,
Secretary.
[FR Doc. 75-19 Filed 1-5-75; 8:45 am]
[DOCKET NO. B-0058]
MISSISSIPPI POWER AND LIGHT CO.
Order Accepting for Filing and Suspending Rate Increases, Rejecting Fuel Clauses, Granting Waivers, Granting Motion To Withdraw, and Granting Interventions
DECEMBER 20, 1974.
On October 9, 1974, Mississippi Power
and Light Company (MPL) tendered for filing a proposed change in rates for
Service to its wholesale customers. MPL
serves seven Electric power associations and four municipalities under its cur-
rently effective rate schedules. On
November 22, 1974, after negotiations
with the electric power associations,
MPL filed additional rate schedules in
substitution for the rate schedules filed
on October 9, 1974. These rate schedules
represent a reduction in the originally
proposed increase based on the negotia-
tions with the electric power associations. MPL states that it is voluntarily propo-
sing corresponding reductions to its
municipal customers.
Service to its wholesale customers, and
for filing a proposed change in rates for
Service to its wholesale customers. MPL
serves seven Electric power associations and four municipalities under its cur-
rently effective rate schedules. On
November 22, 1974, after negotiations
with the electric power associations,
MPL filed additional rate schedules in
substitution for the rate schedules filed
on October 9, 1974. These rate schedules
represent a reduction in the originally
proposed increase based on the negotia-
tions with the electric power associations. MPL states that it is voluntarily propo-
sing corresponding reductions to its
municipal customers. MPL states that it is voluntarily proposing corresponding reductions to its
municipal customers.
Notice of the October 9, 1974 filing was
issued October 17, 1974, with protests or
petitions to intervene due on or be-
fore October 30, 1974. Timely protests
were received from the municipal cus-
tomers, the Cities of Leland, Canton,
Duran, and Ecselleus, all in Mississippi. These protests generally protest the rate
increase and changes in certain terms and
conditions, but are not petitions to
intervene. An untimely protest and pos-
tion to intervene and for rejection of
the

1 Rate Schedule Nos. REA-12 and MW-12.
2 Rate Schedule Nos. REA-13 and MW-13.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
rate schedules was filed by the 7 electrical power associations (EPAs).2 Notice of the November 22 filing was made on December 3, 1974. The EPAs, on December 4, 1974, filed a Motion to Withdraw their Protest and Petition to Intervene, in which they request the Commission to accept the November 22 filing in substitution for the rate schedules filed on October 9, 1974, and moved that they be permitted to withdraw their petition. On December 7, 1974, the Public Service Commission and the Light and Water Commission of the City of Kosciusko (Kosciusko) filed a petition to intervene.

Since MP&L made its filing of November 22, 1974, in substitution for its filing of October 9, 1974, we shall confine our review to the later filing, except as to certain statements made in the letter of transmittal filed on October 9, 1974, regarding service to the City of Durant. In this regard, MP&L states that its contract with Durant is a fixed rate contract. We agree with this interpretation of the contract with Durant. We do not, however, agree with MP&L's proposal to bill Durant under rate schedule MW-5 until May 1, 1975.4 By its own admission, MP&L agrees that this is a fixed rate contract. Therefore, the Mobile-Sierra rule prohibits a unilateral rate increase as contemplated by MP&L's proposal to bill Durant under rate schedule MW-5, rather than MW-11, the presently effective contract rate applicable to Durant. We therefore reject this proposal by MP&L.

MP&L has filed a notice of cancellation of its contract with Durant on April 26, 1974, consistent with the requirement that one year's notice be given of the intention of either party to terminate the contract. MP&L states that MW-12 would be applied after the termination of the existing contract. We shall assume that MP&L intended to also substitute rate schedule MW-13 for service to Durant by its November 22 filing. We shall therefore permit it to serve Durant thereunder after the expiration of its fixed rate contract. However, consistent with the regulations of Municipal Electric Utility Association v. F.P.C.,4 we shall require MP&L to file a superseding service agreement at least 30 days prior to the termination of the fixed rate contract. We shall also grant waiver of the ninety-day notice requirement in this regard.

The fuel cost adjustment clause contained in the November 22 filing contains a tax adjustment clause. We believe that any change in rates resulting from the operation of this clause should be substantiated by data and computations showing the basis for such change and shall so order. Kosciusko states that MP&L, by its proposed increase, has eliminated a discount currently being received by it under paragraph 11 of MP&L's rate schedule MW-11, which has increased the rates to the municipalties by a greater percentage than it has increased the rates to the EPAs, and that MP&L has not based its facts and circumstances existing prior to April 5, 1974, the date of the last amendment to the agreement between it and MP&L. We believe that this last allegation is without merit. There is no contractual bar to a rate increase by MP&L to Kosciusko and our filing requirements dictate, inter alia, costs for the most recent twelve months for which data are available in order to justify a rate increase. However, we believe that the other two allegations require an evidentiary hearing and accordingly shall accept MP&L's proposed rate schedules for filing and suspend them for one day, when they will be permitted to become effective, subject to refund. We agree with MP&L that its voluntary filing of the rates higher than those originally filed should not result in a delay of the effectiveness of these rate schedules. We shall therefore grant waiver of the notice requirements of the Commission's regulations, accept the rate schedules for filing, suspend them for one day, when they will be permitted to become effective, subject to refund, as of December 7, 1974.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in MP&L's proposed rate schedules and that these rate schedules be accepted for filing and suspended for one day, as hereinafter ordered.

(2) Good cause exists to reject MP&L's proposed fuel cost adjustment clause.

(3) Good cause exists to reject MP&L's proposed fuel cost adjustment clause.

(4) Good cause exists to grant waiver of the 30 and 90 day notice requirements to permit MP&L's proposed change in rates and charges, tendered on November 22, 1974, is hereby accepted for filing and suspended for one day, when it is permitted to become effective, subject to refund, on December 7, 1974.

(5) Pursuant to the authority of the Federal Power Act, particularly Section 205 thereof, and the Commission's Rules and Regulations (18 CFR, Chapter I), a hearing for the purposes of cross-examination of the parties concerning the lawfulness and reasonableness of the rates and charges contained in the rate schedules filed by MP&L on November 22, 1974, shall be held in accordance with the provisions of Order No. 517. Pursuant to the authority of the Federal Power Act, particularly Section 205 thereof, and the Commission's Rules and Regulations (18 CFR, Chapter I), a hearing for the purposes of cross-examination of the parties concerning the lawfulness and reasonableness of the rates and charges contained in the rate schedules filed by MP&L on November 22, 1974, shall be held in accordance with the provisions of Order No. 517.

The Commission orders: (A) Pending hearing and decision thereon, MP&L's proposed change in rates and charges, tendered on November 22, 1974, is hereby accepted for filing and suspended for one day, when it is permitted to become effective, subject to refund, on December 7, 1974.

(B) Pursuant to the authority of the Federal Power Act, particularly Section 205 thereof, and the Commission's Rules and Regulations (18 CFR, Chapter I), a hearing for the purposes of cross-examination of the parties concerning the lawfulness and reasonableness of the rates and charges contained in the rate schedules filed by MP&L on November 22, 1974, shall be held in accordance with the provisions of Order No. 517. Pursuant to the authority of the Federal Power Act, particularly Section 205 thereof, and the Commission's Rules and Regulations (18 CFR, Chapter I), a hearing for the purposes of cross-examination of the parties concerning the lawfulness and reasonableness of the rates and charges contained in the rate schedules filed by MP&L on November 22, 1974, shall be held in accordance with the provisions of Order No. 517.

(C) On or before March 18, 1975, the Commission Staff shall file with the Commission a superseding test and petition to intervene should be filed on or before April 1, 1975. Any rebuttal evidence by MP&L shall be filed on or before April 15, 1975.

(D) A Presiding Administrative Law Judge to be designated for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure.

(E) The City of Kosciusko is hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission. The participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and Provided, further, that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(F) MP&L's proposal to bill the City of Durant under rate schedule No. MW-5 until May 1, 1975, is hereby rejected.

(G) Waiver of the 30 and 90 day notice requirements to permit the proposed rates to become effective, after a one day suspension, December 7, 1974, except for service to Durant, is hereby granted.

(H) Waiver of the 30 day notice requirement for a change in service to the City of Durant is hereby granted, provided that, 30 days prior to the termination of service under rate schedule No. MW-11 to the City of Durant, MP&L will file with the Commission a superseding

---

3 MP&L is currently serving Durant under Rate Schedule MW-11, Rate Schedule MW-5 is the Rate Schedule in effect on the date of the Commission's agreement with MP&L's Agreement for Service dated May 1, 1950.

---

NOTICES

---

FEDERAL REGISTER, VOL 40, NO. 3—MONDAY, JANUARY 6, 1975
By the Commission.

[SEAL] KENNETH F. PLUMM, Secretary.

[FEDERAL REGISTER, Vol 40, No. 3—Monday, January 6, 1975]
Cascade stated that petitioners had failed to allege an emergency warranting relief.

Washington Natural Gas Company, Washington Water Power Company, and Intermountain Gas Company propose that the Commission deny the request for temporary relief and set the matter for formal hearing. It is contended that a question of standing arises from the petitioners as to all issues referred to in the order shall be filed on all parties of record including the Commission Staff on or before January 13, 1975.

(D) Northwest Pipeline Corporation is directed to file testimony on or before January 13, 1975 indicating the possible effect of the requested relief on its system and its position with respect to the Petitions.

(E) The Oregon Public Utilities Commissioner is requested to direct Northwest Natural Gas Company to file testimony on or before January 13, 1975 indicating the existing situation on its distribution system.

(F) The above-mentioned interveners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission; Provided, however, That participation of such interveners shall be limited to matters affecting as specifically set forth in the petition to intervene, and Provided, further, That the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

[SEAL] KENNETH F. PLUMB, Secretary.

[FR Doc.75-25 Filed 1-3-75; 8:45 am]

TEXAS EASTERN TRANSMISSION CORP. ET AL.

Order Granting Intervention, Denying Motion to Stay, Granting Application for Rehearing, and Reopening the Record

DECEMBER 23, 1974.

On November 26, 1974, we issued an Order denying a petition, requesting extraordinary relief from curtailment imposed by Texas Eastern Transmission Corporation (TETCO), filed by the North Alabama Gas District (North Alabama) and the Cherokee Alabama plant of the Agri-Chemical Division of United States Steel Corporation (USS or Agr-Chem). On December 10, 1974, we issued a further Order denying a Motion by North Alabama for stay of the Order of November 26, 1974, pending application for rehearing. Now before us are a Petition to Intervene and a Motion for Stay filed on December 12, 1974, by USS, and an Application for Rehearing and a Supplement to Application for Rehearing filed on December 9 and 12, 1974, by North Alabama (in which USS joins). We have determined that USS's Petition to Intervene should be granted, and that its Motion for Stay should be denied. We will also reopen the record in this proceeding to receive additional evidence on certain specified issues and to give North Alabama another opportunity to prove that extraordinary relief is required. Our November 26, 1974, Order, which denied permanent relief and thereby terminated temporary relief, will remain in effect without modification or rescission during rehearing, for North Alabama has not proven on this record that an extraordinary exception is justified. However, we will expedite the procedures for receipt of additional evidence and valve intermediate decision.

1. U.S. Steel's Petition and Motion. We will permit USS to Intervene in this proceeding even at this late date, USS owns and operates the Agr-Chem plant which receives all of the gas that TETCO delivers to North Alabama. USS disputes that USS is the real party in interest here. USS has also moved for

2. Exhibit No. 8.
stay of the Order denying relief pending decision on the application for rehearing, or in the alternative, for an interim stay of ten days pending request for judicial review. The Commission finds that the irreparable injury to Ag-Chem and the national interest, which will result from curtailment of its gas and reduction of its fertilizer output prior to the exhaustion of the available gas, plainly outweighs any harm that might result from reinstatement of temporary extraordinary relief.

In one sense, it is not necessary to consider USS's literal request, as we are herein acting upon the application for rehearing, and as USS has already sought a stay, our decision is about to receive a hearing on that request. Yet, we have weighed the merits of USS's request and have concluded that it would not be in the public interest to require TETCO to deliver any extraordinary relief gas to North Alabama in addition to the gas provided under the TETCO interim curtailment plan which already allows Ag-Chem its highest priority given to industrial gas users.

In any extraordinary relief proceeding the petitioner has the burden of proving that an extraordinary exception or exemption exists. The petitioner has not sustained that burden. It has been determined that North Alabama has not met its burden of proof and that therefore, extraordinary relief was not justified and should cease immediately. Upon Motion of North Alabama for stay we granted the same and it is suggested that we have singled out North Alabama in this case. Nevertheless, we will order the reopening of the record in this proceeding for the receipt of additional evidence. This course of action will permit full exploration of the changed circumstances alleged in North Alabama's Motion for Stay and Application for Rehearing and give North Alabama another opportunity to prove that extraordinary relief is fully justifiable and necessary. The evidence to be submitted by North Alabama, Staff and various intervenors must be relevant and material to the following five significant issues.

First, North Alabama is again directed to demonstrate the technical infeasibility of plant conversion to permit the use of additional fuel supplies and, particularly, the absolute inability of Ag-Chem to acquire No. 2 fuel oil with the requisite low metal content. In making this showing, North Alabama should be mindful of the previous orders of the Commission, in that we based our previous orders upon the necessity of the changed circumstances alleged in North Alabama's Motion for Stay and Application for Rehearing and give North Alabama another opportunity to prove that extraordinary relief is fully justifiable and necessary. The evidence to be submitted by North Alabama, Staff and various intervenors must be relevant and material to the following five significant issues.

Second, North Alabama should present additional evidence on the use of Ag-Chem's end product: where and for what agricultural purpose is the fertilizer used; how much of it is exported; how and where is the non-agricultural ammonium monoproduction used. Third, North Alabama and the other parties should submit any additional available evidence on the current and projected fertilizer shortage, and specifically should attempt to resolve the disparity between the estimates of the Department of Agriculture and the other evidence. Fourth, we believe that additional evidence, on the current and projected future ability of
Ag-Chem's two additional suppliers to provide gas to Ag-Chem, is important and necessary. Finally, North Alabama should explore and respond to Staff's suggestions that construction or lease of storage facilities, negotiation of exchange agreements, and production or purchase of liquefied natural gas or synthetic natural gas may be feasible options here.

We hope to receive and will welcome evidence responsive to these five issues from all participants in this proceeding; but we note again that the petitioner, North Alabama, has the primary burden of proving the existence of extraordinary circumstances which warrant the grant of extraordinary relief. Although we are granting rehearing, our Order of November 26, 1974, is not herein rescinded and it remains in effect. On the record before us now, North Alabama has not proven that the public interest requires extraordinary relief. Interim extraordinary relief will not be ordered pending our further rehearing and reconsideration for the same reason, and as we cannot conclude that additional evidence and waiver of the intermediate decision procedure.

The Commission finds: (1) Participation in this proceeding by the United States Steel Corporation may be in the public interest and interests specifically set forth in the Petitioner as an intervenor shall be considered, provided, however, that the participation of the Petitioner as an intervenor shall not be construed as recognition by the Commission that USES, or any intervenor, might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(b) The Motion for Stay of the Order of November 26, 1974, filed on December 12, 1974, by United States Steel Corporation is hereby denied.

(c) The Application for Rehearing of the Order of November 26, 1974, filed December 9, North Alabama Gas District and in which United States Steel Corporation joins, is hereby granted.

(d) The record in this proceeding is hereby reopened only for the limited purpose of receipt of additional evidence which is relevant and material to the following five issues:

(1) The technical feasibility of conversion of Ag-Chem's plant to use fuel oil instead of process gas, and particularly, the ability of Ag-Chem's two other gas suppliers to provide gas to Ag-Chem with a sufficiently low metallic content;

(2) The use of Ag-Chem's end product; where is the fertilizer used and for what specific agricultural purposes, how much is exported, how and where is the non-agricultural production used;

(3) The degree of severity of the fertilizer shortage and particularly, the current supply and demand projections of the Department of Agriculture;

(4) The current and projected future ability of Ag-Chem's two other gas suppliers to provide gas to Ag-Chem or any intervenor, might be aggrieved by our rules:

(5) The technical feasibility of construction or lease of storage facilities, negotiation of exchange agreements, or production or purchase of LNG or SNG.

(b) A public hearing shall be held on January 23, 1975, at 10 a.m. e.t., in a hearing room of the Federal Power Commission, concerning the five issues specified above. Administrative Law Judge is hereby designated in which it allegedly clarified its need for additional evidence as hereafter ordered.

(c) Upon completion of the hearing, the President Administrative Law Judge shall certify the record and transmit it to the Commission forthwith. Any appropriate briefs or pleadings concerning the evidence received at hearing shall be filed with the Commission within ten days after completion of the hearing. Any appropriate briefs or pleadings shall be filed with the Commission within seventeen days after completion of the hearing.

By the Commission. Commissioner Springer, concurring in part and dissenting in part, filed a separate statement. 

[SEAL]

KENNETH F. PLUMAS
Secretary.

[FR Doc. 75-24 Filed 1-3-75; 8:45 am]

[Docket No. RP75-16-13]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND SOUTH JERSEY GAS CO.


On October 17, 1974, South Jersey Gas Company (South Jersey) filed a petition for "immediate extraordinary relief" from the curtailment provisions of its sole pipeline supplier, Transcontinental Gas Pipe Line Corporation (Transco), during the 1974-75 winter period. On November 18, 1974, South Jersey requested that the Commission issue an order directing Transco to supplement its deliveries by an amount sufficient to meet its month-to-month projected winter period (November 10, 1974 through April 15, 1975) with provisions for a monthly peak requirement of 3,563,000 Mcf and a daily peak requirement of 124,500 Mcf. South Jersey stated that deliveries would be made pursuant to Transco's CD-3 natural gas supply contract with South Jersey. On November 18, 1974, South Jersey filed a motion pursuant to § 1.15 of the Commission's rules of practice and procedure, "for Interim Emergency Extraordinary Relief from Curtailment Plan Pending Final Relief" in which it allegedly clarified its need for interim relief pendente lite, as well as for permanent extraordinary relief.

South Jersey states that the requested gas volumes in December and January are necessary to protect winter service to essential industrial customers of certain of South Jersey's customers. Specifically, South Jersey requests relief on behalf of 19 large firm industrial customers whose requirements are no greater than 200 Mcf per day. South Jersey claims that under a 50% curtailment by Transco, it will have to curtail its industrial customers by 50%, which would necessitate a reduction in operations that will result in layoffs of up to 8,200 workers and loss of business.

By telegram issued November 18, 1974, the Secretary of the Commission informed South Jersey that its petition for extraordinary relief filed October 17, 1974, did not contain the minimal information required by § 2.78(a) (ii) of the Commission's rules as amended by Order No. 467-C issued September 17, 1974, for which it seeks relief. On November 27, 1974, South Jersey responded to the deficiency telegram. We are constrained to find that South Jersey has failed to cure the defects in its October 17, 1974 filing by its filing of November 27, 1974. Specifically South Jersey has failed to provide the following information required by our rules:

(1) A breakdown of all natural gas requirements on a monthly basis at the plant site by specific end users.
(2) The internal plant scheduling within each particular end-use without the relief requested.
(3) The estimated peak day volumes of natural gas available with and without the requested relief.
(4) The estimated monthly volumes of natural gas available with and without the requested relief for the period specified in the request (December 1, 1974 through March 1, 1975).

By telegram issued November 1, 1974, STS.
The Commission finds:

(1) Good cause exists to set for formal hearing the application for extraordinary relief.

(2) As presented on the petition, extraordinary relief, pendente lite should be denied.

(3) Participation of the above-named petitioners may be in the public interest.

The Petitioners: (A) The application for extraordinary relief filed in Docket No. RP75-16-3 is hereby set for hearing.

(B) Pursuant to the authority contained in and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, including particularly sections 4, 5, 15 and 18, and the Commission's rules and regulations under that Act, a public hearing shall be held commencing January 21, 1975, at 10 a.m. at a hearing room of the Federal Power Commission, 250 North Capitol Street, NE, Washington, D.C. 20426 concerning whether extraordinary relief should be granted on a permanent basis.

(C) Petitioner, South Jersey, and any supporting parties shall file their testimony and evidence at the Commission on January 7, 1975, and serve on all parties including Staff Counsel on that date. The deficiencies cited in this order should be cured in the testimony and evidence submitted by South Jersey. In addition, Petitioner for relief should be prepared at the hearing to:

(a) Demonstrate compliance with subparagraph 2.78(a) (ii) of the Commission's General Policy and Interpretations, adopted by Order No. 407-C issued April 4, 1974 (mimeo pp. 5-8).

(b) Identify, explain and provide the South Jersey volumes reported to Transco (for purposes of curtailment implementation) applicable to the customers for whose relief is sought for the months of September 1974 through May 1975.

(c) Show the South Jersey and New Jersey Public Service Commission priority categories in which the customers for whom relief is sought are placed.

(d) Show, for South Jersey, the disposition of volumes received from Transco, for September, October, and November 1974, by FPC priorities, and by customer for each of the FPC categories in which the customers for whom relief is sought are placed. Estimate, to the extent feasible, similar data for the period following actual data through May 1975. Include, separately identified, disposition of volumes not sold, e.g. storage injection volumes and company use and unaccounted for volumes.

(e) Submit pertinent Transco curtailment tariff sheets in effect pendente lite at the time of the application herein and thereafter, to date of hearing. Submit similar sheets which show entitlements of South Jersey. Submit similar sheets of South Jersey relevant to sales to the customers for whom relief is sought. Provide a textual description of each submitted.

(f) End use data and information for the firm industrial customers whose requirements are no greater than 300 Mcf per day.

Participants will be expected to explain the effect on South Jersey's claim for relief in Docket No. RP75-16-3 of (1) the Court of Appeals for the District of Columbia circuit order issued November 26, 1974, and (2) the provisions of the Interim Settlement Agreement now in effect on the Transco system.

(D) Rebuttal testimony shall be filed at the Commission on January 14, 1975, and served on all parties at the hearing on that day.

(E) Extraordinary relief pendente lite is hereby denied.

(F) The above-named petitioners are hereby permitted to become intervenors in these proceedings subject to the Rules and Regulations of the Commission. Provided, however, that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and provided, further, that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because any order of the Commission entered in this proceeding.

By the Commission.

[SEAL]
KENNETH F. FLAVIN, Secretary.

---GEORGE PRINTING OFFICE---
DEPOSITORY LIBRARY COUNCIL TO THE PUBLIC PRINTER---

GOVERNMENT PRINTING OFFICE
DEPOSITORY LIBRARY COUNCIL TO THE PUBLIC PRINTER--
Meeting
The Depository Library Council to the Public Printer will meet 2 p.m. to 6 p.m., on January 25, 1975. Meeting place will be Parlor H located on the 6th floor of the Palmer House, State and Monroe Streets, Chicago, Illinois. The purpose of this meeting is to nominate officers, discuss previous meeting, and report on recommendations made to Public Printer.

The meeting will be open to the public. Any member of the public who wishes to attend shall notify the Assistant Public Printer (Superintendent of Documents) Government Printing Office—Washington, D.C. 20402.

General participation by members of the public, or questioning of Council members or other participants shall be permitted with approval of the chairman.

Date: December 30, 1974.

T. F. McCORMICK,
Public Printer.

---NOTICES---
FEDERAL PROPERTY MANAGEMENT REGULATIONS
Delegation of Authority

1. Purpose. This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric rate proceeding.

2. Effective date. This regulation is effective immediately.

3. Delegation.
   a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a) (4) and 205(d) (40 U.S.C. 481(a) (4) and 485(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Public Utilities Commission of Ohio involving the application of the Dayton Power and Light Company for an increase in electric rates (Application No. 74-282-7).
   b. The Secretary of Defense may delegate 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 officials, officials, and employees thereof.

   Date: December 27, 1974.

   ALFRED F. SAMPIER,
   Administrator of General Services.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
ARCHITECTURE PLUS ENVIRONMENTAL ARTS ADVISORY PANEL
Renewal
In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 999(a) (4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby...
given that renewal of the Architecture Plus Environmental Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts for a period of 2 years until January 5, 1977. This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE, Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 75-256 Filed 1-3-75; 8:45 am]

DANCE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463, section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4)) notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts for a period of 2 years until January 5, 1977. This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE, Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 75-257 Filed 1-3-75; 8:45 am]

EXPANSION ARTS ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463, section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts for a period of 2 years until January 5, 1977. This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE, Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 75-258 Filed 1-3-75; 8:45 am]

FEDERAL ARCHITECTURE TASK FORCE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463, section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Federal Architecture Task Force Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts for a period of 2 years until January 5, 1977. This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE, Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 75-259 Filed 1-3-75; 8:45 am]

FEDERAL STATE PARTNERSHIP ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463, section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Federal-State Partnership Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts for a period of 2 years until January 5, 1977. This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE, Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 75-260 Filed 1-3-75; 8:45 am]

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463, section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Federal Graphics Evaluation Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts for a period of 2 years until January 5, 1977. This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE, Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 75-261 Filed 1-3-75; 8:45 am]
National Council on the Arts, with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

PUBLIC MEDIA ADVISORY PANEL

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Public Media Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

MUSIC ADVISORY PANEL

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

THEATRE ADVISORY PANEL

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Theatre Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 5, 1977. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

EDWARD M. WOLFE,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
SECURITIES AND EXCHANGE COMMISSION

BBI, INC.
[File No. 500-1]

Suspension of Trading

December 24, 1974.

The common stock of BB1, Inc., being traded otherwise than on a national securities exchange is suspended, for the period from December 25, 1974, through January 3, 1975.

By the Commission.

[SEAL]  George A. Fitzsimmons, Secretary.
[FR Doc. 75-192 Filed 1-3-75; 8:45 am]

BIOMEDICAL SCIENCES, INC.
[File No. 500-1]

Suspension of Trading

December 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Bio-Medical Sciences, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to sections 10(a) (4) and 15c6 of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from December 25, 1974, through January 3, 1975.

By the Commission.

[SEAL]  George A. Fitzsimmons, Secretary.
[FR Doc. 75-192 Filed 1-3-75; 8:45 am]

EQUITY FUNDING CORPORATION OF AMERICA

Suspension of Trading

December 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, warrants to purchase the stock, 51% convertible debentures due 1991, and all other securities of Equity Funding Corporation of America being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 15(c) (5) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from December 25, 1974, through January 6, 1975.

By the Commission.

[SEAL]  George A. Fitzsimmons, Secretary.
[FR Doc. 75-192 Filed 1-3-75; 8:45 am]

GENERAL ELECTRIC OVERSEAS CAPITAL CORP.

Application for Issuance of Certain Debt Securities

December 27, 1974.

Notice is hereby given that General Electric Overseas Capital Corporation ("Applicant") a wholly-owned finance subsidiary of General Electric Company ("GE"), 750 Lexington Avenue, New York, New York has filed an application pursuant to Subparagraph (c) (2) of Rule 6c-1 under the Investment Company Act of 1940 ("Act") for an order permitting Applicant to issue certain debt securities to purchasers in foreign countries notwithstanding the expiration of the United States Interest Equalization Tax ("IET"). 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.

Applicant, a New York corporation, was formed by GE in 1968 primarily to raise funds abroad for GE's foreign operations. As a "finance subsidiary", pursuant to Rule 6c-1 under the Act, Applicant is exempt from all provisions of the Act, subject to the conditions in Rule 6c-1. Subparagraph (c) (2) of Rule 6c-1 provides that, if the public interest will not be served, without an order of the Commission, any securities (except to its parent company or to a subsidiary of the parent company which is not an investment company) will not issue, without an order of the Commission, any securities (except to its parent company or to a subsidiary of the parent company which is not an investment company) if the IET expires, is repealed or the rate thereof is reduced to zero and such tax is not replaced by another comparable tax.

GE has caused its wholly-owned subsidiary in The Netherlands to begin a major expansion of its plastics manufacturing facilities. From the outset of the project, which has now been underway for many years, it has been anticipated that the funding would be obtained through borrowings abroad by Applicant. Two methods of financing are under consideration:

(1) Applicant would offer and sell to the public in Switzerland Swiss Franc denominated bearer coupon bonds in the aggregate principal amount of $60 million Swiss francs, the equivalent of approximately $40 million, through Swiss banks acting as underwriters. The bonds would be straight debt obligations, would be listed on one or more stock exchanges in Switzerland and would be fully guaranteed by GE both as to payment of principal and interest; or

(2) Applicant would privately place its unsecured debt securities in a foreign currency equivalent in aggregate principal amount to approximately $20 million. Payment of interest and principal on these notes would similarly be guaranteed by GE. The transfer thereof would not be United States citizens or nationals, entities organized or incorporated under the laws of the United States or any political subdivision thereof or persons resident, or normally resident in the United States, including resident aliens ("U.S. Persons"). Such persons would covenant not to transfer or assign any interest in the notes to U.S. Persons and the notes would be in registered form and could not be transferred without satisfactory proof to Applicant that the transferees were not U.S. Persons.

Applicant represents that, notwithstanding the expiration of the IET, it should be permitted to proceed with the above-described issuance of debt securities for, among others, the following reasons:

(1) A United States investor interest is unlikely since, in addition to the restrictions on purchase and transfer, the securities will probably bear substantially lower interest rates than are currently available on similar quality debt securities in the United States.

(2) Potential investors in the proposed debt securities will not be looking either to Applicant or Applicant's so-called "investment portfolio"; the securities will be fully guaranteed by GE and, indeed, in Applicant's opinion, could not be sold on any economically feasible terms without such guarantee. Moreover, Applicant states that an analysis of its investment portfolio shows that its investments are of a kind which would not cause potential investors in its debt securities to invest therein without a guarantee thereof by GE.

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 provision or 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.

Notice is further given that any interested person may, not later than January 20, 1975, 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. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C.

FEDERAL REGISTER, VOL 40, NO. 3—MONDAY, JANUARY 6, 1975
NOTICES

WESTGATE CALIFORNIA CORP. [F10 609-1] Suspension of Trading December 27, 1974.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock (1/2 preferred and 3/4 common) of Westgate California Corp., filed on their construction projects in the central United States. The applicant requested a hearing on its application.

A notice of the application for variance was published in the Federal Register on October 19, 1973 (38 FR 29130), with notice of the filing of a petition and an invitation to interested persons to submit written data, views and arguments concerning the application by November 19, 1973. In response to this notice, comments opposing the application were received from: (1) the Department of Labor and Industrial Relations, State of Hawaii; (2) Nixon DeThomas, Certified Safety Professional; and (3) W. E. Phillips, Secretary of the ANSI A. 80.1 Standards Committee.

JOSEPH WEISS & SONS, INC. Petition for a Determination

On the basis of a petition filed under section 301(a) (2) of the Trade Expansion Act of 1962 on behalf of the workers and the former workers of Joseph Weiss & Sons, Inc., Brooklyn, New York, the United States Tariff Commission, on December 30, 1973, instituted an investigation under section 301(a) (2) of the said Act to determine whether, as a result in major part of the quotations granted under trade agreements, articles, like or directly competitive with manufactured products of such type produced in the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

The optional public hearing afforded by law has not been held by petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed by January 16, 1974.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 5th and E Streets NW., Washington, D.C. 20436, and at the New York City Office of the Tariff Commission located at 6 World Trade Center.

By order of the Commission.

[FR Doc. 75-194 Filed 1-3-75; 8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OBERLE-JORDRE COMPANY, INC.

Hearing on Application for Variance

Notice is hereby given pursuant to section 6(d) of the Williams-Steger Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 7574), and § 1905.20 of Title 29, Code of Federal Regulations, that a hearing will be held on the application of the Oberle-Jordre Company, Inc., hereinafter referred to as "applicant," 612 Tri-State Building, Cincinnati, Ohio 45202, for a variance from the construction safety and health standard prescribed in 29 CFR 1926.552 (G) (6), which prohibits the use of endless belt-type manlifts on construction.

The applicant seeks a variance from § 1926.552(e) (6), to permit the applicant and the class it represents to use endless belt-type manlifts on their construction projects in the states of Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin and other states throughout the central United States.

The applicant requested a hearing on its application.

A notice of the application for variance was published in the Federal Register on October 19, 1973 (38 FR 29130). With notice of the filing of an application and an invitation to interested persons to submit written data, views and arguments concerning the application by November 19, 1973. In response to this notice, comments opposing the application were received from: (1) the Department of Labor and Industrial Relations, State of Hawaii; (2) Nixon DeThomas, Certified Safety Professional; and (3) W. E. Phillips, Secretary of the ANSI A. 80.1 Standards Committee.
On September 5, 1974, a letter was sent to the applicant by Barry J. White, Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C., which summarized the objections received to the application for a variance and which gave notice to the applicant that the Office of Regional Programs intended to oppose the application for a variance.

Interested persons, including affected employers and employees, may file a request to present views and evidence and to participate in the hearing no later than January 17, 1975. The requests to participate in the hearing must be filed with both:

James J. Concannon
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
U.S. Department of Labor
1220 24th Street NW., Room 210
Washington, D.C. 20210

and

H. Stephen Gordon
Chief Administrative Law Judge
U.S. Department of Labor
Suite 729
Vanguard Building
1111 15th Street NW.
Washington, D.C. 20210

Such requests shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of that position.

The hearing granted herein will be convened on Wednesday, January 22, 1975 at 9:30 a.m., in Room 829, 600 Federal Place, Louisville, Kentucky at which time the applicant and any interested person who has filed a request to appear in accordance with the above requirements, may submit written or oral data, views, or arguments and call witnesses, subject to the regulations on hearings contained in 29 CFR 1905.20 et seq., the Occupational Safety and Health Act, the Administrative Procedure Act, pertinent provision of the Federal Rules of Civil Procedure, and rulings of the Administrative Law Judge.

The issues of fact and law shall include, although shall not necessarily be limited to, whether the applicant has demonstrated by evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide places of employment which are safe and healthful as those which would prevail if the standard were complied with.

I hereby designate as hearing examiner to conduct this hearing an Administrative Law Judge appointed by the Chief Administrative Law Judge of United States Department of Labor.

It shall be a condition of this grant of a request for a hearing that applicant shall give notice thereof to affected employers by the same means used to inform them of the application for a variance and shall certify to the Assistant Secretary by January 10, 1975 that such notice has been given.

Signed at Washington, D.C. this 30th day of December, 1974.

JOHN H. STEINBERG
Assistant Secretary of Labor

Office of the Secretary

THE FOURCO GLASS CO.

Determination on Petition of Workers for Eligibility to Apply for Adjustment Assistance

Under date of December 4, 1974, a petition requesting certification of eligibility to apply for adjustment assistance was filed with the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, by the United Glass and Ceramic Workers of North America, AFL-CIO, and by the Window Glass Cutters of America, AFL-CIO, on behalf of workers and former workers of the Adamston Division, Clarksburg, West Virginia and Harding Division, Fort Smith, Arkansas of the Fourco Glass Co., Clarksburg, West Virginia. The request for certification was made under Proclamation 3967 (Adjustment of Duties on Certain Sheet Glass) of February 27, 1970.

In that proclamation, the President, among other things, acted to provide unemployment assistance under Chapter 3, Title III, of the Trade Expansion Act of 1962. The Act, section 302(b)(2), provides that the Secretary of Labor shall certify a petition for adjustment assistance under Chapter 3 any group of workers in an industry with respect to which the President has acted under section 302(a)(3), upon a showing by such group that an international trade barrier has caused or threatens to cause an unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof. The same degree of causal connection is applicable here as under the tariff adjustment and other adjustment assistance provisions; that is, the increased imports have been the major factor.

The Director, Office of Foreign Economic Policy, upon receipt of the December 4, 1974, petition, instituted an investigation (Notice of Delegation of Authorization No. 43675, 29 CFR 290.117). After that, the Director made a recommendation to me relating to the certification of eligibility to apply for adjustment assistance.

The requests to appear and present views and evidence and to participate in the hearing were granted and are now pending.

SPOONER
Assistant Secretary of Labor

Office of the Secretary

RCA CORP.

Certification of Eligibility of Workers To Apply for Adjustment Assistance

Under date of November 15, 1974, the U.S. Tariff Commission made a report of its investigation (TTA-W-240) under section 301(e)(2) of the Trade Expansion Act of 1962 (76 Stat. 884) in response to a petition for determination of eligibility to apply for adjustment assistance filed by the Radio Communications Assemblers Union on behalf of workers and former workers of the Harrison, N.J. plant of the RCA Corp., New York, N.Y. In this report the Commission found that electronic receiving tubes and components thereof known as mounts produced by the Harrison, N.J. plant of the RCA Corp. are, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.
The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but Interested parties should take appropriate steps to ensure that they are notified of cancellation or postponement of hearings in which they are interested.

No amendments will be entertained after the transfer is complete. In order to prevent their spoilage, such cars shall be re-used exclusively for the transportation of sugar beets originating on its lines in Colorado and destined to sugar factories located on the RI or on its connections regardless of the provisions of Revised Service Order No. 1171 and of Mandatory Car Service Rules 1 and 2. When released empty on lines other than the RI, such cars shall be returned empty to the RI for subsequent loading with sugar beets.


[Seal]
ROBERT L. ONSWALD, Secretary.

[FEDERAL REGISTER: VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975]
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

It appearing, that there is a massive movement of sugar beets originating at stations on the lines of the Chicago, Rock Island and Pacific Railroad Company (RI) in the state of Colorado; that the RI is unable to furnish sufficient hopper cars from its own fleet to transport these beets; and that it is essential that the RI be authorized to use hopper cars owned by other railroads to enable it to transport these beets promptly in order to prevent their loss through spoilage.

It is ordered, That, pursuant to the authority vested in me by section (b) of Fifth Revised Service Order No. 1043, the RI be, and it is hereby, authorized to:

(1) Intercept empty and to use exclusively for the transportation of sugar beets a total of twenty-five (25) hopper cars owned by each of the following railroads:
The Baltimore and Ohio Railroad Company.
The Chicago, Burlington and Quincy Railroad Company.
The Illinois Central Railroad Company.
The Pennsylvania Railroad Company.
The Erie Railroad Company.
The Delaware, Lackawanna and Western Railroad Company.
The Reading Company.
The Pennsylvania Secondary Railway Company.
The Western Maryland Railway Company.
The Delaware and Hudson Railway Company.
The Southern Pacific Company.
The Missouri Pacific Railroad Company.
The Missouri-Kansas-Texas Railroad Company.
The Chicago and Eastern Illinois Railroad Company.
The Rock Island and Pacific Railroad Company.
The Chicago, Rock Island and Pacific Railroad Company.

(2) Such cars, in addition to fifty-two (52) similar cars owned by the Nutrol and Western Railway Company and furnished voluntarily by that company, shall be used exclusively by the RI for transporting sugar beets originating on its lines in Colorado and destined to sugar factories located on the RI or on its connections regardless of the provisions of Fifth Revised Service Order No. 1043 and of mandatory Car Service Rules 1 and 2.

(3) When released empty on lines other than the RI, such cars shall be returned empty to the RI for subsequent loading with sugar beets.

Effective 12:01 a.m. October 3, 1974.

[SEAL]
R. D. Freiling, Director, Bureau of Operations.

MOTOR CARRIERS OF PROPERTY

No. MC 29555 (Sub-No. '67TA), filed December 18, 1974. Applicant: BRIGGS TRANSPORTATION CO., 2360 West County Road C, St. Paul, Minn. 55113.
Applicant's representative: Winston W. Hurd (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Sugar, dry, in bulk, in tank vehicles, from the plant sites of Amstar Corporation, Philadelphia, Pa., to the ports of entry located on the International Boundary Lines between the United States and Canada at or near Niagara Falls and Buffalo, N.Y., for 90 days. Restriction: The above authority is restricted to traffic having immediate subsequent movement in foreign commerce. Supporting shipper: Lifesaver Ltd., Canajoharie, N.Y. 13317. Send protests to: Darrell W. Hammons, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 150 Causeway St., 5th Floor, Boston, Mass. 02114.

No. MC 61440 (Sub-No. '14TA), filed December 20, 1974. Applicant: LEEWAY MOTOR FREIGHT, INC., 30th Bldg., Oklahoma City, Okla. 73106. Applicant's representative: Richard H. Champlin, P.O. Box 83468, Oklahoma City, Okla. 73108. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment (except those requiring temperature control) and those injurious or contaminating to other lading), serving the plantsite of the Firestone Tire and Rubber Company at or near Nashville, Tenn., as an off-route point in connection with applicant's authorized regular route, for 180 days. Supporting shipper: Firestone Tire and Rubber Co., Lee Clowers, Director, Corporate Transp., 1200 Firestone Parkway, Akron, Ohio 44317. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old P.O. Bldg., 215 NW Third, Oklahoma City, Okla. 73102.
NOTICES

No. MC 73750 (Sub-No. 4TA), filed December 18, 1974. Applicant: WALSH PIANO & FURNITURE MOVERS, INC., 6129 North Milwaukee River Parkway, Milwaukee, Wis. 53209. Applicant's representative: Richard C. Alexander, 710 North plankinton Avenue, Milwaukee, Wis. 53203. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Musical instruments, and chairs, equipment and supplies used by a symphony orchestra, from Milwaukee, Wis., to Normal, Quincy, and Carbondale, Ill.; Bowling Green, Ky.; and Starkville, Miss.; Oxford, Miss.; Helena, Ark., and return to Milwaukee, Wis., for 180 days. Supporting shipper: Milwaukee Symphony Orchestra, 252 North Water Street, Milwaukee, Wis. 53202 (Richard C. Thomas). Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 153 West Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 111729 (Sub-No. 486TA), filed December 16, 1974. Applicant: PROLOG CORRIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11759. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) Radiopharmaceuticals, radioactive drugs, and medical isotopes, between Arlington Heights, Ill., on the one hand, and, on the other points in Georgia and Tennessee; (2) Replacement parts for business machines and computers, between Atlanta, Ga., on the one hand, and, on the other, Allentown, Pa., Reading-Berks-Barre, Pa., restricted to traffic having a prior or subsequent movement by air; and (3) Business papers, records, and audit and accounting media of all kinds, between Atlanta, Ga., on the one hand, and, on the other, Allentown, Pottsville, Reading and Wilkes-Barre, Pa., restricted to traffic having a prior or subsequent movement by air for 180 days. Supporting shippers: (1) Amersham/Scarle Corporation, 2636 S. Clearbrook Drive, Arlington Heights, Ill. 60005 and (2) National Cash Register, 456 Union Avenue, Allentown, Pa. 18104. Send protests to: Anthony D. Glaino, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 20 Federal Plaza, New York, N.Y. 10004.

No. MC 105375 (Sub-No. 55TA), filed December 16, 1974. Applicant: DACLEN TRANSIT CO., 873 Fortieth Avenue, Newport, Minn. 55055. Applicant's representative: Joseph A. Eschenbacher, Jr. (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Liquid animal feed and liquid animal feed supplements, in bulk, in tank vehicles, from Minneapolis, Minn., to Clinton, Iowa, and to-ut-oh points in Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, and Iowa, for 180 days. Supporting shipper: Land O'Lakes, Inc., 2828 10th Avenue South, Fort Dodge, Iowa 50501. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 153 West Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.


No. MC 107515 (Sub-No. 97TA), filed December 16, 1974. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 30030. Applicant's representative: Alan E. Berry, Suite 376, 2920 Peachtree Road NE, P.O. Box 18584, Atlanta, Ga. 30326. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Agricultural chemicals, other than in bulk, in vehicles equipped with mechanical refrigeration, from the plantate of Monsanto at Arlington, Tenn., to points in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, and Washington, for 180 days. Supporting shipper: Monsanto Company, 800 North Lindbergh Blvd., St. Louis, Mo. 63160. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 111723 (Sub-No. 486TA), filed December 16, 1974. Applicant: PROLOG CORRIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11759. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) Radiopharmaceuticals, radioactive drugs, and medical isotopes, between Arlington Heights, Ill., on the one hand, and, on the other points in Georgia and Tennessee; (2) Replacement parts for business machines and computers, between Atlanta, Ga., on the one hand, and, on the other, Allentown, Pa., Reading-Berks-Barre, Pa., restricted to traffic having a prior or subsequent movement by air; and (3) Business papers, records, and audit and accounting media of all kinds, between Atlanta, Ga., on the one hand, and, on the other, Allentown, Pottsville, Reading and Wilkes-Barre, Pa., restricted to traffic having a prior or subsequent movement by air for 180 days. Supporting shippers: (1) Amersham/Scarle Corporation, 2636 S. Clearbrook Drive, Arlington Heights, Ill. 60005 and (2) National Cash Register, 456 Union Avenue, Allentown, Pa. 18104. Send protests to: Anthony D. Glaino, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 20 Federal Plaza, New York, N.Y. 10004.


No. MC 114457 (Sub-No. 215TA), filed December 18, 1974. Applicant: DART TRANSIT COMPANY, 760 N. Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Michael P. Zell (same address as applicant). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Urethane products, from St. Paul, Minn., to points in Wisconsin, Michigan, Illinois, and Minnesota, over irregular routes, transporting: Ice cream, for the account of Safe Way Stores, Incorporated, in vehicles
NOTICES

equipped with mechanical refrigeration, from points in Maricopa, Mojave, Yavapai and Yuma Counties, Ariz., to points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties for 180 days. Supporting shipper: Safeway Stores, Incorporated, 210 West Seventh Street, Los Angeles, Calif. 90014. Send protests to: District Supervisor, Claud W. Reaves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, San Francisco, Calif. 94110.


No. MC 12428 (Sub-No. 6TA), filed December 19, 1974. Applicant: Drink's, Inc., 234 E. 24th Street, Chicago, Ill. 60616. Applicant's representative: Chandler L. van Gundy, 16th & H Streets NW., Washington, D.C. 20005. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Gold, silver, and precious metals, between Providence, R.I., on the one hand, and, on the other, New York, N.Y. and points in Essex and Middlesex Counties, N.J., for 180 days. Supporting shipper: Rhode Island Hospital, Providence, R.I.; One Hospital Trust Plaza, Providence, R.I. Send protests to: District Supervisor, Richard E. Shullaw, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60694.

No. MC 124328 (Sub-No. 70TA), filed December 19, 1974. Applicant: Drink's, Inc., 234 E. 24th Street, Chicago, Ill. 60616. Applicant's representative: Chandler L. van Gundy, 16th & H Streets NW., Washington, D.C. 20005. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Gold, silver, and precious metals, between Providence, R.I., and points in Essex and Middlesex Counties, N.J., for 180 days. Supporting shipper: Rhode Island Hospital, Providence, R.I.; One Hospital Trust Plaza, Providence, R.I. Send protests to: District Supervisor, Richard E. Shullaw, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1086, Chicago, Ill. 60694.


No. MC 124679 (Sub-No. 67TA), filed December 20, 1974. Applicant: R. R. Englehardt, Sons, Inc., 600 South, Salt Lake City, Utah 84110. Applicant's representative: Daniel B. Johnson, 1123 Munsey Building, 1293 E Street NW., Washington, D.C. 20004. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: photographic materials, supplies and equipment, in vehicles equipped with mechanical refrigeration, between the plantsite and warehouse facilities at Agfa-Gevaert, Incorporated at Teterboro; N.J., on the one hand, and, on the other, Salt Lake City, Utah; and Glendale and Brisbane, Calif., for 180 days. Supporting shipper: Agfa-Gevaert, Inc., 275 North Street, Teterboro, N.J. 07608; Adolph Vogt, Materials Manager. Send protests to: Lyle D. Hefner, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, Utah 84135.

No. MC 126530 (Sub-No. 21TA), filed December 16, 1974. Applicant: KATI BURSCH BROS. INC., 102 Terminal Street, Dubuque, Iowa 52001. Applicant's representative: Carl E. Munson, 469 Fisher Building, Dubuque, Iowa 52001. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Liquid animal feed and liquid animal feed supplements, to: Dairy Plants, Fort Dodge, Iowa 50501; Fort Dodge, Iowa 50501. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, Utah 84135.

No. MC 129480 (Sub-No. 157TA), filed December 18, 1974. Applicant: TRIGLINE EXPRESSWAYS, LTD., 550-71 Avenue SE, Calgary, Alberta, Canada T3H OS2. Applicant's representative: Edward T. Lyons, Suite 1600 Lincoln Center, Denver, Colo. 80203. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Gypsum board, from the plantsite and storage facilities of Big Horn Gypsum Products Company at or near Cody, Wyo., to the International Boundary line between the United States and Canada in the State of Montana, for 180 days. Supporting shippers: William L. Freidman Distributors, Ltd., 1012 Beverly Blvd., Calgary, Alberta, Canada, and P. W. L. Importers, Ltd., 701-17th Street East, Box 1865, Saskatoon, Saskatchewan, Canada. Send protests to: Paul J. Lebame, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 232, U.S. Post Office Building, Billings, Mont. 59101.

No. MC 129662 (Sub-No. 57TA), filed December 18, 1974. Applicant: RAJOR, INC., P.O. Box 766, Franklin, Tenn. 37064. Applicant's representative: William J. Conozeleno, P.O. Box 1736, Winsto
t

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JUNE 6, 1975
routes, transporting: Fire brick, furnace or kiln linting products, ingot mould top tops, and fire clay requiring special equipment by motor vehicle, over irregular routes, and commodities incidental to the installation of same when not exceeding 10 percent of total shipping weight, from Canon City, Colo., to points in Arizona, New Mexico, Oregon, Idaho, Nevada, and California; and (2) from Albuquerque, N. Mex., to El Paso, Tex., and (2) from Laredo, Tex., to Brownsville, Tex., and (3) from Fort Worth, Tex., to El Paso, Tex., and (2) Laredo, and to Fort Worth, Tex. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Hides, (1) from Clovis, N. Mex., to Albuquerque, N. Mex., (2) from Laredo, Tex., to Brownsville, Tex., and (3) from Fort Worth, Tex., to San Antonio, Tex., and Houston, Tex., for 180 days. Supporting shipper: C.H. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 617 Gold Avenue SW, Albuquerque, N. Mex. 87101.


No. MC 138658 (Sub-No. 3TA), filed December 19, 1974. Applicant: HARRY POOLE, INC., 2252 Kingsington Road, Macon, Ga. 31902. Applicant's representative: William Addams, Suite 212, 5399 Roswell Road NE., Atlanta, Ga. 30342. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Crushed agricultural limestone, in bulk, in dump vehicles, from points in Jefferson County, Tenn., to points in Georgia and South Carolina, for 180 days. Supporting shippers: There are approximately 9 statements of support attached to the application, which may be examined here and at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: William L. Scrope, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1253 W. Peachtree St. NW., Room 545, Atlanta, Ga. 30309.


No. MC 138800 (Sub-No. 2TA), filed December 19, 1974. Application: Larry W. Czerniak, 9900 W. 74th Avenue, Arvada, Colo. 80005. Applicant's representative: John P. Thompson, 450 Capitol Life Center, Denver, Colo. 80235. Authority sought to operate as a common carrier, by motor vehicle, over regular and irregular routes, transporting: Irregular routes: Camera film (except movie film moving to or from movie theaters), film slides, photographs, prints, negatives and photographic supplies, between points in Denver, Adams, Arapahoe, Boulder, and Jefferson Counties, Colo. Regular routes: Camera film (except movie film moving to or from movie theaters), film slides, photographs, prints, negatives and photographic supplies, between points in Denver, Adams, Arapahoe, Boulder, and Jefferson Counties, Colo. Restrictions: The entire operation shall be restricted against the transportation of any one day. Supporting shipper: There are approximately 27 statements of support attached to the application, which may be examined here and at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Joel Moraus, Interstate Commerce Commission, Bureau of Operations, 3 Clinton St., Newark, N.J. 07102.

No. MC 140132 (Sub-No. 3TA), filed December 18, 1974. Applicant: Snowball, LTD., P.O. Box 15328, St. Louis, Mo. 63138. Applicant's representative: Jacob P. Billig, 1156 Sixteenth Street NW., Washington, D.C. 20036. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Scrap metals, ferrous and non-ferrous, and crushed auto bodies, for 180 days. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: Beer, from Golden, Colo., to Elko, Winnemucca, and Elko, Nev., and (2) from Clovis, N. Mex., to Bakersfield, Calif., for 180 days. Authority sought to operate as a common carrier, by motor vehicle, over regular and irregular routes, transporting: Beer, from Golden, Colo., to Elko, Winnemucca, and Elko, Nev., and (2) from Clovis, N. Mex., to Bakersfield, Calif., for 180 days.
NOTICES

Motor Carriers of Passengers


By the Commission.

[SEAL]
ROBERT L. OSWALD, Secretary.

[FR Doc. 75–288 Filed 1–3–76; 8:45 am]

[Notice No. 210]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

January 6, 1975.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 311, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1133) appear below:

Each application (except as otherwise specifically noted) filed after March 19, 1975, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission’s special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before January 27, 1975. Pursuant to section 17(b) of the Interstate Commerce Act, the filing of such petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–75530. By order of December 18, 1974, the Motor Carrier Board approved the transfer to Ace Limousine Service, Inc., 6804 Overland Ave., Whittier, Calif., of the operating rights in Certificates Nos. MC-139738 (Sub-No. 1) and MC-139739 (Sub-No. 2) issued May 18, 1973, and September 4, 1974, to Donald D. Graf, doing business as Ace Limousine Service, Brick Town, N.J., authorizing the transportation of passengers and their baggage, in non-scheduled door-to-door service, limited to the transportation of not more than 11 passengers, not including the driver, in special operations, between points in Ocean County (except Lakehurst and the Lakehurst United States Naval Air Station) and Monmouth County, N.J., on the one hand, and, on the other, LaGuardia Airport and John F. Kennedy International Airport, New York, N.Y., and Philadelphia International Airport, Philadelphia, Pa., Charles J. Williams, 47 Lincoln Park, Newark, N.J. 07102, Attorney for applicants.

No. MC–FC–75563. By order of December 18, 1974 the Commission approved the transfer to Dennis Cordes, 153 St. John’s Place, New York, N.Y., and, on the other, Continental Air Freight, St. Louis, Mo., of the operating rights in Certificate No. 35856 issued July 3, 1973 to Howard Anderson, Plum City, Wis., authorizing the transportation of various commodities from and to specified points and areas in Wisconsin and Minnesota. F. H. Kroeger, 2388 University Ave., St. Paul, Minn., 55114. Applicant representative.


No. MC–FC–75599. By order of December 17, 1974 the Motor Carrier Board approved the transfer to Dakota Film &
NOTICES

[Service Order No. 1179]1

THE TEXAS AND PACIFIC RAILWAY COMPANY AND THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

At a Session of the Interstate Commerce Commission, Division 3, acting as an Appellate Division, held at its office in Washington, D.C., on the 22nd day of November 1974.

Upon consideration of the record in the above-entitled proceeding, including the petition of Amtrak for reconsideration or deferral of the effective date of the order of the Commission, Division 3, acting as an Appellate Division, dated August 1, 1974, which order modified the order of the Commission, Division 3, dated March 21, 1974, and the telegraphic reply of the Texas and Pacific Railway, thereto; and of the order of the Commission, Commissioner Tuggle, dated September 6, 1974; and

It appearing, that by Service Order No. 1179, the Commission, by Division 3, on March 21, 1974, ordered the Texas and Pacific Railway Company to operate trains of the National Railroad Passenger Corporation and to provide employees, tracks, and other facilities as required between a connection with the Missouri Pacific Railroad Company at Texarkana, Ark., and a connection with the Atchison, Topeka & Santa Fe Railway Company at Fort Worth, Tex., and that this order was pursuant to the Commission's authority under section 402 of the Railroad Passenger Service Act, as amended, 45 U.S.C. 552; and

It further appearing, that upon reconsideration of its order, Division 3, acting as an Appellate Division, on August 1, 1974, (1) revoked Service Order No. 1179, subject to the condition that in the event Amtrak refunded its application under section 402(a) of RPSA, the service order would remain in effect; and (2) set for modified procedure matters relating to just and reasonable compensation for the operation of the subject trains and indemnification against casualty risk;

It further appearing, that by order of the Commission, Commissioner Tuggle, dated September 6, 1974, (1) the provisions of the order dated August 1, 1974, which required the refund of its application under section 402(a) were stayed, and (2) the remaining provisions of that order were continued in effect;

It further appearing, that in accordance with the provisions of the order dated August 1, 1974, the parties have filed statements concerning matters of compensation and indemnification against casualty risk for the services performed by the T&P for Amtrak in the operation of the trains subject to Service Order No. 1179; and

It further appearing, that in the instant petition, Amtrak primarily maintains that (1) the Commission should not revoke the subject service order, (2) the Commission should not presently decide matters relating to compensation and indemnification, and (3) the service order should be continued in effect and extended beyond the expiration date initially imposed; and

It further appearing, that the parties involved in this proceeding have been unable to formulate a mutually acceptable agreement covering the terms and conditions of the operation of trains over the subject trackage of T&P; that substantive contractual differences relating to an interpretation of the agreement between MoPac and Amtrak exist, which differences bear directly on the ability of the T&P and Amtrak to reach an accord in this matter; and that, the parties involved herein have submitted their dispute for judicial determination;

It further appearing, that, in support of its petition, Amtrak has submitted a decision by the United States Court of Appeals for the Eighth Circuit, Docket No. 74-1203, "National Railroad Passenger Corporation v. Missouri Pacific Railroad Company and the Texas and Pacific Railway Company," which determined that the underlying dispute between the parties, i.e., the applicability of the MoPac-Amtrak agreement, should be submitted to arbitration before the National Arbitration Panel; that by order dated August 16, 1974, the district court, from which the appeal was taken in this matter, directed the Missouri Pacific Railway to submit to arbitration the agreement relating to MoPac's obligation to supply certain services to Amtrak, which services are the subject of Service Order No. 1179; and that, the Commission's action in its order dated August 1, 1974, was taken before entry of the above-referred to court order and without notice of the judicial determination by the Court of Appeals in the said docket;

It further appearing, that the National Arbitration Panel is presently considering this contractual dispute and that its determination is relevant to the issue of whether or not Amtrak should file an application pursuant to section 402(a) of RPSA; that, in order to provide for a more orderly resolution of this dispute the Commission should revoke its order

[Ex Parte Mc-94]

[FR Doc.75-289 Filed 1-3-75;8:45 am]

1MOTOR CARRIER RATES FOR THE CARRIAGE OF L.T. SHIPMENTS OF MAIL

DECEMBER 24, 1974.

Notice is hereby given that on December 10, 1974, the U.S. Postal Service filed a petition, pursuant to the provisions of 39 U.S.C. 5209, asking the Commission to approve and prescribe proposed rates for application to the voluntary carriage of mail by authorized general-commodity motor common carriers in LTL shipments.

Any person interested in the matter which is the subject of the petition and who wishes to participate actively in any further proceedings herein shall notify this Commission, by filing with the Office of Proceedings, Room 5342, 12th Street and Constitution Avenue, N.W., Washington, D.C., 20423, on or before January 30, 1975, an original and one copy of a statement of his intention to participate. Thereafter, the nature of further proceedings herein, if any, will be designated. The petition and statements of intent to participate, if any, will be available for public inspection at the offices of the Interstate Commerce Commission during the regular business hours.

A copy of this notice will be served upon the petitioner and all carriers in the Carrier Service List appended to the petition, and notice of the filing of the petition will be given to the general public by depositing a copy of this notice in the Office of the Secretary of the Commission at Washington, D.C., and by delivering a copy hereof to the Director, Office of the Federal Register, for publication in the Federal Register.

[SEAL] ROBERT L. OSWALD, Secretary.

[FR Doc.75-289 Filed 1-3-75;8:45 am]

1Schedule of rates and charges filed as part of the original document.

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
NOTICES

of August 1, 1974, only insofar as it requires Amtrak presently to file an application pursuant to section 402(a);

It further appearing, that the subject service order is set to expire on November 30, 1974; that the expiration of this service order would result in the cancellation of Amtrak passenger trains operating between St. Louis, Mo., and Laredo, Tex.; that this result would be an extreme disservice to the public who travel or will travel on these trains and would interfere substantially with the present and future usefulness of these trains in the performance of adequate and continuous service to the public; and that due to the exigencies of this situation, the service order should be amended to extend the expiration date of this order for a period of six months;

It further appearing, that, the T&P has not yet been compensated or indemnified against casualty risk for the provision of any of the services ordered by the Commission; that Amtrak in its petition has expressed its willingness to compensate T&P for its operations pursuant to the terms and conditions of the existing Basic Agreement between Amtrak and MoPac dated April 16, 1974, and to be governed by the provisions of the same agreement relating to indemnification against casualty risk; that the parties have submitted their statements relating to these matters; and that, the Commission has yet to make a final determination of these matters; and

It further appearing, that, as an interim measure, the Commission should require Amtrak to compensate and indemnify T&P for its services already performed in accordance with this service order and for those services to be performed for the duration of the service order; that the foregoing should not be taken to be a determination of the issues and facts as submitted by the parties in their statements for consideration under modified procedure; and that, a final determination will be made as to the matters of compensation and indemnification against casualty risk for the provision of the required services by T&P to Amtrak:

It is ordered, That the petition for reconsideration of the National Railroad Passenger Corporation be, and it is hereby, granted to the extent request is made for the revocation of those provisions of the order dated August 1, 1974, which revoked Service Order No. 1179, subject to the condition that Amtrak files its application pursuant to section 402(a) of the Rail Passenger Service Act, as amended, and these provisions of said order which required the posting of notice of termination of the subject trains, as set forth in the first two ordering paragraphs of the above-referred to order; that the petition for reconsideration insofar as it seeks a limited continuance of Service Order No. 1179, be, and it is hereby, granted; and that Service Order No. 1179, be, and it is hereby, amended to provide for expiration of the Service Order at 11:59 p.m., May 31, 1975, unless otherwise further modified, changed, or suspended by further order of this Commission;

It is further ordered, That the National Railroad Passenger Corporation shall compensate the Texas and Pacific Railway Company for the services it has performed for said corporation pursuant to the terms of Service Order No. 1179, from its date of entry, March 21, 1974; that this compensation shall be in conformity with the provisions, terms, conditions, and procedures set forth in the Basic Agreement between Amtrak and the Missouri Pacific Railroad Company, signed April 16, 1971; that the National Railroad Passenger Corporation shall continue to compensate the Texas and Pacific Railway Company in accordance with the above-referred to Agreement for the duration of this service order or until otherwise directed by order of this Commission for services performed by the Texas and Pacific Railway Company pursuant to the subject service order; provided, however, That this compensation shall be considered only as an interim payment for the provision of such services and that compensation paid by the National Railroad Passenger Corporation in accordance with the terms specified herein shall not be considered as a final determination by this Commission on the merits or otherwise of these statements filed by the parties hereto with respect to matters of just and reasonable compensation and indemnification against casualty risk, as directed by the order dated August 1, 1974;

It is further ordered, That, the National Railroad Passenger Corporation shall hereafter indemnify the Texas and Pacific Railway Company against any casualty risk to which it may be exposed in accordance with the provisions, terms, conditions, and procedures set forth in the above-referred to Basic Agreement; provided, however, That the application of the Basic Agreement shall not be considered as a final determination on the merits or otherwise of the pleadings filed by the parties relative to the terms, conditions, etc., for indemnification by the corporation for the railroad for its services performed to date and to be performed pursuant to this service order; It is further ordered, That this proceeding shall otherwise remain open for consideration of the level of compensation to be fixed for the services and facilities provided to the National Railroad Passenger Corporation by the Texas and Pacific Railway Company and the necessary indemnification against casualty risk by the corporation for the railroad; and that such determination will be retroactive to March 21, 1974, with appropriate set-off for the compensation presently ordered herein;

It is further ordered, That, except to the extent granted herein, the petition for reconsideration or denial be, and it is hereby, denied; and

It is further ordered, That, this order shall be effective on the date it is served.

By the Commission, Division 3, acting as an Appellate Division.

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

[SEAL]

ROBERT L. OSWALD,
Secretary.

FR Doc.75-286 Filed 1-3-75; 8:14 am]
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

NATIONAL HEALTH SERVICE CORPS

Critical Health Manpower Shortage Areas
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service
[ 42 CFR Part 23 ]
NATIONAL HEALTH SERVICE CORPS

Critical Manpower Shortage Areas

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to delete Part 23 of Title 42, Code of Federal Regulations, and to substitute in lieu thereof a new Part 23. The primary purpose of the new proposed Part 23 is to implement section 2 of the Emergency Health Personnel Act Amendments of 1972 (Pub. L. 92-585), which amended section 238 of the Public Health Act, authorizing the establishment of the National Health Service Corps.

The major changes made by this proposed regulation are as follows: (1) the Secretary, without regard to an application for assignment of NHSC personnel, will designate those areas which have a critical health manpower shortage; (2) options are set forth for the reimbursement of the National Health Service Corps by applicants whereby the Corps can recover its reasonable costs of providing services; (4) the charge to any person for services from assigned personnel shall be in accordance with a schedule of charges, determined in consultation with the local medical, or dental, or other appropriate health society; and (5) the Secretary may approve an application without the consideration, among other pertinent factors:

§ 23.2 Definitions.

(a) "Act" means the Public Health Service Act.

(b) "State" means any of the several states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

(d) "Assigned personnel" means health or health related personnel of the Regular and Reserve Corps of the Service and such civil service personnel as the Secretary designates, including, but not limited to, physicians, dentists, psychologists, nurses, paramedical personnel, medical technicians, administrative or clerical, or health related personnel of the Regular and Reserve Corps of the Service or health related personnel of the Regular and Reserve Corps of the Service.

§ 23.3 Eligibility.

Application for assignment of Corps personnel to an area designated by the Secretary under § 23.4 may be made by the health agency or any other public or nonprofit private health entity in such area.

§ 23.4 Designation.

(a) In accordance with section 238(b) (1), the Secretary shall designate those areas which he determines have critical health manpower shortages. In making such determination the Secretary shall take into consideration, among other pertinent factors:

(1) The latest reliable health resources statistics available to him, such as numbers of primary care physicians, dentists, and other health manpower personnel; the range of primary care and other health services available; and the types of health facilities in the area.

(2) Health status indicators, such as infant and maternal mortality rates, accident rates, morbidity rates, disability rates, life expectancy rates, and others.

(3) Inaccessibility of health services in the community, and the ability to obtain services when required on a timely and effective basis, taking into account transportation difficulty, travel time, utilization rates, ability of health resources to meet increased demands, and other socio-economic, demographic, and environmental factors of community life which significantly impair access. The Secretary shall publish periodically in the Federal Register a list of such designated areas together with the specific criteria used in determining such areas.

(b) Any State health agency or local public health agency or other public or nonprofit private health entity in an area which has not been designated by the Secretary pursuant to paragraph (a) of this section may request such designation. If upon review of the application and all other relevant factors it is determined that the area meets the criteria utilized under paragraph (a) of this section, the Secretary shall add the area to the list of areas designated.

(c) Upon determining that there has been a substantial change in circumstances upon which a designation was based, the Secretary may, 90 days after publication of a notice in the Federal Register, withdraw his designation of an area as one having a critical health manpower shortage.

§ 23.5 Information and Assistance.

The Secretary shall conduct information programs in the areas designated to inform public and nonprofit private health entities served in the designated areas of the technical and consultative services available from the Corps and to assist people in those areas who are seeking assignment of Corps personnel to their areas.

§ 23.6 Application for Assignment.

(a) An application for the assignment of Corps personnel under section 238 of the Act may be submitted to the Secre-
tary by an eligible applicant in such form and manner and at such time as the Secretary may require.

(b) The application shall include, among other things, the certification to the Secretary of:

(1) the local government of such area,

(2) the State and district medical, dental or other appropriate health societies (as the case may be) that such assignment is needed for the area, provided, however, that where such certification has been withheld, a full explanation of the absence of such certification shall be submitted.

(c) The application shall also include, unless established to the satisfaction of the Secretary that such recommendations were not reasonably obtainable, the recommendations of (1) the appropriate State health planning agency established pursuant to section 314(a) of the Act; (2) the appropriate Regional Medical Program established pursuant to Title IX of the Act; (3) the appropriate local medical, dental, or other appropriate health association or societies; (4) the appropriate State health planning agency established pursuant to section 314(b) of the Act; (5) the State medical, dental, and other health associations and (6) from other medical personnel of the area to be served.

(d) The application shall also include evidence satisfactory to the Secretary that the general public has been informed, through the published news media or other means of communication, the nature of the servicing agencies, the actions of the certifying and recommending agencies, and has been afforded adequate opportunity to comment on such application. All such comments received shall be appended to the application.

(e) Such applications shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant any obligation imposed by law, the statute, these regulations, or any additional conditions of assignment imposed pursuant thereto.

§ 23.7 Assignment of Personnel.

The Secretary may upon proper application, assign Corps personnel to such designated areas where he finds such assignment will best serve the purposes of section 329 of the Act and the regulations of this part, taking into account:

(a) The need of the area for health services to be provided without regard to the area's ability to pay;

(b) The willingness of the area and the appropriate governmental agencies therein to assist and cooperate with the Public Health Service in providing effective health services to residents of the area;

(c) The recommendations of any agency or organization which may be responsible for the development, under section 314(a) or (b) of the Act, of a comprehensive plan covering all or any part of the area involved;

(d) Rates to be charged by the designated medical, dental, and other health associations and from other medical personnel of the area for services to such persons to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

§ 23.8 Costs and charges of services.

(a) The National Health Service Corps shall be reimbursed, subject to the approval of the Secretary, in accordance with one of the following mechanisms designed to recover the reasonable costs of providing services. Each agreement concluded with an applicant under § 23.10 shall identify the method of reimbursement selected from the following:

(1) The National Health Service Corps will be reimbursed a percentage of the total receipts collected (after certain preferential costs in the agreement concluded under § 23.10 agreed to are paid) which is equal to the percentage of the National Health Service Corps'(s') contribution toward the cost of operation as determined under the agreement concluded with the applicant under § 23.10.

(2) The National Health Service Corps will be reimbursed its actual reasonable costs per annum (a fixed amount regardless of receipts collected; or

(3) The National Health Service Corps will provide the total cost of operation and will collect all receipts.

(b) Except as otherwise provided in paragraph (a) of this section, any person receiving services from assigned personnel shall be charged at a rate designed to recover reasonable costs, to be determined in accordance with one of the methods of reimbursement specified above. Such charges shall (except as provided in paragraph (c) of this section) be in accordance with a schedule of charges determined in consultation with the local medical, dental, or other appropriate health society, and specified in the agreement concluded with the applicant under § 23.10; provided, however, That where assigned personnel are providing services within the framework of an established health services delivery system, the charges collected shall be consistent with the charges made by such system.

(c) In lieu of being charged on a fee-for-services basis pursuant to paragraph (b) of this section, persons eligible to receive services from assigned personnel may be charged on a prepaid capitation basis or other reimbursement mechanism.

§ 23.9 Supervision of assigned personnel and termination of assignment.

Personnel assigned in accordance with the provisions of section 329 of the Act and these regulations thereto at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by assigned personnel are matters of the performance of their Federal functions and do not alter their direct professional and administrative responsibility to the Secretary. The Secretary may terminate or modify any such assignment if he determines that such assignment is not being performed in accordance with section 329 of the Act, the regulations in this part, or any agreement entered into under § 23.10.

§ 23.10 Agreements with applicants.

The Secretary will, upon determining to assign personnel to an area, and consistent with section 329 of the Act and these regulations, enter into agreements with applicants setting forth such additional terms and conditions as he deems necessary to assure the performance of the purposes of section 329 of the Act.
the regulations in this part, and interests of the public health, or the effective utilization of assigned personnel, including but not limited to:

(a) Number and type of personnel assigned;

(b) Duration of assignment;

(c) Fees and methods for charging for services of assigned personnel including the choice of option for reimbursing the Federal Government for its reasonable costs under section 23.8;

(d) Types of facilities or other assistance to be provided by applicant.

§ 23.11 Use of facilities by assigned personnel.

The Secretary, to the extent feasible, may make such arrangements as he determines necessary to enable assigned personnel to utilize the health facilities of the area to be served. If there are no health facilities in or serving such area, the Secretary may arrange to have such care and services provided in the nearest health facilities of the Public Health Service or the Secretary may lease or otherwise provide facilities in such area for the provision of care and services. In providing such care and services, the Secretary may (a) make such arrangements as he determines are necessary for the use of equipment and supplies of the Service and for the lease or acquisition of other equipment and supplies and (b) secure the temporary services of nurses and allied health professionals.

[FR Doc. 75-29 Filed 1-3-75; 8:45 am]
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

PRIVACY RIGHTS OF PARENTS AND STUDENTS
PROPOSED RULES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Secretary
[ 45 CFR Part 99 ]
PRIVACY RIGHTS OF PARENTS AND STUDENTS

Proposed Establishment of Part

Pursuant to the authority contained in section 438 of the General Education Provisions Act, 20 U.S.C. 1232g (as amended), added by section 513, Pub. L. 93-380 (enacted August 21, 1974), and amended by Senate Joint Resolution 40 (Sen. Res. 40, 1974) notice is hereby given that the Secretary proposes to add a new Part 99 to Title 45 of the Code of Federal Regulations to read as set forth below.

Section 438 of the General Education Provisions Act, as amended, which is effective as of November 19, 1974, sets out requirements designed to protect the privacy of parents and students. Specifically, the statute governs (1) access to records maintained by certain educational institutions and agencies, and (2) the release of such records. In brief, the statute provides that such institutions must provide parents of students access to official records directly related to the students and an opportunity for a hearing to challenge such records on the grounds that they are inaccurate, misleading or otherwise inappropriate; that institutions must obtain the written consent of parents before releasing personally identifiable data about a student from records to other than a specified list of exceptions; that parents and students must be notified of these rights; that these rights transfer to students at certain points; and that an office and review board must be established in HEW to investigate and adjudicate violations and complaints of this section. The office has been designated in the Secretary and may be contacted at the following address:

Mr. Thomas S. McFee
Room 5E836
Department of Health, Education, and Welfare
330 Independence Avenue, N.W.
Washington, D.C. 20201
Telephone (202) 245-7448

(The statute further provides, under subsection (e), that the Secretary shall promulgate regulations to protect the privacy of students and their families in connection with certain Federal data-gathering activities. The proposed rules set forth below relate to all of section 438 except subsection (e), which will be the subject of further regulations to be issued at a future date.)

For the convenience of readers, section 438, (except subsection (e)) as amended reads as follows:

Sec. 438. (a) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parent or guardian of students who are or have been in attendance at a school of such agency or of such institution, as the case may be, the right to inspect and review the education records of their children, if any material or document in the education records of a student is maintained by such an institution on more than one student, the parents of one or more of such students shall have the right to inspect and review only such part of such material or document as is related to such student or students; and (2) any parent or guardian of students who are or have been in attendance at a school of such agency or of such institution, as the case may be, the right to inspect and review the education records of their children, if any material or document in the education records of a student is maintained by such an institution on more than one student, the parents of one or more of such students shall have the right to inspect and review only such part of such material or document as is related to such student or students.

(b) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1976, if such letters or statements are not used for purposes other than those for which they were placed in such records;

(iii) the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C) or the student has been given a reasonable time to take such action;

(iv) respectng admission to any educational agency or institution;

(v) the granting of an employment, and

(vi) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to educational records in accordance with the provisions of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required [(sic) as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity to challenge the content of such education records in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of all such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program. (4) (A) For the purposes of this section, the term "education records" means, except as otherwise provided in paragraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of institutional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b) (1), the records and documents of such law enforcement unit which are maintained solely for law enforcement purposes; and

(iii) are not made available to persons other than law enforcement officials of the same jurisdiction; and

(iv) on records on a student who is 18 years of age or older, or, to the extent that such an institution has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, the right to inspect and review the education records of their children, if any material or document in the education records of a student is maintained by such an institution on more than one student, the parents of one or more of such students shall have the right to inspect and review only such part of such material or document as is related to such student or students; and (2) any parent or guardian of students who are or have been in attendance at a school of such agency or of such institution, as the case may be, the right to inspect and review the education records of their children, if any material or document in the education records of a student is maintained by such an institution on more than one student, the parents of one or more of such students shall have the right to inspect and review only such part of such material or document as is related to such student or students.

For the purposes of this section the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(5) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein) other than directory information, as defined in paragraph (b) of subsection (a) of this section, without the written consent of their parents or a person having legal decision-making authority for such student.

(6) The term "personally identifiable information" does not include—

(i) any information that is aggregated with other information so that the identity of the student with respect to whom it relates cannot be identified or reasonably inferred by the party possessing the aggregated information; or

(ii) any information that has been altered so that the identity of the student with respect to whom it relates cannot be reasonably inferred by the party possessing such information; or

(iii) any information that has been de-identified or in which the identifying characteristics have been removed so that the identity of the student with respect to whom it relates cannot be reasonably inferred by the party possessing such information; or

(iv) any information that is included in a record of institutional, supervisory, and administrative personnel and informational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; or

(v) any information that is in the sole possession of a law enforcement official of the same jurisdiction and which is maintained solely for law enforcement purposes; or

(vi) any information that is not made available to persons other than law enforcement officials of the same jurisdiction.

(7) No funds shall be made available to any educational agency or institution which has a policy or practice of releasing, to any party other than those providing such treatment, provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(8) (A) For the purposes of this section the term "directory information" includes any information relating to a student which is generally available to the public, such as a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) The Secretary or any institution making public directory information shall give notice of the categories of information which it has designated as such information with respect to which it is releasing, to the institution or agency and shall allow a reasonable period of time after such notice is given for the parents of students attending the institution or agency to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(9) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(10) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein) other than directory information, as defined in paragraph (b) of subsection (a) of this section, without the written consent of their parents or a person having legal decision-making authority for such student.

(11) The term "personally identifiable information" does not include—

(i) any information that is aggregated with other information so that the identity of the student with respect to whom it relates cannot be identified or reasonably inferred by the party possessing the aggregated information; or

(ii) any information that has been altered so that the identity of the student with respect to whom it relates cannot be reasonably inferred by the party possessing such information; or

(iii) any information that has been de-identified or in which the identifying characteristics have been removed so that the identity of the student with respect to whom it relates cannot be reasonably inferred by the party possessing such information; or

(iv) any information that is included in a record of institutional, supervisory, and administrative personnel and informational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; or

(v) any information that is in the sole possession of a law enforcement official of the same jurisdiction and which is maintained solely for law enforcement purposes; or

(vi) any information that is not made available to persons other than law enforcement officials of the same jurisdiction.
PROPOSED RULES

Prior to November 19, 1974, the Department of Health, Education, and Welfare (DEW) adopted a system of regulations called the Family Educational Rights and Privacy Act of 1974 (FERPAA). This system required that educational institutions specify policies that would affect the privacy of students, or the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education.

In March 1975, the Department of Health, Education, and Welfare released proposals for making amendments to the FERPAA. These proposals were subsequently published in the Federal Register Volume 40, Number 36, page 13570, May 19, 1975. The proposals are intended to update the FERPAA and address changes in educational practices and technologies since the original enactment of the FERPAA.


Reviewers should also note that where statutory language is repeated in the proposed rules, it is so indicated by use of brackets. The brackets will be deleted when the final regulations are published.

The Department of Health, Education, and Welfare invites comments on the proposed rules. Comments should be directed to the need for regulations, rather than to their substance.


Comments received in response to this notice will be available for public inspection at the above office on weekdays during regular business hours. All relevant material received on or before March 7, 1975, will be considered.

Dated:

CASPAN W. WINTERBERG, Secretary of Health, Education, and Welfare.

PART 99--PRIVACY RIGHTS OF PARENTS AND STUDENTS

Sec. 99.1 Applicability of part.
99.2 Definitions.
99.3 Student rights.
99.4 Notification by educational institutions.
99.5 Waivers.

Subpart B--Access to Records
99.11 Requisitions for personal records.
99.12 Limitations on access.
99.13 Access rights.

Subpart C--Challenges to the Content of Records
99.21 Right to a hearing.
99.22 Formal proceedings.

Subpart D--Release of Personally Identifiable Records
99.23 Consent.
99.24 Copy to be provided to parents or eligible students.
99.25 Authority of parent to give consent.
99.26 Release of information for health or welfare investigations.
99.27 Release to other school officials.
99.28 Release to Federal and State officials.
99.29 Transfer of information by third parties.
99.30 Directory information.

FEDERAL REGISTER, VOL. 40, NO. 3--MONDAY, JANUARY 6, 1975
PROPOSED RULES

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232 (a) (3))

"Education records" (a) mean those records, files, documents, and other materials which: (1) [contain information directly related to a student; and] (2) [are maintained by an educational agency or institution, or by a person acting for such agency or institution.]

The term does not include: (1) [records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute]; (2) [if the personnel of a law enforcement unit do not have access to education records under] § 99.30, [the records and documents of law enforcement unit which] (1) [are kept apart from records described in] (a), (b) [are maintained solely for law enforcement purposes, and (d) are not available to persons other than law enforcement officials of the same jurisdiction.]

(3) [In the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or]

(4) [records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional acting in his professional or para-professional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.]

(20 U.S.C. 1232(g) (a) (4), (A), (B))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which preparatory secondary education is provided, as determined under State law.

(20 U.S.C. 1232(g)(d))

"Office and review board": The terms "Office" and "Review Board" mean the office and the review board described in § 99.60.

(20 U.S.C. 1232g)

"Panel" means a Hearing Panel, as described in § 99.67(a).

(20 U.S.C. 1232g(g))
"Parent" means a natural parent, an adoptive parent, or the legal guardian of a student. (20 U.S.C. 1232g)

"Party" means an individual, agency or organization. (20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make it possible to identify the student with reasonable certainty, or (e) other information which would make it possible to identify the student with reasonable certainty. (20 U.S.C. 1232g)

"Record" means information or data recorded in any medium, including, but not limited to: handwriting, print, tape, film, microfilm, and microfiche. (20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare. (20 U.S.C. 1232g)

"Student" (a) means any person who is attending or has attended an educational institution and with respect to whom the institution maintains education records or personally identifiable information. (b) The term (does not include a person who has not been in attendance at such an institution.) (20 U.S.C. 1232g(a) (1), (9), and (5))

COMMENTS

Most of the definitions repeat statutory language. The definition of "educational institution" repeats the statutory language in section 438(a)(2). Questions regarding educational institutions vis-a-vis their component units are addressed in later substantive sections: for example, the extent to which an institution (if it is a school system or a university system) would face similar termination for violations of this part by a unit of that institution; and the question whether the various units may release records to each other without obtaining parental consent. See §§ 99.30(a) and (b), and 99.66.

The definition of "education records" repeats the statutory language in section 438(a)(4).

With respect to this definition, the Conference report on the Committee Report states: "This is the intention of the Congress that the Department of Health, Education, and Welfare interpret the term "treatment" narrowly to limit the exemption for such records to those similar to those enumerated. It is not intended to apply to remedial educational records made or maintained by education professionals or paraprofessionals. (H. Rept. No. 93-1619 (1974), at Cong. Rec. H. 12187, 12169 (daily ed. December 17, 1974)."

§99.5 Notification by educational institutions.

(a) Each educational institution to which this part applies and which maintains records on students, shall inform (parents) and eligible students (of the rights accorded them) by this part. (20 U.S.C. 1232(g)(6))

(b) In meeting the requirements set forth in paragraph (a) of this section, the educational institution shall provide notice to parents and eligible students, at least annually, of the following:

(1) the type of education records and information contained therein which are directly related to students and maintained by the institution;

(2) the name and position of the official responsible for the maintenance of each type of record, the persons who have access to those records, and the purposes for which they have access;

(3) the policies of the institution for reviewing and expunging these records;

(4) the procedures established by the institution under §99.13;

(5) the procedures (including those set forth in subpart C of this part) for challenging the content of education records;

(6) the cost if any which will be charged to the parent or eligible student for reproducing copies of records under §99.35(c); and

(7) the categories of information which the institution has designated as directory information under §99.40.

§99.6 Other rights and requirements set forth in this part.

(c) The notices provided to a parent or eligible student under this section shall be in the language of the parent or eligible student. (20 U.S.C. 1232(g)(a)(3), (8) and (e))

COMMENTS

This section sets out the requirements of section 438(d), which transfers the rights accorded to parents under section 483 to the students themselves, referred to in this section as "eligible students." See the definition in §99.3. Section 438(d) does not speak to the question of whether students may have rights comparable to those in section 438 concerning their education records before they reach age 18 or the postsecondary level of education. Such rights of students may be provided by State or local law or by institutional practice. "Student rights" are not limited by the legislation. This interpretation avoids some problems: students not having access to their own records, especially where they may be in an adversary relationship to their parents; teachers not being able to discuss the student's records with the student without parental consent; institutions not being able to release report cards to students without parental consent; students under 18 not being able to request their transcripts be sent to colleges or employers without parental consent and so forth.

It is clear from the use of the word "only" in the statutory language, however, that once students reach age 18, the postsecondary level prior to age 18, their parents no longer have any of the rights set out herein, except as provided in §99.30(b).
cost to make copies of any part of a record, and who must bear the cost in a given situation.

Paragraph (b) (6) is necessary to ensure that institutions inform parents of any other rights set out herein, such as access rights and when rights transfer to student.

Paragraph (b) (7) is intended to implement the notice requirement of section 438 (a) (5) (B).

§ 99.6 Waivers.

(a) Educational institutions shall not require parents or eligible students to waive their rights under this part.

(Cong. Rec. S. 21489 (daily ed., December 13, 1974))

(b) [A student or a person applying for admission may waive his] or her right of access to confidential statements described in § 99.12 (e) [except that such waiver shall apply to recommendations only if] (1) (the student is, upon request, notified of the names of all persons making confidential recommendations and) (2) [in the case of recommendations described in § 99.12 (e) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission, to receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.]

(20 U.S.C. 1232g(a) (1) (B) and (G))

COMMENT

Since an educational institution is precluded from "effectively" preventing the exercise of access rights in section 438 (a) (1), an institution could not require students to waive such rights. However, section 438 (a) (1) (B) and (C) allows students to waive their rights under certain conditions.

Subpart B—Access to Records

§ 99.11 Access.

Educational agencies or institutions shall provide parents of students (or eligible students) who are or have been in attendance at a school of such agency or at such institution, as the case may be, access to educational records of the students, except as set out in § 99.12.

(20 U.S.C. 1232g(a) (1) (A))

COMMENT

The language "shall provide parents of students (or eligible students) access" is used in place of the statutory language "policy of denying, or which effectively prevents.

Paragraph (a) is necessary because access could not be meaningful if parents or eligible students were not informed of what types of records the institution might have on a student.

Paragraph (b) sets out statutory requirements.

Paragraph (c) is necessary because a right to obtain copies is an essential part of a right of access. It should be noted that a countersignature may be made against including a right to copy: such a right might subject parents or students to undesirable pressures from third parties to turn over their entire records (for third parties to make admission, employment, credit rating, or other decisions) and that such a right should not be included in a right of access.

Paragraph (d) is necessary so that parents or eligible students may have an opportunity to have any part of the record explained to them.

Paragraph (e) sets out the section 438 (a) (2) requirement which is set out more fully in subpart C;

Paragraph (f) sets out statutory language of section 438 (a) (1) (A).

The Buckley/Pell statement contains the following elaboration:

In general, it is intended that the parent would be shown the actual documents contained in the child's education records. However, under certain circumstances this might not be possible—where, for instance, it is impossible to separate information about one student from that about others. If a student's name is one in a long list of names, it would violate the others' rights to privacy to have the entire list shown to that student's parents. In such a situation, the responsibility of the educational agency or institution is to make the information concerning the student known to the parent without actually having to show him the document.

(Cong. Rec. S. 21488 (daily ed., December 13, 1974))

§ 99.13 Access rights.

The right of access specified in § 99.11 shall include:

(a) The right to be provided a list of the types of education records which are maintained by the institution and are directly related to students;

(b) [The right to inspect and review the content of those records;]

(c) [The right to obtain copies of those records, which may be at the expense of the parent or the eligible student (but not to exceed the actual cost to the educational institution of reproducing such copies);]

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records;

(e) The right to an opportunity for a hearing to challenge the content of those records under subpart C of this part; and

(f) [If any material or document in the education record of a student includes information on more than one student, the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material.]

(20 U.S.C. 1232g(a) (1) (A))

COMMENT

Section 438 (a) (1) (A) establishes a right "to inspect and review" and provides that procedures must be established for allowing access. This section attempts to make a "right of access" meaningful. Authority for making such judgments may be found in section 438 (f) which states that the Secretary shall take "appropriate actions to enforce provisions of the section." Appropriate actions may be interpreted to include the issuance of regulations which further the statutory intent.

The statute does not by its terms preclude the destruction of records.

In a floor discussion of the amendment to section 438, the following colloquy took place between Senators McIntyre and Pell:

Mr. McIntyre. * * * I would appreciate the Senator's telling me whether my understandings on these three points are correct. The act is not designed to require the retention of records or to require that institutions continue to retain and use records that have been used in the past. In fact, it could be said that the act's purposes are best achieved when fewer records are kept and used.

Mr. Pell. * * * the points he has raised are correct.

The law intends that parents have a full and fair opportunity to present evidence to show that their children's records contain inaccurate, misleading or otherwise inappropriate information. The hearing should be held and the institution's decision rendered within a reasonable period after the request. There has been much concern that the right to a hearing will permit a parent or student to contest the record of another in the same institution in a course. That is not intended. It is intended only that there be procedures to challenge an accuracy of the record made by the educational agency or institution which records the grade which was actually given. Thus, the parents or student could seek to correct an improperly recorded grade, but could not through the hearing required pursuant to this law contest whether the teacher should have assigned a higher grade because the parents or student believe that the student was entitled to the higher grade.

On the other hand, if a child has been labeled mentally or otherwise retarded and put aside in a special class or school, parents would be able to review the materials in the record which led to this institutional decision, and perhaps seek professional assistance, to see whether the records contain inaccurate information or erroneous evaluations about their child.

Subpart C—Challenges to the Content of Educational Records

§ 99.21 Informal proceedings.

Educational institutions may attempt to settle a dispute with the parent of a student or the eligible student regarding the content of the student's education records through informal meetings and discussions with the parent or eligible student.

(20 U.S.C. 1232g(a) (2))

Comment

Section 438(a) (2), which requires "an opportunity for a hearing" does not preclude attempts to settle disputes by informal means. Formal hearing procedures may only be necessary when such informal means are not satisfactory to the parent (or eligible student) or the educational institution.

§ 99.22 Formal proceedings.

Upon the request of either party (the educational institution or the parent (or eligible student)), the hearing required by § 99.20 shall be conducted under the procedures adopted and published by the institution under § 99.5(b) (5). Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and to be held within a reasonable period of time following the request for the hearing;

(b) The hearing shall be conducted, and the decision rendered, by an institutional official or other party who does not have a direct interest in the outcome of the hearing;

(c) The parents or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.20; and

(d) The decision shall be rendered in writing within a reasonable period of time after the conclusion of the hearing.

(20 U.S.C. 1232g(a) (9))

Comment

This section specifies certain due process procedures which are felt to be needed for a full and fair hearing.

The Buckley/Pell Statement provides the following guidance:

The law is not specific concerning the format, procedure, or mechanism for the conduct of such a hearing at the local level. It is the intent of the sponsors of this amendment that again a more flexible mechanism be followed by those participants involved. Since the hearing is to be conducted at the local level, a detailed specification of procedures cannot be drawn that could possibly apply to each of the thousands of school districts and colleges across the nation. Each has a slightly different organizational structure and pattern of procedure. Obviously, the hearing mechanism must be adapted in each instance to conform to these individual differences. In some cases, a school district might wish to offer the parent a hearing at the district level; in other instances, disputes about the content of records might be better handled at the local school level. It is not the intent of this amendment to establish schools with onerous hearing procedures.

Subpart D—Release of Personally Identifiable Records

§ 99.30 Consent.

Educational institutions shall not permit access to or the release of educational records or personally identifiable information contained therein, other than directory information, to any party other than the following:

(a) [Other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests;]

(b) [Officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;]

(c) Subject to the conditions set forth in § 93.37, authorized representatives of (1) the Comptroller General of the United States; (2) the Secretary; (3) the Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education; (20 U.S.C. 1232g-3(c)); or (4) [State educational authorities];

(d) [In connection with a student's application for, or receipt of, financial aid;]

(e) [State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute or regulation;]

(f) [Nothing] (this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder;]

FEDERAL REGISTER, VOL. 40, NO. 3—MONDAY, JANUARY 6, 1975
Proposed Rules

This section sets out one of the requirements of section 438(b) (2) (A) and interprets the phrase "if desired by the parents" as modifying both "parents" and "the student" so that copies need not be automatically sent out whether or not desired by the parents. This seems justifiable because the parents or eligible students may be seeking the release of data for their own purposes and may not want a copy of anything released (for example, they would not necessarily want a duplicate copy of a transcript each and every time they want it sent to a college). Further, it would be wasteful to require institutions to provide copies for the parents if they do not want copies. In any case, the regulation provides parents and eligible students with the right to obtain copies on request.

§ 99.33 Authority of parent to give consent.

(a) Except as otherwise provided in this section, any parent of a student may give a written parental consent required under this section to give consent for the release of records. Where parents are separated or divorced, a written parental consent required under this part may be obtained from either parent subject to any agreement between the parents or court order governing the rights of such parents.

(b) Where the consent of a parent or eligible student is required under this part for the release of education records, (a copy of the records to be released) shall be provided on request to (a) the student's parents or (b) the student if desired by the parent.

Comment

This section sets out one of the requirements of section 438(b) (2) (A) and includes a list of those officials who, by reason of their office or association with the educational institution, shall include the educational authorities of parent to give consent.

§ 99.31 Content of consent.

Where the consent of a parent or eligible student is required under this part for the release of education records, it shall be in writing, be signed by the person giving such consent, and shall include (a) the names of the persons to whom such records will be released, (b) the reason for such release, and (c) the names of the parties to whom such records will be released.

Comment

This section is based on section 438(b) (1) and (2) of this Act.

§ 99.32 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of education records, a copy of the records to be released shall be provided on request to (a) the student's parents or (b) the student if desired by the parent.

§ 99.35 Release of information for health or safety emergencies.

(a) Educational institutions may release information from education records to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or others.

(b) The factors which should be taken into account in determining whether records may be released under this section include the following:

1. The seriousness of the threat to the health or safety of the student or others;

2. The need for such records to meet the emergency;

3. Whether the persons to whom such records are released are in a position to deal with the emergency; and

4. The extent to which time is essential in dealing with the emergency.

Comment

This section is required by section 438(b) (1) (I). The Buckley/Fell Statement provides the following elaboration: . . . under certain emergency situations it may become necessary for an educational agency or institution to release personal information to protect the health or safety of a student or other individual, or to prevent the outbreak of a disease (for example, a case of smallpox). It is unrealistic to expect an educational official to seek consent from every parent before a health warning can be issued. On the other hand, a blanket exception for "health or safety" could lead to unnecessary dissemination of personal information. Therefore, in order to assure that there are adequate safeguards on this exception, the amendments provided that the Secretary shall promulgate regulations to implement this subsection. It is expected that he will strictly limit the applicability of this exception.

§ 99.36 Release to other school officials.

For the purposes of the exception set forth in §99.30(a), release of records interests adverse to those of the child and should not control decisions about what information may be released about the child (for example, if the institution is approached by a researcher who will provide grant funds to the institution for a study of the children, the institution may not make a decision which adequately protects the children's privacy rights). The child/student should be represented by a third party who has no conflict of interest.

There may still be problems under this provision if the third party guardian is not duly appointed.
PROPOSED RULES

§ 99.37 Release to Federal and State officials.

(a) Nothing in this part shall preclude authorized representatives of the officials listed in § 99.30(c) from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs.

(b) As used in this section, the term "authorized representatives" may include contractors.

(c) Except (1) where the consent of a parent or eligible student has been obtained pursuant to §§ 99.31-99.33 (subject to the provisions of section 449 of the General Education Provisions Act), or (2) when collection of personally identifiable information is specifically authorized by Federal law, any data collected by the officials listed in § 99.30(c) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

§ 99.38 Record of access.

(a) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all parties [other than those specified in] § 99.30(a) [which have requested or obtained access to a student's education records maintained by such educational agency or institution and which will indicate specifically the legitimate interest of each such party] [his in obtaining this information.

(b) Such record of access shall be available only to parents or eligible students, (to the school official and his or her assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of § 99.30 (a) and (c) [as a means of auditing the operation of the system.]

§ 99.39 Transfer of information by third parties.

(a) Educational institutions shall not release [personal information] on a student except in the condition that the party to which the information is being transferred will not permit any other party to have access to such information without the written consent of the parents or of the eligible student.

(b) Educational institutions shall include, with any information released to an agency or a party who has no higher education relationship to the student, which will indicate all parties [other than those specified in] § 99.30(a) [as a means of auditing the operation of the system.]


Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or otherwise making it available from the institution. This approach is authorized, because of conflicting State laws, section 99.63 makes allowances for such circumstances. This approach is authorized, by 438(f), which states that termination may not occur until the Secretary has determined that compliance cannot be obtained by voluntary means.

§ 99.62 Assurances required—subgrants and subcontracts.

Any educational institution which receives funds under a Federal program referenced in § 99.1(a) shall, as a condition to making any of such funds available to another educational institution (whether by subgrant, contract, subcontract, or otherwise), require such second institution to submit to it an assurance that the other institution is in compliance and will continue to comply with the provisions of section 438 of the Act and the regulations in this part.

§ 99.63 Assurances—conflict with State or local law.

(a) In the event that an educational institution cannot provide the assurance required in §§ 99.61 and 99.62 because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part, the institution shall so state in each of its applications, proposals, and plans submitted to obtain Federal funds which are subject to this part, given the task and legal citation of the conflicting law.

(b) The Secretary may waive the requirements in §§ 99.61 and 99.62 for a limited period of time if the circumstances are set forth in paragraph (a) of this section.

(2) The waiver will be granted only for such period as may be reasonably necessary for the pertinent State or local legislative body (and/or executive) to
PROPOSED RULES

have an opportunity to alter the conflicting State or local law to bring it into conformity with section 438 of the Act and this part.

(c) During the period of a waiver under paragraph (b) of this section, the educational institution to which such waiver applies will not be penalized with regard to the availability of Federal funds.

§ 99.64 Reports and records.

Each educational institution shall (a) make such reports, in such form and containing such information, as the Office or the Review Board may require to carry out its functions under this part, and (b) keep such records and afford such access thereto as the Office or the Review Board may find necessary to assure the correctness of such reports and compliance with the provisions of section 438 of the Act and this part.

§ 99.65 Complaint procedure.

(a) Complaints regarding violations of section 438 of the Act or of the regulations in this part shall be submitted to the Office in writing.

(b) A complaint must be received by the Office not later than 180 days from the date of the alleged violation unless the time for submission is extended by the Office.

(c) (1) The Office will notify each complainant and the educational institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the institution under paragraph (c) (1) of this section shall include the substance of the alleged violation and such institution shall be given an opportunity to submit a written response.

(d) (1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation, the Office will provide written notification of its findings, and the basis for such findings, to the complainant and the institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (d) (2) of this section, the specific steps which must be taken by the educational institution to bring such institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the institution to voluntarily comply.

(e) If the educational institution does not come into compliance within the period of time set under paragraph (d) (3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.66-99.69, inclusive.

§ 99.66 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational institution has failed to comply with the provisions of section 438 of the Act, or of the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational institution (or, at the Secretary’s discretion, to the unit of the educational institution affected by the failure to comply) until there is no longer any such failure to comply.

§ 99.67 Hearing procedures.

(a) Panels. The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.66. Each such Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) Procedural rules. (1) With respect to hearings involving, in the opinion of the Panel, a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (a) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (b) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1) (ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party’s behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(f))

§ 99.68 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.67(b) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under § 99.69.

(20 U.S.C. 1232g(g))

§ 99.69 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party’s counsel), and to the Secretary with a notice affording such party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review such decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany such action by written statement of the grounds for such modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon such decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational institution involved or its attorney.

(20 U.S.C. 1232g(1))