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federal register

TUESDAY, APRIL 27, 1976

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Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
	CSC			CSC
	LABOR			LABOR

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this trial program are invited and will be received through May 7, 1976. Comments should be submitted to the Director of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Corrected Meeting

In the "Reminders" listing in the issue for Wednesday, April 21, 1976, under "Next Week's Meetings", the meeting date for the National Advisory Committee on Occupational Safety and Health on page x should read "5–27–76".

List of Public Laws

This is a continuing numerical listing of public bills which have become law, together with the law number, the title, the date of approval, and the U.S. Statutes citation. The list is kept current in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

H.R. 1465 ..... Pub. Law 94–271
An act to provide for the division of assets between the Twenty-Nine Palms Band and the Cabazon Band of Mission Indians, California, including certain funds in the United States Treasury, and for other purposes
(Apr. 21, 1976; 90 Stat. 373)

H.R. 11598 ..... Pub. Law 94–272
United States Information Agency Authorization Act, Fiscal Year 1976
(Apr. 21, 1976; 90 Stat. 374)

S. 2445 ..... Pub. Law 94–273
Fiscal Year Adjustment Act
(Apr. 21, 1976; 90 Stat. 375)

S. 2444 ..... Pub. Law 94–274
Fiscal Year Transition Act
(Apr. 21, 1976; 90 Stat. 383)

S.J. 35 ..... Pub. Law 94–275
Joint resolution to provide for the designation of the week beginning March 13, 1977, as "National Employ the Older Worker Week"
(Apr. 21, 1976; 90 Stat. 396)

S. 3056 ..... Pub. Law 94–276
Guatemala Relief and Rehabilitation Act of 1976
(Apr. 21, 1976; 90 Stat. 397)

H.J. Res. 491 ..... Pub. Law 94–277
Joint resolution to extend support under the joint resolution providing for Allen J. Ellender fellowships to disadvantaged secondary school students, and for other purposes
(Apr. 21, 1976; 90 Stat. 399)

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of the Treasury

Section 213.3305 is amended to show that one position of Secretary to the Assistant to the Secretary and Director, Office of Revenue Sharing, is excepted under Schedule C.

Effective April 27, 1976, § 213.3305(a) (66) is added as set out below:

§ 213.3305 —Department of the Treasury.

(a) *Office of the Secretary.* * * *

(66) One Secretary to the Assistant to the Secretary and Director, Office of Revenue Sharing.

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

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

[FR Doc.76-12040 Filed 4-26-76;8:45 am]

Title 7—Agriculture

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

[Amdt. 1]

PART 795—PAYMENT LIMITATIONS

Inclusion of Rice Program

On February 16, 1976, the President signed the Rice Production Act of 1975 which establishes a program for the benefit of producers and consumers of rice. This Act provides that the total amount of payments which a person is entitled to receive during a crop year under the rice program shall not exceed $55,000. The language of the Act dealing with this provision is similar to the language of the Agriculture and Consumer Protection Act of 1973 which limits payments to a person under the annual wheat, feed grain, and upland cotton programs to a total of $20,000.

This amendment, therefore, adds the rice program payment limitation to the regulations previously issued by the Secretary of Agriculture to implement the wheat, feed grain, and upland cotton payment limitation.

The regulations containing provisions for payment limitations, 7 CFR Part 795, published in the FEDERAL REGISTER of April 30, 1974 (39 FR 15021), are amended by revising § 795.1, paragraphs (a) and (b) of § 795.2, and §§ 795.5, 795.17 and 795.18 to read as follows:

GENERAL

§ 795.1 Basis and purpose.

(a) The Agricultural Act of 1970, as amended by the Agriculture and Consumer Protection Act of 1973, provides that the total amount of payments which a person shall be entitled to receive under one or more of the annual programs for wheat, feed grains, and upland cotton for 1974 through 1977 under the Act shall not exceed $20,000.

(b) The Rice Production Act of 1975 provides that the total amount of payments which a person shall be entitled to receive under the annual program for rice for 1976 or 1977 under the Act shall not exceed $55,000.

(c) These limitations are hereinafter referred to as "the payment limitation" or "the limitation."

(d) The Acts provide that the Secretary shall issue regulations defining the term "person" and prescribing such rules as he determines necessary to assure a fair and reasonable application of such limitation.

§ 795.2 Applicability.

(a) The provisions of this part are applicable to all payments made pursuant to the regulations in this chapter for the 1974 through 1977 programs for wheat (Part 728 of this chapter), feed grains (Part 775 of this chapter), and upland cotton (Part 722 of this chapter), and for the 1976 and 1977 programs for rice (Part 730 of this chapter).

(b) If the limitation is for wheat, feed grains and/or upland cotton, the limitation shall be applied to the total of wheat, feed grain, and upland cotton payments.

* * * * * *

DETERMINATION WHETHER MULTIPLE INDIVIDUALS OR OTHER ENTITIES CONSTITUTE ONE OR SEPARATE PERSONS

§ 795.5 Timing for determining status of persons.

Except as otherwise set forth in this part, the status of individuals or entities on March 1 (May 1 for 1974 for the wheat, feed grains, and upland cotton programs; May 1 for 1976 for the rice program) of the current year shall be the basis on which determinations are made under the regulations for such year.

SCHEME OR DEVICE

§ 795.17 Scheme or device.

All or any part of the payments otherwise due a person under the upland cotton, wheat, and feed grain programs or under the rice program on all farms in which he has an interest may be withheld or required to be refunded if he adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part; submitting false information to the county committee (for example, entering into side agreements which differ from information furnished concerning the manner in which program payments are shared, or concerning the facts of a sale or other transfer of property); or creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

ADJUSTMENT IN SET-ASIDE REQUIREMENT

§ 795.18 Request for downward adjustment in set-aside requirement.

A producer whose payments under the upland cotton, wheat, feed grain or rice program may be reduced because of the limitation may request a downward adjustment in his set-aside requirement of the program for the farm. The request shall be in writing and shall be filed with the county committee by a date prescribed by the Deputy Administrator. If such a producer is sharing in payments in two or more counties, it shall be the producer's responsibility to furnish information concerning his participation in the other counties to the county committee for the county in which the application for a downward adjustment is filed.

Since producers of rice are now making plans for their farming operations for 1976, it is essential that the provisions of this amendment be published as soon as possible. Therefore, it is hereby determined that compliance with the notice, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 are impracticable and contrary to the public interest.

Effective date: These amendments shall become effective on April 26, 1976.

(Title 1 of the Agricultural Act of 1970, as amended by the Agriculture and Consumer Protection Act of 1973, Pub. L. 93-86, 87 Stat. 221 (7 U.S.C. 1307) and under Title 1 of the Rice Production Act of 1975, Pub. L. 94-214, 90 Stat. 181 (7 U.S.C. 423c note).)

Signed at Washington, D.C., on April 19, 1976.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.76-11956 Filed 4-26-76;8:45 am]

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

[Docket No. AO 90-A6]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Order Amending Order

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums and peaches grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh pears, plums and peaches grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of fresh pears, plums and peaches grown in the production area; and

(5) All handling of fresh pears, plums and peaches grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is hereby found, on the basis hereinafter indicated, that good cause exists for making the provisions of this amended order effective on the date hereinafter set forth and that it would be contrary to the public interest to postpone such effective time until 30 days after publication in the Federal Register (5 U.S.C. 553). The provisions of this order authorize the regulation of intrastate shipments of fresh pears and peaches. Provisions also authorize marketing promotion projects, including paid advertising, for fresh pears and peaches. In order to have such provisions applicable to the upcoming crop, shipments from which are expected to begin in early May, the order should become effective on the date designated. Copies of the text of the amended order have been made available to all known producers and handlers. The provisions of the order do not impose any restrictions on handlers until regulations in accordance therewith are issued, and compliance with such provisions will not require advance preparation on the part of persons subject thereto which cannot be completed prior to the effective time of such regulations.

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Fresh Pears, Plums, and Peaches Grown in California," upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the fruit covered by the said order, as amended, and as hereby further amended) who, during the period March 1, 1975, through October 31, 1975, handled not less than 50 percent of the volume of pears, not less than 50 percent of the volume of plums, and not less than 50 percent of the volume of peaches covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the respective producers who participated in a referendum on the question of its approval and who during the period March 1, 1975, through October 31, 1975 (which has been deemed to be a representative period), have been engaged within the production area in the production of fresh pears, plums, and peaches for market, such producers having also produced for market at least two-thirds of the volume of each fruit represented in the referendum.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of fresh pears, plums, and peaches grown in California shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

Definitions

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917.1 Secretary.
917.2 Act.
917.3 Person.
917.4 Fruit.
917.5 Grower.
917.6 Handle.
917.7 Handler.
917.8 Commercial plum handler.
917.9 Fiscal period.
917.11 Production area.
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917.15 Representation area.

Administrative Bodies

917.16 Designation of Control Committee.
917.17 Nomination of shipper members of Control Committee.
917.18 Nomination of commodity committee members of Control Committee.
917.19 Selection of members of Control Committee.
917.20 Designation of members of commodity committees.
917.21 Nomination of Pear Commodity Committee members.
917.22 Nomination of Peach Commodity Committee members.
917.23 Nomination of Plum Commodity Committee members.
917.24 Procedure for nominating members of various commodity committees.
917.25 Selection of members of various commodity committees.
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917.27 Alternates.
917.28 Procedure for filling vacancies on committees.
917.29 Organization of committees.
917.30 Removal and disapproval.
917.31 Compensation and expenses.
917.32 Funds and other property.
917.33 Powers of Control Committee.
917.34 Duties of Control Committee.
917.35 Powers and duties of each commodity committee.

Expenses and Assessments

917.36 Expenses.
917.37 Assessments.
917.38 Accounting.

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917.39 Production research, market research and development.

Regulations

917.40 Recommendations for regulations.
917.41 Issuance of regulations.
917.42 Modification, suspension, or termination of regulations.
917.43 Special purpose shipments.
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917.50 Reports.

Miscellaneous Provisions

917.60 Effective time.
917.61 Termination.
917.62 Proceedings after termination.
917.63 Effect of termination or amendment.
917.64 Compliance.
917.65 Duration of immunities.
917.66 Agents.
917.67 Derogation.
917.68 Liability of committee members.
917.69 Separability.

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

DEFINITIONS

§ 917.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 917.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 917.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 917.4 Fruit.

"Fruit" means the edible product of the following three kinds of trees (a) all varieties of plums, (b) all varieties of peaches, and (c) all varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau.

§ 917.5 Grower.

"Grower" is synonymous with producer and means any person who produces fruit for market in fresh form, and who has a proprietary interest therein.

§ 917.6 Handle.

"Handle" and ship are synonymous and mean to sell, consign, deliver or transport fruit or to cause fruit to be sold, consigned, delivered or transported between the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the sale of fruit on the tree, the transportation within the production area of fruit from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such fruit to such packing facility for such preparation.

§ 917.7 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting fruit owned by another person) who handles fruit.

§ 917.8 Commercial plum handler.

"Commercial plum handler" means any person who produces less than 50% of the plums which he handles.

§ 917.9 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period ending on the last day of February of each year, or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 917.11 Production area.

"Production area" means the State of California.

§ 917.12 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of fruit.

§ 917.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of fruit in a particular type and size of container or any combination thereof.

§ 917.14 District.

"District" means any of the following subdivisions of the State of California:

(a) "North Sacramento Valley District" includes and consists of Glenn County, Shasta County, Tehama County, Modoc County, Siskiyou County, Lassen County, Plumas County, and Colusa County.

(b) "Central Sacramento Valley District" includes and consists of Sutter County, Butte County, Yuba County, and Sierra County.

(c) "Sacramento River District" includes and consists of Sacramento County, that portion of Yolo County east of a straight line from the northwest corner of Sacramento County to the Northeast corner of Solano County, and that portion of Solano County east of a straight line from the northeast corner of Solano County to the town of Rio Vista.

(d) "El Dorado District" includes and consists of El Dorado County.

(e) "Placer-Colfax District" includes and consists of Nevada and Placer Counties.

(f) "Solano District" includes and consists of that portion of Yolo County not included in the Sacramento River District, and that portion of Solano County not included in the Sacramento River District.

(g) "Contra Costa District" includes and consists of Contra Costa County.

(h) "Santa Clara District" includes and consists of Alameda County, Monterey County, Santa Clara County, San Mateo County, Santa Cruz County, and San Benito County.

(i) "Lake District" includes and consists of Lake County.

(j) "Mendocino District" includes and consists of Mendocino County, Humboldt County, Trinity County, and Del Norte County.

(k) "South Coast District" includes and consists of San Luis Obispo County, Santa Barbara County, and Ventura County.

(l) "Stockton District" includes and consists of San Joaquin County, Amador County, Calaveras County, and Alpine County.

(m) "Stanislaus District" includes and consists of Merced County, Stanislaus County, Tuolumne County, and Mariposa County.

(n) "Fresno District" includes and consists of Madera County, Fresno County, Mono County, Kings County, and that portion of Tulare County north of the 4th Standard Parallel south of the Mount Diablo Base Line of the General Land Office.

(o) "Tulare District" includes and consists of that portion of Tulare County not included in Fresno District.

(p) "Kern District" includes and consists of that portion of Kern County west of the Tehachapi Mountains.

(q) "Tehachapi District" includes and consists of that portion of Kern County not included in Kern District, and Inyo County.

(r) "Southern California District" includes and consists of San Bernardino County, Orange County, San Diego County, Imperial County, Riverside County, and Los Angeles County.

(s) "North Bay District" includes and consists of Sonoma County, Napa County, and Marin County.

§ 917.15 Representation area.

"Representation area" means any one of the districts or groups of districts which are designated for nominating members and alternate members to the commodity committees under §§ 917.21 through 917.23 or as changed pursuant to § 917.35(g).

ADMINISTRATIVE BODIES

§ 917.16 Designation of Control Committee.

A Control Committee is hereby established consisting of 12 shipper members and 13 commodity committee members, and the members shall be selected in accordance with the provisions of § 917.17 through § 917.19. The members shall be selected annually for a term ending on the last day of February, and said members shall serve until their respective successors are selected and have qualified.

§ 917.17 Nomination of shipper members of the Control Committee.

Nominations for the 12 members of the Control Committee to represent shippers shall be made in the following manner:

(a) By February 1 of each year the Control Committee shall announce a time and place for a meeting of all shippers of fruit and shall conduct the election of nominees at such meeting. At said election meeting the shippers present shall select a nominee for each of the shipper member positions on the Control Committee. Each shipper shall cast only one vote.

(b) No shipper shall be entitled to participate in the nomination of members of the Control Committee, or be eligible for membership on such committee, if such shipper has failed to pay the assessments, due to be paid by him pursuant to the provisions of § 917.37.

§ 917.18 Nomination of commodity committee members of the Control Committee.

Nominations for the 13 members of the Control Committee to represent the commodity committees shall be made in the following manner:

(a) A nomination for one member shall be made by each commodity committee selected pursuant to § 917.25.

Nominations for the remaining members shall be made by the respective commodity committees as provided in this section. The number of remaining members which each respective commodity committee shall be entitled to nominate shall be based upon the proportion that the previous three fiscal periods' shipments of the respective fruit is of the total shipments of all fruit to which this part is applicable during such periods. In the event provisions of this part are terminated as to any one fruit, nominations of members to the Control Committee shall be composed of representatives of the remaining two fruits. The apportionment shall be determined as aforesaid. In the event provisions of this part are terminated as to any two fruits, the members of the commodity committee of the remaining fruit shall have all of the powers, duties, and functions given to the Control Committee under this part and sections of this part pertaining to the designation of the Control Committee shall be terminated.

(b) A person nominated by any commodity committee for membership on the Control Committee shall be an individual person who is a member or alternate member of the commodity committee which nominates him. Each member of each commodity committee shall have only one vote in the selection of nominees for membership on the Control Committee.

§ 917.19 Selection of members of the Control Committee.

From the nominations made pursuant to § 917.17, or from other persons, the Secretary shall select the shipper members of the Control Committee. From the nominations made pursuant to § 917.18, or from other persons, the Secretary shall select the commodity committee members of the Control Committee. Any person selected as member of the Control Committee shall qualify by filing with the Secretary a written acceptance of the appointment.

§ 917.20 Designation of members of commodity committees.

There are hereby established a Pear Commodity Committee and a Peach Commodity Committee each consisting of 13 members and a Plum Commodity Committee consisting of 12 members. Each commodity committee may be increased by one public member nominated by the respective commodity committee and selected by the Secretary. The members of each said committees shall be selected biennially for a term ending on the last day of February of odd numbered years, and such members shall serve until their respective successors are selected and have qualified. The members of each commodity committee shall be selected in accordance with the provisions of § 917.25.

§ 917.21 Nomination of Pear Commodity Committee members.

Nominations for membership on the Pear Commodity Committee shall be made by the growers of pears in the respective representation areas as follows:

(a) North Sacramento Valley District and the Central Sacramento Valley District one nominee.

(b) Sacramento River District, Stockton District, Stanislaus District, Contra Costa District, Santa Clara District, and Solano District four nominees.

(c) Placer-Colfax District one nominee.

(d) Lake District four nominees.

(e) Mendocino District and the North Bay District one nominee.

(f) El Dorado District one nominee.

(g) All of the production area not included in subparagraphs (a) through (f) of this section one nominee.

§ 917.22 Nomination of Peach Commodity Committee members.

Nominations for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation areas, as follows:

(a) South Coast District and Southern California District one nominee.

(b) Tehachapi District and Kern District one nominee.

(c) Tulare District one nominee.

(d) Fresno District eight nominees.

(e) Stanislaus District and Stockton District one nominee.

(f) All of the production area not included in subparagraphs (a) through (e) of this section one nominee.

§ 917.23 Nomination of Plum Commodity Committee members.

Nominations for membership on the Plum Commodity Committee shall be made by the growers of plums in the respective representation areas as follows:

(a) Kern District, Tehachapi District, South Coast District, and Southern California District one nominee.

(b) Tulare District two nominees.

(c) Fresno District six nominees.

(d) Placer-Colfax District one nominee.

(e) North Sacramento Valley District and Central Sacramento Valley District one nominee.

(f) All of the production area not included in subparagraphs (a) through (e) of this section one nominee.

§ 917.24 Procedure for nominating members of various commodity committees.

(a) The Control Committee shall hold or cause to be held not later than February 15 of each odd numbered year a meeting or meetings of the growers of the fruits in each representation area set forth in §§ 917.21, 917.22, and 917.23 for the purpose of designating nominees of the commodity committees. These meetings shall be supervised by the Control Committee, which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(b) With respect to each commodity committee only growers of the particular fruit who are present at such nomination meetings or represented at such meetings by duly authorized employees may participate in the nomination and election of nominees for commodity committee members. Each such grower, including employees of such grower, shall be entitled to cast but one vote for each position to be filled for the representation area in which he produces such fruit.

(c) A particular grower, including employees of such growers, shall be eligible for membership as principal or alternate to fill only one position on a commodity committee. A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him during the previous fiscal period, or he must represent an organization which produced at least 51 percent of the pears shipped by it during such period. A grower nominated for membership on the Plum Commodity Committee may be a producer who has a proprietary interest in or is an employee of a commercial plum handler: *Provided,* That at least one such nominee from each representation area shall be a producer who does not have a proprietary interest in or is not an employee of a commercial plum handler.

§ 917.25 Selection of members of various commodity committees.

The Secretary shall select the members of each commodity committee from nominations made by growers, as provided in §§ 917.21 through 917.24, or from among other eligible persons. Any person selected as a member of a commodity committee shall qualify by filing with the Secretary a written acceptance of the appointment.

§ 917.26 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in §§ 917.21 through 917.24, the Secretary may, without regard to nominations, select the members and alternate members of the commodity committees on the basis of the representation provided in §§ 917.21 through 917.23. In the event nominations are not made for membership on the Control Committee, pursuant to the provisions of §§ 917.17 and 917.18, by May 1 of each year, the Secretary may select such members without waiting for nominees to be designated.

§ 917.27 Alternates.

There shall be an alternate for each member of the Control Committee, and an alternate for each member of each commodity committee. Each such alternate shall possess the same qualifications, shall be nominated and selected in the same manner and shall hold office for the same term, as the member for whom he is alternate. An alternate shall, in the event of such member's absence at a meeting of the committee, act in the place and stead of such member; and, in the event of such member's removal, resignation, disqualification, or death, the alternate for such member shall, until a successor for the unexpired term of said member has been selected, act in the place and stead of said member. In the event both a member and his alternate are unable to attend a meeting the member or the committee members present may designate any other alternative to serve in such member's place and stead provided such action is necessary to secure a quorum.

§ 917.28 Procedure for filling vacancies on committees.

To fill any vacancy on the Control Committee or on any of the commodity committees occasioned by the failure of any person selected as a member or as an alternate member to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member, a successor for the unexpired term of such member or alternate shall be nominated and selected in the manner specified in §§ 917.17 through 917.19 and §§ 917.21 through 917.25. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations on the basis of representation provided for in §§ 917.16 and 917.21 through 917.23.

§ 917.29 Organization of committees.

(a) A majority of all of the members of the Control Committee shall constitute a quorum, and any action of the Control Committee shall require the concurrence of the majority of all members present at the meeting.

(b) A quorum of the Pear Commodity Committee and of the Peach Commodity Committee shall each consist of nine members and a quorum of the Plum Commodity Committee shall consist of eight members.

(c) The Control Committee and each commodity committee shall give to the Secretary the same notice of each meeting that is given to the members of the respective committee.

(d) The Control Committee or any commodity committee may, upon due notice to all of the members of the respective committee, vote by letter, telegraph, or telephone: *Provided,* That any member voting by telephone shall promptly thereafter confirm in writing his vote so cast.

§ 917.30 Removal and disapproval.

The members of the Control Committee, including their respective successors and alternates, and the members of each commodity committee, including their respective successors and alternates, and any agent or employee appointed or employed by the Control Committee and the members of any other committee established pursuant to the provisions of this subpart shall be subject to removal or suspension at any time by the Secretary. Each regulation, decision, determination, or other act of the Control Committee, or any commodity committee, or any other committee established pursuant to the provisions of this subpart, shall be subject to the continuing right of the Secretary to disapprove of the same at any time; and, upon such disapproval, each such regulation, decision, determination, or other act, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 917.31 Compensation and expenses.

All committee members shall serve without compensation, but said members, and their respective alternates, shall be reimbursed for expenses necessarily incurred in the performance of their duties. At its discretion any committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses as aforesaid.

§ 917.32 Funds and other property.

(a) All funds received by the Control Committee, pursuant to the provisions of this part, shall be used solely for the purpose specified in this part; and the Secretary may require the Control Committee and its members to account for all receipts and disbursements.

(b) Upon the resignation, removal, or expiration of the term of any member or employee of the Control Committee, or of any member of any commodity committee, all books, records, funds, and other property in his possession belonging to the Control Committee or any commodity committee shall be delivered to the Control Committee or to his successor in office; and such assignments and other instruments shall be executed as may be necessary to vest in the Control Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee, pursuant to the provisions of this part.

(c) The Control Committee may, with the approval of the Secretary, maintain in its own name, or in the name of its members, a suit against any shipper for the collection of such shipper's pro rata share of expenses, pursuant to the provisions of this part.

§ 917.33 Powers of Control Committee.

The Control Committee shall have the following powers:

(a) To administer, as specifically provided in this part, the terms and provisions of this part.

(b) To make administrative rules and regulations in accordance with and to effectuate the terms and provisions of this part.

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part.

(d) To recommend to the Secretary amendments to this part.

§ 917.34 Duties of Control Committee.

The Control Committee shall have the following duties:

(a) To act as intermediary between the Secretary and any grower or shippers.

(b) To keep minute books and records which will clearly reflect all of the acts and transactions of said Control Committee; and such minute books and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary.

(c) To investigate, from time to time, and assemble data on the growing, shipping, and marketing conditions respecting fruit, as defined in § 917.4; to engage in such research and service activities in connection with the handling of such fruit as may be approved, from time to time, by the Secretary; and to furnish to the Secretary such available information as may be requested.

(d) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and define the duties of each.

(e) To develop and provide the commodity committees data on shared expenses to facilitate equitable apportionment of such expenses in the development of budgets.

(f) To confer with representatives of shippers and growers of fruit produced in other states and areas with respect to the formulation or operation of marketing agreements providing for the regulation of shipments among the several states and areas in the United States in which such fruit is grown.

(g) With the approval of the Secretary establish procedures for the selection and appointment of a public member and alternate to each of the commodity committees.

(h) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Control Committee.

(i) To defend all legal proceedings against any committee members (individually or as members) or any officers or employees of such committees arising out of any act or omission made in good faith pursuant to the provisions of this part.

(j) To cause the books of the Control Committee to be audited by a competent accountant at least once each fiscal period and at such other time or times as the Control Committee may deem necessary or as the Secretary may request. Such audit shall indicate whether the funds have been received and expended in accordance with the provisions of this part.

(k) To appoint nomination committees if it deems proper for any or each nomination meeting held pursuant to §§ 917.21 through 917.23. Such nomination committees would canvas prospective members and alternate members to the commodity committees to determine their eligibility and willingness to serve and present a slate of nominees to the meeting or meetings. The presentation of nominees by the nominating committee at these meetings shall not exclude the right of any grower to nominate any eligible person at such meeting.

§ 917.35 Powers and duties of each commodity committee.

Each commodity committee shall have the following powers and duties:

(a) With regard to the respective fruit for which it was established, to establish

production research and marketing research and development projects as authorized under § 917.39, to recommend to the Secretary regulation of shipments pursuant to the provisions of this part, and to possess such other powers and exercise such other duties as will properly effectuate the purpose of this part: *Provided, however,* That the Peach and Pear Commodity Committee shall each approve actions under § 917.39 and make said recommendations pursuant to § 917.40 through § 917.43 only upon the affirmative vote of not less than nine members of each said committee: *Provided further,* That the Plum Commodity Committee shall approve such actions pursuant to § 917.39 or make said recommendations pursuant to § 917.40 through § 917.43 only upon the affirmative vote of not less than eight members of said committee.

(b) To make such rules and regulations with respect to fruit for which it was established as may be necessary to effectuate the terms and provisions of this part.

(c) To forward to the Control Committee and to the Secretary a record of the minutes of each meeting of the commodity committee.

(d) To establish such other committees to aid the commodity committee in the performance of its duties under this part as may be deemed advisable.

(e) Each season prior to any recommendation to the Secretary for a regulation of shipments pursuant to §§ 917.40 through 917.43 to determine the marketing policy to be followed for the respective commodity during the ensuing fiscal period and to submit such policy to the Secretary, said policy report to contain, among other provisions, information relative to the estimated total production and shipments of the fruit by districts, information as to the expected general quality and size of fruit; possible or expected demand conditions of different market outlets, supplies of competitive commodities, such analysis of the foregoing factors and conditions as the committee deems appropriate, and the type of regulations of shipments expected to be recommended for the respective fruit.

(f) To submit as soon as practicable after the beginning of each fiscal year to the Secretary, for his approval, a budget of its expenses for such fiscal period, including its proportional share of the expenses of the Control Committee and an explanation of the items therein, and a recommendation as to the rate of assessment for the respective fruit for which the commodity committee was established.

(g) With the approval of the Secretary, to redefine the Districts into which the State of California has been divided under § 917.14 or change the representation of any representation area affecting the respective commodity committee: *Provided, however,* That if any such changes are made, representation on any such committee from the various representation areas shall be based, so far as practicable, upon the proportionate quantity of the respective fruit shipped from the respective representation area during the preceding three fiscal periods: *Provided further,* That the commodity committees shall follow the principle, so far as practicable, of assigning a member position on the commodity committees to any representation area from which five percent of regulated shipments have originated during such periods.

EXPENSES AND ASSESSMENTS

§ 917.36 Expenses.

Each commodity committee is authorized to incur such expenses as the Secretary finds are reasonable and are likely to be incurred by the said commodity committee during each fiscal period for the maintenance and functioning of such committee, including its proportionate share of the expenses of the Control Committee; and for such research and service activities relating to handling of the fruit for which the commodity committee was established as the Secretary may determine to be appropriate. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 917.37.

§ 917.37 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the commodity committees during a fiscal period, each handler shall pay to the Control Committee, upon demand, assessments on all fruit handled by him. The payment of assessments for the maintenance and functioning of the committees may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment which handlers shall pay with respect to each fruit during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment in order to secure funds to cover any later findings by the Secretary relative to such expenses, and such increase shall apply to all fruit shipped during the fiscal period.

(c) In order to provide funds to carry out the functions of the commodity committee prior to commencement of shipments in any season, shippers may make advance payments of assessments, which advance payments shall be credited to such shippers and the assessments of such shippers shall be adjusted so that such assessments are based upon the quantity of fruit shipped by such shippers during such season. Any shipper who ships fruit for the account of a grower may deduct, from the account of sale covering such shipment or shipments, the amount of assessments levied on said fruit shipped for the account of such grower.

§ 917.38 Accounting.

If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each commodity committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period or be paid such refund. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That, to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

RESEARCH

§ 917.39 Production research, market research and development.

The committees, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fruit. Such projects may provide for any form of marketing promotion including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to § 917.37.

REGULATIONS

§ 917.40 Recommendations for regulations.

(a) Whenever a commodity committee deems it advisable to regulate the handling of any variety or varieties of fruit in the manner provided in § 917.41, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the commodity committee shall give consideration to current information with respect to the factors affecting the supply and demand for such fruit during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the commodity committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 917.41 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of any variety or varieties of fruit whenever he finds, from the recommendations and information submitted

by the commodity committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the total quantity of any grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of fruit;

(2) Limit the shipment of any variety or varieties of fruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of any fruit;

(b) The commodity committee shall be informed immediately of any such regulation issued by the Secretary, and the commodity committee shall promptly give notice thereof to handlers.

§ 917.42 Modification, suspension, or termination of regulations.

(a) In the event the commodity committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 917.41 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the commodity committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of fruit in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 917.43 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 917.37, 917.41, and 917.42, and the regulations issued thereunder, handle fruit (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the commodity committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ 917.41, 917.42, 917.45, or 917.37, the handling of fruit; (1) To designated market areas outside the continental United States; (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 917.39); or (3) in such minimum quantities or types of shipments, as may be prescribed.

(c) The commodity committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent fruit handled under the provisions of this section from entering the channels of trade for other than the specified purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the commodity committee for authorization to handle fruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the fruit will not be used for any purpose not authorized by this section.

§ 917.45 Inspection and certification.

(a) Whenever the handling of any variety of a particular fruit is regulated pursuant to §§ 917.41 or 917.42, each handler who handles such fruit shall, prior thereto, cause such fruit to be inspected by the Federal or Federal-State Inspection Service: *Provided*, That inspection and certification shall not be required if such fruit has previously been so inspected and certified. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the commodity committee a copy of the certificate of inspection issued with respect to such fruit. The commodity committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(b) The Control Committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, for any or all fruits, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

§ 917.50 Reports.

(a) Each handler shall furnish to the Manager of the Control Committee, at such times and for such periods as the Control Committee or the commodity committees may designate, certified reports covering, to the extent necessary for the committees to perform their functions, each shipment of fruits as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, grade, and size of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled;

(8) The price per package at which sold, including specific and detailed information relative to all discounts, allowances, rebates, or other adjustments thereof.

(b) Upon request of any committee, made with the approval of the Secretary, each handler shall furnish to the Manager of the Control Committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the fruits received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the Control Committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handlers furnishing the information are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

MISCELLANEOUS PROVISIONS

§ 917.60 Effective time.

The provisions of this part and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 917.61.

§ 917.61 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part or the applicability of the provisions of this part as to a particular fruit whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers of the fruit: *Provided*, That such majority has during the current fiscal period produced more than 50 percent of the volume of the fruit which was produced within the production area for

shipment in fresh form. Such termination shall become effective on the first day of March subsequent to the announcement thereof by the Secretary.

(d) The Control Committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the Control Committee prior to October 1 of the then current fiscal period. Upon recommendation of the Control Committee, received not later than December 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers of the particular kind of fruit prior to February 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning December 1, 1974, and ending February 15, 1975, to ascertain whether continuance of this part as to any fruit included in this part is favored by the growers. The Secretary shall conduct such a referendum within the same period of every fourth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 917.62 Proceedings after termination.

(a) Upon the termination of the provisions of this part pertaining to any fruit or fruits, the Control Committee then functioning shall for the purpose of liquidating the affairs of the Control Committee with respect to such fruit continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all funds, property, and claims vested in the Control Committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Control Committee and upon the trustees.

§ 917.63 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 917.64 Compliance.

Each shipper shall comply with all regulations. No shipper shall ship fruit in violation of the provisions of this part or in violation of any regulation issued by the Secretary pursuant to the provisions of this part.

§ 917.65 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of the provisions of this subpart shall cease upon its termination except with respect to acts done under and during the time the provisions of this part are in force and effect.

§ 917.66 Agents.

The Secretary may by a designation in writing name any person, including any officer or employee of the Government or any agency or Division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 917.67 Derogation.

Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

§ 917.68 Liability of committee members.

No members of the Control Committee, any commodity committee, or other committee, or any subcommittee, or any employee of the Control Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any shipper or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty.

§ 917.69 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, thing, or any particular kind of fruit is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, thing, or kind of fruit shall not be affected thereby.

Effective date: April 29, 1976.

Signed at Washington, D.C., on April 21, 1976.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.76-12077 Filed 4-26-76;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Release of Areas Quarantined

This amendment excludes the entire State of Rhode Island from the areas quarantined by the regulations in 9 CFR Part 76, as amended, because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas contained in 9 CFR Part 76, as amended, do not apply to the excluded areas, but the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 apply to the excluded areas. No areas in the State of Rhode Island remain under quarantine.

Accordingly, Part 76, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases is hereby amended in the following respect:

§ 76.2 [Amended]

In § 76.2, paragraph (e)(2) relating to the State of Rhode Island is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132, (21 U.S.C. 111–113, 114g, 115, 117, 120, 131, 123–126, 134b, 134f); 37 FR 28464, 28477, 38 FR 19141)

Effective date. The foregoing amendment shall become effective April 21, 1976.

The amendment relieves restrictions no longer deemed necessary to prevent the spread of hog cholera and must be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 21st day of April, 1976.

J. M. HEJL,
Deputy Administrator,
Veterinary Services.

[FR Doc.76-12150 Filed 4-26-76;8:45 am]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Release of Area Quarantined

Correction

In FR Doc. 76-11006 appearing at page 16145 in the FEDERAL REGISTER of Friday, April 16, 1976, the sixth line in the authority citation for § 76.2 should read as follows: "123-126, 134b, 134f); 37 FR 28464, 28477, 38".

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE (MEAT AND POULTRY PRODUCTS INSPECTION), DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

Definition of Meat Recovered by Mechanical Means and by Low Temperature Rendering Techniques

o *Purpose:* The purpose of this document is to set forth in the Federal meat inspection regulations, on an interim basis, standards for product obtained from the mechanical deboning of meat tissues and for products recovered by low temperature rendering. o

The Department is concurrently publishing a proposed rulemaking document which if adopted would redefine the term "meat" as used in the regulations. The proposal, in part, would provide for various categories of "meat," acceptable uses in formulated products for each category; appropriate amounts, if such restrictions are necessary; and parameters by which some of these categories, such as product recovered by mechanical separation from bone, and that recovered by low temperature rendering, could be judged acceptable. Additionally, information would be solicited as to the proper identification of these categories when used as ingredients of formulated meat products.

The proposed redefinition of "meat" appears to be especially appropriate at this time, since the world wide food shortage, especially of protein, makes it mandatory that all available food be retained for consumption. At the same time, the Department is well aware of its responsibilities to assure that meat and meat food products are wholesome, not adulterated, and properly marked, labeled, and packaged when distributed to consumers.

Some of the technologies developed to retain additional product from carcasses of livestock are new and have not been used sufficiently in this country to decide upon limits for protein, fat, and bone quantity, and protein quality that are appropriate and acceptable in various formulated products. Therefore, after careful consideration of the problem, analysis of the limited testing in this country, analysis of experiences of other countries which permit use of these systems, and the need for additional data, the Department has decided to publish the following interim rule as § 319.3 of the regulations. This rule will remain in effect pending the completion of the proposed rulemaking proceeding on the general revision of regulations concerning the definition of "meat," unless rescinded prior thereto. Therefore, Part 319 is amended by adding a new § 319.3 to read:

Section 319.3 is added as set forth below:

§ 319.3 Mechanically deboned and low temperature rendered meats.

(a) Mechanically deboned meat, mechanically deboned meat for processing, and mechanically deboned meat for rendering are those products resulting from the sanitary, mechanical separation of meat from bone by approved machinery and conforming to the parameters contained in Table 1, at end of this section.

(b) Low temperature rendered meat and low temperature rendered meat for processing are the products resulting from the sanitary low temperature (120° F. or less) rendering of meat tissue by approved machinery, and conforming to the parameters contained in Table 2, at end of this section.

(c) The maximum use levels of products defined in § 319.3 (a) and (b) are as follows:

(1) Mechanically deboned meat, low temperature rendered meat, or any combination thereof shall be limited to a maximum of 20 percent of the meat or meat and meat byproducts content of formulated products.

(2) Mechanically deboned meat for processing, low temperature rendered meat for processing, or any combination thereof shall be limited to 15 percent of the meat or meat and meat byproducts content of formulated products.

(3) Any combination of products specified in subparagraphs (c)(1) and (c)(2) shall be limited to 15 percent of the meat or meat and meat byproducts content of formulated products.

(4) Mechanically deboned meat for rendering as such may not be used in any formulated meat product. After rendering so that it meets the respective standard, it may be used as low temperature rendered meat or low temperature rendered meat for processing.

(d) Products defined in §§ 319.3(a) and 319.3(b) may be used in any formulated product except hamburger, ground beef, fabricated steaks and products traditionally prepared with larger pieces of meat such as "beef and gravy," "lamb stew," and "pork and dressing," and may be identified in the labeling by the species name, e.g., beef, pork, etc.

(e) In preparing product defined in §§ 319.3(a) and 319.3(b), the establishment operator shall:

(1) Apply for label approval listing equipment and processing procedures,

(2) Develop a quality assurance system to control product compliance, and

(3) Obtain approval of the quality assurance system from the Department[1] prior to starting operations.

(f) The Department will conduct sampling, analytical, and inspection procedures to confirm accuracy of establishment results and assure product compliance.

TABLE 1.—*Mechanically deboned products*

Product	Protein minimum (percent)	PER[3] minimum	or	Essential[1][2] amino acids minimum (percent)	Fat maximum (percent)	Calcium maximum (percent)
Mechanically deboned meat	14	[4]2.5		[5]32	30	0.5
Mechanically deboned meat for processing	10	[4]2.5		[5]32	60	.75
Mechanically deboned meat for rendering[5]						

TABLE 2.—*Low temperature rendered products*

Product	Protein minimum (percent)	PER[3] minimum	or	Essential[1][2] amino acids minimum (percent)	Fat maximum (percent)	Calcium maximum (percent)
Low temperature rendered meat	15	[4]2.5		[5]32	20	0.5
Low temperature rendered meat for processing	20	[4]2.0		[5]27	20	.5

[1] As a percent of total protein.
[2] Exclusive of tryptophane, but including phenylalanine, isoleucine, leucine, lycin, methionine, valine, and threonine.
[3] PER may be calculated from the following equations in lieu of PER determination or percent essential amino acids.
1. PER=0.459 (Leucine)−0.047 (Proline)−0.634.
2. PER=0.435 (Methionine)+0.780 (Leucine)+0.211 (Histidine)−0.944 (Tyrosine)−1.816. Amino acid values in these equations are expressed as percent of total protein.
[4] Adjusted to 2.50 for standard casein.
[5] Fails to meet any of the requirements for mechanically deboned meat for processing.

The purpose of this amendment is to gather data in connection with the proposed redefinition of the term "meat" being published simultaneously herewith, and will provide invaluable input for decisionmaking on final rulemaking. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice or public rulemaking proceedings on these amendments are impractical and unnecessary, and that good cause is found for making this amendment effective in less than 30 days after publication in the FEDERAL REGISTER.

Effective: April 27, 1976.

Done at Washington, D.C., on: April 23, 1976.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.76-12272 Filed 4-26-76;8:45 am]

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[1] Such approval may be requested from the Systems Development and Sanitation Staff, Technical Services, Meat and Poultry Inspection Program, 14th and Independence Avenue, SW., Washington, D.C. 20250.

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

[Regulation ER-953, Amdt. 2]

PART 222—AIR CARGO PICKUP AND DELIVERY ZONES; FILING OF TARIFFS; APPLICATION FOR AUTHORITY TO FILE

Clarifying Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., April 22, 1976.

Section 222.2 of the Board's Economic Regulations (14 CFR 222.2) states, inter alia, that carriers must file tariffs covering all pickup and delivery services they offer. The requirements for such tariffs are that they conform with our general tariff rules in Part 221 and that they provide for pickup and delivery services only at locations within 25 miles of the airport or the city limits of the certificated point, unless the location is included in other currently effective pickup and delivery tariffs or is specifically authorized by the Board under § 222.3.

The present language of § 222.2 states that tariffs meeting these criteria "will be accepted for filing." The burden of compliance in this matter rests, of course, with the filing carrier. The Board is concerned, however, that the language quoted above might be misconstrued to mean that the Board is assuming a positive duty to ascertain whether each location contained within a tariff is in fact in compliance with the rule, or that acceptance of the tariff constitutes a finding that the location(s) contained within it are proper under this section. Therefore, the Board has determined to amend § 222.2 to clarify the fact that it is the carrier's responsibility to ensure that the tariff complies with our regulations. Any carrier violating the rule or filing a false certification is, of course, subject to enforcement action.

Since the within amendment is interpretative in nature and merely clarifies an existing obligation, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 222 of its Economic Regulations (14 CFR Part 222), effective April 22, 1976; as follows:

Revise § 222.2 to read as follows:

§ 222.2 Filing of tariffs.

In accordance with the provisions of Part 221 and this regulation, each carrier shall file tariffs covering all pickup and delivery services offered. Such tariffs shall be filed only if they meet the requirements of Part 221 of this subchapter and (a) provide for service to places which are not located beyond a radius of 25 miles of the airport or of the city limits of the certificated point, or (b) provide for service to places or areas included in other currently effective pickup and delivery tariffs on file with the Board, or (c) are authorized upon application of the carrier filed in accordance with § 222.3. A certification shall accompany each tariff filing identifying the category within which each pickup and delivery service falls.

(Secs. 204 and 403 of the Federal Aviation Act of 1958), as amended, 72 Stat. 743, 758 (as amended); 49 U.S.C. 1324 and 1373.)

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR, *Acting Secretary.*

[FR Doc.76-12228 Filed 4-26-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 13—PUBLIC RULEMAKING PROCEDURES

PART 0—RULES OF PRACTICE

Adoption and Revocation of Rules

The Commodity Futures Trading Commission is adopting rules setting forth the procedures to be followed in rulemaking proceedings, i.e., the formulation, amendment or repeal of rules. The new provisions comprise Part 13 of Title 17 of the Code of Federal Regulations. They comply with the requirements of the Administrative Procedure Act, 5 U.S.C. § 553, and substantially track the language of that statute. At the same time the Commission is revoking §§ 0.73 through 0.77 of Part 0 of Title 17 of the Code of Federal Regulations, which have contained rulemaking provisions adopted by the Commission's predecessor agency—the Commodity Exchange Authority under the Secretary of Agriculture—and which have continued in effect until the present time pursuant to section 411 of the Commodity Futures Trading Commission Act of 1974, 88 Stat. 1389, et seq. (Pub. Law 93-463).

Section 13.1 of the rules describes the general scope of the new provisions. Essentially, they relate to all substantive rules promulgated by the Commission except those relating to Commission management or personnel or to public property, loans, grants, benefits or contracts.

Section 13.2 describes the procedure by which anyone who wishes the Commission to consider the issuance, amendment or repeal of a rule may petition the Commission. The section prescribes what information should or may be included in the petition and instructs the petitioner where to direct his request. It further provides that receipt of the petition will be acknowledged, and that the petitioner will be notified of any subsequent action taken by the Commission. Pursuant to section 13.2, a notice of denial of a petition will state the grounds for denial unless the notice is self-explanatory or merely affirms a prior denial.

When the Commission proposes to issue, amend or repeal a rule or regulation, either the terms or substance of the proposed rule or a description of the subjects and issues involved will first be published in the FEDERAL REGISTER. This requirement and the content of the FEDERAL REGISTER notice are described in § 13.3 of this Part. Among other things, each published notice will contain the authority under which it has been promulgated and a statement of the manner in which interested persons may participate in the rulemaking proceedings.

Section 13.4 authorizes public participation in a rulemaking proceeding through written comments or, when required by law or at the discretion of the Commission, through hearings, either upon written submissions or on oral presentation. Because of the variety of circumstances under which oral hearings may be appropriate, no attempt has been made to establish uniform rules with respect to them. Where oral hearings are ordered, the Commission will announce in the FEDERAL REGISTER the procedures to be utilized in that particular proceeding.

Under certain circumstances, set forth in § 13.5, adherence to the notice requirements and comment procedure of §§ 13.3 and 13.4 are not required. Section 13.5 (a) exempts situations where all persons subject to the rules are named in the rule and either have been personally served or have been given actual notice of the action proposed. The more general exceptions are stated in § 13.5(b) which encompasses (1) interpretative rules, general statements of policy, and rules of agency organization, procedure and practice; and (2) situations where the Commission finds that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest. For example, these procedures may be found unnecessary where the changes are technical and reflect changes in form, as distinguished from substantive changes. On the other hand, they might be found impractical or contrary to the public interest, when time is of the essence in protecting the public against newly discovered abusive practices. In either case, a justification will be set forth by the Commission in the release announcing adoption of the provisions.

Under § 13.6, before adopting a new rule or revoking or amending an existing rule the Commission will consider the written and oral comments presented by the public, as well as other relevant matters of law, fact or policy. Publication of the rule or regulation in its final form will then be made in the FEDERAL REGISTER, and will include a short statement of the basis and purpose of the rule. An explanation will normally be given why the Commission has accepted or rejected significant suggestions from the public. If the proposed rule or rule change is withdrawn, rather than adopted (either intact or with modification), notice to that effect will also be given in the FEDERAL REGISTER.

The notice in the FEDERAL REGISTER will be published 30 days prior to the effective date of the rule, or change therein, except when: (1) the rule is not substantive in nature; (2) the rule grants or recognizes an exception, or relieves a restriction; (3) it is essentially an interpretative rule or statement of policy; or (4) the Commission otherwise provides, upon finding of good cause. In the latter situation, the notice announcing

the rule will contain the Commission's finding and cause shown.

Pursuant to authority contained in the Commodity Futures Trading Commission Act, Pub. L. 93-463, Sec. 101(a)(11), 88 Stat. 1391, 7 U.S.C. § 4a(j), the Commodity Futures Trading Commission hereby revokes Part 0—Rules of Practice and adopts a new Part 13 of Chapter I of Title 17 of the Code of Federal Regulations as set forth below:

Part 0—Rules of Practice

[Revoked]

* * * * * *

PART 13—PUBLIC RULEMAKING PROCEDURES

Sec.
13.1 Scope.
13.2 Petition for issuance, amendment, or repeal of rule.
13.3 Notice of proposed rulemaking.
13.4 Public participation in rulemaking.
13.5 Exceptions to notice requirement.
13.6 Promulgation of rules; publication.

AUTHORITY: Pub. L. 93-463, Sec. 101(a)(11), 88 Stat. 1391, 7 U.S.C. 4a(j).

§ 13.1 Scope.

The Rules of Part 13 set forth the procedures of the Commodity Futures Trading Commission for the formulation, amendment or repeal of a rule or regulation, insofar as those procedures directly affect the public. Unless otherwise stated, the Rules apply to all rulemaking by the Commission, except to the extent the rulemaking involves Commission management or personnel or public property, loans, grants, benefits or contracts.

§ 13.2 Petition for issuance, amendment, or repeal of a rule.

Any person may file a petition with the Secretariat of the Commission for the issuance, amendment or repeal of a rule of general application. The petition shall be directed to Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, and shall set forth the text of any proposed rule or amendment or shall specify the rule the repeal of which is sought. The petition shall further state the nature of the petitioner's interest and may state arguments in support of the issuance, amendment or repeal of the rule. The Secretariat shall acknowledge receipt of the petition, refer it to the Commission for such action as the Commission deems appropriate, and notify the petitioner of the action taken by the Commission. Except in affirming a prior denial or when the denial is self-explanatory, notice of a denial in whole or in part of a petition shall be accompanied by a brief statement of the grounds of denial.

§ 13.3 Notice of proposed rulemaking.

Whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application, there shall first be published in the FEDERAL REGISTER a notice of the proposed action. The notice shall include:

(a) A statement of the time, place and nature of the rulemaking procedures, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceedings;

(b) Reference to the authority under which the rule is proposed; and

(c) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 13.4 Public participation in rulemaking.

(a) *Written Comments.* Interested persons will be afforded an opportunity to participate in a rulemaking proceeding of which notice has been given pursuant to § 13.3 of these rules through the submission of statements, information, opinion, and arguments in the manner stated in the notice.

(b) *Hearings.* When required or permitted by law the Commission may hold hearings in connection with a rulemaking proceeding at which interested persons may be heard, either by oral presentation or upon written submission, and may adopt such procedures as in its judgment will best serve the purpose of the rulemaking proceeding.

§ 13.5 Exceptions to notice requirement and public participation.

(a) Notice under § 13.3 and public participation under § 13.4 shall not be required when persons subject to the rules are named and are either personally served or otherwise given actual notice of proposed rulemaking in accordance with law.

(b) Except when notice or hearing is required by statute the provisions of §§ 13.3 and 13.4 shall not apply:

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure or practice; or

(2) When the Commission for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the release issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

§ 13.6 Promulgation of rules; publication.

After consideration of all relevant matters of fact, law, and policy, including all relevant matters presented by interested persons in the proceedings, the Commission will take such action on the proposed rule as it deems appropriate. Any rule adopted will be published in the FEDERAL REGISTER and the announcement of the rule will incorporate a concise statement of the rule's basis and purpose, as well as any necessary findings. Announcement will also be made in the FEDERAL REGISTER if a proposal is subsequently withdrawn.

The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except:

(a) A substantive rule which grants or recognizes an exception or relieves a restriction;

(b) Interpretative rules and statements of policy; or

(c) As otherwise provided by the Commission for good cause found and published with the rule.

The foregoing rules, as well as the revocation of the rules heretofore contained in §§ 0.73 through 0.77 of Part 0 of Title 17 of the Code of Federal Regulations, shall be effective April 27, 1976. The Commission finds that the foregoing action relates solely to agency practice and procedure and that the public procedures and publication prior to the effective date of the rules in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. § 553, are not required. However, the Commission encourages interested persons to submit written comments, suggestions and objections. Materials submitted will be evaluated and considered with a view to amendment in appropriate cases. Comments should be directed to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attn: Secretariat.

Issued in Washington, D.C. on April 21, 1976.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.76-12043 Filed 4-26-76;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Order No. 543-A; Docket No. RM75-24]

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Reporting of Producer Expenditures and Activities; Order Denying Rehearing

APRIL 19, 1976.

Continuing Investigation of Expenditure, Exploration and Development Activities, Production, Reserve Additions, and Revenues of Natural Gas Producers and Producing Affiliates Subject to the Federal Power Commission.

On December 10, 1975 (40 FR 58630), the Commission issued Order No. 543 which promulgated a new § 260.29 of the Commission's regulations. In Order No. 543 we provided for the collection of data related to expenditures, exploration and development activities, reserve additions, production and revenue by producer and jurisdictional producer affiliates who together produce for direct sale and for sale for resale in interstate commerce more than 250,000 Mcf of gas each year. This data will be utilized in our ratemaking proceedings, including each review of the nationwide rates of flowing and new gas. On November 17, 1975, prior to its issuance, the General Accounting Office (GAO) approved Form No. 64, which accompanied that order, for a period of one year. However, we consider this order to be a permanent ongoing report form in furtherance of our statutory duties under the Natural Gas Act (Order No. 543 at 7).

Within thirty days of December 10, 1975, the date on which this order became effective, fifteen parties[1] filed petitions for rehearing of Order No. 543. By order issued January 30, 1976, rehearing and reconsideration was granted for purposes of further consideration. By this order, two applications for rehearing[2] untimely filed were also treated as applications for reconsideration. In addition, one application for reconsideration was filed and is treated as such herein. Generally, petitioners raised many of the same contentions, including burden of reporting, duplicativeness, and unavailability of data, which we considered and rejected in Order No. 543, as we do here.

Another frequently raised objection was that the data to be submitted (1) is of a confidential nature and as such disclosure to the public is prohibited by the Freedom of Information Act, 5 U.S.C. § 552(b) (4) and (2) constitutes a taking of property without due process of law in contravention of the Fifth Amendment to the Constitution. We found in our earlier order that the public right to this information outweighed the petitioners' proprietary interests (Order No. 543 at 5, citing *F.C.C.* v. *Schreiber*, 381 U.S. 279 (1964)).[3]

We recognize our obligation to comply with the legislative intent of the Freedom of Information Act which "places emphasis on the fullest disclosure." S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965). However, upon further consideration, we find that there is some merit in petitioners' argument that the information contained in Form 64 be given protection from full disclosure (citing *Continental Oil Corporation* v. *F.P.C.*, 519 F. 2d 31 (5th Cir., 1975)). While we are not in complete agreement with the holding in *Continental*, it is clear that it does permit publication of data in a composite or aggregate form or by deleting the filing party's name and any other identifying characteristics. The court noted that an impersonal disclosure of the data as described above would protect both public and private interests. Therefore, we shall utilize this data in composite or aggregate form where appropriate. We shall also make Form No. 64 information public but shall delete the name of each independent producer from the heading. If there is a need for the identification of any individual independent producer or group of independent producers, we shall consider that question when it arises in the context of a specific case.

Our determination to proceed in the manner described above forecloses extended discussion concerning arguments that Form No. 64 amounts to a taking of proprietary information without just compensation. Again, we have balanced the private interests of the producers against the public's interest in disclosure in arriving at the above conclusion. As was stated in *Nebbia* v. *New York*, 291 U.S. 502, 534 (1933), when one "has dedicated his property to a public use [it] is, therefore, merely another way of saying that if one embarks in a business which public interest demands shall be regulated, he must know regulation will ensure." This regulation perforce encompasses public involvement, particularly in the area of national ratemaking.

Finally, producers' assertions that the Commission is exceeding its statutory authority in requiring information concerning intrastate activities or from persons without its jurisdiction are groundless. Order No. 543 states that "all persons found by the Commission to be a 'natural gas company' * * * and their *jurisdictional* affiliates and subsidiaries * * * shall be required to report" (Order at 1-2). Clearly, we are seeking information only from jurisdictional entities. As to the former contention, we found in Order No. 543 that the national energy crisis compels us to undertake broadly based investigations associated with our Sections 4 and 5 ratemaking functions (Order at 2). The court in *Continental Oil Co.* v. *F.P.C.*, *supra* at 33, recognizing a similar need in our issuance of Order No. 521, held that "[t]hose regulating the public interstate market must know the private intrastate price structure if their regulations are to function effectively. Moreover, the mere disclosure of details of intrastate sales of natural gas is not the regulation of non-jurisdictional sales." Data which may include intrastate activities are, therefore, an integral part of our regulatory efforts toward encouraging the search for natural gas at a price which is consistent with the public interest.

Petitioners' applications for rehearing and reconsideration involve no new facts or principles of law which were not fully considered in Order No. 543 or, which now having been considered above, warrant a modification of Order No. 543, except as hereinafter provided.

The Commission orders. (A) The petitions for rehearing and reconsideration filed by all parties in this proceeding are denied, except as provided in Ordering Paragraph (C) below.

(B) All persons required to file a new Form No. 64 will file the initial report for 1975 and prior years by June 11, 1976. Subsequent reports shall be filed no later than March 31 of each year.

(C) Information contained in Form No. 64 shall be made public without further notice to the following extent only:

Composite or aggregate data or data submitted by any party, if his name and any information permitting identification by reference to other public records is deleted. *Continental Oil Company* v. *F.P.C.*, 519 F. 2d 31 (5th Cir. 1975).

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.76-12062 Filed 4-26-76;8:45 am]

[1] See Appendix A.

[2] 1/9/76, Telegram received from Atlantic Richfield Company applying for rehearing and reconsideration of Order No. 543; 1/21/76, Telegram received from Ashland Oil, Inc. requesting rehearing and reconsideration of Order No. 543.

[3] See also our discussion related to disclosure at pp. 20-23 of Order No. 526, Docket No. RM74-16 (issued February 25, 1975).

Title 20—Employees' Benefits

CHAPTER II—RAILROAD RETIREMENT BOARD

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Regulations Under the Railroad Unemployment Insurance Act

The first paragraph of § 345.1 and § 345.2(a) of the Regulations under the Railroad Unemployment Insurance Act are hereby amended effective January 1, 1976, to read as follows:

§ 345.1 Statutory provisions.

Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined as set forth below of so much of the compensation as is not in excess of $300 for any calendar month paid by him to any employee for services rendered to him after June 30, 1939, and before July 1, 1954, and is not in excess of $350 for any calendar month paid by him to any employee for services rendered to him after June 30, 1954, and before June 1, 1959, and is not in excess of $400 for any calendar month paid by him to any employee for services rendered to him after May 31, 1959: Provided, however, That if compensation is paid to an employee by more than one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than $300 for any month before July 1, 1954, and to not more than $350 for any month after June 30, 1954, and before June 1, 1959, and to not more than $400 for any month after May 31, 1959, of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each employer other than a subordinate unit of a national railway - labor - organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300 if such month is before July 1, 1954, or less than $350 if such month is after June 30, 1954, and before June 1, 1959, or less than $400 if such month is after May 31, 1959, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

If the balance to the credit of the railroad unemployment insurance account as of the

close of business on Sept. 30, of any year, as determined by the Board:

	Percent[1]
$300,000,000 or more	0.5
$200,000,000 or more but less than $300,000,000	4.0
$100,000,000 or more but less than $200,000,000	5.5
$50,000,000 or more but less than $100,000,000	7.0
Less than $50,000,000	8.0

[1] The rate with respect to compensation paid during the next succeeding calendar year. (Effective with respect to compensation paid for services rendered after Dec. 31, 1975, Public Law 94-92.)

§ 345.2 Employers' contributions.

The $400 specified in this section is the maximum compensation per employee per month subject to contributions after May 31, 1959 with respect to services rendered after that date. Maximum compensation amounts subject to contributions, and allocations, for prior periods are shown in section 345.1.

(a) Except as provided in paragraph (b) of this section, every employer shall pay a contribution equal to the following percentages of the amount of compensation paid to any employee for employment on and after July 1, 1939:

(1) July 1, 1939 through Dec. 31, 1947	3
(2) January 1, 1948 through Dec. 31, 1955	½
(3) January 1, 1956 through Dec. 31, 1956	1½
(4) January 1, 1957 through Dec. 31, 1957	2
(5) January 1, 1958 through Dec. 31, 1958	2½
(6) January 1, 1959 through May 31, 1959	3
(7) June 1, 1959 through Dec. 31, 1961	3¾
(8) January 1, 1962 through Dec. 31, 1975	4
(9) January 1, 1976 through Dec. 31, 1976	5½
(10) Each succeeding calendar year, the applicable percentage specified in section 345.1 of these regulations.	

Dated: April 20, 1976.

By Authority of the Board,

[SEAL] R. F. BUTLER,
Secretary of the Board.

[FR Doc.76-12111 Filed 4-26-76;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FI 578]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Oswayo, Pa.; Correction

The notice published on May 12, 1975, at 40 FR 20622, listing the Borough of Oswayo, PA (Potter Co.) as an area eligible for the sale of insurance should be corrected to read the Township of Oswayo, PA (Potter Co.).

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12162 Filed 4-26-76;8:45 am]

[Docket No. FI 936]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Castle, OK; Correction

The notice published on March 29, 1976, at 41 FR 12892, listing the Town of Castle, OK, map number as H 499278 01 should be corrected to read H 400278 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12171 Filed 4-26-76;8:45 am]

[Docket No. FI 813]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Danville, VA; Correction

The notice published on December 24, 1975, at 40 FR 59432, listing the City of Danville, VA, map number as H 510044A 01-06 should be corrected to read H 510044A 01-06.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128, and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12172 Filed 4-26-76;8:45 am]

[Docket No. FI 838]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

East Layton, UT; Correction

The notice published on January 15, 1976, at 41 FR 2246, listing the City of East Layton, UT, map number as H 490031A 01 should be corrected to read H 490043A 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12167 Filed 4-26-76;8:45 am]

[Docket No. FI 936]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

La Ward, TX; Correction

The notice published on March 29, 1976 at 41 FR 12892, listing the City of La Ward, TX, map number as H 480174 01 should be corrected to read H 481074 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 634 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12170 Filed 4-26-76;8:45 am]

[Docket No. FI 936]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Logan, IA; Correction

The notice published on March 29, 1976, at 41 FR 12891, listing the City of Logan, IA, map number as H 190046A 01 should be corrected to read H 190146A 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12175 Filed 4-26-76;8:45 am]

[Docket No. FI 715]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

New Castle, WY; Correction

The notice published on August 20, 1975, at 40 FR 48508, listing the City of New Castle, WY, map number as H 560051A 01 should be corrected to read H 560057A 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of au-

thority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12166 Filed 4-26-76;8:45 am]

[Docket No. FI 887]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

North Freedom, WI; Correction

The notice published on February 25, 1976, at 41 FR 8183, listing the Village of North Freedom, WI, map number as H 550339B 01 should be corrected to read H 550399B 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128, and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12163 Filed 4-26-76;8:45 am]

[Docket No. FI 327]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Paris, NY; Correction

The notice published on August 12, 1974, at 39 FR 28891, listing the Town of Paris, NY, map number as H 236539 01 should be corrected to read H 360539 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128, and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12168 Filed 4-26-76;8:45 am]

[Docket No. FI 835]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Piatt, PA; Correction

The notice published on January 12, 1976, at 41 FR 1756, listing the Township of Piatt, PA, map number as H 420553A 01-04 should be corrected to read H 420653A 01-04.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12165 Filed 4-26-76;8:45 am]

[Docket No. FI 880]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Scott County, IL; Correction

The notice published on February 13, 1976, at 42 FR 6728, listing Scott County, IL, map number as H 170805 01-21 should be corrected to read H 170905 01-21.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12169 Filed 4-26-76;8:45 am]

[Docket No. FI 880]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Shelton, NB; Correction

The notice published on February 13, 1976, at 41 FR 6737, listing the Village of Shelton, NB, map number as H 310319 01 should be corrected to read H 310019 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12173 Filed 4-26-76;8:45 am]

[Docket No. FI 813]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Theresa, NY; Correction

The notice published on December 24, 1975, at 40 FR 59431, listing the Village of Theresa, NY, map number as H 360352A 01 should be corrected to read H 360353A 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12164 Filed 4-26-76;8:45 am]

[Docket No. FI 880]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Victor, IA; Correction

The notice published on February 13, 1976, at 41 FR 6737, listing the City of Victor, IA, map number as H 190500 01 should be corrected to read H 190426 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12174 Filed 4-26-76;8:45 am]

[Docket No. FI 880]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

Windsor, PA; Correction

The notice published on February 13, 1976, at 41 FR 6733, listing the Borough of Windsor, PA, map number as H 420924A 01 should be corrected to read H 420942A 01.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2689, Feb. 27, 1969, as amended 39 FR 2787, Jan. 24, 1974.)

Issued: April 15, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12161 Filed 4-26-76;8:45 am]

[Docket No. FI-1075]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Changes Made in Determinations of the City of Smithville, Missouri, Base Flood Elevations

On January 8, 1976, at 41 FR 1474, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas. The list included Flood Insurance Rate Maps for portions of the City of Smithville, Missouri.

The Federal Insurance Administration,

after consultation with the Chief Executive Officer of the community, has determined that it is appropriate to modify the base (100-year) flood elevations of some locations in the City of Smithville. These modified elevations are currently in effect and amend the Flood Insurance Rate Map, which was in effect prior to this determination. A revised rate map will be published as soon as possible. The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 295271A, and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

From the date of this notice, any person has 90 days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data. All interested parties are on notice that until the 90-day period elapses, the Administrator's new determination of elevations may itself be changed.

Any persons having knowledge or wishing to comment on these changes should immediately notify:

Mayor L. R. Lukon, 108 N. Bridge Street, Smithville, Missouri 64089.

Also, at this location is the map showing the new base flood elevations. This map is a copy of the one that will be printed. The numerous changes made in the base flood elevations on the City of Smithville Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the City of Smithville, Missouri map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: April 14, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-12086 Filed 4-26-76;8:45 am]

[Docket No. FI-1076]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Changes Made in Determinations of the Borough of Rumson, New Jersey, Base Flood Elevations

On January 8, 1976, at 41 FR 1475, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas. The list included Flood Insurance Rate Maps for portions of the Borough of Rumson, New Jersey.

The Federal Insurance Administration, after consultation with the Chief Executive Officer of the community, has determined that it is appropriate to modify the base (100-year) flood elevations of some locations in the Borough of Rumson. These modified elevations are currently in effect and amend the Flood Insurance Rate Map, which was in effect prior to this determination. A revised rate map will be published as soon as possible. The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 345316B, and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

From the date of this notice, any person has 90 days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data. All interested parties are on notice that until the 90-day period elapses, the Administrator's new determination of elevations may itself be changed.

Any persons having knowledge or wishing to comment on these changes should immediately notify:

Mayor John O. Teeter, East River Road, Rumson, New Jersey 07760.

Also, at this location is the map showing the new base flood elevations. This map is a copy of the one that will be printed. The numerous changes made in the base flood elevations on the Borough of Rumson Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Rumson map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 14, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-12087 Filed 4-26-76;8:45 am]

[Docket No. FI-1078]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Changes Made in Determinations of the City of Fargo, North Dakota, Base Flood Elevations

On January 8, 1976, at 41 FR 1475, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas. The list included Flood Insurance Rate Maps for portions of the City of Fargo, North Dakota.

The Federal Insurance Administration, after consultation with the Chief Executive Officer of the community, has determined that it is appropriate to modify the base (100-year) flood elevations of some locations in the City of Fargo. These modified elevations are currently in effect and amend the Flood Insurance Rate Map, which was in effect prior to this determination. A revised rate map will be published as soon as possible. The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 385364A, and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

From the date of this notice, any person has 90 days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data. All interested parties are on notice that until the 90-day period elapses, the Administrator's new determination of elevations may itself be changed.

Any persons having knowledge or wishing to comment on these changes should immediately notify:

Mr. F. R. Fahrlander, City Auditor, City Hall, Fargo, North Dakota 58102.

Also, at this location is the map showing the new base flood elevations. This map is a copy of the one that will be printed. The numerous changes made in the base flood elevations on the City of Fargo Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the City of Fargo map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12089 Filed 4-26-76;8:45 am]

[Docket No. FI-1077]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Changes Made in Determinations of the City of Pembina, North Dakota, Base Flood Elevations

On January 8, 1976, at 41 FR 1475, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas. The list included Flood Insurance Rate Maps for portions of the City of Pembina, North Dakota.

The Federal Insurance Administration, after consultation with the Chief Executive Officer of the community, has determined that it is appropriate to modify the base (100-year) flood elevations of some locations in the City of Pembina. These modified elevations are currently in effect and amend the Flood Insurance Rate Map, which was in effect prior to this determination. A revised rate map will be published as soon as possible. The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448) 42 U.S.C. 4001–4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 385368C, and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

From the date of this notice, any person has 90 days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data. All interested parties are on notice that until the 90-day period elapses, the Administrator's new determination of elevations may itself be changed.

Any persons having knowledge or wishing to comment on these changes should immediately notify:

Mayor A. Franklyn Barron, P.O Box 3, Pembina, North Dakota 58271.

Also, at this location is the map showing the new base flood elevations. This map is a copy of the one that will be printed. The numerous changes made in the base flood elevations on the City of Pembina Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the City of Pembina map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12088 Filed 4-26-76;8:45 am]

[Docket No. FI-790]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Linden, New Jersey

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Linden, New Jersey under § 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Linden, New Jersey, 07036.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation (feet above mean sea level)	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Morses Creek	Morses Mill Rd	11.5	3,200	2,000
	NJC RR. Sound Shore Bridge	11.5	(1)	(1)
Peach Orchard Brook	St. Georges Ave	28.4	250	250
	Dill Ave	26.1	250	650
	Hussa St	25.8	200	1,350
	Bergen Ave	25.9	250	550
	Essex Ave	25.5	200	500
	Linden Ave	19.5	100	850
	U.S. Highway 1	12.0	100	1,200
	Brunswick Ave	11.5	1,450	1,650
West Brook	St. Georges Ave	39.8	150	300
	Gibbons St	34.7	100	1,300
	Curtis St	33.0	100	350
	Elm St	28.7	150	500
	Elizabeth St	27.0	550	800
	Linden Ave	22.5	900	500
	West Stimpson Ave	18.8	100	700
	Wood Ave	10.8	100	100
	Clinton St	10.8	650	550
Kings Creek	Patterson Rd. West	18.7	100	150
	Patterson Rd. East	10.9	100	100
	Lower Rd	11.5	(1)	150
	Rango Rd	11.5	200	800

1 Extends to corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 5, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-11976 Filed 4-26-76;8:45 am]

[Docket No. FI-539]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for Baltimore County, Maryland

On April 2, 1975, in 40 FR 14756, the Federal Insurance Administrator published a list of communities with special hazard areas which included Baltimore County, Maryland. Map No. H 240010 126 indicates that a parcel of land located at the north side of Eastern Boulevard at Diamond Point Road, Baltimore County, Maryland, as recorded in Liber 5500, Pages 652 through 657 in the office of the Clerk of the Circuit Court for Baltimore County, Maryland, is partially within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, Map No. H 240010 126 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on April 18, 1975.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 7, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12200 Filed 4-26-76;8:45 am]

[Docket No. FI-364]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Austin, Texas

On September 24, 1974, in 39 FR 34276, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas which included the City of Austin, Texas. Map No. H 480624 57 indicates that Lots 4–27, Block A; Lots 1–11, and Lots 17–24, Block B; Lots 1–11, Lots 17–28, and Lot 34, Block C; and Lots 1–6, Block D, of Onion Creek Plantations, Section 1, Austin, Texas, as recorded in Plat Book 64, Page 50 in the office of the Clerk of the Court of Travis County, Texas are within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that Lots 1–11, and Lots 17–24, Block B; Lots 1–11, Lots 17–28, and Lot 34, Block C; and Lots 1–6, Block D, are not within the Special Flood Hazard Area. A portion of Lots 4–27, Block A, is not within the Special Flood Hazard Area. The portion is described as follows:

Beginning at the Southeast corner of Lot 4; thence, N 19°20' E a distance of 75 feet, more or less, to the top rear edge of an existing berm; thence N 70°40' W along the top rear edge of said berm approximately 568 feet to a point on the West lot line of Lot 13; thence N 60°40' W approximately 110 feet to a point; thence along a curve to the left with a radius of 125 feet and an arc length of 190 feet to a point on the South lot line of Lot 17, also being a point on the top rear edge of said berm; thence S 17° W approximately 116' to a point on the North lot line of Lot 20, also being a point on the top rear edge of said berm; thence S 34°20' W approximately 445 feet along the top rear line of said berm to a point on the Southwest lot line of Lot 27; thence S 55°40' E approximately 75 feet to a point on the North line of Dixie Drive; thence along the North line of Dixie Drive 544.0 feet to a point; thence around the right-of-way line of Foy Circle approximately 318.7 feet to a point on the North line of Dixie Drive; thence along the North line of Dixie Drive 615.8 feet to the point of beginning.

The above parcel describes the portion of Lots 4–27 between the adjacent street line and the top rear edge of the existing trapezoidal berm on Lots 1–27 as shown on the drainage and berm design plans for Onion Creek Plantations, prepared by Davis-Webb Engineering on June 20, 1975.

Accordingly, Map No. H 480624 57 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on September 13, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12207 Filed 4-26-76;8:45 am]

[Docket No. FI-204]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Bartlett, Tennessee

On February 25, 1974, in 39 FR 7174, the Federal Insurance Administrator published a list of communities with special hazard areas which included the City of Bartlett, Tennessee. Map No. H 470175 01 indicates that Lots 71 through 74, and 94 through 107, Bartlett Woods Subdivision, Section D, Bartlett, Tennessee, as recorded in Plat Book 54, Page 41 in the office of the Register of Deeds of Shelby County, Tennessee, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that Lot 107 of the above mentioned property is not within the Special Flood Hazard Area. A portion of Lots 71 through 74, and 94 through 106, which can be described as follows:

Beginning at a point being the southwest corner of Lot 71 of Bartlett Woods Subdivision, Section D; N 01°40'03" E, approximately 70 feet to a point; thence N 20° E, approximately 50 feet to a point; thence N 83°30' E, approximately 380 feet to a point; thence North, approximately 20 feet to a point; thence N 73° W, approximately 70 feet to a point; thence N 15°5' W, approximately 50 feet to a point; thence N 23° E, approximately 125 feet to a point; thence N 52°30' E, approximately 83 feet to a point; thence N 17° E, approximately 55 feet to a point; thence N 25° W, approximately 185 feet to a point; thence N 37° E, approximately 185 feet to a point; thence N 78° E, approximately 339 feet to a point; thence N 63° E, approximately 100 feet to a point on the northern line of Lot 106; thence continuing along the northern line of Lot 106 to a point on the northeast corner of Lot 106; thence southerly along the eastern line of Lot 106 to the centerline of Flowering Tree Drive; thence in a general southwesterly and southerly direction along said centerline of Flowering Tree Drive to the intersection of the centerline of Elmore Road; thence proceeding westerly along said centerline of Elmore Road, approximately 585 feet to a point; thence N 01°40'03" E, approximately 52 feet to a point on the southwest corner of Lot 71, also being the point of beginning, specifically excluding Lots 75, 76, and 93 which were previously removed from the Special Flood Hazard Area (41 FR 4526, February 2, 1976),

is not within the Special Flood Hazard Area. Accordingly, Map No. H 470175 01 is hereby corrected to reflect that the above lot and portions of lots are not within the Special Flood Hazard Area identified on February 22, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76-12205 Filed 4-26-76;8:45 am]

[Docket No. FI-237]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Blaine, Minnesota

On February 13, 1976, in 41 FR 8180, the Federal Insurance Administrator published a list of communities with Spe-

cial Flood Hazard Areas which included the City of Blaine, Minnesota. Map No. H 270007A 03 indicates that Outlot A; Lot 3, Block 3; and Lots 1 through 7 and Lot 10, Block 6, Carrara, Blaine, Minnesota, as recorded in Plat Book 19, Page 17, in the office of the Register of Deeds of Anoka County, Minnesota, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above mentioned property, with the exception of areas shown as Drainage Easement on the recorded plat map cited above, is not within the Special Flood Hazard Area. Accordingly, Map No. H 270007A 03 is hereby corrected to reflect that the above portion of property is not within the Special Flood Hazard Area identified on June 28, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 7, 1976.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.76–12202 Filed 4–26–76;8:45 am]

[Docket No. FI–649]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Eureka, Missouri

On August 11, 1975, in 40 FR 33672, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas which included the City of Eureka, Missouri. Map No. H 290349A 02 indicates that Lots 11A, 12B through 14B, 25B through 30B and 31A, Deerpath Plat I, Eureka, Missouri, as recorded in Book 163, Pages 2 and 3, in the office of the Recorder of Deeds of St. Louis County, Missouri, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that Lots 25B through 30B and 31A are not within the Special Flood Hazard Area. It has also been determined that the existing structures on Lots 11A and 12B through 14B are not within the Special Flood Hazard Area. Accordingly, Map No. H 290349A 02 is hereby corrected to reflect that the above property and structures are not within the Special flood Hazard Area identified on September 26, 1975.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 5, 1976.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.76–12203 Filed 4–26–76;8:45 am]

[Docket No. R–76–365]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Cranston, Rhode Island

On January 8, 1976, in 41 FR 1476, the Federal Insurance Administrator published a list of communities with special hazard areas which included the City of Cranston, Rhode Island. Map No. H 445396 13 indicates that Lot 29, Eden Park West, Cranston, Rhode Island, as recorded in Plat Book 11, Page 24 in the office of the City Clerk of Cranston, Rhode Island, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is within Zone C, and not within the Special Flood Hazard Area. The map amendment is not based on the placement of fill on the above named property after the effective date of the Flood Insurance Rate Map of the community. Accordingly, Map No. H 445396 13 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on September 9, 1970.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 7, 1976.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.76–12204 Filed 4–26–76;8:45 am]

[Docket No. FI–440]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Houston, Texas

On January 10, 1975, in 40 FR 2190, the Federal Insurance Administrator published a list of communities with special hazard areas which included the City of Houston, Texas. Candlelight Oaks Village, Harris County, Texas, as recorded in Volume 226, Page 1, in the office of the Clerk of the Court of Harris County, Texas, has recently been annexed by the City of Houston, Texas. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is now within the corporate limits of the City of Houston, Texas, and is not within the Special Flood Hazard Area Accordingly, Map No. H 480296 46 is hereby corrected to reflect that the above property is within the corporate limits of Houston, and is not within the Special Flood Hazard Area identified on December 27, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 7, 1976.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.76–12208 Filed 4–26–76;8:45 am]

[Docket No. FI–352]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Lubbock, Texas

On September 12, 1974, in 39 FR 32890 the Federal Insurance Administrator published a list of communities with special hazard areas which included the City of Lubbock, Texas. Map No. H 480452 20 indicates that Spanish Oaks Addition Lubbock, Texas, as recorded in Volume 1, Pages 157 and 158 in the office of the Clerk of Lubbock County, Texas, is partially within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that Lots 1 through 293 of the above property are not within the Special Flood Hazard Area. Accordingly, Map No. H 480452 20 is hereby corrected to reflect that Lots 1 through 293 of the above property are not within the Special Flood Hazard Area identified on August 30, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.76–12209 Filed 4–26–76;8:45 am]

[Docket No. FI–342]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the City of Memphis, Tennessee

On August 28, 1974, in 39 FR 31315, the Federal Insurance Administrator pub-

lished a list of communities with special hazard areas which included the City of Memphis, Tennessee. Map No. H 470177 13 indicates that the site of the caustic soda and caustic potash tanks of the Mid-South Terminal Corporation as shown on the revised Plot Plan entitled "Memphis Public River Terminal Plot 1," prepared by Brough and Stephens, Inc., of Memphis, Tennessee, and being a part of Lot 2, Memphis and Shelby County Port Commission's Industrial Subdivision, Memphis, Tennessee, as recorded in Plat Book 17, Page 2 in the office of the Register of Shelby County, Tennessee, is in its entirety within the Special Flood Hazard Area. The site can be further described as follows:

Commencing at a point being the northwesterly corner of Lot 2 and the northeasterly corner of Lot 3 of the Memphis and Shelby County Port Commission's Industrial Subdivision; thence southerly along the western line of said Lot 2, approximately 825 feet to a point; thence in an easterly direction perpendicular to said western line of Lot 2, approximately 940 feet to the actual point of beginning; thence in a southerly direction parallel to said western line of Lot 2, approximately 123 feet to a point; thence in an easterly direction perpendicular to the said western line of Lot 2, approximately 220 feet to a point; thence in a northerly direction parallel to said western line of Lot 2, approximately 123 feet to a point; thence in a westerly direction perpendicular to said western line of Lot 2, approximately 220 feet to the point of beginning.

It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, Map No. H 470177 13 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area is identified on August 23, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 7, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12206 Filed 4–26–76;8:45 am]

[Docket No. FI–1099]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the County of Mobile, Alabama

On January 8, 1972, in 37 FR 281, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas which included the County of Mobile, Alabama. Map No. H 015008 24 indicates that Howells Ferry Heights, Third Unit-Part-A, Mobile County, Alabama, as recorded in Map Book 25, Page 67, in the office of the Judge of the Probate Court of Mobile County, Alabama, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above mentioned property is within Zone C, and is not within the Special Flood Hazard Area. The map amendment is not based on the placement of fill on the above named property after the effective date of the Flood Insurance Rate Map of the community. Accordingly, Map No. H 015008 24 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on January 8, 1972.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued. April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12198 Filed 4–26–76;8:45 am]

[Docket No. FI–1100]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for Fairfax County, Virginia

On January 8, 1976, in 41 FR 1477, the Federal Insurance Administrator published a list of communities with special hazard areas which included Fairfax County Virginia. Map No. H & I 515525 13 indicates that Lot 72, Sutton Place, being 3112 Wynford Drive, Fairfax County, Virginia, as recorded in Deed Book 2449, Page 615 in the office of the Clerk of the Court of Fairfax County, Virginia, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the existing structure on the above property is within Zone B, and not within the Special Flood Hazard Area. The map amendment is not based on the placement of fill on the above named property after the effective date of the Flood Insurance Rate Map of the community. Accordingly, Map No. H & I 515525 13 is hereby corrected to reflect that the existing structure on the above property is not within the Special Flood Hazard Area identified on June 17, 1970.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12195 Filed 4–26–76;8:45 am]

[Docket No. FI–1100]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for Fairfax County, Virginia

On January 8, 1976, in 41 FR 1477, the Federal Insurance Administrator published a list of communities with special hazard areas which included Fairfax County, Virginia. Map No. H & I 515525 13 indicates that Lot 172, Stonehurst, Section Three, being 9289 Bailey Lane, Fairfax County, Virginia, as recorded in Deed Book 3469, Page 332 in the office of the Clerk of the Court of Fairfax County, Virginia, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is within Zone C, and not within the Special Flood Hazard Area. The map amendment is not based on the placement of fill on the above named property after the effective date of the Flood Insurance Rate Map of the community. Accordingly, Map No. H & I 515525 13 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on June 17, 1970.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33. FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12196 Filed 4–26–76;8:45 am]

[Docket No. FI–1100]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for Fairfax County, Virginia

On January 8, 1976, in 41 FR 1477, the Federal Insurance Administrator published a list of communities with special hazard areas which included Fairfax County, Virginia. Map No. H & I 515525 18 indicates that Lot 15, Block 3, Section 3–B, Ravensworth Subdivision, Fairfax County, Virginia, as recorded in Deed Book 2076, Page 443 in the office of the Clerk of the Court of Fairfax County, Virginia, is in its entirety within the Special Flood Hazard Area. It has been de-

termined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is within Zone C, and not within the Special Flood Hazard Area. The map amendment is not based on the placement of fill on the above named property after the effective date of the Flood Insurance Rate Map of the community. Accordingly, Map No. H & I 515525 18 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on June 17, 1970.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 5, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12197 Filed 4–26–76;8:45 am]

[Docket No. R–76–365]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for Prince George's County, Maryland

On January 8, 1976, in 41 FR 1474, the Federal Insurance Administrator published a list of communities with special hazard areas which included Prince George's County, Maryland. Map No. H 245208 47 indicates that Lots 18 through 21, Block G; Lots 12 through 15, Block K; and Lots 9 through 14, Block L, Murray Hill, Prince George's County, Maryland, as recorded in Plat Book WWW 87, Plat 65, in the Land Records of Prince George's County, Maryland, are within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is within Zone C, and not within the Special Flood Hazard Area. The map amendment is not based on the placement of fill on the above named property after the effective date of the Flood Insurance Rate Map of the community. Accordingly, Map No. H 245208 47 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area identified on August 4, 1972.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: April 5, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12201 Filed 4–26–76;8:45 am]

[Docket No. FI–232]

PART 1920—PROCEDURE FOR MAP CORRECTION

Letter of Map Amendment for the Town of Falmouth, Maine

On April 1, 1974, in 39 FR 11897, the Federal Insurance Administrator published a list of communities with special hazard areas which included the Town of Falmouth, Maine. Map No. H 230045 01 indicates that the parcel of land in Falmouth, Maine conveyed to the Maine Audubon Society in memory of David Moulton, and recorded in Book 3630, Pages 130 through 133 in the office of the Register of Cumberland County, Maine is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that a portion of the above property, which can be described as follows:

Beginning at an iron situated on the boundary of land now or formerly of Agnes Merrill Johnston, which iron is located a distance of 390.08 feet, more or less, on a course of S 67°16′ W from another iron on the southern boundary of land of said Johnston which point is also the most Westerly corner of land conveyed by Richard Olney, Jr., et al. to Alden H. Sawyer, Jr., et al. by deed dated August 17, 1964, and recorded in the Cumberland County Registry of Deeds in Book 2244 at Page 398; thence from said iron marking the point of beginning S 67°16′ W, approximately 95 feet to a point; thence N 21°30′ W, approximately 72 feet to a point; thence S 65°30′ W, approximately 382 feet to a point; thence N 75°30′ W, approximately 77 feet to a point; thence N 21°33′30″ W, approximately 155 feet to an iron; thence N 34°38′ E, 211.88 feet to an iron; thence N 5°58′30″ W, 331.34 feet to an iron on the Southerly sideline of a right-of-way which runs from Old Route One, so-called, across other land of the Grantor and along the Northerly boundary of the land herein being conveyed, said right-of-way being 50 feet wide; thence by the Southerly sideline of said right-of-way S 76°47′30″ W, 162.03 feet to an iron; thence continuing by said Southerly sideline of said right-of-way N 70°41′ E, 226.71 feet to an iron; thence S 12°58′30″ E, 587.47 feet, more or less, to the point of beginning.

Is not within the Special Flood Hazard Area. Accordingly, Map No. H 230045 01 is hereby corrected to reflect that the above portion of property is not within the Special Flood Hazard Area identified on March 29, 1974.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: April 13, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–12199 Filed 4–26–76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

PART 1—INCOME TAX, TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Deferral of Date for Filing Form 990 by a Subordinate Organization Covered by a Group Exemption Letter Issued to a Church or a Parent Organization

To officers and employees of the Internal Revenue Service and others concerned: The notice defers the time by which a subordinate organization (other than private foundations) covered by a group exemption letter issued to a church central or parent organization must file Form 990.

STATEMENT OF CONSIDERATION

In the February 11, 1976, issue of the FEDERAL REGISTER (41 FR 6073) the Internal Revenue Service published a notice of proposed rule making relating to the definition of integrated auxiliaries. The Internal Revenue Service had previously announced that subordinate organization not qualifying as an integrated auxiliary, nor qualifying as a church, an interchurch organization of local units of a church, or a convention or association of churches, would be required to file a 1975 Form 990.

As a result of the fact that the regulations relating to integrated auxiliaries have not yet been finalized, there is uncertainty as to whether certain subordinate organizations qualify as integrated auxiliaries. Thus, it is found desirable to delay the filing requirement for subordinate organizations pending a public hearing.

A notice of public hearing providing for reconsideration of the definition of the term integrated auxiliary is issued concurrently with this deferral notice.

It is therefore provided that a subordinate organization (other than a private foundation) covered by a group exemption letter issued to a church central or parent organization will not be required to file a 1975 Form 990.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.76–12211 Filed 4–22–76;4:07 pm]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 70—EXAMINATION AND COPYING OF DEPARTMENT OF LABOR RECORDS

Correction

Secretary of Labor's Order 51–69 dated December 16, 1969, designates and delegates authority to the Deputy Under Secretary for International Affairs.

Accordingly, in 29 CFR 70.36(a)(1), the term "Deputy Under Secretary for International Labor Affairs" should have read, and is hereby corrected to read, "Deputy Under Secretary for International Affairs" and the term "Associate Deputy Under Secretary for Interna-

tional Labor Affairs" should have read, and is hereby corrected to read, "Associate Deputy Under Secretary for International Affairs."

Signed at Washington, D.C., on this 20th day of April 1976.

W. J. USERY, Jr.,
Secretary of Labor.

[FR Doc.76-12005 Filed 4-26-76;8:45 am]

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of North Carolina State Poster for Public Employees

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On February 1, 1973, notice was published in the FEDERAL REGISTER (38 FR 3041) of the approval of the North Carolina Plan and adoption of Subpart I of Part 1952 containing the decision and describing the plan. On February 23, 1976, North Carolina submitted a supplement to the plan involving a developmental change. (See Subpart B, 29 CFR Part 1953.) The supplement contains the North Carolina Safety and Health Poster for public employees which is to be posted at all State and local government workplaces in the State.

2. Description of the poster. The North Carolina Safety and Health Poster for public (State and local government) employees contains, among other things, provisions notifying employees of their obligations and protections under the North Carolina Occupational Safety and Health Act (S.B. 342, Chapter 295); their right to request inspections and their right to remain anonymous as a result; their right to participate in inspections; their protection against discharge or discrimination under State law, and their right to file complaints about the administration of the State program with the Occupational Safety and Health Administration. The poster also contains a provision for prompt notice to employers and employees when alleged violations occur. (The North Carolina public employee program is implemented through an agency self-inspection system).

3. Location of the plan and its supplement for inspection and copying. A copy of this supplement, along with the approved plan, 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 N-3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Suite 587, 1375 Peachtree Street, N.E., Atlanta, Georgia 30309; and Office of the Commissioner of Labor, North Carolina Department of Labor, 11 West Edenton Street, Raleigh, North Carolina 27611.

4. Public participation. Under § 1953.2 (c) of this Chapter the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the North Carolina Safety and Health Poster for Public Employees incorporates the provisions required under 29 CFR 1903.2(a) (3) and all of the appropriate provisions of 29 CFR 1952.10(a) (5) as required under 29 CFR 1952.11(b) (3) (iv). Accordingly, it is felt that further opportunity for public comment and notice is unnecessary.

5. Decision. After consideration, the North Carolina Safety and Health Poster described above is hereby approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition 29 CFR 1952.154(c) is hereby revised to reflect completion of a developmental step.

§ 1952.154 Completed developmental steps.

* * * * *

(c) (1) In accordance with 1952.153(p) and the requirements of 29 CFR 1952.10, the North Carolina poster for private employers was approved by the Assistant Secretary on April 17, 1975.

(2) In accordance with § 1952.153(p) and the requirements of 29 CFR 1952.10, the North Carolina poster for public employees was approved by the Assistant Secretary on April 20, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12230 Filed 4-26-76;8:45 am]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

South Carolina; Approval of Plan Supplements

1. Background. Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 6, 1972, a notice was published in the FEDERAL REGISTER (37 FR 25932) of the approval of the South Carolina Plan and adoption of Subpart C of Part 1952 containing the decision and describing the plan. On August 29, 1975, and October 3, 1975, notice of submission of a number of South Carolina plan supplements involving developmental and State initiated changes and providing opportunity for public comment was published in the FEDERAL REGISTER (40 FR 39895 and 40 FR 45855). These supplements are described below. In addition on September 26, 1975, October 28, 1975, and January 15, 1976, South Carolina submitted additional plan supplements and assurances amending certain aspects of the original published supplements.

2. Description of the supplements. (a) Radiological Health Program. In order to formalize enforcement of State standards addressing radiation hazards (South Carolina standards are identical to Federal standards), South Carolina has amended Section 7.02-4 of the State plan. The Division of Radiological Health of the South Carolina Department of Health and Environmental Control, beginning July 1, 1975, will make inspections to cover employment which is not subject to the jurisdiction established by the Atomic Energy Act of 1954. By amendment dated October 28, 1975, South Carolina reduced the total professional man-years to be devoted to this program from 3.3 to 2.8 and the anticipated number of inspections to be devoted to evaluating exposure to x-ray machines and microwave ovens during fiscal year 1976 from 740 to 200.

(b) Public Employee Program. The South Carolina public sector program provides coverage of employees of State and local governments in a manner identical to that of private employees. Inspections will be conducted by regular compliance officers in the same manner as in the private sector including the issuance of citations and proposals of penalties. State/local government and private employees and employers have identical rights and responsibilities.

(c) Management Information System. In accordance with the commitment in 29 CFR 1952.103(c) South Carolina has completed development of a management information system designated to provide the data required by the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) in monitoring the State program and information necessary for internal management of resources and evaluation of program performance. The system has both automated and manual components and is fully described in the supplement which replaces section 11.07 of the plan narrative.

(d) Regulations for enforcement of standards and administrative review of contested cases (Article IV). On June 5, 1975, the South Carolina Commissioner of Labor, Edgar L. McGowan, promulgated an amended Article IV replacing the Article IV contained in the originally approved plan. The revised Article IV in addition to detailing procedures for issuing citations, proposing penalties and conducting administrative review of contested cases includes amended procedures for informal conferences (limited to within the 20 working day contest period), consideration of petitions for

modification of abatement dates, and formal hearings. Under South Carolina law both employees and employers may contest citations, proposed penalties, and abatement dates. The Commissioner of Labor, rather than an independent Review Commission is the review authority for contested cases. Subsequent to the June 5, 1975, promulgation the Section 4.00(k) definition of "person" was expanded to include "organization of employees" (September 26, 1975). A series of supplemental assurances clarifying the intent of certain aspects of Article IV and designed to bring the regulation into conformity with Federal requirements was also submitted by Commissioner McGowan on January 15, 1976: (1) Section 4.01A will be interpreted to require issuance of a citation to an employer regardless of the employer's immediate abatement of the hazard; (2) Section 4.04B in conformance with Section 40–271 of the South Carolina Act allows employees, as well as employers, to protest notification of failure to correct a violation and of proposed penalties; (3) Section 4.05A concerning Petitions for Modification of Abatement, will require all steps taken by the employer to achieve compliance and what interim steps are being taken to protect employees from the cited hazard to be stated in the petition, and the procedures in Section 4.05A, for forwarding Petition for Modification of Abatement by the Chief Safety Specialist to the Commissioner within 5 working days after expiration of the 10 day protest period, will be interpreted as controlling over the less explicit language of Section 4.10Q(2); (4) Section 4.09 will be implemented to insure that after receipt of a Notice of Protest, any action to withdraw, modify or amend a citation or penalty will be referred to the State Attorney General for handling including preparation of the necessary formal motion, with such motion to be submitted to the assigned Hearing Examiner (if no Hearing Examiner has been assigned, then to the Commissioner) for granting or denial.

3. Issues. Public comments in response to the August 29, 1975, notice of South Carolina plan changes were received from the Center for Law and Social Policy, Washington, D.C. on behalf of the Southern Institute for Occupational Health, Columbia, South Carolina. No comments were received in response to the October 30, 1975, notice and there were no requests for a hearing.

The Center for Law and Social Policy addressed its comments solely to Article IV, South Carolina Review Procedures, and requested major modification of the regulation to "facilitate inclusion of employees in the enforcement process in South Carolina." Comments were divided into two categories (a) those areas the Center felt differed significantly from the Federal program and (b) those areas similar to the Federal program but considered to provide an "insufficient means of enforcing the Act." The comments have been reviewed and supplemental assurances provided by the State (see Description of the supplements, paragraph d, above) to correct several outstanding problems. It must be noted that section 18 of the Act sets out the Federal standards and enforcement as the basic requirement of effectiveness for a State program.

The South Carolina System for review of contested cases as approved in the State plan provides for employer/employee appeal to the Commissioner of Labor. Such a system, absent an independent review body was approved with the proviso that the Commissioner of Labor's staff for enforcement and staff for review of contested cases must remain separate and independent. Article IV attempts to establish those procedural safeguards which will formalize this separation and guarantee a full and fair opportunity for review of all positions on matters at issue in contested case proceedings.

As presently constituted, appeal of the Commissioner of Labor's determination to the State courts may be taken by any employer or employee party to the initial proceedings. Because of the Commissioner's dual, but separate function the State has not provided for agency (Department of Labor) appeal to the courts of a final order of the Commissioner. However, Section 40–271 of the South Carolina Act provides that any order of the Commissioner becomes final 30 days after its issuance and Section 4.10(00) (4) states that all proceedings prior to finality of the Commissioner's order shall be before the Commissioner. This is interpreted to allow officials of the Commissioner's enforcement staff as well as other parties the opportunity to request reconsideration of the Commissioner's order. Since the State only recently began operating under the revised Article IV a final determination on whether this alternative is "at least as effective" as an independent review body remains a matter for continuing monitoring and evaluation.

4. Location of the plan and its supplements for inspection and copying. A copy of this supplement, along with the approved plan, may be inspected and copied during normal businesss hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Suite 587, 1375 Peachtree Street, N.E. Atlanta, Georgia 30309; and Office of the Commissioner of Labor, South Carolina Department of Labor, 3600 Forest Drive, Columbia, South Carolina 29206.

5. Decision. After consideration, the South Carolina plan changes outlined herein are approved, as amended and supplemented, under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In addition 29 CFR 1952.104 is hereby amended by adding the following paragraphs (g) through (j) to reflect completion of certain developmental steps.

§ 1952.104 Completed developmental steps.

* * * * * *

(g) In accordance with § 1952.103(c) development of a management information system designed to provide the data required by the Assistant Secretary and information necessary for internal management of resources and evaluation of State program performance has been completed.

(h) The State plan has been amended to include the details of a public employee program. State and local government employees will be afforded protection identical to that of employees in the private sector.

(i) The South Carolina plan has been amended to include an expanded radiation health effort. The Division of Radiological Health, South Carolina Department of Health and Environmental Control, under contract to the South Carolina Department of Labor will make inspections to provide coverage of radiation hazards not subject to regulation under the Atomic Energy Act of 1954.

(j) In accordance with plan commitments South Carolina regulations for enforcement of standards and review of contested cases, Article IV, were revised and repromulgated on June 5, 1975. Further amendment to Section 4.00K (September 26, 1975) and a January 15, 1976, letter of supplemental assurances from Commissioner Edgar L. McGowan are considered integral parts of the approved South Carolina review procedures.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 677))

Signed at Washington, D.C. this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76–12231 Filed 4–26–76;8:45 am]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Washington Plan; Approval of Plan Supplements

1. Background. Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for the review of changes and progress in State plans which have been approved in accordance with Section 18 (c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington Plan and the adoption of Subpart F to Part 1952 containing the decision. On October 29, 1975 the State of Washington submitted supplements to the plan involving developmental changes to the Seattle Regional Office of the Occupational Safety and Health Administration. Following regional review, the supplements were forwarded to the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as

the Assistant Secretary) for his determination as to whether they should be approved. The supplements are described below.

2. Description of the supplements. (a) Staff training. The State has submitted a statement certifying the completion of the training objectives as set forth in the State plan. The training included all the safety and health inspectors completing a one week training course at Issaquah, Washington. A full time training officer is assigned to develop training needs on a continuing basis.

(b) Management Information System. The system will operate as a computerized system. The system will provide, among other things, data on inspection type, employee participation, employee discrimination, special programs, number and type of violations, proposed penalties and collection of penalties, employee complaints, safety and health coverage, serious and non-serious penalties and violations, training, time utilization, and contested cases.

3. Location of the plan and its 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: Technical Data Center, Occupational Safety and Health Administration, Room N-3620, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; and the Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.

4. Public participation. Under § 1953.2 (c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Washington plan supplements described above are consistent with commitments contained in the approved plan, which were previously made available for public comment. Accordingly, it is found that further public comment and notice is unnecessary.

5. Decision. After careful consideration, the Washington plan supplements described in (a) and (b) above are hereby approved under Subpart B of Part 1953 of this chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, Subpart F of 29 CFR Part 1952 is hereby amended to reflect these approved plan changes. Accordingly, § 1952.124 of Subpart F is hereby amended by adding new paragraphs (e) and (f) as follows:

§ 1952.124 Completed developmental steps.

* * * * *

(e) In accordance with § 1952.123(e) Washington has completed the training as described in this section.

(f) In accordance with § 1952.123(d) Washington has developed and implemented a computerized Management Information System.

(Sec. 18, Pub. L. 91-596 84 Stat. 1603 (29 U.S.C. 667))

Signed at Washington, D.C. this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12232 Filed 4-26-76;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

Appendices

On February 26, 1976, there was published in the FEDERAL REGISTER on page 8390 (41 FR 8390) a proposal to amend § 806b.58 of Subpart H (40 FR 55592), by proposing as a rule under 5 U.S.C. 552a (k) to exempt an additional system of records within the Department of the Air Force from the specified subsections of 5 U.S.C. 552a. Interested persons were invited to participate in this proposed amendment to the regulation, not later than March 25, 1976, by submitting written data, views, or arguments. No comments were received relative to that proposal. Accordingly, the proposed amendment is hereby adopted without change as set forth below.

Effective date. April 12, 1976.

DAVID P. TAYLOR,
Acting Secretary of the Air Force.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

APRIL 21, 1976.

Section 806b.58(k) is added to read as follows:

§ 806b.58 Specific Exemptions.

* * * * *

(k) 03501 General Officer Personnel Data System.

(1) Exemption. Such portions of this system as pertain to completed Air Force Forms 78, "Air Force General Officer Effectiveness Report" are exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f).

(2) Authority. 5 U.S.C. 552(k)(7).

(3) Reasons. This exemption is required to insure that selection boards are provided with candid evaluations of the potential of officers being considered for promotion to Major General, Lieutenant General and General.

[FR Doc.76-12065 Filed 4-26-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 529-3]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCE

Delegation of Authority to State of South Dakota

Pursuant to the delegation of authority for the standards of performance for new stationary sources (NSPS) to the State of South Dakota on March 25, 1976, EPA is today amending 40 CFR 60.4, Address, to reflect this delegation. A Notice announcing this delegation is published today at 41 FR 17600. The amended § 60.4, which adds the address of Department of Environmental Protection to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on March 25, 1976, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of Section 111 of the Clean Air Act, as amended.

42 U.S.C. 1857c-6.

Date: April 20, 1976.

STANLEY W. LEGRO,
Assistant Administrator for Enforcement.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by revising subparagraph QQ to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(A)-(Z) * * *

(AA)-(PP) * * *

(QQ) State of South Dakota, Department of Environmental Protection, Joe Foss Building, Pierre, South Dakota 57501.

* * * * *

[FR Doc.76-12245 Filed 4-26-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-340]

PART 73—RADIO BROADCAST SERVICES

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Reregulation of Radio and Television Broadcasting

By the Commission: 1. As a result of its continuing study concerning the reregulation of radio and TV, the Commission has under consideration the matter of amending certain provisions in Parts 73 and 74 of its rules. These amendments will update certain rules, delete parts of others which are no longer necessary and make corrections and revisions where indicated.

2. The following rule changes are made for the reasons indicated:

(a) In the Report and Order adopted by the Commission on May 29, 1975 [1] the proceeding, which consolidated Dockets 16004 and 18052, was terminated. (Docket 16004: In the Matter of Amendment of Sections 73.333 and 73.699, Field Strength Curves for FM and TV Broadcast Stations; Docket 18052: In the Matter of Amendment of Part 73 of the Rules Regarding Field Strength Measurements for FM and TV Broadcast Stations.) As a result of this Commission action, a new Section 73.314 was added to the FM rules, establishing policies and procedures for field strength measurements in the FM service. No provision is made in the FM rules for the possible use of a test transmitter in making such measurements. Such provision has, since 1954, been part of the AM rules and with the adoption of these measurement procedures in the FM service, the authorization of test transmitters, where needed, is desirable. With the adoption of this Report and Order, the Commission also modified the procedures for making field strength measurements in the VHF and UHF bands, Section 73.686. (N.B., headnote of this section was changed in the Report and Order from "Measurement for rule making purposes and upon request of the Commission" to "Field strength measurements".) As in FM (and AM), when appropriate and needed, the use of test transmitters for such TV field strength measurements will be allowed.

(1) Accordingly, in the FM rules, new Section 73.278, Special field test authorization, is added.

(2) And, in the TV rules, new Section 73.627, Special field test authorization, is added.

(3) Since noncommercial educational FM stations are subject to all the provisions of the FM technical standards contained in Subpart B (see § 73.505 Standards of good engineering practice), insertion of this test transmitter rule into Subpart C of the noncommercial educational FM rules, is not necessary.

(b) Section 73.598, Personal attacks, in the noncommercial educational FM (NCE–FM) rules, refers in paragraph (c), to editorializing by the licensee. This rule (paragraph (c)) is deleted for the following reason:

(1) Section 399(a) of the Communications Act of 1934, (added by Public Law 90–129, November 7, 1967), provides that "No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office."

(i) Since there are stations operating as noncommercial educational facilities, though licensed on channels not reserved for education (30 AM's; 16 FM's; and 10 TV's), this prohibition against editorializing by noncommercial educational AM, FM and TV stations is added, via a Note to the AM, FM and TV sections titled "Personal attacks; politcal editorials". (73.123–AM, 73.300–FM and 73.679–TV.)

(c) In Section 73.676, Remote control operation, subpargraph (a)(6) directs the reader to "See § 73.682(a)(22)". This should read "§ 73.682(a)(21)".

(1) Correction in the text of § 73.676 is made accordingly.

(d) In the TV broadcast translator station rules, Section 74.750 (Equipment and installation), is modified to delete footnote 1, following subparagraph (c)(7)(ii). The footnote states: "The National Industry Advisory Committee (NIAC) has under study for the Commission an alerting system using the frequencies 853 and 960 hertz. Pending resolution of this study, audiofrequency tones for identification purposes within 200 hertz of those frequencies shall not be used".

The Commission, after the completion of the NIAC study, adopted this new Emergency Broadcast System attention signalling arrangement on November 7, 1974 (49 F.C.C. 2d 1160), and after approving one postponement of the effective date, has affirmed April 15, 1976, as the starting date. Audiofrequency tones for station identification of television translators shall henceforth not be within 200 hertz of the EBS alerting tones of 853 and 960 hertz.

(1) § 74.750(c)(7)(ii) is rewritten accordingly to delete the footnote and amend the requirement.

(e) Considerable confusion exists on the part of both licensees and FCC personnel in application of the rule regarding ferquency tolerances for television translator stations. (§ 74.761.) The rule specifies that translator stations must operate with output within a specified tolerance of the assigned aural and visual frequencies. However, translator station licenses do not specify the operating frequencies, as do television broadcast stations, but are only assigned a "channel". Since TV broadcast stations may be assigned nominal channel frequencies with a plus or minus 10,000 hertz offset, the question is then raised as to whether translators are expected to operate on the licensed channel frequencies without offset, or may then operate with the same offset as the station being translated? Our FCC field personnel have difficulty applying § 74.761 as it is presently worded due to this fact that translators are assigned a channel and not a specific output frequency. Exact frequencies would have to be assigned in order to determine if a section is within the frequency tolerance specified in the present rule. Suggestions that the exact frequencies be assigned channel visual and aural carrier frequency without offset, have been considered. However, translators are inexpensive frequency conversion devices, whose output frequency is dependent on input frequency. Translator equipment manufacturers supply equipment for a specific channel conversion without concern for offset, so that TV broadcast stations with an offset are translated offset. To follow the suggestion would mean that manufacturers would have to alter this system which would place an undue burden on translator licensees and manufacturers. It appears that translator licensees and the Commission field staff would be better served if licensees were allowed to maintain frequencies to the tolerances set forth in § 74.761, including offset of the primary station. There would be no detriment to service to the public with this procedure and the determination regarding offsets (or no offsets) of the primary stations could be simply determined by referring to Section 73.606, Table of Assignments.

(1) Therefor, a change is made in § 74.761 to more clearly express these desired tolerance requirements.

(f) Section 74.783 sets forth the station identification requirements for TV translator stations. It requires that each translator of over 100 watts peak visual power transmit its call sign in Morse Code every 30 minutes. Translators of 100 watts or less peak visual power may make arrangements to be identified by their primary station, which shows the translator call letters and location during the periods of the day prescribed in Section 74.783(a)(2), Station identification.

The rules also allow full power "Satellite" stations to be identified by the station whose programs they rebroadcast. So, there is no valid reason to continue to require station identification only in Morse Code for the higher power translators.

(1) Section 74.783(a) is amended accordingly, allowing higher power translators the option of being identified visually or aurally by the primary station, or in Morse Code.

(2) Section 74.750, Equipment and installation, will also be amended (paragraph (c)(7)) relieving licensees of the requirement of installing Morse Code keying devices in the event the identification is to be made by the primary station whose signals the translator is rebroadcasting.

(3) For licensees choosing to use the Morse Code station identification, § 74.783 is changed to conform to all other broadcast station identification requirements, i.e., once an hour, instead of the present requirement, in § 74.783, of identifying every 30 minutes.

(Reference to time of station identification in § 74.750 is also changed from "each 30 minutes" to "each 60 minutes".)

(g) In the FM translator and booster station rules, the footnote relating to the NIAC study described in paragraph (2)

[1] 53 F.C.C. 2d 855 (1975).

(d), above, appears in the equipment and installation section. (§ 74.1250.) The footnote is deleted and the rule is amended to conform to the use of the new EBS alerting tones.

(h) Section 74.1283 sets forth the station identification requirements for FM translator and booster stations. Where the licensee of an FM translator elects to transmit his call sign via International Morse Code, he is directed to do so "at least once each 30 minutes during the time the station is in operation".

(i) To conform to the AM, FM and TV services and the change made in this Order in the TV translator services, § 74.1283 is amended to require station identification at least once each 60 minutes. (Reference to time of station identification in § 74.1250 is also changed from "once each 30 minutes", *to "once each 60 minutes".*)

3. We conclude that, for the reasons set forth above, adoption of these amendments will serve the public interest. Prior notice of rulemaking, effective date provisions, and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

4. Therefore, it is ordered, That pursuant to Sections 4(i) and 303 (j) and (r) of the Communications Act of 1934, as amended, Parts 73 and 74 of the Commission's Rules and Regulations are amended as set forth below, effective April 29, 1976.

Adopted: April 14, 1976.

Released: April 22, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

1. In § 73.123, a Note is added following paragraph (c):

§ 73.123 Personal attacks; political editorials.

* * * * * * *

(c) * * *

NOTE: Inasmuch as no noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office (Sec. 399(a) Communications Act), the provisions of subparagraph (b)(3) referring to "editorials of the licensee" and paragraph (c) in its entirety do not apply to such stations.

2. New Section 73.278 is added as follows:

§ 73.278 Special field test authorization.

(a) Upon a showing that a need exists, a special test authorization to operate a portable or regularly authorized transmitter may be issued to persons desiring to make field intensity surveys to determine factors influencing radio wave propagation, in particular areas or paths for the period necessary to conduct the survey. Such authorization may be granted upon the following conditions:

(1) No objectionable interference will result to the operation of other authorized radio services; in this connection, the power requested shall not exceed that necessary for the purposes of the test.

(2) The carrier will be unmodulated except for hourly voice identification.

(3) The output power of the transmitter shall not exceed authorized test power and the RF transmission line meter indication shall be maintained at a constant value for each phase of the test.

(4) The output power of the transmitter shall be logged at half-hour intervals and at any time that such power is changed. Certified copies of such log notations shall be submitted to the Commission with the required report.

(5) The test equipment shall not be permanently installed, unless such installation has been separately authorized. Mobile units shall not be deemed permanent installations.

(6) The equipment must be operated by or under the personal direction of either a licensed radiotelephone first-class or second-class operator.

(7) A report, containing the measurements, their analysis and other results of the survey shall be filed with the Commission within sixty (60) days from the termination of the test authorization. The measurements shall be made and reported according to the procedures described in Section 73.314.

(b) The test equipment, installation and operation thereof need not comply with the requirements of Commission rules and standards except as specified in this section: Provided however, that the equipment, installation and operation shall be consistent with good engineering principles and practices.

(c) No authorization shall be issued unless the applicant for such authorization is determined to be legally qualified. Requests for authorization to operate a transmitter under this section shall be made in writing, signed by the applicant (with no special form provided, however), and shall set forth the following information:

(1) Purpose, duration and need for the survey.

(2) Frequency, transmitter output power and time of operation.

(3) A brief description of the test antenna system, its estimated effective radiated field and height above average terrain, and the geographic coordinates of its proposed location.

(4) In the case of a person who is not a licensee or permittee of this Commission, the information required by section II of FCC Form 301.

(d) The authorization may be modified or terminated by notification from the Commission if in its judgment such action will promote the public interest, convenience or necessity.

3. In Section 73.300, a Note is added following paragraph (c):

§ 73.300 Personal attacks; political editorials.

* * * * * * *

(c) * * *

NOTE: Inasmuch as no noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office (Sec. 399 (a) Communications Act), the provisions of subparagraph (b)(3) referring to "editorials of the licensee" and paragraph (c) in its entirety do not apply to such stations.

§ 73.593 [Amended]

4. In Section 73.593, paragraph (c) is deleted in its entirety.

5. New Section 73.627 is added as follows:

§ 73.627 Special field test authorization.

(a) Upon a showing that a need exists, a special test authorization to operate a portable or regularly authorized transmitter may be issued to persons desiring to make field intensity surveys to determine factors influencing radio wave propagation, in particular areas or paths for the period necessary to conduct the survey. Such authorizations may be granted upon the following conditions:

(1) No objectionable interference will result to the operation of other authorized radio services; in this connection, the power requested shall not exceed that necessary for the purposes of the test.

(2) The carriers will be unmodulated except for a visual test pattern and hourly voice identification.

(3) The output powers of the aural and visual transmitters shall not exceed the authorized test powers and the transmission line meter indications shall be maintained at constant values for each phase of the test.

(4) The output powers of the transmitters shall be logged at half-hour intervals and at any time that such power is changed. Certified copies of such log notations shall be submitted to the Commission with the required report.

(5) The test equipment shall not be permanently installed, unless such installation has been separately authorized. Mobile units shall not be deemed permanent installations.

(6) The equipment must be operated by or under the personal direction of a licensed radiotelephone first class operator.

(7) A report, containing the measurements, their analysis and other results of the survey shall be filed with the Commission within sixty (60) days from the termination of the test authorization. The measurements shall be made and reported according to the procedures described in Section 73.686.

(b) The test equipment, installation and operation thereof need not comply with the requirements of Commission rules and standards except as specified in this section: Provided however, that the equipment, installation and operation shall be consistent with good engineering principles and practices.

(c) No authorization shall be issued unless the applicant for such authorization is determined to be legally qualified. Requests for authorizations to operate a transmitter under this section shall be made in writing, signed by the applicant (with no special form provided, however), and shall set forth the following information:

(1) Purpose, duration and need for the survey.

(2) Frequency, transmitter output powers and time of operation.

(3) A brief description of the test antenna system, its estimated effective radiated field and height above average terrain, and the geographic coordinates of its proposed location.

(4) In the case of a person who is not a licensee or permittee of this Commission, the information required by section II of FCC Form 301.

(d) The authorization may be modified or terminated by notification from the Commission if in its judgment such action will promote the public interest, convenience or necessity.

6. In Section 73.676, subparagraph (a) (6) is amended as follows:

§ 73.676 Remote control operation.

(a) * * *

(6) Apparatus designed to use the signal radiated from the antenna, or fed from the antenna circuit by a coaxial link and suitable for continuously and accurately monitoring the waveform and other characteristics of the transmitted visual signal including the percentage of modulation of the signal (a vectorscope or other instrument designed to depict the instantaneous phase and amplitude relationships of color components shall be provided, if any portion of the transmissions are in color). The apparatus shall be capable of providing both full field displays, and displays of test signals inserted on selected lines in the vertical blanking interval (see § 73.682(a) (21)); appropriate switching shall be provided so that either mode of presentation can be selected by the operator.

* * * * *

7. In Section 73.679, a Note is added following paragraph (c):

§ 73.679 Personal attacks; political editorials.

* * * * *

(c) * * *

NOTE: Inasmuch as no noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office (Sec. 399(a) Communications Act), the provisions of subparagraph (b) (3) referring to "editorials of the licensee" and paragraph (c) in its entirety do not apply to such stations.

8. In Section 74.750 paragraph (c) (7) (i) and (ii) are amended to read as follows, and the footnote 1, following (c) (7) (ii) is deleted:

§ 74.750 Equipment and installation.

* * * * *

(c) * * *

(7) Transmitters of over 1 watt peak visual power shall be equipped with an automatic keying device which will transmit the call sign assigned to the station, in International Morse Code, at least once each 60 minutes during the time the station is in operation, unless the translator licensee has in effect an agreement with the TV station being rebroadcast to transmit aurally or visually the translator call sign as provided in § 74.783. Transmission of the call sign can be accomplished by:

(i) frequency shift keying; the aural and visual carrier shift shall not be less than 5 kHz or greater than 25 kHz.

(ii) amplitude modulation of the aural carrier of at least 30% modulation. The audio frequency tone used shall not be within 200 hertz of the Emergency Broadcast System Attention Signal alerting frequencies.

* * * * *

9. Section 74.761 is amended to read as follows:

§ 74.761 Frequency tolerance.

The licensee of a television broadcast translator station shall maintain the output frequencies as follows:

(a) For transmitters rated at not more than 100 watts peak visual power, the output frequency shall be maintained within 0.02% of the visual carrier and the aural carrier center frequencies for the assigned translator channel. Translator stations will operate with plus or minus the 10 kHz offset frequency, if any, of the primary stations.

(b) For transmitters rated at more than 100 watts peak visual power, the output frequency shall be maintained within 0.002% of the visual carrier and the aural carrier center frequencies for the assigned translator channel. Translator stations will operate with plus or minus the 10 kHz offset frequency, if any, of the primary stations.

10. Section 74.783 is amended to read as follows:

§ 74.783 Station identification.

(a) Each television broadcast translator of over 1 watt peak visual power must transmit its station identification:

(1) by transmitting the call sign in International Morse Code at least once each hour. This transmission may be accomplished by means of an automatic device as required by § 74.750(c) (7). Call sign transmission shall be made at a code speed not in excess of 20 words per minute; or

(2) by arranging for the primary station, whose signal is being rebroadcast, to identify the translator station by transmitting an easily readable visual presentation or a clearly understandable aural presentation of the translator station's call letters and location. Two such identifications shall be made between 7 a.m. and 9 a.m. and 3 p.m. and 5 p.m. each broadcast day at approximately one hour intervals during each time period. Television stations which do not begin their broadcast day before 9 a.m. shall make these identifications in the hours closest to these time periods at the specified intervals.

(b) Licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television station licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or his service representative to be contacted in the event of malfunction of the translator. It shall be the responsibility of the translator licensee to furnish current information to the television station licensee for this purpose.

(c) Call signs for television broadcast translator stations will be made up of the initial letter K or W followed by the channel number assigned to the translator and two letters. The use of the initial letter will generally follow the pattern used in the broadcast service, i.e., stations west of the Mississippi River will be assigned an initial letter K and those east of the Mississippi River the letter W. The two letter combinations following the channel number will be assigned in order and requests for the assignment of the particular combinations of letters will not be considered. The channel number designator for Channels 2 through 9 will be incorporated in the call as a two-digit number, i.e., Ø2, Ø3, Ø4, Ø5, Ø6, Ø7, Ø8, or Ø9, to avoid similarities with call signs assigned to Amateur Radio Stations.

11. In Section 74.1250 the introductory paragraph of (c) (7) and paragraph (c) (7) (ii) is amended and the Note following the paragraph is deleted:

§ 74.1250 Equipment and installation.

* * * * *

(c) * * *

(7) Transmitters of FM broadcast translator stations of more than 1 watt transmitter output power shall be equipped with an automatic keying device which will transmit the call sign assigned to the station, in International Morse Code, at least once each 60 minutes during the time the station is in operation unless there is in effect a firm agreement with the station's primary station as provided in § 74.1283(c) (1). Transmission of the call sign can be accomplished in either of the following ways:

(i) * * *

(ii) By amplitude modulation of the FM carrier of at least 30% modulation. The audio frequency tone used shall not be within 200 hertz of the Emergency Broadcast System Attention Signal alerting frequencies.

* * * * *

12. Section 74.1283(c) (2) is amended to read as follows:

§ 74.1283 Station identification.

* * * * *

(c) * * *

(1) * * *

(2) Where the licensee or permittee of an FM translator station has not made arrangements for station identification in accordance with subparagraph (1) of this paragraph, such FM translator station shall transmit its call sign in International Morse Code at least once each 60 minutes during the time the station is in operation. The transmission may be accomplished by means of an automatic device as required by § 74.1250(c) (7). Call sign transmission shall be made at Code speed not in excess of 20 words per minute. At this speed, the transmission of each individual call sign will require approximately 4 seconds.

* * * * *

[FR Doc.76-12213 Filed 4-26-76;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

DEFINITION OF INTEGRATED AUXILIARIES OF A CHURCH

Public Hearing on Proposed Regulations

Proposed regulations under section 6033 of the Internal Revenue Code of 1954, relating to the definition of integrated auxiliaries of a church appear in the FEDERAL REGISTER for February 11, 1976 (41 FR 6073).

A public hearing on the provisions of such proposed regulations will be held on June 7, 1976, beginning at 10 a.m. in the George S. Boutwell Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202-964-3935. Under such § 601.601(a)(3) persons who have submitted written comments within the time prescribed in the notice of proposed rule making, and who desire to present oral comments at the hearing on such proposed regulations, should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by May 21, 1976. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Under § 601.601(a)(3) (26 CFR Part 601) each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers thereto.

Persons who desire a copy of such written comments or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commissioner, in writing, at the above address by May 28, 1976. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is ten cents ($0.10) per page.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of this agenda will be available free of charge at the hearing, and information with respect to its contents may be obtained on June 4, 1976, by telephoning (Washington, D.C.) 202-964-3935.

JAMES F. DRING,
Director, Legislation and Regulations Division.

[FR Doc.76-12212 Filed 4-22-76;4:08 pm]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 26]

WHEAT

Proposed Revision of Standards

The United States Grain Standards Act, as amended (82 Stat. 761, 7 U.S.C. 71 et seq.), provides for official U.S. standards to designate the quality of grain for use by producers, merchandisers, and consumers in the domestic and export marketing of grain. The Act provides for an official grading service upon request and payment by the applicant of a fee to cover the cost of the service.

Pursuant to section 4 of the United States Grain Standards Act, as amended (7 U.S.C. 76), notice is hereby given according to administrative procedure provisions of section 553 of Title 5, United States Code, that the U.S. Department of Agriculture has under consideration proposed revisions of the United States Standards for Wheat (7 CFR 26.301 et seq.).

Statement of considerations.

Classing. Wheat grown commercially in the United States is divided for marketing purposes into seven classes: Hard Red Spring Wheat, Durum Wheat, Red Durum Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, and Mixed Wheat. Color, texture, and other physical characteristics are used as a basis for categorizing each of these classes.

Such basis for categorizing wheat under the present standards cannot be applied to a recently released variety of wheat which has a diverse pedigree and distinctive purple pigments in the bran coat. This purple-colored wheat was developed and released specifically for feed purposes. The purple color in the bran coat is intended as a means of identification. Official inspection personnel cannot properly class this purple wheat under current criteria. Classing procedures need to be revised to provide for purple-colored wheat or any other new varieties which may be developed and released in the future, and which do not meet classing criteria under the present standards.

A review of the supply and use of current classes of wheat indicates the primary use of the class Red Durum Wheat is for feed, and its production levels are insignificant. Thus, the reclassing of Red Durum Wheat would have little, if any, adverse effect on the marketing of this class of wheat.

Therefore, the Department proposes to establish in the wheat standards a new class designation "Unclassed Wheat" and to delete the present class "Red Durum Wheat." The new class "Unclassed Wheat" would include the miscellaneous categories of wheat; namely, Red Durum Wheat, purple-colored wheat, and any other wheat which cannot be properly classed under the criteria provided. Such designation would then provide, in the official standards, a means of classing new varieties of wheat which may contain unusual color pigments or other characteristics which would create difficulties in classing.

The variable composition of the class "Unclassed Wheat" would necessitate including, on the inspection certificate, additional information useful for marketing purposes. It is proposed, therefore, that inspection certificates for Unclassed Wheat show under "Remarks" a description of the wheat and the estimated percentage of each type.

Subclassing. Several of the classes of wheat are further divided into subclasses. The class Hard Red Winter Wheat comprises the subclasses Dark Hard Winter Wheat, Hard Winter Wheat, and Yellow Hard Winter Wheat.

The percentage of kernels which are dark, hard, and vitreous in texture is the criterion which sets the subclasses apart. Kernels which are yellow or mottled, or which contain a yellow or mottled spot, regardless of size, are considered to be not dark, hard, and vitreous.

The subclass Dark Hard Winter Wheat contains 75 percent or more of dark, hard, and vitreous kernels. The subclass Hard Winter Wheat contains 40 percent or more but less than 75 percent of dark, hard, and vitreous kernels. The subclass Yellow Hard Winter Wheat contains less than 40 percent of dark, hard, and vitreous kernels. The dark, hard, and vitreous requirement for separating the subclasses Dark Hard Winter Wheat and Hard Winter Wheat has remained unchanged for many years; however, the requirement for separating the subclasses Hard Winter Wheat and Yellow Hard Winter Wheat was changed in 1957 from "less than 25 percent" to "less than 40 percent" of dark, hard, and vitreous kernels.

Subclasses in wheat were established to aid in segregating and marketing the crop by indicating to the buyer a rough measurement of the quality of flour and bread that would be produced. The rough measurement was established be-

cause of the existence of a positive correlation between protein content and the percentage of dark, hard, and vitreous kernels. The measurement of dark, hard, and vitreous kernels satisfied a desired characteristic of grain grading; namely, that it could be performed in a rapid and economical manner by the inspector. The information would be immediately available.

Occasionally the Hard Red Winter Wheat crop is exceptionally low in the percentage of dark, hard, and vitreous kernels. For example, the problem was acute in the State of Oklahoma and across the southern portion of Kansas bordering Oklahoma in 1975. About 72 percent of the Oklahoma crop graded Yellow Hard Winter Wheat. This compares with 47, 19, and 2 percent for the crop years of 1974, 1973, and 1972, respectively. About 42 percent of the Kansas crop graded Yellow Hard Winter Wheat. This compares with 19, 21, and 28 percent for the crop years of 1974, 1973, and 1972, respectively. It is a matter of record that the average protein content of the 1975 Hard Red Winter Wheat crop was low. Oklahoma's crop averaged 10.7 percent and is the lowest on record dating back to 1948. The Kansas crop averaged 11.2 percent and was the fifth lowest on record dating back to 1948.

Yellow Hard Winter Wheat is blended with other subclasses containing sufficient dark, hard, and vitreous kernels in order to meet the "40 percent or more" requirement for the subclass Hard Winter Wheat. In the 1975 crop, because of the large percentage of Yellow Hard Winter Wheat, it was difficult to assemble sufficient wheat of the other subclasses to meet the blending needs.

There is only a limited market for the subclass Yellow Hard Winter Wheat. One possible reason for the marketing difficulty is that much of the class Hard Red Winter is marketed as Dark Hard Winter Wheat and Hard Winter Wheat. There is a hesitancy on the part of foreign buyers to purchase Yellow Hard Winter Wheat, regardless of the protein content.

Some segments of the industry requested that the subclass Yellow Hard Winter Wheat be redefined to contain "less than 25 percent" of dark, hard, and vitreous kernels, while others have requested that subclasses be deleted.

Considerable testing has been performed by the Department and industries to determine if the current subclassing procedure is valid. The data that was compiled covered the past four crop years (1972–1975). Analyses of the data show that:

1. There is positive correlation between the percentage of dark, hard, and vitreous kernels and protein content in a given sample.

2. There is correlation between the percentage of dark, hard, and vitreous kernels and baking scores, but it is not as strong as the correlation between protein content and baking scores.

After careful analysis of the data, the Department cannot support or determine a basis on which to justify the lowering of the current requirement for Yellow Hard Winter Wheat from "less than 40 percent" to "less than 25 percent" of dark, hard, and vitreous kernels.

The Department does concur, however, that protein content is a better measure of baking quality than the percentage of dark, hard, and vitreous kernels. Therefore, the subclasses Yellow Hard Winter, Hard Winter, and Dark Hard Winter Wheats are of equal baking quality if their protein content is equal. Analysis of data shows that the protein content of the three subclasses may be equal, but this seldom occurs. In those instances when it does occur, the producer may be unfairly penalized when the price is based on subclassing as opposed to protein content. This has led to the valid question of the usefulness of subclassing when a test for protein content is available. If its usefulness is questionable, then perhaps the procedure should be eliminated. If the present method of subclassing is deleted, there will be a shift to using protein content to indicate relative quality of the wheat.

Most major wheat markets have protein tests (Kjeldahl) available. The current protein test is accurate, but time consuming. If protein determination becomes necessary, country elevators who do not now have the service available will need to locate sources where the service may be obtained.

The determination of protein content by the Kjeldahl method for domestic marketing is not under the supervision of the Department. Therefore, the protein results obtained cannot be considered official and included on official grade certificates, nor are there appeal rights when a disputed result arises. The Department is currently evaluating infrared devices which appear to have the potential for the rapid and accurate determination of protein content. If the evaluation is favorable, the Department will consider approving the devices for use in determining wheat protein content and the showing thereof on the official inspection certificate. The evaluation of the devices will not be completed for approximately one or two years. In the interim period, only unofficial results would be available, as indicated above.

The Department proposes to amend the method of classing Hard Red Winter Wheat by deleting all reference to subclasses. If the subclasses in Hard Red Winter Wheat are deleted, the percentage of dark, hard, and vitreous kernels will be available to the applicant upon request.

Determination of Defets (total). The current standards provide that heat-damaged kernels, damaged kernels (total), and foreign material shall be determined upon the basis of the wheat when free from dockage. When determined on this basis, there are occasional instances when a damaged kernel of wheat may be scored twice as defects (total) against the sample being analyzed. Defects (total) is the sum of damaged kernels (total), foreign material, and shrunken and broken kernels. For example, thin damaged kernels of wheat may be scored as damaged kernels (total) and again scored as shrunken and broken kernels if they pass through the 0.064 x ⅜ oblong-hole sieve.

Similarly, thin damaged kernels of rye may be scored three times against the sample of wheat by functioning as damaged kernels (total), as foreign material, and as shrunken and broken kernels. The grading system would be improved by minimizing those instances where the presence of certain undesirable factors would be scored two or three times as defects (total) against a sample. The true quality of wheat would be reflected more accurately from an end-use viewpoint when heat-damaged kernels, damaged kernels (total), and foreign material are determined on a test portion of wheat from which dockage and shrunken and broken kernels have been removed. This parallels commercial milling procedures, wherein dockage and shrunken and broken kernels are removed from the wheat before the milling process. For feed and other uses, this change would have a lesser impact. It is therefore proposed that heat-damaged kernels, damaged kernels (total), and foreign material be determined on the basis of a test portion of wheat when free from dockage and shrunken and broken kernels.

Heat Damage. The presence of even a small quantity of heat-damaged kernels has an adverse effect on the breadmaking quality of wheat. The current standards limit the amount of heat-damaged kernels to 0.1 and 0.2 percent in grades U.S. Nos. 1 and 2, respectively.

The sample size used for the determination of heat damage does not permit the consistent duplication of inspection results at the 0.1 percent level. Therefore, under the proposed revisions, the limit for heat-damaged kernels would be set at a maximum of 0.2 percent for both U.S. No. 1 and U.S. No. 2 grades. This change would permit the consistent duplication of inspection results with the existing sample size.

Special Grade "Heavy Wheat". The standards were amended in 1964 to provide a special grade "Heavy wheat" for (a) Hard Red Spring Wheat in grades No. 1, No. 2, or No. 3 which had a test weight per bushel of 60 pounds or more, or (b) any other class of wheat in grades No. 1, No. 2, or No. 3 which had a test weight per bushel of 62 pounds or more.

This special grade was intended as a premium factor which would increase returns to producers of wheat with a high test weight per bushel. However, the application of this factor has been of little benefit to producers. Except for Hard Red Spring Wheat in one major market, the Department is unaware of any instances in the commercial market where premiums are paid for higher test weight wheat. In that market, a premium is usually paid in increments of ½ pound per bushel for Hard Red Spring Wheat which weighs from 58 to 60 pounds per bushel. The premium, however, applies to the actual test weight of the wheat and is applied whether or not the wheat qualifies for the special grade "Heavy Wheat."

Wheat exporters state that the special grade "Heavy wheat" should be deleted, because it serves no useful purpose. Since no premiums are paid for the special grade "Heavy wheat," it is difficult to justify the retention of such grade. Retention of the special grade would serve only to increase the clerical workload and include information on inspection certificates which is not useful. Discussions with representatives of all segments of the industry indicate that the deletion of the special grade "Heavy wheat" would have no adverse effect on the marketing of wheat. Accordingly, the Department proposes that the special grade "Heavy wheat" be deleted.

Certification. The standards require that the percentages of white club wheat and other white wheat in the subclass Western White Wheat be shown on the grade line of the inspection certificate as a part of the grade. Most of the Western White Wheat is exported from the Pacific Northwest. Some exporters state that buyers generally do not need or want this information and that the requirement serves only to add unnecessary information on the grade line. They further suggest that, if a buyer requests this information, it could be furnished in a separate letter.

The components of Western White Wheat, namely white club wheat and other white wheat, belong to different botanical species. The end-use characteristics of the two species are not identical. Western White Wheat is a mixture and permits a range of 10 to 90 percent of either component, so the composition of different lots of Western White Wheat is often variable. For these reasons, the Department believes that the percentages of the components of Western White Wheat are necessary in estimating end-use characteristics of such mixtures and should be shown on the inspection certificate. However, it does not appear necessary that the information be shown on the grade line. It is therefore proposed that the percentage of white club wheat and other white wheat that comprise Western White Wheat not be shown on the grade line, but be shown under "Remarks" on the inspection certificate.

The standards provide that the estimated percentages of the components which comprise Mixed Wheat be shown on the grade line of the inspection certificate, similar to Western White Wheat. Proposals have been made in this revision to show components of Western White Wheat and Unclassed Wheat under "Remarks" on the inspection certificate for the reason mentioned above. Therefore, for the purpose of uniformity, it is proposed that the percentages of the components which comprise Mixed Wheat not be shown on the grade line, but be shown under "Remarks" on the inspection certificate.

Sample Grade Factors. Contamination of wheat by animal filth is undesirable for public health reasons. Rodent pellets and bird droppings are considered animal filth under current grading procedures. Wheat which contains 3 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth in a 1,000-gram sample is graded Sample grade. The Food and Drug Administration, however, considers wheat containing 2 or more rodent pellets in a 900-gram sample (1 quart) as actionable and subject to seizure. Various State Departments of Agriculture follow the FDA guidelines in their inspection procedures and consider wheat which contains 2 or more rodent pellets in a 1,000-gram sample as actionable.

The non-uniform application of this grading factor between official inspection personnel and the FDA has created inspection problems. For example, wheat graded U.S. No. 1 by inspection personnel may be considered actionable by the FDA because of the application of different guidelines with respect to the presence of rodent pellets. The Department believes that the allowable limits for rodent pellets, bird droppings, and other animal filth under the U.S Standards for wheat should more closely agree with limits for rodent pellets established by the Food and Drug Administration.

Accordingly, the Department proposes that wheat containing 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth in a 1,000-gram sample shall be graded "U.S. Sample grade" wheat.

The Department further proposes that the definition of Sample grade be amended by changing the method of expressing the limit for crotalaria seeds to "3 or more" instead of "more than 2." This change adds clarity and uniformity to the definition while not altering the limits. Also, the limits for stones, pieces of glass, castor beans, and particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s) are included in the definition of Sample grade. The limits of 8 or more stones, 2 or more pieces of glass, 3 or more castor beans, and 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s) have been followed in the inspection process for several years and do not constitute new limits. These proposals are included to clarify the definition of Sample grade.

Special Grade "Ergoty Wheat". The special grade "Ergoty wheat" is presently applied to wheat containing ergot in excess of 0.3 percent. Ergot is toxic and all efforts need to be made to keep it out of food and feed channels. Although more definitive data on the toxicity of ergot is needed, livestock feeding trials have shown significant symptoms of toxicity in animals regularly consuming feed containing 0.06 percent of ergot. Foreign wheat importers have voiced vigorous objections to the presence of ergot in U.S. wheat. To encourage the domestic marketing of wheat which is free from ergot and to help protect the foreign market for U.S. wheat, it is proposed that the designation "Ergoty" be applied to wheat containing ergot in excess of 0.10 percent.

Special Grade "Tough Wheat". The special grade "Tough wheat," applied to wheat which contains moisture in excess of 13.5 percent, was introduced to indicate possible storage problems. The special grade does not always indicate storability because of variations in climate throughout the country. Knowledge of the actual percentage of moisture in the lot is more useful to the buyer. Discounts for moisture in most markets are based on the percentage of moisture, not the "Tough wheat" designation. During informal discussions with members of the grain industry, several groups requested that we delete the special grade designation and rely on the moisture content as stated on the certificate.

The regulations under the Act require that, under certain conditions, official certificates which show an official grade determination shall show the moisture content of the wheat. Therefore, it is proposed that the special grade "Tough wheat" be deleted and that moisture be stated on the inspection certificate as required by the regulations.

Summary of Proposed Changes. It is proposed to amend the standards for wheat to provide for these and related changes as follows:

1. Delete the class "Red Durum Wheat" and substitute a new class designated "Unclassed Wheat"—to provide a classing category that will include, in addition to red durum wheat, new varieties of wheat which are pigmented in colors other than red or white, or which otherwise may not be classed under other criteria provided.

2. Redefine the class Hard Red Winter Wheat by deleting all subclasses—to improve marketing procedures.

3. Revise the format of the standards by:

a. Showing the definition for wheat, including the classes thereunder, then listing all other definitions in alphabetical order.

b. Deleting Section 26.326, "Grades"—the term is adequately defined in "Grades, Grade Requirements, and Grade Designations."

c. Including "moisture" and "test weight per bushel" under "Terms Defined"—these terms previously were included in "Principles Governing Application of Standards.

4. Clarify the definition for "percentages"—to provide for uniformity in expressing percentages for grade determinations.

5. Define the term "distinctly low quality"—to identify the term more clearly.

6. Redefine "dockage," "moisture," "shrunken and broken kernels," and "test weight per bushel"—to show additional information (e.g., approved equipment for determining such factors) that is considered significant to the meaning and application of the standards.

7. Add to the definition for "other grains" the following grains: Guar, nongrain sorghum, popcorn, rice, safflower, sweet corn, sunflower, triticale, and wild oats—to provide for designation of those grains likely to be found in wheat.

8. Add the section "Temporary Modifications in Equipment and Procedures" to "Principles Governing Application of

Standards"—to provide for instances when adverse growing or harvesting conditions make the use of some routine procedures impractical.

9. Clarify the definition for "percentages"—to provide for uniformity in expressing percentages for grade determinations.

10. Change the determination of heat-damaged kernels, damaged kernels (total), and foreign material from the basis of wheat when free from dockage to the basis of wheat when free from dockage and shrunken and broken kernels—to keep degrading factors from being scored against the sample more than once.

11. Change the limits for heat-damaged kernels in grades U.S. Nos. 1 and 2 from 0.1 and 0.2 percent, respectively, to 0.2 percent for both grades—to increase inspection accuracy.

12. Delete the special grade "Heavy wheat"—to remove a requirement which has been of little benefit to producers.

13. Show the components and percentages thereof for the subclass "Western White Wheat" and the classes "Unclassed Wheat" and "Mixed Wheat" "Remarks" on the inspection certificate—to reduce the amount of information shown on the grade line and to provide useful marketing information in the "Remarks" section.

14. Charge the definition of Sample grade in § 26.306 "Grades, Grade Requirements, and Grade Designations"—to coincide our limits with the FDA and to include factors which are presently considered under "otherwise of distinctly low quality."

15. Redefine the special grade "Ergoty wheat" as wheat which contains ergot in excess of 0.10 percent—to restrict further the presence of this toxic material.

16. Delete the special grade "Tough wheat"—it is not a good indicator of the degree of storability.

17. Make nonsubstantive changes of an editorial nature.

The Department proposes that the United States Standards for Wheat be revised to read as follows:

UNITED STATES STANDARDS FOR WHEAT[1]

TERMS DEFINED

§ 26.301 Definition of wheat.

The grain of common wheat (*Triticum aestivum L.*), club wheat (*T. compactum* Host), and durum wheat (*T. durum* Desf.) which, before the removal of the dockage, consists of 50 percent or more of one or more of these wheats and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats.

Wheat shall be divided into the following seven classes: Hard Red Spring Wheat, Durum Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, Unclassed Wheat, and Mixed Wheat.

(a) *Hard Red Spring Wheat.* All varieties of hard red spring wheat. This class shall be divided into the following three subclasses:

(i) *Dark Northern Spring Wheat.* Hard Red Spring Wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring Wheat.* Hard Red Spring Wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring Wheat.* Hard Red Spring Wheat with less than 25 percent of dark, hard, and vitreous kernels.

(b) *Durum Wheat.* All varieties of white (amber) durum wheat. This class shall be divided into the following three subclasses:

(i) *Hard Amber Durum Wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum Wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum Wheat.* Durum Wheat with less than 60 percent of hard and vitreous kernels of amber color.

(c) *Hard Red Winter Wheat.* All varieties of hard red winter wheat. There are no subclasses in this class.

(d) *Soft Red Winter Wheat.* All varieties of soft red winter wheat. There are no subclasses in this class.

(e) *White Wheat.* All varieties of white wheat. This class shall be divided into the following four subclasses:

(i) *Hard White Wheat.* White Wheat with 75 percent or more of hard kernels. It may contain not more than 10 percent of white club wheat.

(ii) *Soft White Wheat.* White Wheat with less than 75 percent of hard kernels. It may contain not more than 10 percent of white club wheat.

(iii) *White Club Wheat.* White Club Wheat containing not more than 10 percent of other white wheat.

(iv) *Western White Wheat.* White Wheat containing more than 10 percent of white club wheat and more than 10 percent of other white wheat.

(f) *Unclassed Wheat.* Any variety of wheat which is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class shall include:

(i) Red Durum Wheat.

(ii) Any wheat which is other than red or white in color.

(g) *Mixed Wheat.* Any mixture of wheat which consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes which meets the definition of wheat.

§ 26.302 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) Contrasting classes shall be:

(1) Durum Wheat, White Wheat, and Unclassed Wheat in the classes Hard Red Spring Wheat and Hard Red Winter Wheat.

(2) Hard Red Spring Wheat, Hard Red Winter Wheat, Soft Red Winter Wheat, White Wheat, and Unclassed Wheat in the class Durum Wheat.

(3) Durum Wheat and Unclassed Wheat in the class Soft Red Winter Wheat.

(4) Hard Red Spring Wheat, Durum Wheat, Hard Red Winter Wheat, and Unclassed Wheat in the class White Wheat.

(b) *Damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged, in the sample after the removal of dockage and shrunken and broken kernels.

(c) *Defects.* Damaged kernels, foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for the factor "Defects (total)" for each numerical grade.

(d) *Distinctly low quality.* Wheat which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be graded properly by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device; i.e., large stones, wreckage, etc.

(e) *Dockage.* All matter other than wheat which can be removed readily from a test portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[3] Also, underdeveloped, shriveled, and small pieces of wheat kernels removed in properly separating the material other than wheat and which cannot be recovered by properly rescreening or recleaning. (See also § 26.305 and § 26.307.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(f) *Foreign material.* All matter other than wheat which remains in the sample after the removal of dockage and shrunken and broken kernels.

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[1] Compliance with the provisions of these standards does not excuse failure to comply with the provision of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The following publications are referenced in these standards. Copies may be obtained from the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Manual, GR Instruction 916-6; effective September 25, 1968, as amended, U.S. Department of Agriculture, Agricultural Marketing Service.

(b) Grain Inspection Manual, GR Instruction 918-6, effective August 28, 1973, as amended, U.S. Department of Agriculture, Agricultural Marketing Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved devices, and request for approval of devices should be directed to the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(g) *Heat-damaged kernels.* Kernels, pieces of wheat kernels, and other grains that are materially discolored and damaged by heat which remain in the sample after the removal of dockage and shrunken and broken kernels.

(h) *Moisture.* Water content in wheat as determined by an approved device in accordance with procedures prescribed in the Equipment Manual.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(i) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, and wild oats.

(j) *Shrunken and broken kernels.* All matter which can be removed from a test portion of the dockage-free sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Manual.[2] For the purpose of this paragraph, "approved device" shall be the 0.064 x ⅜ oblong-hole sieve.[3]

(k) *Sieve, 0.064 x ⅜ oblong-hole.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 (⅜) inch.

(l) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(m) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage free test portion of the original sample using an approved device in accordance with instructions in the Grain Inspection Manual.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

PRINCIPLES GOVERNING APPLICATION OF STANDARDS

§ 26.303 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that will not appear in the representative sample and/or the sample as a whole.

(b) *Certain Sample grade factors.* Each determination of rodent pellets, bird droppings, other animal filth, castor beans, crotolaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, odor, temperature, an unknown foreign substance, and a commonly recognized harmful or toxic substances shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage; except that the determination of heat-damaged kernels, damaged kernels, (total), and foreign material shall be upon the basis of the grain when free from dockage and shrunken and broken kernels.

§ 26.304 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the wheat standards are applicable to wheat produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of wheat may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, Grain Division Field Offices, official inspection agencies, and interested parties in the grain trade will be notified promptly in writing of the modification. Adjustments in interpretations (i.e., identity, class, quality, and condition) are excluded and shall not be made.

§ 26.305 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of wheat, the class, the subclass, and the percentage of dockage and/or ergot. The percentage when determining the identity of wheat, the class, and the subclass shall be stated to the nearest whole percent. The percentage of dockage when equal to one-half percent or more shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, with other fractions disregarded as shown in the following examples: Dockage ranging from 0.5 to 0.9 percent shall be expressed as 0.5 percent, from 1.0 to 1.4 percent as 1.0 percent, from 1.5 percent to 1.9 percent as 1.5 percent, etc. The percentage of ergot shall be stated to the nearest hundredth percent.

§ 26.306 Grades and Grade Requirements.

(a) Grades and grade requirements for all classes of Wheat, except Mixed Wheat. (See also § 26.308.)

Grades, grade requirements, and grade designations—wheat

Grade	Minimum test weight per bushel		Maximum limits of—						
								Wheat of other classes[2]	
	Hard Red Spring wheat or White Club wheat	All other classes and subclasses	Heat-damaged kernels	Damaged kernels (total)[1]	Foreign material	Shrunken and broken kernels	Defects (total)[2]	Contrasting classes	Wheat of other classes (total)[4]
	Pounds	*Pounds*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
U.S. No. 1	58	60	0.2	2	0.5	3	3	1	3
U.S. No. 2	57	58	.2	4	1.0	5	5	2	5
U.S. No. 3	55	56	.5	7	2.0	8	8	3	10
U.S. No. 4	53	54	1.0	10	3.0	12	12	10	10
U.S. No. 5	50	51	3.0	15	5.0	20	20	10	10
U.S. sample grade	U.S. sample grade shall be wheat which: 1. Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or 2. Contains a quantity of smut so great that 1 or more of the grade requirements cannot be determined accurately; or 3. Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria sp.*), 3 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 g of wheat; or 4. Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or 5. Is heating or otherwise of distinctly low quality.								

[1] Includes heat-damaged kernels.
[2] Defects (total), include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these 3 factors may not exceed the limit for defects.
[3] Unclassed wheat of any grade may contain not more than 10 pct of wheat of other classes.
[4] Includes contrasting classes.

(b) *Grades and grade requirements for Mixed Wheat.* (See also § 26.308.)

Mixed Wheat shall be graded according to the U.S. numerical and U.S. Sample grade requirements of the class of wheat which predominates in the mixture, except that the factor "wheat of other classess" shall be disregarded.

§ 26.307 Grade designations.

The grade designations for wheat shall include in the following order: (a) the letters "U.S."; (b) the number of the grade or the words "Sample grade"; (c) the subclass, or in the case of Hard Red Winter Wheat, Mixed Wheat, Soft Red Winter Wheat, and Unclassed Wheat, the class; (d) each applicable special grade (See also § 26.309); and (e) when applicable, the word "dockage" together with the percentage thereof. In the case of Western White Wheat, there shall be included under "Remarks" on the inspection certificate, the name and percentage of white club wheat and other white wheat in the mixture. In the case of Un-

classed Wheat, there shall be included under "Remarks" on the inspection certificate the color or other characteristics which describe the wheat, together with the percentage thereof.

In the case of Mixed Wheat, there shall be included under "Remarks" on the inspection certificate the name and percentage of the classes that comprise the mixture.

SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS, AND SPECIAL GRADE DESIGNATIONS

§ 26.308 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 26.306. Such special grades are established and determined as follows:

(a) *Ergoty wheat.* Wheat which contains more than 0.10 percent of ergot.

(b) *Light garlicky wheat.* Wheat which contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets.

(c) *Garlicky wheat.* Wheat which contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Light smutty wheat.* Wheat which has an unmistakable odor of smut, or which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(e) *Smutty wheat.* Wheat which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(f) *Weevily wheat.* Wheat which is infested with live weevils or other insects injurious to stored grain. As applied to wheat, the meaning of the term "infested" is set forth in the Grain Inspection Manual.[2]

(g) *Treated wheat.* Wheat which has been scoured, limed, washed sulfured, or treated in such a manner that the true quality is not reflected by either the U.S. numerical grade or the U.S. Sample grade designation alone.

§ 26.309 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 26.307.

(a) The grade designation for ergoty, light garlicky, garlicky, light smutty, smutty, and weevily wheat shall include in the order listed, following the applicable class or subclass, the word(s) "Ergoty," "Light garlicky," "Garlicky," "Light smutty," "Smutty," and "Weevily," as warranted, and all other information prescribed in § 26.307.

(b) The grade designation for treated wheat shall include, following the applicable class or subclass and any of the above applicable special grade designations, the word "Treated," followed by a statement indicating the kind of treatment (e.g., scoured, limed, washed, sulfured, etc.).

Comments and effective date. The United States Grain Standards Act, as amended, requires that public notice shall be given on any amendment of the standards and that no changes shall become effective less than 1 year after promulgation thereof, unless, in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. It is desirable that new standards become effective before the beginning of harvest to minimize possible disruption of normal marketing procedures.

If the proposed revision as set forth herein is adopted in whole or in part, it is intended that the revision would be made effective on or about May 1, 1977.

Public hearings on the proposed revision will not be held, but all persons who desire to submit written data, views, or arguments on this proposal should file them in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than May 27, 1976.

Any persons who desire to submit their views orally in an informal manner should so advise the Director, Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250 [telephone (202) 447-9164] so that arrangements may be made for such submission by said date. A summary of such views will be made and furnished for vertification to the person making the submission and, if approved, may be filed by him in the Office of the Hearing Clerk. All comments so filed will be available for public inspection during official hours of business (7 CFR 1.27 (b)). Consideration will be given to all comments filed with the Hearing Clerk and to all other information available to the U.S. Department of Agriculture in arriving at a decision on the proposed revision of the wheat standards.

For a period of 6 months after adoption of these amendments, official inspection personnel would, upon request, show on inspection certificates the grade under both the "old" and "new" standards.

Copies of the current wheat standards may be obtained from the Director, Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250, or from any field office of the Grain Division.

Done at Washington, D.C. on: April 21, 1976.

DONALD E. WILKINSON,
Administrator.

[FR Doc.76-12079 Filed 4-26-76;8:45 am]

Agricultural Marketing Service

[7 CFR Part 944]

FRUITS; IMPORT REGULATIONS

Avocados

Consideration is being given to the proposal hereinafter set forth which would prescribe requirements for the importations of avocados into the United States pursuant to Part 944—Fruits; Import Regulations (7 CFR Part 944), during the period May 31, 1976, through April 30, 1977. The proposed import regulation would prescribe the same grade requirements for imported avocados as that applicable, pursuant to Order No. 915 (7 CFR Part 915; 40 FR 52605), to avocados grown in South Florida. With respect to maturity the proposed regulation would apply the same minimum size or weight requirements to imported avocados of the Pollock, Catalina, and Trapp varieties as are applicable to Florida avocados of the same varieties. All other imported avocadoes would be required to meet minimum size or weight reiquirements comparable to those effective for similar types grown in Florida as variations in characteristics make application of identical requirements impractical. Weights or diameters and dates when specified varieties of avocados may be imported are indices used to assure that imported avocados are mature and will ripen satisfactorily after purchase by consumers.

This import regulation would be effective pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same in quadruplicate with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 10, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). As proposed, the domestic regulation under the marketing order for Florida avocados would become effective May 31, 1976. To prevent the import of immature avocados, the import regulation would be made effective on the same date. Hence, the time available does not permit preliminary notice beyond that herein provided.

Such proposal reads as follows:

§ 944.16 Avocado Regulation 24.

(a) On and after the effective time of this section, the importation into the United States of any avocados is prohibited unless such avocados are inspected and meet the following requirements:

(1) All avocados imported during the period May 31, 1976, through April 30, 1977, shall grade not less than U.S. No. 3.

(2) Avocados of the Pollock variety shall not be imported (i) prior to July 5, 1976; (ii) from July 5, 1976, through July 18, 1976, unless the individual fruit in each lot of such avocados weighs at least 18 ounces or measures at least 3 11/16 inches in diameter; and (iii) from July 19, 1976, through August 1, 1976, unless the individual fruit in each lot of such avocados weighs at least 16 ounces or measures at least 3 7/16 inches in diameter.

(3) Avocados of the Catalina variety shall not be imported (i) prior to September 13, 1976; (ii) from September 13,

1976, through September 19, 1976, unless the individual fruit in each lot of such avocados weighs at least 24 ounces; and (iii) from September 20, 1976, through October 3, 1976, unless the individual fruit in each lot of such avocados weighs at least 22 ounces.

(4) Avocados of the Trapp variety shall not be imported (i) prior to August 16, 1976; (ii) from August 16, 1976, through August 29, 1976, unless the individual fruit in each lot of such avocados weighs at least 14 ounces or measures at least $3^{19}/_{16}$ inches in diameter; and (iii) from August 30, 1976, through September 12, 1976, unless the individual fruit in each lot of such avocados weighs at least 12 ounces or measures at least $3^{7}/_{16}$ inches in diameter.

(5) Avocados of any variety other than Pollock, Catalina, and Trapp varieties, of the West Indian varieties not listed elsewhere in this reglation, shall not be imported (i) prior to July 5, 1976; (ii) from July 5, 1976, through August 1, 1976, unless the individual fruit in each lot of such avocados weighs at least 18 ounces; (iii) from August 2, 1976, through September 5, 1976, unless the individual fruit in each lot of such avocados weighs at least 16 ounces; (iv) from September 6, 1976, through October 3, 1976, unless the individual fruit in each lot of such avocados weighs at least 14 ounces: *Provided,* That any lot of such avocados may be imported without regard to the date or minimum weight requirements of this paragraph if such avocados, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color normal for that fruit when mature.

(6) Avocados of any variety of the Guatemalan type, including hybrid type seedlings, unidentified Guatemalan and hybrid varieties, and Guatemalan and hybrid varieties not listed elsewhere in the regulation shall not be imported (i) prior to September 20, 1976; (ii) from September 20, 1976, through October 17, 1976, unless the individual fruit in each lot of such avocados weighs at least 15 ounces; and (iii) from October 18, 1976, through December 19, 1976, unless the individual fruit in each lot of such avocados weighs at least 13 ounces.

(7) Notwithstanding the provisions of subparagraphs (2) through (6) of this paragraph regarding the minimum weight or diameter for individual fruit, not to exceed 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified and be less than the specified diameter: *Provided,* That such avocados weigh not over 2 ounces less than the applicable specified weight for the particular variety specified in such subparagraphs. Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports of avocados. Such inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the avocados will be imported:

Ports	*Office*	*Advance notice*
All Texas points.	Leo M. Denbo, 100 South Nebraska Ave., San Juan, Tex. 78573, Phone (512) 787-4091 or Charles E. Farrugan, 734 East Overland, El Paso, Tex. 79901, Phone (915) 542-7723.	1 d.
All New York points.	Carmine J. Cavallo, Room 23A Hunts Point Market, Bronx, N.Y. 10474, Phone (212) 991-7063 and 7069 or Charles D. Renick, 170 Niagara Frontier Food Terminal—Room 8, Buffalo, N.Y. 14206, Phone (716) 854-1955.	Do.
All Arizona points.	B. O. Morgan, 225 Terrace Ave., Nogales, Ariz. 85621, Phone (602) 287-2902.	Do.
All Florida points.	Lloyd W. Bonny, 1320 Northwest 12th Ave.—Room 103, Miami, Fla. 33125, Phone (305) 324-6110 or J. T. Scruggs, 775 Warner Lane, Orlando, Fla. 32814, Phone (305) 894-6511 or Johnnie L. Corbitt, Unit 40—3335 North Edgewood, Jacksonville, Fla. 32205, Phone (904) 354-5553.	Do.
All California points.	Daniel P. Thompson, 784 South Central Ave.—Room 200, Los Angeles, Calif. 90021, Phone (213) 622-8750.	3 d.
All Louisiana points.	Leonard E. Mixon, 1927 Federal Office Bldg., 701 Loyola Ave., New Orleans, La. 70113, Phone (504) 589-6741 and 6742.	1 d.
All other points.	M.A. Castillo, F&V Division-AMS-USDA, Washington, D.C. 20250, Phone (202) 447-5870.	3 d.

(c) Inspection certificates shall cover only the quantity of avocados that is being imported at a particular port of entry by a particular importer.

(d) The inspection performed, and certificates issued, by the Federal or Federal-State Inspection Service shall be in accordance with the rules and regulations of the Department governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51). The cost of any inspection and certification shall be borne by the applicant therefor.

(e) Each inspection certificate issued with respect to any avocados to be imported into the United States shall set forth, among other things:

(1) The date and place of inspection;

(2) The name of the shipper or applicant;

(3) The commodity inspected;

(4) The quantity of the commodity covered by the certificate;

(5) The principal identifying marks on the container;

(6) The railroad car initials and number, the truck and the trailer license number, the name of the vessel, or other identification of the shipment; and

(7) The following statement, if the facts warrant: Meets U.S. import requirements under Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(f) Notwithstanding any other provisions of this regulation, any importation of avocados which, in the aggregate, does not exceed 55 pounds may be imported without regard to the restrictions specified herein.

(g) It is hereby found that the application of the maturity restrictions being imposed, pursuant to Order No. 915 (7 CFR Part 915; 40 FR 52605), upon avocadoes grown in South Florida to imported avocados, other than of the Pollock, Catalina, and Trapp varieties, is not practicable because of variations in characteristics between the domestic and imported avocados; and the maturity restrictions applicable to imported avocados other than of the Pollock, Catalina, and Trapp varieties are comparable to those imposed upon the domestic commodity. The quality restrictions for all imported avocados, and the maturity restrictions for imported avocados of the Pollock, Catalina, and Trapp varieties, are the same as those being imposed upon the domestic commodity.

(h) No provisions of this section shall supersede the restrictions or prohibitions on avocados under the Plant Quarantine Act of 1912.

(i) Nothing contained in this section shall be deemed to preclude any importer from reconditioning, prior to importation, any shipment of avocados for the purpose of making it eligible for importation.

(j) The terms relating to grade, as used herein, shall have the same meaning as when used in the United States Standards for Florida Avocados (7 CFR 51.3050–51.3069. "Diameter" shall mean the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit. "Importation" means release from custody to the United States Bureau of Customs.

Dated: April 22, 1976.

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

[FR Doc.76-12151 Filed 4-26-76;8:45 am]

Animal and Plant Health Inspection Service

[9 CFR Parts 301, 317, and 319]

DEFINITION OF MEAT AND CLASSES OF MEAT, PERMITTED USES, AND LABELING REQUIREMENTS

Notice of Proposed Rulemaking

• *Purpose:* The primary purpose of this document is to propose amending the meat inspection regulations to revise the definition of meat and provide for uses and labeling of certain classes of meat. •

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Animal and Plant Health Inspection Service of this Department is considering amending Parts 301, 317, and 319 of the meat inspection regulations (9 CFR Parts 301, 317, and 319), under the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), to revise the definition of "meat", to define certain classes of meat, to provide for the labeling of such classes of meat in products, to provide for the use of certain classes of meat in products, and to specify limits with respect to fat and certain classes of meat in products.

Statement of Considerations: There is an ever increasing strain placed upon the world's available food supply. Materials which were not traditionally used as foods in certain parts of the world are now gaining wide acceptance. Inflation, plus the increased competition for available supplies, are but two of the many economic factors interacting to raise the consumers' costs for food. The problem has triggered an all out search for new food sources, better utilization of existing sources, and means of reducing waste of available materials. Evidence to support the concern over serious shortages may be seen in the efforts of all nations to address the problem, and the scientific and technical resources committed to find answers.

The meat industry has recently utilized new nonmeat materials by combining them with traditional meat ingredients to process new products that are appealing to the consumer. In addition to using new sources of ingredients, the industry is also striving to develop new methods for recovering additional nutrients. Recently, mechanical equipment has been developed to a point where indications are that an additional 5 to 15 pounds of product containing 10 to 15 percent by weight of protein can be recovered from carcasses which undergo traditional hand deboning operations. More attention, too, is being placed on recovering the small amounts of protein occurring in fatty tissues. Both of these products are presently being produced and utilized in limited amounts under special guidelines developed by USDA for the purpose of acquiring factual data upon which to base this proposed rulemaking.

The Department wholeheartedly supports the effort to expand the food supply, but is conscious of its responsibilities as a regulatory agency in the field of meat and poultry inspection. The first consideration in allowing the use of any ingredient, new or traditional, is its wholesomeness. Secondly, the Department is becoming increasingly aware of its responsibilities in the field of nutrition. Meat and poultry are acknowledged as among the best sources of the complete protein needed by humans. To allow broad substitution of new products, which are wholesome and edible but greatly inferior to the traditional nutritional value of meat, would not serve the needs of the consumer. Although there may be cost benefits available, they must be carefully weighed against the public welfare and the need for adequate nutrition over a lifetime. This philosophy underlies the regulatory proposals regarding new types of meat products being recovered or processed by advanced technological methods.

What is meat? For many years the Federal meat inspection regulations (9 CFR 301.2(tt)) have defined meat as follows:

"*Meat.* The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats."

In preparing to revise the definition of meat, the Department first examined the two principal forms in which the consumer purchases meat. One form is essentially unprocessed, except for the cutting or grinding operation; e.g., steaks, roasts, chops, or hamburger. The second form is in processed products in which the meat ingredients are mixed with other ingredients of animal and/or vegetable origin to form a new product; e.g., various types of sausages and luncheon meat; canned products, such as stews and chilis; frozen products, such as pizzas; entrees, such as beef and gravy; and specialty foods, such as egg rolls.

Livestock carcasses and parts therefrom of lower grades are rarely used for retail cuts. It should be emphasized that by lower grades, we are referring to carcasses and parts therefrom which are wholesome in all respects, but which came from animals that because of age, type of feed, or length of time on feed, or other factors, yield carcasses and parts therefrom which are of lower quality. Such lower grade carcasses and parts therefrom are usually deboned completely. Meat derived from such animals, which is usually very low in fat content, and those trimmings derived from the production of retail cuts, which are usually much higher in fat content, are the meat ingredients frequently used for processed meat products.

These meats which are used for further processing form the large body of products known generally as manufacturing meat. The consumer never sees these meats as such, and the various processors usually produce or specify the types of trimmings they want for blending and processing into their line of products. However, new sources of manufacturing meat are now available as a result of advancing technology, principally in the area of low temperature rendering, high temperature rendering, and mechanical deboning. It is in order to allow wider use of these new products, that the Department proposes to expand the definition of the word "meat." Implicit in the proposed new standards is an assurance to the consumer that their inclusion in formulated products will not dilute the nutritional quality normally and traditionally associated with meat. This philosophy was discussed conceptually on March 22 with an Ad Hoc group of consumer representatives called together by USDA. Those attending were: Nancy Llewellyn—Member, Arkansas State Consumer Task Force, and Vice Chairman, Board of Directors, West Arkansas Community College; Camille Haney—Director of Consumer Affairs for Barkin, Herman, Solochek, and Paulsen, and Member, President's Consumer Advisory Council; Sue Kappler—Virginia Conference of Consumer Organizations; James Turner—Swankin, Turner, and Koch (Law Firm), and General Counsel, National Consumers League; Kinsey B. Green—Executive Director, American Home Economics Association; Harold Sherman—New York City Department of Consumer Affairs; Mitchell King—National Consumers Congress; Rodney Stein—State Department of Consumer Affairs, California; Martin Peterson—Director, External Liaison, Office of Consumer Affairs, Department of Health, Education, and Welfare; and Howard Seltzer—Deputy Director, Program Development and Implementation, Office of Consumer Affairs, Department of Health, Education, and Welfare.

While there was general agreement that nutritional standards for these products were a needed and progressive step, there was also, general concern as to how they would appear on the ingredient statement of a processed product. Consumers present at the meeting expressed reservations about the terms "Beef" and "Pork" (which are designations for hand-deboned meat) being appropriate for the products under consideration in this proposal. In their view, the processing required to produce the product altered the general nature of the products processed so that it should be identified in a more specific manner. Much of their concern centered about increased bone content which is discussed further in the Statement of Considerations, and controlled by the proposed standard for calcium. Several present suggested labeling terminology that would be descriptive of the processing technique, e.g., mechanically deboned meat and partially defatted meat. Their consensus was that consumers want sufficiently distinctive labeling upon which to base purchasing decisions between dif-

fering products and their respective prices.

Because of the reservations expressed by the Ad Hoc consumer group, the Department wishes to highlight this matter to all who plan to comment, and to expressly ask for information, data, views, or suggested alternatives to aid in reaching a final conclusion.

In responding to consumer concerns that nutritional standards are needed for these products, the Department is addressing three main points; the amount of fat, the amount of protein, and the quality of the protein.

Meat purchased as steaks, chops, or roasts by the consumer presents no problem with respect to the protein quality being artificially changed, and the amount of fat in such meat can be seen and considered in light of different trimming practices and price.

There could be a problem with respect to the nutritional quality of products recovered by the mechanical deboning, or low or high-temperature rendering operations. In order to allow the wider use of these products, the Department proposes to expand the definition of meat and include requirements that will assure the consumer that inclusion of these articles in formulated products will not dilute the nutritional quality traditionally associated with such products. Additionally, such requirements will allow identification of these various forms of manufacturing product so that a processor can avail himself of the types best suited to his finished products.

In recent years, the question of fat percentages in meat products is one which has generated a great deal of interest on the part of consumers. Fat is interspersed in the lean muscle tissue and also occurs as an overlying cover of whole muscles or muscle groups. Fat is also deposited in relatively large amounts in other parts of the carcass, such as around the kidneys or in other parts of the abdominal cavity, and is ordinarily processed into lard or tallow. Only that fat which accompanies and overlies the muscle would be included in the revised definition of meat. Many cuts of meat, both wholesale and retail, contain in excess of 50 percent fat; and some, such as pork jowls, contain approximately 85–90 percent fat. The consumer who is concerned about fat in the diet can select those cuts of meat which are known to contain lesser amounts of fat, or can trim away the overlying layer of fat to fit personal preference.

The incorporation of manufacturing meat of high fat content into meat food products has been the subject of many comments and much misunderstanding. It has been noted that in the preparation of carcasses, and wholesale and retail cuts, trimmings are produced which are used as ingredients in processed products. These are bought and sold on the basis of lean to fat content; "50–50" trimmings, for example, will average 50 percent lean and 50 percent fat. The production of these trimmings will frequently result in some pieces which contain very little lean or no lean at all, and other pieces which contain a high percentage of lean. One of the questions addressed by this proposal is whether to allow blending of such trimmings, or to require each piece to contain a certain amount of lean muscle tissue. The Department proposes that the control of the amount of fat in the finished product is the important consideration, and accordingly proposes to allow the blending of all trimmings, so long as there is a fat limit on the finished products.

With the multitude of processed meat items available, which have traditionally been made, sold, and found acceptable at various fat levels, an attempt to limit the use of ingredients by setting maximum fat levels for all products would be too cumbersome to be practical. Therefore, the Department proposes to divide certain classes of manufacturing meat into categories based, among other things, on fat levels with which they have been associated, impose a 50 percent maximum fat limit based on the meat, meat byproduct, and poultry product content of all meat food products not otherwise specifically regulated as to fat content.

Aside from the question of fat, and protein quantity and quality, there are other considerations in the defining and acceptance of meats produced by new processes. In the mechanical deboning process, the bones are finely broken and some pulverized portions are incorporated into the product. There are two matters worthy of consideration in this respect. One is that of adulteration. Is the product adulterated by the presence of such bone? It is the Department's present, position that the bone, if present in such a particle size or in such an amount as to be readily apparent to the taste or touch, would indeed be identifiable as bone and would be a reason for considering the product to be adulterated. However, modern equipment can minimize the particle size and level of bone to an extent that it cannot be detected by sensation in the mouth. Additionally, a trained taste panel was used to determine at which levels bone becomes apparent to the taste and thus objectionable. The members were unable to detect a significant taste difference between products prepared without the addition of mechanically deboned meat and products prepared with the addition of mechanically deboned meat containing calcium (which is an indicator of bone content) even at levels above those being proposed in this document.

To address another important consideration of the bone question, we should consider the place of calcium in the American diet. Concern has been expressed over maintenance of the calcium-phosphorous balance in the diet. The concern has been that the amount of calcium present is too low, and meat is one of the diet staples that is deficient in calcium. Calcium is one of the main constituents of bone, and that which is incorporated into mechanically deboned meat is readily available to the human digestive system and, therefore, should be considered in view of such concern. As long as the particle size can be controlled, and the amount incorporated into finished product not detectable in any way, the Department is of the opinion that far from being objectional, the presence of additional calcium may be of benefit.

Another product addressed by the proposal is that resulting from the low temperature rendering of meat tissues. Heretofore, if the starting ingredients were meat trimmings containing at least 12 percent lean meat, the finished product, after removal of most of the fat, was identified as "partially defatted chopped beef (or pork)." If the inital ingredients were trimmings containing less than 12 percent lean, the finished product was identified as "partially defatted beef (or pork) fatty tissue."

Much controversy arose over the use of these products in various processed meat products. Their nutritional value was questioned, and their status as meat or meat byproducts never competely resolved. Again, the Department proposes to adopt the nutritional quality approach and define these products as meat, provided they conform to the nutritional parameters set forth in the proposal. The parameters are such that the controversy over their nutritional quality should no longer exist to bar their use in appropriate products.

A calcium level has been set for these rendered products, since the renderer may use mechanically deboned parts of carcasses which exceed the calcium limits set for mechanically deboned meat.

High temperature rendering can produce meat with the same qualities as that produced by low temperature rendering, except that the product is cooked.

Although the lean muscle tissue of cheeks, heads, diaphragms, hearts, tongues, and esophagi have always been officially considered as meat, the Department has not always required explicit declaration of the presence of such tissue on labeling of products containing such tissues. For consistency, this proposal would permit these tissues to be used as meat without further labeling qualifications.

Because of the extent of the proposed amendments, the most important changes are summarized in tables following the proposal. Table 1 lists proposed fat, PER (or amino acid content), protein and calcium limits for the various classes of meat; and Table 2 lists certain standardized products and the classes of meat which would be permitted as ingredients in such products.

The proposed amendments are as follows:

1. § 301.2(tt) (9 CFR 301.2(tt)) would be revised to read as follows:

§ 301.2 Definitions.

* * * * *

(tt) Meat. Any edible portion of the carcass of any cattle, sheep, swine, or goats, exclusive of lips, snouts, ears, caul fat, leaf fat, kidney fat, and other visceral fat, and exclusive of all organs, *except* the heart, tongue, and esophagus;

and including but not limited to the following classes of meat: [1]

(1) Skeletal meat,
(2) Heart meat,
(3) Tongue meat,
(4) Esophagus meat,
(5) Meat trimmings,
(6) Fatty meat trimmings,
(7) Mechanically deboned meat,
(8) Mechanically deboned meat for processing,
(9) Mechanically deboned meat for rendering,
(10) Rendered meat,
(11) Rendered meat for processing,
(12) Cooked rendered meat, and
(13) Cooked rendered meat for processing.

The term "meat," as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

* * * * *

2. § 317.2(f)(1) (9 CFR 317.2(f)(1)) would be amended by adding a new subdivision (vi) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f)(1) * * *

(vi) The terms "beef", "pork", "mutton", or "goat" (or "chevon") may be used for any of the classes of meat defined in § 319.5 of this subchapter when derived, respectively, from cattle, sheep, swine, or goats (chevon).

* * * * *

3. A new § 319.5 would be added to Part 319 to read as follows:

§ 319.5 Definitions of classes of meat.

Class 1: *Skeletal Meat*—skeletal muscle tissue with accompanying fat that has been attached directly to bone, including that from the diaphragm, and cheeks after they are trimmed to remove glandular tissue.

Class 2: *Heart Meat*—the heart trimmed of bone and cartilage.

Class 3: *Tongue Meat*—the tongue trimmed of cartilage and glandular materials.

Class 4: *Esophagus Meat*—the muscular portion of the esophagus.

Class 5: *Meat Trimmings*—the product resulting from the trimming of dressed carcasses, primal parts, or wholesale or retail cuts of skeletal meat, and containing 30 percent fat or less.

Class 6: *Fatty Meat Trimmings*—the product resulting from the trimming of dressed carcasses, primal parts, or wholesale or retail cuts of skeletal meat, and containing more than 30 percent fat.

Class 7: *Mechanically Deboned Meat*—the product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle tissue, and containing a minimum of 14.0 percent protein with a minimum Protein Efficiency Ratio (PER) value of 2.5 (or an essential amino acid content of 33%),[1] a maximum fat content of 30 percent, and a maximum calcium content of 0.75 percent.

Class 8: *Mechanically Deboned Meat for Processing*—the product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle tissue and which fails to meet one or more of the limits prescribed for class 7, but contains a minimum of 10.0 percent protein with a minimum PER value of 2.5 (or an essential amino acid content of 33%),[1] and a maximum calcium content of 1.0 percent.

Class 9: *Mechanically Deboned Meat for Rendering*—the product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle tissue and which fails to meet one or more of the limits prescribed for class 8.

Class 10: *Rendered Meat*—the product resulting from the partial removal of fat from meat of class 1, 2, 3, 4, 5, 6, 7, 8, or 9, or a combination thereof, by a low temperature (120° F. or less) rendering process, and containing a minimum of 14 percent protein with a minimum PER of 2.5 (or an essential amino acid content of 33%),[1] a maximum fat content of 30 percent, and, if mechanically deboned meat is used, a maximum calcium content of 0.75 percent.

Class 11: *Rendered Meat for Processing*—the product resulting from the partial removal of fat from meat of class 1, 2, 3, 4, 5, 6, 7, 8, or 9, or a combination thereof, by a low temperature (120° F. or less) rendering process, and which fails to meet one or more of the limits prescribed for class 10, but contains a minimum of 20 percent protein with a minimum PER of 2.0 (or an essential amino acid content of 28%),[1] a maximum fat content of 30 percent, and, if mechanically deboned meat is used, a maximum calcium content of 1.0 percent.

Class 12: *Cooked Rendered Meat*—the product resulting from the partial removal of fat from meat of class 1, 2, 3, 4, 5, 6, 7, 8, or 9, or a combination thereof, by a high temperature (160° F. or more) rendering process, and containing a minimum of 14 percent protein with a minimum PER of 2.5 (or an essential amino acid content of 33%),[1] a maximum fat content of 30 percent, and, if mechanically deboned meat is used, a maximum calcium content of 0.75 percent.

Class 13: *Cooked Rendered Meat for Processing*—the product resulting from the partial removal of fat from meat of class 1, 2, 3, 4, 5, 6, 7, 8, or 9, or a combination thereof, by a high temperature (160° F. or more) rendering process, and which fails to meet one or more of the limits prescribed for class 12, but contains a minimum of 20 percent protein with a minimum PER of 2.0 (or an essential amino acid content of 28%),[1] a maximum fat content of 30%, and, if mechanically deboned meat is used, a maximum calcium content of 1.0 percent.

4. A new § 319.6 (9 CFR 319.6) would be added to read:

§ 319.6 Limitations with respect to fat and certain classes of meat.

(a) Unless specific fat limits are otherwise prescribed in this Part for any products, the meat, meat byproduct, and/or poultry product portion of the formula shall consist of no more than 50 percent fat by analysis. This paragraph shall not apply to oleomargarine, margarine, mixed fat shortening, lard, leaf lard, and rendered animal fat or mixture thereof.

(b) In meat food products in which meat of class 8, 11, or 13, as defined in § 319.5, or a combination thereof, are permitted ingredients under this Part, the use shall be limited to a maximum of 20 percent of the total of all meat, meat byproducts, poultry products and poultry meat used in the formulation.

§ 319.15 [Amended]

5. Section 319.15(a) (9 CFR 319.15(a)) would be amended by inserting after the words "frozen beef in the first sentence the following: "only of class 1, 5, or 6, as defined in § 319.5 of this subchapter, or a combination thereof,"; by deleting in the first sentence the words "and without the addition of beef fat as such"; and by deleting the last sentence.

6. Section 319.15(b) (9 CFR 319.15(b)) would be amended by inserting after the words "frozen beef" in the first sentence the following: "only of class 1, 2, 3, 4, 5, or 6, as defined in § 319.5 of this subchapter, or a combination thereof,"; by deleting in the first sentence the following: "beef fat as such and/or"; and by deleting the last sentence.

7. Section 319.15(c) (9 CFR 319.15(c)) would be amended by inserting after the words "frozen beef" in the first sentence the following: "only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter or a combination thereof,"; by deleting in the first sentence the following: "beef fat as such and/or"; and by deleting in the second sentence the following: "and/or partially defatted beef fatty tissue".

8. Section 319.15(d) (9 CFR 319.15(d)) would be amended by deleting the remainder of the first sentence after the word "meat" and by inserting in lieu thereof the following: "only of class 1, 5, or 6, as defined in § 319.5 of this subchapter, or a combination thereof."; and by deleting the third sentence.

9. Section 319.15(e) (9 CFR 319.15(e)) would be amended by adding after the phrase "of fresh beef fatty tissue" in the first sentence the following: "and which does not meet the definition of meat class 10 or 11 contined in § 319.5 of this subchapter"; and by adding after the word

[1] Said classes of meat are defined in § 319.5 of this subchapter.

[1] The percent of the following amino acids expressed as a percentage of the total protein: phenylalanine, isoleucine, leucine, lysine, methionine, tryptophan, valine, and threonine. PER, if used, should be adjusted to 2.50 for casein.

"appearance" in the second sentence the words "and may be used wherever binders are permitted and at the same levels."

§ 319.29 [Amended]

10. Section 319.29(a) (9 CFR 319.29 (a)) would be amended by adding after the word "skin" in the first sentence the following: ", and which does not meet the definition of meat class 10 or 11 contained in § 319.5 of this subchapter"; and by adding after the word "appearance" in the second sentence, the words "and may be used wherever binders are permitted and at the same levels."

§ 319.80 [Amended]

11. Section 319.80 (9 CFR 319.80) would be amended by inserting after the word "shall" in the first sentence the following: "consist of meat only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combination thereof, and shall"; and by adding a period after the words "surface fat".

§ 319.81 [Amended]

12. Section 319.81 (9 CFR 319.81) would be amended by deleting the second and third sentences; and by adding after the words "fresh beef weight" in the remaining sentence the following: ", and shall consist of meat only of class 1 or 2, as defined in § 319.5 of this subchapter, or a combination thereof".

§ 319.100 [Amended]

13. Section 319.100 (9 CFR 319.100) would be amended by inserting after the word "cuts" in the first sentence, the following: "of beef only of class 1, as defined in § 319.5 of this subchapter,"; by inserting after the words "shall be prepared" in the second sentence, the following: "from beef only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof, and shall be prepared"; and by deleting the fourth and fifth sentences.

§ 319.104 [Amended]

14. Section 319.104(f) (9 CFR 319.104 (f)) would be amended by deleting in the first sentence the following: "may contain finely chopped ham shank meat to the extent of 25 percent over that normally present in the boneless ham"; and by inserting in lieu thereof the following: "shall consist of meat only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combination thereof, derived from ham".

§ 319.105 [Amended]

15. Section 319.105(a) (9 CFR 319.105 (a)) would be amended by deleting after the words "prepared with" in the first sentence the following: "ham," and by inserting in lieu thereof the following: "meat only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combination thereof, derived from ham, and with."

16. Section 319.105(b) (9 CFR 319.105 (b)) would be amended by deleting subparagraph (1), and renumbering subparagraphs (2) through (9) as subparagraphs (1) through (8), respectively.

§ 319.140 [Amended]

17. Section 319.140 (9 CFR 319.140) would be amended by deleting in the first sentence the words "kinds of meat or meat and meat byproducts" and by inserting in lieu thereof the following: "classes of meat or classes of meat and meat byproducts, as otherwise provided for in this subpart".

§ 319.141 [Amended]

18. Section 319.141 (9 CFR 319.141) would be amended by inserting after the comma following the words "or both" in the first sentence, the following: "of meat only of class 1, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof"; by deleting in the first sentence the words "not including pork byproducts"; and by revising the second sentence to read: "The finished product shall not contain more than 45 percent fat, based on laboratory analysis."

§ 319.142 [Amended]

19. Section 319.142 (9 CFR 319.142) would be amended by inserting after the comma following the words "or both" in the first sentence the following: "of meat only of class 1, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof"; and by deleting in the first sentence the words "not including beef byproducts".

§ 319.143 [Amended]

20. Section 319.143 (9 CFR 319.143) would be amended by inserting after the comma following the words "frozen meat" in the first sentence the following: "only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof"; by deleting in the first sentence the words "or meat and meat byproducts"; and by revising the second sentence to read: "The finished product shall not contain more than 45 percent fat based on laboratory analysis."

§ 319.144 [Amended]

21. Section 319.144 (9 CFR 319.144) would be amended by inserting after the word "swine" in the first sentence the following: "only of class 1, 7, or 8, as defined in § 319.5 of this subchapter, or a combination thereof,"; and by revising the second sentence to read: "The finished product shall not contain more than 45 percent fat based on laboratory analysis."

§ 319.160 [Amended]

22. Section 319.160 (9 CFR 319.160) would be revised to read: § 319.160 Smoked pork sausage. Smoked pork sausage shall conform to the provisions of § 319.141 of this subchapter, and shall be smoked with hardwood or other approved nonresinous materials.

§ 319.180 [Amended]

23. Section 319.180(a) (9 CFR 319.180 (a)) would be amended by deleting in the first sentence the words "one or more kinds of raw skeletal muscle meat or raw skeletal muscle meat" and by inserting in lieu thereof the following: "meat only of class 1, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof, of such meat".

24. Section 319.180(b) (9 CFR 319.180 (b)) would be amended by deleting in the first sentence the following: "one or more kinds of raw skeletal muscle meat with raw meat byproducts, or not less than 15 percent of one or more kinds of raw skeletal muscle meat" and by inserting in lieu thereof the following: "meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof, with raw meat byproducts, or not less than 15 percent of such meat"; and by deleting the third sentence.

25. Section 319.180(e) (9 CFR 319.180 (e)) would be amended by inserting after the words "of this section" the following: "Partially defatted beef fatty tissue, partially defatted pork fatty tissue,"; and by changing the "D" to lower case in the word "Dried."

26. Section 319.180(g) (9 CFR 319.180 (g)) would be amended by deleting the remainder of the sentence after the comma following the word "tongues," and by inserting in lieu thereof the following: "lips, weasands, spleens, and visceral fat."

27. Subpart H was apparently deleted inadvertently (see 38 FR 14742). Therefore, subpart H would be added to read as follows:

Subpart H—Other Cooked Sausage

§ 319.200 Liver sausage and braunschweiger.

"Liver Sausage" and "Braunschweiger" are cooked sausages made from fresh and/or frozen pork and pork livers and/or beef livers and may contain cured pork, beef and/or veal. Such products shall, except as provided below, contain meat only of class 1, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof. Liver sausage may also contain beef and pork byproducts; pork skins only of meat class 2, 3, or 4, as denfied in § 319.5 of this subchapter, or a combination thereof; and sheep livers and goat livers. These products shall contain not less than 30 percent liver computed on the weight of the fresh liver and may contain binders and extenders as permitted in § 319.140.

§ 319.260 [Amended]

28. Section 319.260 (9 CFR 319.260) would be amended by inserting after the words "comminuted meat" in the first sentence the following: "only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.261 [Amended]

29. Section 319.261 (9 CFR 319.261) would be amended by inserting after the words "comminuted meat" the first sentence the following: "only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.280 [Amended]

30. Section 319.280 (9 CFR 319.280) would be amended by revising the first sentence to read: "Scrapple shall contain not less than 40 percent meat and/or meat byproducts computed on the basis of fresh weight, and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.281 [Amended]

31. Section 319.281(a) (9 CFR 319.281 (a)) would be amended by deleting the period after the word "cooked" and by deleting the words "It contains meat"; and by inserting in lieu thereof the following: "and which contains meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, or 11, as defined in § 319.5 of this subchapter, or a combination thereof."

32. Section 319.281(b)(1) (9 CFR 319.-281(b)(1)) would be deleted and the remaining subparagraphs (2) through (9) would be renumbered (1) through (8).

§ 319.300 [Amended]

33. Section 319.300 (9 CFR 319.300) would be amended by inserting after the words "fresh meat" in the first sentence the following: ", and shall contain meat only of 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof"; and by deleting the second sentence.

§ 319.301 [Amended]

34. Section 319.301 (9 CFR 319.301) would be amended by inserting after the words "fresh meat" in the first sentence the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof"; and by deleting the second sentence.

§ 319.302 [Amended]

35. Section 319.302 (9 CFR 319.302) would be amended by deleting in the first sentence the words "and trimmed"; and by inserting after the words "cooked meat" in the first sentence the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.303 [Amended]

36. Section 319.303 (9 CFR 319.303) would be amended by inserting after the words "with beef" in the first sentence of paragraph (a) the following: "only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof"; by deleting from paragraph (a)(1) the words "and trimmed"; by deleting subparagraphs (1) and (8) from paragraph (b); by renumbering subparagraphs (2) through (7) of paragraph (b) as subparagraphs (1) through (6), respectively; and by deleting paragraph (d).

§ 319.304 [Amended]

37. Section 319.304 (9 CFR 319.304) would be amended by inserting after the words "fresh meat" the following: ", and shall contain meat only of class 1, 5, or 6, as defined in § 319.5 of this subchapter, or a combination thereof".

§ 319.305 [Amended]

38. Section 319.305 (9 CFR 319.305) would be amended by inserting after the words "of the tamales" in the first sentence the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof"; and by inserting after the words "and gravy" in the third sentence the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.306 [Amended]

39. Section 319.306 (9 CFR 319.306) would be amended by adding after the words "fresh meat" in the first sentence the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.307 [Amended]

40. Section 319.307 (9 CFR 319.307) would be amended by adding after the words "fresh meat" the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof".

§ 319.310 [Amended]

41. Section 319.310 (9 CFR 319.310) would be amended by inserting after the words "and sauce" the following: ", and shall contain meat from the ham only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combintion thereof, or bacon".

§ 319.311 [Amended]

42. Section 319.311 (9 CFR 319.311) would be amended by inserting after the word "ingredients" the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6. 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof".

§ 319.312 [Amended]

43. Section 319.312 (9 CFR 319.312) would be amended by deleting the words "and trimmed" in the first sentence; and by inserting after the words "cooked meat" in the first sentence the following: ", and shall contain meat only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combination thereof."

44. The heading and text of § 319.313 would be revised to read as follows:

§ 319.313 Meat with gravy and gravy with meat.

"Meat with Gravy" and "Gravy with Meat" shall contain meat only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combination thereof, and shall contain a minimum of 50 percent cooked meat and 35 percent cooked meat, respectively.

§ 319.500 [Amended]

45. Section 319.500 (9 CFR 319.500) would be amended by inserting after the words "uncooked meat" the following: ", and shall contain meat only of class 1 or 5, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.600 [Amended]

46. Section 319.600(a) (9 CFR 319.600 (a)) would be amended by inserting after the words "raw meat" in the second sentence the following: ", and shall contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

§ 319.760 [Amended]

47. Section 319.760(a) (9 CFR 319.760 (a)) would be amended by inserting after the words "comminuted ham" in the first sentence the following: "only of class 1, 5, or 6, as defined in § 319.5 of this subchapter, or a combination thereof,"; and by revising the second sentence to read as follows: "The total fat content shall not exceed 35 percent of the finished product."

§ 319.761 [Amended]

48. Section 319.761 (9 CFR 319.761) would be amended by adding a new sentence at the end of the paragraph to read as follows: "Meat used for potted meat food product or deviled meat food product shall be meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof."

49. Section 319.762 (9 CFR 319.762) would be revised to read as follows:

§ 319.762 Ham spread, tongue spread, and similar products.

"Ham Spread", "Tongue Spread", and similar products may contain meat only of class 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, or 13, as defined in § 319.5 of this subchapter, or a combination thereof, and not less than 50 percent of the total meat used shall be of class 1, 2, 3, 4, or 5, or a combination thereof; computed on the weight of the fresh meat, and not less than 50 percent of the total meat used shall be of the meat ingredient of the product name.

Any person wishing to submit written data, views or arguments concerning the proposed amendments may do so by filing them, in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, or if the material is deemed to be confidential, with the Product Standards Staff, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, by August 25, 1976.

Any person desiring opportunity for oral presentation of views should address such request to the Staff identified in the preceding paragraph, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public

inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect such persons by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c))

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C. on April 23, 1976.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

TABLE 1.

	MEAT CLASS	MAXIMUM PERCENT CALCIUM	MINIMUM PERCENT PROTEIN	MINIMUM RATIO OF % ESSENTIAL AMINO ACIDS 1/	MAXIMUM PERCENT FAT
SKELETAL MUSCLE	1	-	-	- -	-
HEART MEAT	2	-	-	- -	-
TONGUE MEAT	3	-	-	- -	-
ESOPHAGUS MEAT	4	-	-	- -	-
MEAT TRIMMINGS	5	-	-	- -	30
FATTY MEAT TRIMMINGS	6	-	-	- -	-
MECHANICALLY DEBONED MEAT	7	0.75	14	2.5 or 33	30
MECHANICALLY DEBONED MEAT FOR PROCESSING	8	1.00	10	2.5 or 33	-
MECHANICALLY DEBONED MEAT FOR RENDERING	9	-	-	- -	-
RENDERED MEAT	10	0.75	14	2.5 or 33	30
RENDERED MEAT FOR PROCESSING	11	1.00	20	2.0 or 28	30
COOKED RENDERED MEAT	12	0.75	14	2.5 or 33	30
COOKED RENDERED MEAT FOR PROCESSING	13	1.00	20	2.0 or 28	30

1/ Expressed as a percent of total protein

TABLE 2.

Reg. Cite in 9 CFR 319	PRODUCT NAME	CLASS OF MEAT 1	2	3	4	5	6	7	8	9	10	11	12	13
.15(a)	Chopped Beef, Ground Beef	x				x	x							
.15(b)	Hamburger	x	x	x	x	x	x							
.15(c)	Beef Patties	x	x	x	x	x	x	x	x		x	x		
.15(d)	Fabricated Steaks, etc.	x				x	x							
.80	Barbecued Meats	x				x								
.81	Roast Beef, Parboiled, Steam Roasted	x	x											
.100	Corned Beef Cuts	x												
.100	Canned Corned Beef	x	x	x	x	x	x	x	x		x	x		
.104(f)	Pressed Ham, Spiced Ham, etc.	x				x								
.105	Chopped Ham	x				x								
.141	Fresh Pork Sausage	x				x	x	x	x		x	x		
.142	Fresh Beef Sausage	x				x	x	x	x		x	x		
.143	Breakfast Sausage	x	x	x	x	x	x	x	x		x	x		
.144	Whole Hog Sausage	x						x	x					
.160	Smoked Pork Sausage	x				x	x	x	x		x	x		
.180(a)	Franks, Bologna, etc.	x				x	x	x	x		x	x		
.180(b)	Franks, Bologna, etc.	x	x	x	x	x	x	x	x		x	x		
.200	Braunschweiger	x	x	x	x	x	x	x	x		x	x		
.200	Liver Sausage	x	x	x	x	x	x	x	x		x	x		
.260	Luncheon Meat	x	x	x	x	x	x	x	x		x	x		
.261	Meat Loaf	x	x	x	x	x	x	x	x		x	x	x	x
.280	Scrapple	x	x	x	x	x	x	x	x		x	x	x	x
.281	Bockwurst	x	x	x	x	x	x	x	x		x	x		
.300	Chili Con Carne	x	x	x	x	x	x	x	x		x	x	x	x
.301	Chili Con Carne with Beans	x	x	x	x	x	x	x	x		x	x	x	x
.302	Hash	x	x	x	x	x	x	x	x		x	x	x	x
.303	Corned Beef Hash	x	x	x	x	x	x	x	x		x	x	x	x
.304	Meat Stews	x				x	x							
.305	Tamales	x	x	x	x	x	x	x	x		x	x	x	x
.306	Spaghetti and Meatballs, etc.	x	x	x	x	x	x	x	x		x	x	x	x
.307	Spaghetti Sauce with Meat	x	x	x	x	x	x	x	x		x	x	x	x
.310	Lima Beans with Ham, etc.	x				x								
.311	Chow Mein, Chopped Suey, etc.	x	x	x	x	x	x	x	x		x	x	x	x
.312	Pork with Barbecued Sauce Beef with Barbecued Sauce	x				x								
.313	Beef and Gravy, Gravy and Beef	x				x								
.500	Meat Pies	x				x								
.600(a)	Pizza	x	x	x	x	x	x	x	x		x	x	x	x
.760(a)	Deviled Ham, Tongue, etc.	x				x	x							
.761	Potted Meat, Deviled Meat	x	x	x	x	x	x	x	x		x	x	x	x
.762	Ham, Tongue Spreads, 50% of Product	x	x	x	x	x								
	50% Optional above	x	x	x	x	x	x	x	x		x	x	x	x

[FR Doc.76-12271 Filed 4-26-76;8:45 am]

Food and Nutrition Service

[7 CFR Part 275]

[AMDT. 83]

PAYMENT OF CERTAIN ADMINISTRATIVE COSTS TO STATE AGENCIES

Food Stamp Program; Efficiency and Effectiveness

Pursuant to the authority contained in the Food Stamp Act of 1964, as amended (78 Stat. 703, as amended; 7 U.S.C. 2011-2026), notice is hereby given that the Food and Nutrition Service, Department of Agriculture, intends to amend its regulations governing the operation of the Food Stamp Program for the purpose of revising Part 275 which contains the requirements for State agencies reporting on their administration of the Food Stamp Program.

On July 14, 1975, there was published in the FEDERAL REGISTER (40 FR 29531) regulations revising the Food Stamp Program Regulations governing the operation of the program for the purpose of implementing the reporting requirements of Public Law 93-347 which amended section 15(b) of the Food Stamp Act. The amendment (Part 275) established requirements for the reporting of uniform data on the entire administration of the program as well as the conditions for continued funding by FNS.

As proposed, the changes are as follows:

1. The establishment by FNS or State agencies of administrative units is more clearly defined.

2. The requirement that one-quarter of reviews of project areas with a monthly bonus of less than $500,000 be completed in each semiannual period is being deleted. The deletion of this requirement will allow States more flexibility in scheduling and conducting reviews.

3. The requirement that State agencies conduct State agency operations reviews is being deleted. The State agency operations review will be included in FNS' review of States' systems for data collection and evaluation.

4. The due date of Personnel reports has been revised and reference to the content of the report is being deleted. The necessary content of the report will be contained in an FNS Instruction and Handbook.

5. Timetables for performance of reviews will continue to be approved by FNS. However, the requirement that any adjustments to the timetable have FNS approval is being deleted.

6. Reference to State agencies submitting to FNS project area review findings is being deleted. Project area review findings will be retained at the State level to be used by FNS in the validation process of States' systems for data collection and evaluation. FNS, however, may request that the State submit the documentation of review findings.

7. Reference to an amendment to the State Plan of Operation containing the name and title of the individual designated to coordinate the required activi-

ties of the system is being deleted. State Plan of Operation requirements for this system will be contained in an FNS Instruction and Handbook.

8. The requirement that State agencies submit to FNS a Corrective Action Status Report is being deleted. The Semiannual Corrective Action Report will address unachieved corrective action from project area and State corrective action plans.

9. Reference to implementation in two phases is being deleted. The accomplishment of these phases has been completed and reference is no longer necessary in the regulations.

10. Minor editorial changes have been made to clarify the language of the regulation.

An administrative appeal process is being contemplated for State agencies in regard to fiscal sanctions. However, no appeal process has been established at this time.

Interested persons may submit written comments, suggestions, or objections regarding the proposed changes to the Director, Food Stamp Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. All comments received no later than May 27, 1976, will be considered before the final regulations are issued.

Comments, suggestions, or objections will be open to public inspection pursuant to 7 CFR 1.27(b) at the Office of the Director during regular business hours (8:30 a.m.–5 p.m.).

Accordingly, it is proposed to amend § 275.10 of Part 275 of Chapter II, Title 7, Code of Federal Regulations, to read as follows:

§ 275.10 Monitoring and reporting program performance.

(a) *Purpose.* Under the Food Stamp Act, the State agency is responsible for the effective and efficient administration of the program and for reporting on such administration to the Department. The Food Stamp Act assigns to the Department the responsibility for ensuring that the State's administration is effective and efficient prior to continuing the payment of funds for costs incurred in the administration of the program. Effective and efficient administration of the program means administration by the State agency of its program responsibilities in a manner which substantially complies with the Food Stamp Act, this subchapter, FNS Instructions and Handbooks, and the State Agency's Plan of Operation. To enable the accomplishment of these mandates, this section: (1) requires that each State agency have a system for monitoring and improving its administration of the program, (2) establishes requirements for reports which FNS will use in determining the extent to which a State meets the standards for proper administration established in this subchapter and in FNS Instructions and Handbooks in order to continue Federal payments for administrative costs, and (3) sets forth conditions under which FNS will cancel such payments.

(b) *Definitions.* "Annual" means the 12-month period from January 1 through December 31.

"Biennial" means the 24-month period from January 1 of an even-numbered year through December 31 of the following year.

"Project area" means the political subdivision within a State which has been approved for participation in the program by the Department. However, FNS or the State agency with FNS approval may establish administrative units as its project area for review and reporting purposes.

"Semiannual" means the six-month period either from January 1 through June 30 or July 1 through December 31.

(c) *State responsibilities for monitoring and improving program performance.* The State agency shall provide for a continuing system of data collection, evaluation, and action which will allow for a determination of the efficiency and effectiveness of program administration and improvement in program operations. To ensure the successful operation of such system, the State agency shall designate a person, on a full- or part-time basis, to coordinate these activities. Further, the State agency shall provide adequate staff to keep the program review process current within established reporting dates and at a level of quality which ensures valid findings, adequate program analysis, and effective corrective action. The components of the State agency's system shall be:

(1) Data collection through the following:

(i) A quality control system (a method of continuing review on a sampling basis) to validate the accuracy of household eligibility and determine the extent to which households are paying the proper purchase requirements and receiving the coupon allotments to which they are entitled. The State agency's system of quality control shall be implemented through:

(A) Application of sampling methods prescribed by FNS;

(B) Use of FNS prescribed schedules and instructions or schedules which provide for identical information; and

(C) Field investigations including personal interviews with all households which fall within the sample of participating households and, as necessary, with households that have been denied participation or whose eligibility has been terminated.

(ii) Reviews of project area operations including, but not necessarily limited to, information concerning staff training and utilization, caseload data, certification and issuance procedures, timeliness and accuracy of reports, fair hearing procedures, coupon control and security, fiscal controls, and service to recipients. Such information shall at a minimum be collected as follows:

(A) On an annual basis for project areas with monthly bonus of $500,000 or more in the last month of the preceding Federal fiscal year.

(B) On a biennial basis for project areas with monthly bonus of less than $500,000 in the last month of the preceding Federal fiscal year.

(2) Data analysis and evaluation which will result in:

(i) A comprehensive review of information collected in paragraph (c)(1) of this section;

(ii) A review of results of past corrective action;

(iii) An identification of problems; and

(iv) A determination of probable causal factors.

(3) Corrective acton planning. (i) The development of corrective action plans should involve the coordinated efforts of persons in the areas of data analysis, quality control, operations, and policy development in identifying causal factors and determining a course of action which will serve to either substantially reduce or eliminate program deficiencies. Such corrective action plans shall include a statement of the problem and its causes, actions to be taken by the State to eliminate the problem, and a timetable containing target dates for completion of individual corrective action goals. The coordinator, established in paragraph (c) of this section, will be responsible for insuring both the preparation of the corrective action plan and its approval by the head of the State agency.

(ii) Timing. (A) All project area corrective action plans shall be prepared no later than 60 days following the completion date of the review activity.

(B) State corrective action plans shall be prepared no later than 120 days after the end of each semiannual period. Such plans shall be based on quality control findings, State systems and operations information, and information gathered during project area reviews which should be addressed on a Statewide basis or from a State agency level.

(4) Corrective action implementation and monitoring. The State agency coordinator shall ensure the effectiveness and timely completion of corrective actions through monitoring the completion of corrective action plans and assessing the results.

(d) *Responsibilities for reporting on program performance.* States shall report to FNS on their administration of the program through the following reports:

(1) Personnel reports which shall be submitted in a standard format by November 1 of each year. Such reports shall contain information on equivalent full-time State food stamp positions eligible for FNS funding as of the end of the preceding Federal fiscal year.

(2) Quality control reports as prescribed.

(3) Timetable for performance of reviews required under paragraph (c)(1)(ii) of this section. The timetable shall cover two years of review activity and shall be submitted to FNS for approval 60 days prior to each bennial period.

(4) Project area corrective action plans for project areas with a monthly bonus of $500,000 or more. Such corrective action plans shall be submitted to

FNS no later than 60 days following the completion of the review.

(5) Semiannual Corrective Action Report which shall be submitted to FNS no later than 120 days following the end of each semiannual period and shall consist of the following:

(i) Consolidated project area corrective action plan for project areas with monthly bonus of less than $500,000. Such corrective action plan shall be developed in accordance with paragraph (c) (3) (i) of this section and shall reflect all progress made toward completion of the problems at the time of submission.

(ii) State corrective action plan based on:

(A) Statewide quality control findings;

(B) Findings of FNS' review of State agency operations (if conducted during the semiannual period);

(C) Findings of FNS' review of State agency systems for data collection and evaluation (if conducted during the semiannual period);

(D) Information gathered during project area reviews which should be addressed on a Statewide basis or from a State agency level.

(iii) Unachieved corrective action from project area and State corrective action plans.

(6) Semiannual Outreach Report which shall be submitted to FNS no later than 120 days following the end of each semiannual period.

(e) *FNS determination of efficiency and effectiveness of State operations.* FNS shall make a determination on the efficiency and effectiveness of State operations on the basis of State reports and other information available such as Federal audits and investigations and unit cost data referred to in § 275.3(b)(4) as it relates to the general criteria under section C(1)(a) of Appendix A which requires that allowable costs be necessary and reasonable for proper administration of the program. As part of the determination, FNS will evaluate State reports and corrective action plans for completeness and timeliness and conduct reviews of the following: (1) State's system for data collection and evaluation in order to:

(i) Assess the operation of the State's system for monitoring and improving program operation;

(ii) Provide a basis for assisting the State in improving its system; and

(iii) Test the validity of the data collected by the State.

(2) State's operation of the Food Stamp Program in order to:

(i) Assess the efficiency and effectiveness of the State's operation of the Food Stamp Program;

(ii) Provide a basis for assisting the State in improving and strengthening program operations; and,

(iii) Ascertain that the State agency is correctly operating the program in accordance with FNS Regulations and FNS Instructions and Handbooks.

The State shall develop corrective action based on the FNS review of the State's operation of the Food Stamp Program as well as the FNS review of the State's system for data collection and evaluation. The State shall include corrective action based on these reports in the State corrective action plan submitted as part of the Semiannual Corrective Action Report in accordance with paragraph (d) (5) (ii) of this section, if such reviews were conducted during the semiannual period.

(f) *Cancellation of FNS funding.* If FNS determines that operations of the State agency do not meet the criteria for efficiency and effectiveness as prescribed by this part, those State outlays made in payment of such operational costs shall not be allowable and shall be cancelled in accordance with § 275.13. Prior to such cancellation, FNS will warn the State agency, informally and formally, that such action is being considered. Nothing in this section can be construed as abrogating the State's recourse to further review by the Federal court system.

(1) *Cause for cancellation.* FNS may cancel any portion of payments to the State agency if FNS determines that the State agency has:

(i) Failed to submit on a timely basis any of the following completed reports:

(A) Personnel.

(B) Statistical portion of the semiannual quality control report.

(C) Timetable for performance of reviews.

(D) Project area corrective action plans for project areas with a bonus of $500,000 or more.

(E) Semiannual Corrective Action Reports which include those items outlined in paragraph (d) (5) of this section.

(F) Semiannual Outreach Reports.

(ii) Failed to substantially comply with the provisions of this subchapter, or,

(iii) Knowingly submitted an incorrect report on its administration of the program, or,

(iv) Failed to take the necessary action contained in its FNS approved corrective action plan.

FNS shall not cancel Federal funding for any continuing deficiencies if the State agency has taken action in accordance with a corrective action plan approved by FNS.

(2) *Timing of cancellation.* When FNS determines that State agency operations are not in conformance with the provisions of this part, an informal warning shall be issued to the State agency detailing the deficiencies. The State agency will have 30 days in which to respond. If, at the end of this period the State agency has not responded to the satisfaction of FNS, a formal warning shall be issued. The formal warning will state how the State agency is out of compliance and the amount of funds for which cancellation is being considered. If, after a period of no less than 30 days, the problem remains unresolved, the State agency will be notified that payments are cancelled as specified in § 275.13.

(g) [Deleted]

(78 Stat. 703, as amended; (7 U.S.C. 2011-2026))

(Catalog of Federal Domestic Assistance Programs No. 10.551, National Archives Reference Services)

Dated: April 22, 1976.

JOHN DALIGARD,
Deputy Assistant Secretary.

[FR Doc.76-12279 Filed 4-26-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[41 CFR Part 14-1]

PROCUREMENT SET-ASIDE FOR SMALL BUSINESS

Notice of Proposed Rulemaking

Pursuant to the authority of sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)), the Department of the Interior proposes to amend its procurement regulations concerning set-asides for small business of procurements of construction (including alteration, maintenance, and repair).

The Department adopted a policy as published at 33 FR 853, January 24, 1968, to set aside on a class basis for small business all procurements of construction (including alteration, maintenance, and repair) estimated to cost $500,000 or less. The policy was expanded to include class set-asides for small business of such procurements estimated to cost between $500,000 and $1 million, unless the contracting officer determines that to do so would not be in the public interest because of a lack of price competition, proficiency, or other circumstances (37 FR 20027, September 27, 1972).

Since the adoption of the class set-aside policy, the national economy has increased to a degree which makes the dollar amounts stated in the policy inconsistent with current market conditions. The Department proposes to increase the amounts of $500,000 and $1 million to $1 million and $2 million, respectively. Although the percentage increase is not the same, the proposed change will be consistent with recent adjustments in the small business size standards made by the Small Business Administration.

Interested persons may participate in this proposed rulemaking by submitting written comments to the Assistant Director for Procurement, Office of Management Services, Department of the Interior, 18th and C Streets NW, Washington, D.C. 20240. Comments received on or before May 28, 1976, will be considered before final action is taken on this proposal. No hearing is contemplated.

Dated: April 19, 1976.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

In consideration of the foregoing, it is proposed that 41 CFR Subpart 14-1.7 be amended by revising § 14-1.706-1 to read as stated below.

§ 14–1.706 Procurement set-aside for small business.

§ 14–1.706–1 General.

(a) Pursuant to §§ 1–1.706–1, 1–3.201 (a) and (b) of this title, and § 14–3.201 (a) of this chapter, it shall be the policy of the Department of the Interior to set aside on a class basis for small business all procurements of construction (including alteration, maintenance, and repairs) estimated to cost $1 million or less, except individual procurements for which small purchase procedures (see Subpart 1–3.6 of this title) are to be used or when emergency repair work is required. Contracting officers may deviate from this class set-aside policy as provided in § 1–1.706–3 of this title.

(b) It shall be the policy of the Department of the Interior to set aside for small business all procurements of construction (including alteration, maintenance, and repair) estimated to cost between $1 million and $2 million unless the contracting officer determines that to do so would not be in the public interest because of a lack of price competition, deficiency, or other circumstances.

(c) Construction procurements (including alteration, maintenance and repair) estimated to cost $2 million or more shall be considered for small business set-aside on a case-by-case basis.

[FR Doc.76–12108 Filed 4–26–76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[49 CFR Part 391]

[Docket No. MC–72, Notice No. 76–11]

QUALIFICATION OF DRIVERS

Proposed Minimum Physical Requirements

• *Purpose.* The purpose of this notice is to seek public comment on a proposal to revise the minimum physical requirements for commercial vehicle drivers. The proposal will introduce a classified approach for evaluating the status of those commercial vehicle drivers with cardiovascular disease. A driver with cardiovascular disease under the proposed classification system could be certified if it has been determined that he has no limitation of physical activity or limiting symptoms associated with physical activity. The proposal will apply to drivers operating in interstate or foreign commerce. •

The Federal Highway Administration (FHWA) proposes to adopt the Functional Classification of the New York Heart Association (Sixth and Seventh Edition).[1] Under this classification system, the examining physician will assign an individual with a diagnosis of cardiovascular disease to either Class I, II, III or IV, depending on the limitations of physical activity and the appearance of symptoms created by activity such as undue fatigue, palpitation, syncope, dyspnea, collapse, anginal pain or congestive cardiac failure. Under this classification system, the qualification of an individual with cardiovascular disease will be based on his physical capabilities.

No longer would the examining physician have to subjectively determine whether a cardiovascular condition will progress to the degree of severity that it is likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. Instead, certification of a driver with cardiovascular disease would be considered if he is placed in Class I (symptom-free and has no restriction placed on his physical activity) by his attending physician.

A complete revision of the qualifications of drivers requirements which included the minimum physical requirements was proposed on June 2, 1969 (34 FR 9080). After reviewing comments by respondents, it was decided, in the public interest with respect to highway safety, that requirements to upgrade driver qualifications were necessary. To ensure that drivers of modern, more complex vehicles could safely withstand the increased physical and mental demands that their occupation imposes, more stringent minimum qualifications for commercial vehicle drivers were published on April 22, 1970 (35 FR 6458). On November 13, 1970, § 391.41(b)(4) and (6) of the Federal Motor Carrier Safety Regulations were amended to clarify that only those individuals currently suffering from cardiovascular disease and high blood pressure were physically disqualified to drive (35 FR 17419). The revision became effective January 1, 1971.

The current rule provides that an individual is physically qualified to drive a motor vehicle in accordance with § 391.41(b)(4) if he has no current clinical diagnosis of a cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (difficult or painful breathing), collapse or congestive cardiac failure. Any individual with a diagnosis of cardiovascular disease (arteriosclerotic heart disease, coronary artery disease) should be considered permanently disqualified since this disease is progressive and known to cause syncope, dyspnea, collapse and even sudden death without prior warning. Unsuspected incapacitation behind the wheel of a commercial motor vehicle not only jeopardizes the driver's life but also the lives of the motoring public around him. Reduction of the effects of organic and physical disorders, emotional impairments and other limitations of the driver's good health are extremely important factors in accident prevention.

The incidence of cardiovascular disease (arteriosclerosis of the coronary circulation) increases with age. Arteriosclerosis a degenerative process of deposition of blood fats in the walls of arteries, generally occurs only in parts and segments of the arterial system. The symptoms of the disease manifest themselves in disorders of the brain, heart, kidneys, intestines and lower extremities, depending upon which arteries are involved.[2]

Data strongly indicate that to a considerable degree, coronary heart disease in the United States results principally from the impact of three widely prevalent risk factors, hypercholesterolemia, cigarette smoking and hypertension.[3] Current statistics indicate that at least 3 million adults in the United States between the ages of 34 and 65 have significant coronary heart disease, manifested by either chest pain as a result of insufficient blood supply to the heart muscle (angina pectoris) or damage to an area of heart muscle from reduction in blood supply (myocardial infarction, heart attack). An estimated 1 million of these people develop a myocardial infarction each year with a mortality rate approaching 40 percent.[4]

When the diagnosis of acute myocardial infarction first became feasible around 1860, the prognostic outlook for both the acute attack and long-term survival was considered poor. In 1956, after completing a 25-year follow-up study of 200 patients, Dr. Paul D. White and his group reported that 49 percent of the 200 patients with myocardial infarction survived 5 years.[5]

While there is no known cure today for cardiovascular disease, strict medical regimen and/or surgical intervention have successfully alleviated the incapacitating symptoms associated with the disease. Since 1971, the evolution of medical technology has brought about significant changes in the treatment of cardiovascular disease.

With the advancement of pacemakers, coronary artery bypass graft surgery (replacement of disease arteries with healthy vessels), diagnostic techniques and drug therapy, cardiovascular disease is being detected and treated earlier to prevent the rapid development of incapacitating symptoms.

Many authorities believe that available follow-up data is inconclusive concerning prolongation of life or diminished incidence of myocardial infarction following medical or surgical therapy. The relief and prevention of incapacitating symptoms will allow the individual to continue performing at a normal level of physical activity for an indefinite period of time. Many surviving victims of myocardial infarction incur little damage to the heart muscle and, therefore, may not have restrictions on their physical activ-

[1] *Diseases of the Heart and Blood Vessels: Nomenclature and Criteria for Diagnosis.* New York Heart Assoc. Boston, Little Brown & Co., 112–113, 1964; 286, 1973.

[2] *Cardiovascular Surgery,* Prepared by the Heart Information Center, National Heart Institute, NIH, Available From the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402, Public Health Servic Publication No. 1701, Paper Copy Price 45¢.

[3] *Schroeder, J., et al.,* "Detection of the High-Rick Patient for Sudden Death," *Advanced Cardiology,* Vol. 15, 25–36, 1975.

[4] *Isom, O. W. and F. C. Spencer, M.D.'s,* "The Current Status of Bypass Grafting for Coronary Artery Disease," *Southern Medical Journal,* Vol. 69, No. 7, 897–907, July 1975.

[5] *Richards, D. W., E. F. Bland and P. D. White,* "A Completed Follow-up Study of 200 Patients with Myocardial Infarction," *Journal of Chronic Diseases,* Vol. 4, 415–22, 1956.

ity. These individuals have a very high propensity of reoccurring infarction even though they continue to function at a normal level of physical activity. As reported in the Framingham Study (14-year follow-up of coronary heart disease), an individual surviving an initial myocardial infarction has a 43 percent chance of having a second one in the future.[6]

Cardiovascular disease is progressive in nature. Any rule change should take into consideration the individual condition prior to and after a cardiovascular occurrence. Since it is presently impossible to determine when such a cardiovascular condition will progress to a level of incapacitation, it would be unfair to permanently disqualify those individuals who have been diagnosed as having cardiovascular disease without the appearance of physical symptoms, or have been rehabilitated after a cardiac occurrence to a level of normal physical activity without symptoms.

Allowing certain individuals to drive a commercial vehicle in interstate commerce once they have been diagnosed as having coronary artery disease imposes certain risks to highway safety. To allow *all* individuals with coronary artery disease, the greater the risks of a their physical limitations and incapacitating symptoms would be an unreasonable hazard to public safety.[7] Based on reports by leading cardiologists, the more severe the pre-existing coronary artery disease, the greater the risks of a myocardial infarction occurring. Those individuals with limitations of their physical activity (regardless of how slight) have a more severe form of coronary artery disease and are in much greater risk of becoming suddenly incapacitated as compared to the individual who has no limitations but is followed closely by a cardiologist to prevent a sudden reoccurrence of myocardial infarction. The chances of a second infarction occurring in a two-year interval following any physical examination is directly and strikingly related to the functional class of the individual. According to the Framingham follow-up, 41 percent of those with coronary artery disease had a second myocardial infarction within 6 years of their first occurrence. Fifty percent of those reoccurrences were fatal with one third being sudden, even though the last examination frequently revealed the disease as progressed to mild Class I or II.[8]

To avoid unwarranted risks it is necessary to certify as qualified only those individuals who fall into the category of Class I having no resulting limitations of physical activity. By not qualifying individuals of Class II, III or IV, the greater accident risks associated with the more severe disease process are eliminated, and individuals having a mild form of coronary disease without physical limitations are given the opportunity to drive.

For those drivers who have had a myocardial infarction, thrombosis, or surgery for revascularization, bypass graft, valve replacement or pacemaker insertion; a rehabilitation period is required. Sufficient time for recovery from these occurrences is necessary to allow the driver to overcome the risks identified with the acute recovery phase and avoid precipitating sudden death. The period of rehabilitation before allowing a driver to be examined for certification should be based on the period of greatest risk following the occurrence.

Those individuals who have survived an initial infarction have an excessive mortality and carry an excessive risk of coronary event the rest of their lives. This relative excessiveness decreases with time. A five-year survival rate of individuals with coronary artery disease ranges from 65–75%. An annual mortality rate of 3.4% has been reported. As evidenced from follow-up studies, the greatest risk of complications following a myocardial infarction, appears during the first year and, as reported, the mortality rate is in excess of 3.4% during the first year after the attack.[9]

In the total group studied by G. C. Friesinger, et al., in 1970, 73% of the coronary arteriosclerotic group survived after 5 years, vs. 97% of the group without known disease. Of the arteriosclerotic subgroups, 95% with mild disease and 71% with angina pectoris survived after 5 years. Only 47% with severe disease survived after that length of time. Those in whom arrhythmias or conduction defects were observed after their first infarction, are at a greater risk of death, and particularly sudden death, in the next 5 years than are persons in whom such abnormalities had not been noted.[10]

The 1973 progress study by Dr. A. Bruschke, et al., followed 590 diagnosed cases of coronary disease a minimum of five years. According to the 8-year survival curve of the entire population studied, the mortality rate was highest during the first year (11.5%) and declined gradually during the following years (7.6%, 6.5% and 4.7%) with a 5 year cardiac death rate from coronary disease at 34.3%.[11]

For those individuals with cardiovascular disease who have suffered a myocardial infarction, the risk of reoccurrence is highest during the first year following the attack, with a mortality rate greatest during the first five years.

The Bureau has received many comments concerning statistics on the effects and results of coronary artery bypass grafts. The techniques used during the surgical procedure and the severity of the disease have a direct relationship on the results making the statistics very controversial. This surgery is palliative to relieve the symptoms associated with cardiovascular disease. The underlying cardiovascular disease is not altered and the probability of reoccuring coronary insufficiency is still an ever-present threat. Relief of angina and increased exercise tolerance as a result of bypass surgery, may allow the individual with cardiovascular disease to perform normal daily activities with or without restrictions. The principal concern with bypass grafts at present is the high rate of occlusion with the prompt return of the original symptoms (angina). Short-term follow-up studies of graft patency reveal that 20–25% of grafts occlude within 1 year after the operation due to blockage of the vessel by a blood clot (thrombosis). Late closures are generally not associated with thrombosis, but rather the pathological process of subintimal fibrous hyperplasia (excess fibrous tissue formation in the vessel wall) occluding the graft.[12] Since the arteriosclerotic condition is already present and advanced in degree to warrant bypass surgery for alleviation of symptoms, there is little that can be done to alter the process or prevent the clinical course of events. Bypass grafts may only relieve the symptoms for as long as the grafts remain patent. Reappearance of symptoms or a fatal myocardial infarction without warning remain ever-present hazards. It is important for these individuals to remain under medical observation on a continuous basis to keep abreast of the severity of their conditions as a safeguard against the sudden appearance of incapacitating symptoms.

The probability of occlusion or rejection of a coronary artery bypass graft is more likely to occur within the first year following the operation, most of which occlude within the first six months.[13]

Interference in the electrical impulse of the heart's conduction system may result in heart block of varying degrees of severity. Disturbances of the conduction system are associated with serious, often life-threatening, cardiac conditions. Any cessation or interruption of the heart rate may result in attacks of disorientation, syncope, collapse, or sudden death. Restoration of the normal heart rate, relieving these symptoms, can be accomplished by insertion of an artification pacemaker.[14] Pacemaker insertion temporarily corrects those symptoms

[6] *Gordon, T. and Wm. B. Kannel, M.D.'s,* "Premature Mortality from Coronary Heart Disease. The Framingham Study," *JAMA,* Vol. 215, No. 10, 1617–25, March 8, 1971.

[7] *Levy, R. L., et al.,* "Heart Disease in Drivers of Public Motor Vehicles as a Cause of Highway Accidents. Report of a Case With Procedure for Prevention *JAMA,* Vol. 184 No. 6, 481–4, May 11, 17963.

[8] Levy, R. L., et al., *Gordon,* pp. 1617–25.

[9] *Mulcahy, Risteard, et al.,* "Factors Influencing Long-Term Prognosis in Male Patients Surviving a First Coronary Attack," *British Heart Journal,* Vol. 37, 158–65, 1975.

[10] *Herman, M. V.,* "The Clinical Picture of Ischemic Heart Disease," *Progress in Cardiovascular Disease,* Vol. 14 No. 3, 321–29, November 1971.

[11] *Bruschke, A., M.D.,* et al., "Progress Study of 590 Consecutive Nonsurgical Cases of Coronary Disease Followed 5–9 years. I. Arterographic Correlations," *Circulation,* Vol. 47, 1147–53, June 1973.

[12] *Flemma, R. J., et al.,* "Is Vein Bypass Here to Stay: Early and Long-Term Observations," *Advanced Cardiology,* Vol. 9, 124–33, 1973.

[13] *Gott, V. L., et al.,* "Outlook for Patients After Coronary Artery Revascularization," *Am. Journal of Cardiology,* Vol. 33, 431–37, March 1974.

[14] *Zoll, Paul M.,* "Historical Development of Cardiac Pacemakers," *Progress in Cardiovascular Diseases,* Vol. 14 No. 5, 421–29, March 1972.

and inherent dangers not compatible with the safe operation of commercial vehicles.

Modern pacemakers are highly reliable devices, but sometimes do fail. Causes of pacemaker failure include mechanical malfunction (battery depletion, component breakdown) and electrode interruption (improper connection, break in insulation, displacement in the heart chamber). Displacement of electrodes, wire breakage and component failure in the pulse generator have, to a greater extent, been corrected. Failure of the pulse generator, from any cause, after the initial adjustment period following insertion is rare. The major failure difficulties presenting after the first year following insertion are due to battery depletion.[15]

Complications related to improper function can be largely prevented if the pacemaker malfunction is detected and corrected before useful function ceases. With frequent physical examinations and educating the individual on early symptoms and conditions to be aware of, pacemaker failure can be reduced or avoided before serious incapacitating symptoms from the underlying cardiac condition develop.

Frequent medical examinations may allow a cardiovascular condition to be monitored and, to a certain extent, controlled, thus reducing the risk of the sudden appearance of symptoms. Since it is recognized that rehabilitation is directly related to the severity of an individual's condition and the prescribed therapeutic treatment, in the interest of highway safety, the Federal Highway Administration proposes an initial waiting period of at least 6 months from the time of the cardiac occurrence before a driver is eligible to be medically qualified. After this period, if the examining physician categorizes this individual as being in Class I of the Functional Classification, then he may certify him as qualified to drive in interstate commerce (provided all other physical requirements set forth in 391.41 are met). Those drivers who are not categorized in Class I after the initial 6 month waiting period from the cardiac occurrence may be reexamined periodically until they are able to be properly categorized in Class I and certified. After certification, an annual physical examination for the next 3 consecutive years is proposed to ensure that these drivers remain in Class I.

Interested persons are invited to submit written data, views, or arguments pertaining to adoption of the new proposed rule. In addition, comments are particularly invited on the following questions and, if available, include supporting data:

(1) Do you agree with the proposed rule that drivers with a diagnosis of cardiovascular disease should be allowed to drive a commercial vehicle in interstate commerce if he is in the Functional Class I?

(2) Should individuals in Class II be included in the proposed rule as eligible to drive in interstate commerce?

(3) Is six months sufficient time for a driver to rehabilitate before becoming eligible for certification?

(4) If six months is not sufficient, how long should a driver wait after his cardiac occurrence before being eligible for certification to drive in interstate commerce?

(5) Do you agree with the proposal that an annual physical examination be required for a period of three years after being certified in Class I following a cardiac occurrence as set forth under the proposed Section 391.45(c)(ii)(B)?

(6) In the interest of highway safety, should certified drivers in Class I be restricted from transporting passengers or hazardous materials?

All comments should refer to the docket number and notice number that appear at the top of this document. Comments should be submitted in triplicate to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. Comments received before the close of business on July 30, 1976, will be considered before further action is taken. Comments received will be available for examination by any interested person in the docket room of the Bureau of Motor Carrier Safety, Room 3401, 400 Seventh Street, S.W., Washington, D.C., both before and after the closing date for comments.

In consideration of the foregoing, a revision of § 391.41(b)(4) in its entirety is proposed. In addition, the FHWA is amending the first sentence of § 391.45 in conjunction with the revision of 391.41 (b)(4), and amending paragraph (c), as follows:

1. By revising § 391.41(b)(4) to read as follows:

§ 391.41 Physical Qualification for Drivers.

* * * * *

(b) A person is physically qualified to drive a motor vehicle if he—

* * * * *

(4) has no clinical diagnosis of a current cardiac disease, or is in Class I of the following Functional Classifications, except as provided in § 391.45(c)(ii):

Class I. (*Uncompromised*) Individuals with cardiac disease but without resulting limitations of ordinary physical activity. Ordinary physical activity does not cause undue fatigue, palpitation, syncope, dyspnea, collapse, anginal pain, or congestive heart failure.

Class II. (*Slightly Compromised*) Individuals with cardiac disease resulting in slight limitation of ordinary physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, syncope, dyspnea, collapse, anginal pain, or congestive heart failure.

Class III. (*Moderately Compromised*) Individuals with cardiac disease resulting in marked limitation of ordinary physical activity. They are comfortable at rest. Less than ordinary physical activity causes fatigue, palpitation, syncope, dyspnea, collapse, anginal pain, or congestive heart failure.

Class IV. (*Severely Compromised*) Individuals with cardiac disease resulting in inability to carry on any ordinary physical activity without discomfort. Symptoms of cardiac insufficiency or of the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.

(i) Persons classified in Functional Classification, Class II, Class III, and IV of paragraph (4) are not qualified until medically examined under the provisions of Section 391.45(c) and certified in Functional Classification, Class I.

2. By amending the first sentence of § 391.45 to read as follows:

§ 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with Sections 391.41 and 391.43 as physically qualified to drive a motor vehicle:

* * * * *

3. By revising paragraph (c) of § 391.45 to read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(c) Any driver whose ability to perform his normal duties has been impaired by:

(i) Physical or mental injury or disease, or

(ii) A myocardial infarction, thrombosis, cardiovascular surgery (e.g., revascularization, bypass graft, valve replacement) or pamemaker insertion.

(A) Drivers are eligible to be medically examined and certified after a period of 6 months from the cardiac occurence listed in subparagraph (c)(ii) of this paragraph, and

(B) If certified, must be examined annually for a period of 3 years.

(49 U.S.C. 304, 49 U.S.C. 1655 and delegation of authority 49 CFR 1.48 and 389.4).

Issued on April 16, 1976.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

[FR Doc.76-12039 Filed 4-26-76;8:45 am]

[15] *Kosowsky, Bernard D. and Isaac Barr,* "Complications and Malfunctions of Electrical Cardiac Pacemakers," *Progress in Cardiovascular Diseases,* Vol. 14 No. 5, 501–14, March 1972.

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 1 and 43]

[Docket No. 20776; FCC 76-331]

CONSOLIDATED SYSTEM REPORTS

Filing Procedure

In the Matter of Amendment of Section 1.786 of Part 1 and Section 43.31 of Part 43 of the FCC Rules and Regulations to require monthly submission of consolidated system Report Form 901 by certain companies subject to FCC regulation; and amendment of Part 43 of the Rules to establish a 50-day allowed time period for filing of such consolidated reports.

By the Commission: 1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. It is proposed to amend Section 1.786 of Part 1 and Section 43.31 of Part 43 of the Rules so that those companies controlling telephone communications subsidiaries, all of which are subject to FCC regulation, shall be required to submit consolidated system Monthly 901 Reports (Monthly Report of Revenues, Expenses and Other Items—Telephone Companies), in addition to fulfilling their present requirement of submitting this report on an individual operating company and functional department basis.

3. It appears that additional time will be required, beyond the present 40-day time period presently allowed for submission of the individual company Form 901, to prepare and submit the new consolidated system Form 901. Accordingly, we are proposing that Part 43, Section 43.31 of the Rules be amended to allow an additional ten days (a total of 50 days) for submission of the consolidated system 901 Report. However, the reporting time period for submission of the individual company or individual functional unit 901 Reports will not be altered.

4. Since the carriers affected are presently providing this information to the Commission on a voluntary basis, the requirement contained in this proposal would impose no additional information burden on the affected carriers.

5. If the foregoing proposal is adopted, the amendments will be made effective in the Rules for the month of August 1976.

6. In view of the foregoing, it is proposed to amend Parts 1 and 43 of the Rules as set forth in the attached Appendix.

7. This Notice of Proposed Rule Making is issued under authority contained in Sections 4(i), 201, 219 and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 201, 219 and 220.

8. Pursuant to applicable procedures set forth in 47 CFR 1.415, interested persons may file comments on or before May 27, 1976, and reply comments on or before June 7, 1976. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it in addition to the specific comments invited by this Notice. Comments in response to this Notice will be available for public inspection in the Commission's Broadcast and Dockets Reference Room.

9. In accordance with the provision of 47 CFR 1.419, an original and eleven copies of all statements or briefs shall be furnished to the Commission.

Adopted: April 14, 1976.

Released: April 21, 1976.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS, *Secretary.*

1. In Part 1, Practice and Procedure, § 1.786 is amended by redesignating present paragraph contained therein to (a) and adding a paragraph (b) to read as follows:

§ 1.786 Monthly Financial Reports.

(a) * * *

(b) Companies controlling a system of two or more telephone communications common carrier subsidiaries both or all of which are subject to the Rules and Regulations of this Commission shall file FCC Form 901 monthly on a consolidated system basis.

2. In Part 43, Reports of Communications Common Carriers and Certain Affiliates, § 43.31 is amended by adding a new paragraph (b) and redesignating present paragraph (b) to (c); the new paragraph (b) is to read as follows:

§ 43.31 Monthly Reports of Communications Common Carriers.

* * * * *

(b) Companies controlling two or more telephone communications common carrier subsidiaries both or all of which are subject to the aforementioned reporting requirements (paragraph (a) of this section) shall file with the Commission within fifty (50) days after the end of each calendar month two certified copies of a consolidated system report for that month on forms prescribed (or approved) by the Commission.

[FR Doc.76-12214 Filed 4-26-76;8:45 am]

[47 CFR Parts 2 and 83]

[Docket No. 20775; FCC 76-328]

EMERGENCY POSITION INDICATING RADIOBEACONS

Clarification and Modification of Rules

By the Commisison: 1. The Commission hereby gives Notice of Proposed Rule Making looking toward adoption of rules clarifying and modifying the regulations governing operation of emergency position indication radiobeacons (EPIRB's) in the Maritime Services. In an earlier proceeding, Docket No. 19693 [1], the Commission set out rules providing for the authorization of these devices for Stations on Shipboard in the Maritime Services (Part 83).

2. EPIRB's are radio frequency devices which transmit signals simultaneously on 121.5 and 243 MHz to facilitate search and rescue operations by indicating the position of a distress situation. EPIRB signals are modulated by a well-defined, distinctive, sweeping tone chosen to be easily recognizable and compatible with radiolocation equipment. Aircraft equipped with radio direction finding equipment are extensively used in search and rescue operations and can rapidly determine the location of an EPIRB emitting a signal.

3. Since the adoption of the Report and Order in Docket No. 19693, the Commission has had the opportunity to evaluate at our Laurel Laboratory several EPIRB's which were submitted for purposes of type acceptance, and to assess the adequacy of the rules from a technical and an administrative standpoint. In this regard we feel that it would be in the public interest to make several changes in the present rules and it is for this purpose that the instant proceeding is instituted. The proposed rule changes are required in part as a matter of administrative convenience while other changes are necessary to clarify the rules. Further, it appears that certain modifications are necessary to the technical standards and procedures used for testing the EPIRB to demonstrate compliance with our rules.

4. The administrative changes which this Notice addresses are concerned with rules pertaining to forms on which application is made, forms to request inspections, priority of frequency usage on 121.5 and 123.1 MHz, interim licensing procedures, and the table of frequency allocations. The proposed changes will permit prompt, more expeditious processing of equipment authorizations, license applications and vessel inspections thereby providing benefit to the Commission and the public.

5. Several proposed changes to the technical standards result directly from the Commission's equipment authorization program and the evaluations conducted by the Laboratory Division on several EPIRB devices. For some years it has been Commission policy to test new devices at our Laboratory to determine what problems, if any, exist which affect a device's capability to comply with our rules. The data submitted for equipment authorization (type acceptance) and the tests performed by the Commission engineers revealed that the measurement procedures referenced in the rules (RTCA documents DO-145 and DO-146) were not sufficiently specific to avoid ambiguity in the measurement procedure for RF output power.

6. The proposed rules appended to this Notice permit the applicant to perform these measurements pursuant to a method to be specified by the Commission. This measurement procedure, in the form of a report or bulletin, will be published prior to the effective date of the proposed rules. Further, the proposed rules provide the Chief Engineer authority to publish measurement procedures in any case where an acceptable procedure is not available or where issuance of such procedure is deemed to be in the public interest.

7. The rules provide for two types of EPIRB's; however, there is confusion concerning the applicability of our technical specifications because a class designation was assigned only to those devices whose carriage is required by the U.S. Coast Guard. Class A EPIRB's are required by the U.S. Coast Guard Regulation, 39 FR 10160. EPIRB's which are intended for other applications, such as for use on voluntarily equipped vessels, were not assigned a class designation. This has caused some user groups difficulty in understanding advertisements

[1] Report and Order, Docket No. 19693, adopted March 7, 1974 (39 FR 10140; 45 FCC 2nd 885).

for equipment and in interpreting our rules. The proposed rules designate the latter type of EPIRB a Class B device for purposes of clarification.

8. Based on the Commission's experience in the equipment authorization program and on a review of the pertinent technical standards related to indicators, we believe that the regulations should be more specific in regard to the point within the equipment at which the signal used to activate indicators is derived. Indicators are used to signify that the device is transmitting (operating mode) or is capable of transmitting (test mode), and since the safety of life may depend on an accurate assessment of the condition of the equipment, the indicator output must be reliable. The indicator has the highest probability of accurately describing the condition of the equipment when the signal which activates the indicator is derived from a point in the equipment beyond which no further processing, i.e., amplification, modulation or frequency generation of the transmitted signal, is required. Accordingly, the proposed rules require that the indicators be activated by the RF output power of the device. To date all equipment approved by the Commission meets the proposed rules.

9. The proposed amendments to the rules, as set forth in the Appendix to this Notice are issued pursuant to authority contained in Sections 4(i) and 303 (e), (f), and (r) of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's rules, interested persons may file comments on or before June 22, 1976, and reply comments on or before July 2, 1976. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

11. In accordance with the provisions of Section 1.419 of the Commission's rules, an original and 11 copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

Adopted: April 14, 1976.

Released: April 23, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Parts 2 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In § 2.106, column 11 is amended as follows:

§ 2.106 Table of Frequency Allocations.

Frequency MHz	*Nature of services and of stations*
10	*11*
* * * * *	
121.5---	Aeronautical Mobile. Maritime Mobile. Maritime Radiodetermination. Ship. Survival craft and equipment. Emergency position indicating radiobeacon. Emergency Locator Transmitter.
* * * * *	
123.100-	Aeronautical search and rescue. Ship. Survival craft and equipment.
* * * * *	
243----	Survival craft and equipment. Emergency position indicating radiobeacon. Emergency Locator Transmitter.
* * * * *	

2. A new Section 2.947 is added to read as follows:

§ 2.947 Measurement procedure.

(a) Any measurement procedure acceptable to the Commission may be used to prepare data demonstrating compliance with the requirements of this chapter. In addition, the Commission will accept data which have been measured in accordance with the following standards or measurement procedures:

(1) Those set forth in OCE Bulletins or reports prepared by the Office of the Chief Engineer of the Commission. These will be issued as required, and specified in the particular part of the rules where applicable.

(2) Those acceptable to the Commission and published by national engineering societies such as the Electronic Industries Association, the Institute of Electrical and Electronics Engineers, Inc., and the American National Standards Institute.

(b) Information submitted pursuant to subsection (a) of this section shall completely identify the specific standard or measurement procedure used.

(c) In the case of equipment requiring measurement procedures not specified in the references set forth in subsection (a) (1) and (2) of this section, the applicant shall submit a detailed description of the measurement procedures actually used.

(d) A listing of the test equipment used shall be submitted.

(e) If deemed necessary, the Commission may require additional information concerning the measurement procedures employed in obtaining the data submitted for equipment authorization purposes.

3. Section 2.999 is amended to read as follows:

§ 2.999 Measurement procedure.

The measurement procedures employed shall be in accordance with the requirements set forth in Section 2.947 of this part. In addition, any specific test requirements set forth in the particular rules governing the equipment for which type acceptance is requested shall apply.

4. Section 83.2(i) is amended to read as follows:

§ 83.2 General.

* * * * *

(i) Ship station license. A license authorizing the operation of a ship station, a survival craft station associated with a ship, an emergency position indicating radiobeacon station, or a ship radionavigation station.

* * * * *

§ 83.3 [Amended]

5. Section 83.3 is amended by deleting paragraph (q).

6. Section 83.4 is amended by adding a new paragraph (s) to read as follows:

§ 83.4 Maritime radiodetermination service.

* * * * *

(s) *Emergency position indicating radiobeacon (EPIRB) station.*

A station in the maritime radiolocation service consisting of a transmitter only, the distinctive emissions of which are intended to facilitate search and rescue operations.

7. Section 83.35(a) is amended to read as follows:

§ 83.35 Request for interim ship station license.

(a) A formal application for a new ship station license or for a modification of an existing license if required by § 83.33 when accompanied by a request for an interim ship station license, shall be filed in accordance with § 83.26 and presented in person by the applicant or his agent at the nearest field office of the Commission or at the Commission's main office in Washington, D.C.: *Provided,* That, as an alternative procedure, an applicant in Alaska for such a ship station license may submit an application by mail to the Commission's Field Office at Anchorage, Alaska, when accompanied by a written request for an interim ship station license.

* * * * *

8. Section 83.36(a) is amended to read as follows:

§ 83.36 Application forms for station authorizations.

(a) FCC Form 502 shall be used for filing formal applications for new or modified marine-utility ship or ship radiotelephone and radionavigation station licenses, except for radiotelephone stations required by Title III, Part II of the Communications Act of 1934, as amended, or the Safety of Life at Sea Convention; or; except where the applicant will use radiotelegraph equipment aboard the vessel. In the case of the exceptions listed in the preceding sentence, application for a new or modified ship station license shall be filed on FCC Form

501. Request for authority to use EPIRB's may be included on either of the above application forms, except that application for an EPIRB station only shall be made on Form 502. FCC Form 405–B shall be used for filing formal applications for renewal of marine-utility ship radiotelephone, ship radiotelephone and radionavigation station licenses, except for radiotelephone stations required by Title III, Part II of the Communications Act of 1934, as amended, or the Safety of Life at Sea Convention; or except where the application will use radiotelegraph equipment aboard the vessel. In the case of exceptions listed in the preceding sentence, application for renewal of a ship station license shall be filed on FCC Form 405–A.

* * * * *

9. Section 83.46 is amended by adding a new paragraph (f) to read as follows:

§ 83.46 Application for inspection and certification.

* * * * *

(f) The FCC Forms specified in paragraphs (b) and (d) of this section shall be used to apply for inspection of EPIRB stations on board vessels which are required to be mandatorily fitted by U.S. Coast Guard regulations (Chapter I of Title 46 of the Code of Federal Regulations) when they are additionally subject, respectively, to (1) either or both the Safety Convention and Part II of Title III of the Communications Act, or (2) to Part III of Title III of the Communications Act.

10. Section 83.68 is amended by modifying the title and paragraph (b) to read as follows:

§ 83.68 Authority for survival craft stations and EPIRB stations.

* * * * *

(b) Authority to operate an EPIRB station will be granted only abroad the following types of vessels:

(1) Those authorized to carry survival craft stations;

(2) Those expected to travel in waters beyond the range of marine VHF distress coverage.

(3) Those required to be fitted to comply with the U.S. Coast Guard regulations.

* * * * *

11. Section 83.132(a), subdivision (iii) of subparagraph (1) is amended, subdivision (iv) of subparagraph (1) is deleted and a new paragraph (4) is added as follows:

§ 83.132 Authorized classes of emission.

(a) * * *

(1) Stations using radiotelegraphy:

(iii) For the frequency 121.5 MHz	A2.

* * * * *

(4) Stations not covered by the above:

(i) For the frequency 121.5 MHz	A9.
(ii) For the frequency 243.0 MHz	A9.

* * * * *

12. Section 83.134(i) is revised to read as follows:

§ 83.134 Transmitter power.

* * * * *

(i) For EPIRB stations operating on the frequencies 121.5 and 243 MHz the peak effective radiated power on each frequency, measured during and at the end of 48 hours of continuous operation, and without replacement or recharge of batteries, shall not be less than 75 milliwatts. This specification shall apply to all units whether dry, or immersed for any or all of the forty-eight hour period in fresh or salt-water, as long as the entire antenna extends above the water surface. The peak effective radiated power shall be determined pursuant to the measurement procedure set out in Commission publication number (to be supplied prior to effective date of the Report and Order). The required power shall be obtained over a temperature range of −20 to +55 degrees Celsius.

13. Section 83.139(b) is amended and a new paragraph (g) is added to read as follows:

§ 83.139 Acceptability of transmitters for licensing.

* * * * *

(b) Each survival craft station transmitter which has not been type approved pursuant to § 83.469 or § 83.472 shall be type accepted by the Commission.

* * * * *

(g) Each emergency position indicating radiobeacon transmitter authorized for use in an EPIRB station, ship station, or a survival craft station shall be type accepted by the Commission for operation under this part to be acceptable for licensing.

14. Section 83.144 heading and subparagraphs (c), (d)(1), (d)(1)(iii), (d)(4) and (h) are amended to read as follows:

§ 83.144 Special requirements for emergency indicating radiobeacon stations, Class B.

* * * * *

(c) The EPIRB shall be provided with a clearly visible and/or audible indicator which clearly shows that the device is operating. The indicator shall be activated by the transmitter RF output power.

(d) * * *

(1) May be fitted with a manually-activated test switch, (or comparable device) associated test circuit, and output indicator activated by the RF output power which shall, in the test position:

(i) * * *

(ii) * * *

(iii) Reduce radiation to a level not to exceed 25 microvolts per meter at a distance of one hundred fifty (150) feet irrespective of direction.

(2) * * *

(3) * * *

(4) An EPIRB without a test circuit as described in (1) and (2) may be tested only into a dummy load to insure that no transmission or radiated energy occurs that could be received by a radio station and result in a false alarm. Such tests should be conducted, when practicable, within the first five (5) minutes of any hour and be limited to three audio sweeps or one second, whichever is longer.

* * * * *

(h) The EPIRB shall be powered by a battery, whether an original or replacement component, contained within the transmission case or in a battery holder that is securely attached to the transmitter case. The EPIRB power source shall be separated and independent from the vessel power source. The useful life of the battery (established by the EPIRB manufacturer) is the length of time, after its date of manufacture, that the battery may be stored under marine environmental conditions without losing its ability to permit the transmitter power requirement prescribed in § 83.134(i) to be met. The date (month and year) of the battery's manufacture shall be indelibly and legibly marked on the battery and the expiration date (month and year) upon which 50 percent of its useful life will have expired shall be indelibly and legibly marked on both the battery and the outside of the transmitter. The electro-mechanical connectors on and to the battery must be corrosion resistant and positive in action, and may not rely for contact upon spring force alone.

* * * * *

15. Section 83.145 is amended by modifying paragraph (b) and adding a new subparagraph (8) as follows:

§ 83.145 Special requirements for emergency position indicating radiobeacon stations, Class A.

* * * * *

(b) In addition to the requirements applicable to Class B devices a Class A EPIRB must:

* * * * *

(8) Have the batteries replaced after the date specified in § 83.144(h) has expired or after the transmitter has been used in an emergency situation.

* * * * *

16. Section 83.322(c) is amended as follows:

§ 83.322 Frequencies for use in distress.

* * * * *

(c) The frequency 121.5 MHz (using class A2 emission) is available for assignment to survival craft stations for radiobeacon purposes. The frequency 121.5 MHz (using class A9 emission) is available for assignment to stations for facilitating search and rescue operations. The frequencies 121.5 MHz and 123.1 MHz (class A3 emission) are available for assignment to ship stations for scene of action search and rescue operations between ships and aircraft. The frequency 121.5 MHz will be assigned to ship stations for search and rescue operations only if the frequency 123.1 MHz is also authorized. Communication in support of search and rescue operations is permitted on the frequency 121.5 MHz only when communications on the frequency 123.1 MHz or other VHF frequencies is not practicable. Ships and

aircraft engaged in such communications on 121.5 MHz should shift to 123.1 MHz as soon as possible.

* * * * *

17. Section 83.352(b) is amended as follows:

§ 83.352 Frequencies for use in distress.

* * * * *

(b) The frequency 121.5 MHz (using class A2 emission) is available for assignment to survival craft stations for radiobeacon purposes. The frequency 121.5 MHz (using class A9 emission) is available for assignment to stations for facilitating search and rescue operations. The frequencies 121.5 MHz and 123.1 MHz (class A3 emission) are available for assignment to ship stations for scene of action search and rescue operations between ships and aircraft. The frequency 121.5 MHz will be assigned to ship stations for search and rescue operations only if the frequency 123.1 MHz is also authorized. Communication in support of search and rescue operations is permitted on the frequency 121.5 MHz only when communications on the frequency 123.1 MHz or other VHF frequencies is not practicable. Ships and aircraft engaged in such communications on 121.5 MHz should shift to 123.1 MHz as soon as possible.

* * * * *

18. Section 83.401(c) is amended to read as follows:

§ 83.401 Assignable frequencies for direction finding.

* * * * *

(c) In the event of distress, the following frequencies may be used for radio direction-finding for purposes of search and rescue by any authorized ship, survival craft or emergency position indicating radiobeacon stations:

410 kHz 500 kHz 2182 kHz 8364 kHz
121.5 MHz 243.0 MHz

19. A new Section 83.406 is added to read as follows:

§ 83.406 Special provisions applicable to emergency position indicating radiobeacons.

(a) The station licensee of each EPIRB station shall provide and keep at the station an installation and maintenance record. Alternatively, such record may be made part of the ships radiotelephone or radiotelegraph station log. Entries in this record shall be made by the licensee or the responsible installation, service or maintenance person concerned in each particular instance, but the station licensee shall have the responsibility for the faithful and accurate making of such entries as are required by this section.

(b) Each entry in this record shall be signed by the responsible person concerned.

(c) The following entries shall be made in this record:

(1) The date and place of initial installation;

(2) The results of equipment tests including those conducted by the U.S. Coast Guard;

(3) All transmissions shall be recorded when practicable including the date, time, vessel position and a description of the circumstances requiring such transmission.

[FR Doc.76-12215 Filed 4-26-76;8:45 am]

[47 CFR Part 73]

[Docket No. 20779; FCC 76-352]

BROADCASTS BY LEGALLY QUALIFIED CANDIDATES FOR PUBLIC OFFICE

Notice of Proposed Rule Making

By the Commission: 1. The Commission, on its own motion, gives *Notice of Proposed Rule Making* in the above-entitled matter.

2. Under the Commission's Rules,[1] a "legally qualified candidate" is defined as follows:

Definitions. A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, State or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:

(1) Has qualified for a place on the ballot, or

(2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.

3. The recent decision by the United States Court of Appeals for the Seventh Circuit in the case of Ishmael Flory et al. v. Federal Communications Commission, ____ F2d ____ (74-2010 December 23, 1975), has raised a question as to the requirements which must be met before a candidate will be considered a legally qualified "write-in" candidate. The Court stated:

[A] candidate who has not yet qualified for ballot position under state election laws is nevertheless entitled to equal time if he is otherwise eligible under the second prong of §§ 73.120(a) and 73.657(a) and commits himself to seeking selection by the write-in method in the subsequent election. Sl. op. at 13.

However, the Court also stated that Section 315 "requires that equal time be given to legally qualified candidates, not potential candidates." (Emphasis added, Sl. op. at 9.) Therefore, we propose to amend our rules, in order to clarify the definition of a "legally qualified" write-in candidate as opposed to a "potential" write-in candidate.

4. We also propose to delete subsection (a)(2)(i) of the rules enumerated in footnote, 1 supra. We believe this language to be superfluous since the primary criterion in determining the bona fides of a write-in candidate should be whether such candidate has made a substantial showing. This test is a more reasonable and uniform method by which licensees and candidates can determine their obligations and rights. Of course, nomination by a political party which is commonly known and regarded as such may be a factor to take into consideration when determining whether the candidate has made a substantial showing.

5. Accordingly, the Commission, pursuant to authority contained in Sections 4(i), 303(r) and 315(g) of the Communications Act of 1934, as amended, proposes to amend the rules listed in footnote 1, supra, as indicated in the attached Appendix.

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.49 of the Commission's rules, interested persons may file comments on or before May 27, 1976, and reply comments on or before June 7, 1976. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

7. In accordance with the provisions of § 1.419 of the Rules, an original and 11 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished to the Commission. All filings made in this proceeding will be made available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

Adopted: April 14, 1976.

Released: April 21, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

It is proposed that §§ 73.120(a), 73.290(a), 73.590(a) and 73.657(a) be amended as follows:

§ _____ Broadcasts by Candidates for Public Office.

Definitions. A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, State or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who either:

(1) Has qualified for a place on the ballot, or

(2) Has publicly committed himself to seeking election by the write-in method, and is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method; and makes a substantial showing that he

[1] The definition of a "legally qualified candidate" is found in Sections 73.120(a), 73.290(a), 73.590(a), and 73.657(a).

is a bona fide candidate for nomination or office, as the case may be.

* * * * * *

[FR Doc.76-12217 Filed 4-26-76;8:45 am]

[47 CFR Parts 81 and 83]

[Docket No. 20717]

PORT OF HOUSTON

Designated Radio Protection Areas for Vessel Traffic Services Purposes

1. The American Institute of Merchant Shipping (AIMS) has requested that the time for filing comments and reply comments in this Docket be extended from April 22 and May 3, 1976, respectively, to May 5 and May 14, 1976, respectively.

2. AIMS states that their telecommunications committee has scheduled a meeting to be held in conjunction with the RTCM Assembly Meeting in San Diego, April 26 through April 28, 1976. The matter of Vessel Traffic Services frequency selection is to be a major item on the agenda of this meeting.

3. For good cause shown, we find the public interest will be served by an extension of the comment and reply comment filing periods as requested by AIMS.

4. Accordingly, pursuant to the authority contained in Sections 0.331 and 1.46 of the Commission's rules, the request of AIMS is granted and the dates for filing comments and reply comments in this proceeding are extended to May 5 and May 14, 1976, respectively.

Adopted: April 20, 1976.

Released: April 21, 1976

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] CHARLES A. HIGGINBOTHAM,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.76-12218 Filed 4-26-76;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Parts 1910, 1926]

[Docket No. S-102]

GROUND-FAULT CIRCUIT PROTECTION

Certification of Inflationary Impact Evaluation

On April 7, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 15390-15392; correction notice, 40 FR 18468) by the Occupational Safety and Health Administration (OSHA). It was proposed to amend Title 29, Code of Federal Regulations, §§ 1910.309 and 1926.400 by revoking the requirement for ground-fault circuit protection for personnel on construction sites. This requirement is contained in the last paragraph of section 210-7 of the National Electrical Code (NEC) (ANSI C1-1971, NFPA No. 70-1971), which is adopted by reference in the current §§ 1910.309 and 1926.400.

Subsequently, a hearing was held on December 9 and 10, 1975, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96, 40 U.S.C. 333), and 29 CFR Part 1911. The record of the hearing was certified on March 26, 1976, by the presiding Administrative Law Judge.

In accordance with Executive Order 11821 (39 FR 41501, November 29, 1974), OMB Circular No. A-107 (January 28, 1975), and Secretary's Order No. 15-75 (40 FR 54484, November 24, 1975), and administrative instructions thereto (U.S. Department of Labor Temporary Directive No. 1, November 17, 1975), OSHA has assessed the potential inflationary impact of this proposal, including the inflationary impact of implementing the requirement for ground-fault circuit protection for personnel. Based on the economic identification criteria specified in Section 5(c) of Secretary's Order No. 15-75, OSHA has concluded that the subject matter of this proceeding, including the possible implementation of the requirement for ground-fault circuit protection for personnel is not a "major" action which would necessitate further inflationary impact evaluation or the preparation of an Inflationary Impact Statement, and so certifies pursuant to Section 4(a) of the Secretary's Order. A copy of OSHA's technological feasibility and economic impact assessment is available for inspection and copying in the Technical Data Center, Room N-3620, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

Interested persons are invited to submit written comments on this matter. Such comments must be postmarked on or before May 27, 1976, and should be sent to Jay Arnoldus, Room N-3633, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

The above procedure accords with the special compliance procedure established pursuant to Section 6(c) of OMB Circular No. A-107 by the Council on Wage and Price Stability for certain of OSHA's proposed regulations.

Signed at Washington, D.C. this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12235 Filed 4-26-76;8:45 am]

[29 CFR Part 1928]

[Docket No. S-307]

OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

Field Sanitary Facilities

Pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 8754), and 29 CFR Part 1911, it is proposed to amend Part 1928 of Title 29, Code of Federal Regulations, by adding a new occupational safety and health standard to require sanitation facilities in the field for agricultural employees. The standard would appear as § 1928.110 in a new Subpart I of 29 CFR Part 1928.

Introduction. The accompanying document is a proposed standard, required by section 6(b) of the Act as a step in the administrative rulemaking process. The proposal requests written data, views, and arguments from interested persons on or before July 6, 1976. Interested persons may also file objections and request an informal hearing with respect to the proposed rule. Upon completion of the public participation phases of this rulemaking proceeding, the Occupational Safety and Health Administration (OSHA) may issue a final standard based upon the full record of the proceeding.

The proposed standard requires that potable drinking water and adequate toilet and handwashing facilities be provided for all employees engaged in agricultural work in the field. The proposal also requires that field food service, if provided by the employer, must be carried out in accordance with sound hygienic principles.

The issues raised in this proposal include the following:

1. Should the scope of the standard include all agricultural field operations, and should the requirements be uniformly applied, as provided in the proposal;

2. Whether sanitation facilities, including potable drinking water, toilet and handwashing facilities, and sanitary food service are necessary for the safety and health and agricultural employees engaged in field work;

3. What is an adequate ratio of numbers of toilet and handwashing facilities to the number of employees;

4. Whether alternative compliances such as the provision of transportation, should be permitted for small groups of employees and in what situations, if any, should such alternative compliance apply;

5. Whether the specifications for the location (time/distance) of sanitation facilities are amenable to compliance and enforcement;

The proposed rule is substantially based upon the recommendations of OSHA's Standards Advisory Committee on Agriculture, which were submitted to the Assistant Secretary on 4 February 1975. Also considered were similar existing standards from the States of California and New Jersey.

Discussion. The absence or inadequacy of basic sanitation and hygiene has long been recognized by medical science as a principal factor in the transmission of fecal-borne bacterial and viral diseases and other debilitating parasitic infections.

Poor sanitation often gives rise to the pollution of soil with human wastes containing eggs of parasitic worms and pathogenic organisms when carriers and/or infected persons are present. This situation increases the possibility of contaminating drinking water, food and worker's hands, and of attracting flies and other disease carrying insects. The direct effect of improved safe-drinking

water and proper excreta disposal is exemplified by the eradication in this country of cholera, typhoid and paratyphoid fevers and reduced evidence of dysentery, infant diarrhea, hookworm and other intestinal parasitic infections. See Tisdale, E. E. and Atkins C. H., 33 American Journal of Public Health 1319 (1943), Watt, J. and Lindsay, D. R., Effect of Fly Control in a High Morbidity Area (Diarrheal Disease Control Studies), Public Health Reports, Vol. 63, Part II, 1948, pp. 1319–1334.

A standard for sanitation has been in effect for all permanent workplaces (§ 1910.141) since OSHA first began promulgating its regulations in 1971. Facilities for sanitation have also been required in the construction industry. (§ 1926.51), and in temporary labor camps (§ 1910.142).

At the present time, there are no such health standards for agricultural employees working in the field. Those who are engaged in field labor have the same physiological and hygienic needs, and are exposed to similar health hazard risks as are their industrial counterparts. These risks are often exacerbated as a result of exposure to toxic substances and severe climatic conditions.

Recent legislative enactments (e.g. the Fair Labor Standards Act Amendments of 1974, 88 Stat. 6, 29 U.S.C. 206, P.L. 93–259; the Farm Contractor Registration Act Amendments of 1974, 88 Stat. 1656, 7 U.S.C. 2041 et. seq., P.L. 93–518, and the Emergency Unemployment Assistance Act of 1974, 88 Stat. 1809, 23 U.S.C. 3304, P.L. 93–572) have demonstrated the Congress' intention to bring agricultural employees into the mainstream of the American labor force. The establishment of basic standards for sanitation for field workers will bring them one step closer to the level of protection now being provided to the majority of this country's working men and women.

On September 1, 1972, the Migrant Legal Action Program, Inc. and several other organizations, on behalf of migrant and seasonal farmworkers, petitioned OSHA to issue, among other things, a standard on field sanitation. The petition outlined numerous safety and health hazards which result from a lack of field sanitation.

A subcommittee of the OSHA Standards Advisory Committee on Agriculture (SACA) was established in August 1974 to study the problems relating to field sanitaiton, and to develop recommendations for proposed regulations in this area. The Subcommittee, whose membership was drawn from the full Committee, was composed of a single representative each from agricultural industry, labor, government, and the public at large. Meeting in public session, the subcommittee deliberated on 19 August, 24 and 25 September 1974 (in Washington, D.C.) and on 5 December 1974 (in Dallas, Texas). The recomended standard was approved by the full Committee on 6 December 1974.

During its consideration of the subcommittee's recommendations, the full Committee received oral and written testimony from agricultural workers. Citing from personal and group experiences, the workers told of the consequences of having to endure working conditions in which poor field sanitation facilities were the rule rather than the exception. Corroborative evidence was adduced by medical testimony.

The proposed standard presented below is based substantially on the recommendations of the Standards Advisory Committee on Agriculture, and on the Food Crop Growing and Harvesting Sanitation Code of the State of California [Cal. Health and Safety Code 5474.20–5474.31, and 17 Cal. Admin. Code 8000–8013]. The California Code was relied upon because it has been in effect for ten years. The regulations promulgated by California—a State in which there is a large and active agricultural industry—uniform and comprehensive treatment of the subject of field sanitation. The proposed standard is intended to cover all activities "performed in the field or outside of a permanent structure or facility," and which pertain to agricultural operations. Non-field agricultural activities will not be covered by this standard.

The basic requirements of, and rationale for, the proposed standard are summarized as follows:

(1) Potable water for drinking purposes must be provided to all employees engaged in agricultural work in the field. Testimony from agricultural employees indicated that clean drinking water is often unavailable at or near the workplace. Field labor inherently involves tasks which are physically demanding, especially under the adverse climatic conditions frequently experienced during the crop growing and harvesting season.

There is substantial medical evidence of human strain which results from working without adequate water intake under hot environmental conditions. The three main clinical disorders from excessive heat stress are heat stroke, heat exhaustion and heat cramps. The principal cause is dehydration—loss of water by sweating and loss of body salt. While inadequate water and salt intake are of prime importance, such factors as acclimatization, protection from sun, work load, temperature, humidity and air movement are also important in causing stress. Making drinking water of potable quality easily accessible to workers will help prevent such problems. See Minard, D., H. S. Belding and J. D. Kingston, Prevention of Heat Casualties, Journal American Medical Association, Vol. 165, pp. 1813–1818 (1967).

The proposed definition of potable drinking water contained at § 1928.110 (b) refers to the U.S. Public Health Service (PHS) Drinking Water Standards (42 CFR Part 72). OSHA is aware of the Environmental Protection Agency's (EPA) National Interim Primary Drinking Water Regulations (40 CFR Part 141, 40 FR 59566, December 24, 1975) which will supersede the PHS Drinking Water Standards in June 1977. If appropriate, it is OSHA's intention to substitute the EPA regulations for the PHS standards in the final rule's definition of potable drinking water. Interested persons are invited to comment concerning the appropriateness of the EPA regulations for inclusion in the definition of potable water.

(2) Toilet and handwashing facilities must be provided for all agricultural employees engaged in field work. Facilities must be made available in a ratio of one facility for each 40 employees or fraction thereof, must be within a five-minute walk of the place of work, and must be kept clean and in good working order. For groups of fewer than five (5) employees, facilities need not be physically in the field, as long as they are otherwise easily accessible by readily available transportation. In cases where the work is to be performed in two (2) hours or less, toilet and handwashing facilities are not required.

Incidences of infection and disease which are transmitted by both insect-borne and hand-to-mouth contagion may be reduced by the use of toilet and handwashing facilities. See A. V. Hardy et al., Florida State Board of Health Monograph Series No. 4, 1963; and A. C. Hollester et al., American Journal of Public Health, Vol. 45 No. 3, pp. 354–362 (1955). The alternative for many agricultural employees has been the elimination of human waste in the open field, in or near the area where they work or rest. A second alternative, especially among women laborers, has been prolonged retention often resulting in the development of painful bladder disease. It is believed that employees will be discouraged from using facilities which are provided in either insufficient numbers or at distances too great from the workplace. The ratios, distances, and other compliance factors associated with these provisions are substantially based on the experience and record of the California Health and Administrative Codes.

(3) Field food service, if provided, must be carried out in accordance with sound hygienic principles. The food must be wholesome, free from spoilage, and processed, prepared, handled, and stored in such a manner as to be protected against contamination.

This provision is essentially similar to that required of all employers under existing OSHA standards for sanitation in general industry (§ 1910.141(h)) and construction (§ 1926.51(d)). Although the agricultural employer is not required by this proposed standard to provide any food service, once such service is offered, proper storage and/or dispensing facilities must be utilized.

Environmental and Inflationary Impact Assessments. The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires that Federal agencies assess certain proposed actions, to determine whether a significant impact on the quality of the human environment may result. In accordance with 29 CFR Part 1999, the Director of the Office of Standards Development has determined that this proposal is not a major action likely to have significant impacts on the environment.

It is anticipated that the proposed provisions regarding field sanitary facilities will have a beneficial impact generally, and will improve the quality of the work environment of field laborers. The technology, equipment and procedures required to meet the sanitary and health provisions of the proposed standard are available and in common use, and pose no threat which would adversely affect the quality of the environment or the use of natural resources.

In accordance with Executive Order 11821 (39 FR 41501, November 29, 1974), OMB Circular No. A–107 (January 28, 1975), and Secretary's Order No. 15–75 (40 FR 54484, November 24, 1975), and administrative instructions thereto (U.S. Department of Labor Temporary Directive No. 1, November 17, 1975), OSHA has assessed the potential inflationary impact of this proposal. Based on the economic identification criteria specified in Section 5(c) of Secretary's Order No. 15–75, OSHA has concluded that the proposed regulation is not a major action which would necessitate further inflationary impact evaluation or the preparation of an Inflationary Impact Statement, and so certifies pursuant to Section 4(a) of the Secretary's Order. A copy of OSHA's inflation impact assessment is available for inspection and copying in the Technical Data Center, Room N3620, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210.

Interested persons are invited to comment on the proposed standard on or before July 6, 1976. Written data, views, and arguments must be submitted to the U.S. Department of Labor, Occupational Safety and Health Administration, Docket Officer, Docket No. S–307, Room N3620, 3rd and Constitution Avenue NW., Washington, D.C. 20210, on or before July 6, 1976. The data, views, and arguments will be available for public inspection and copying at the above address.

Pursuant to 29 CFR 1911.11 (b) and (c), interested persons may, in addition to filing written matter as provided above, file objections to the proposal and request an informal hearing with respect thereto, in accordance with the following conditions:

(1) The objections must include the name and address of the objector;

(2) The objections must be postmarked on or before July 6, 1976.

(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered;

(5) The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Accordingly, pursuant to section 6(b) of the Act, Secretary of Labor's Order No. 12–71 (36 FR 8754), and 29 CFR Part 1911, it is proposed to amend Part 1928 of Title 29, Code of Federal Regulations, by adding a new § 1928.110 in a new Subpart I, to read as follows:

Subpart I—General Environmental Controls

§ 1928.110 Field Sanitary Facilities.

(a) *Scope.* This section shall apply to any agricultural operation or activity performed in the field or outside of any permanent structure or facility.

(b) *Definitions.*

"Handwashing facility" means a basin, container, or outlet with an adequate supply of potable water available for the cleansing of the hands and arms.

"Potable water" means water which meets the quality standards prescribed by the U.S. Public Health Service Drinking Water Standards, published in 42 CFR Part 72, or water which is approved for drinking purposes by the State or local authority having jurisdiction.

"Toilet facility" means either a water flushed toilet, chemical toilet, combustion toilet, recirculating toilet, or sanitary privy maintained for the purpose of defecation or urination, or both.

(c) *Drinking water*—(1) *Quantity, potability, and availability.* (i) The employer shall provide drinking water in sufficient amounts, based on the number of employees, nature of work, and climatic conditions:

(ii) All drinking water shall be potable.

(iii) Drinking water shall be available at locations readily accessible to all employees.

(2) *Maintenance.* (i) All drinking water-piping systems, appurtenances, and fountains shall be constructed and maintained in a clean and sanitary condition at all times.

(ii) Drinking water transported to the site shall be carried, stored, and otherwise protected in sanitary containers constructed of smooth, impervious, durable, corrosion resistant materials. Such containers shall be cleaned and disinfected in a manner to insure that the potability of the water is maintained.

(iii) Storage of another beverage, food, or any other foreign substance inside the container is prohibited.

(3) *Dispensing.* (i) Drinking water shall be dispensed either through the use of a drinking fountain equipped with an angled jet outlet, or a gravity water tap.

(ii) Except where water is supplied exclusively by fountain, single service cups stored in a clean and sanitary manner shall be provided in adequate number.

(iii) Where single service cups are utilized, containers for their disposal shall be provided.

(iv) Water containers shall remain covered while in use.

(v) Water shall not be dipped from inside water storage containers.

(vi) Use of a common drinking cup is prohibited.

(vii) Ice used for cooling drinking water shall not be immersed in or in direct contact with the water to be cooled, unless it is made from potable water and has been handled in a sanitary manner.

(4) *Identification.* (i) All containers, fountains, or other devices used for the storage or dispensing of drinking water shall be conspicuously marked "Drinking Water."

(ii) All water outlets, except irrigation nozzles, containing non-potable water shall be conspicuously marked "Unsafe for Drinking or Handwashing." Where irrigation systems are in use, or intended for use, such systems shall be conspicuously marked "Unsafe for Drinking or Handwashing" at central locations.

(iii) All such markings shall be in English and, as appropriate, in the prevalent native language of the workers.

(d) *Toilet facilities*—(1) *General.* (i) One toilet facility shall be provided for each forty (40) employees or fraction thereof.

(ii) Toilet facilities capable of being utilized for urination only shall not be considered as meeting the obligations under paragraph (d) (1) (i) of this section.

(iii) When persons other than employees are permitted the use of toilet facilities in the field, the number of such facilities required under paragraph (d) (1) (i) of this section shall be determined on the basis of total number of employees and other persons permitted to use the facilities.

(2) *Location.* (i) Toilet facilities shall be located within a five-minute walk of each employee's place of work in the field.

(ii) If the access road layout, ground terrain, or other physical condition prevents placing of toilet facilities within a five-minute walk, such facilities shall be located at the point of vehicular access closest to the employees.

(iii) Where a crew, unit, or group consists of fewer than five (5) employees, the requirements of paragraph (d) (2) (i) of this section shall be considered satisfied if toilet facilities are accessible and immediately available to employees by transportation provided by the employer.

(iv) Where agricultural field work is to be of a duration of under two (2) hours (including travel time to and from the workplace), the requirements of paragraph (d) of this section do not apply.

(3) *Construction and maintenance.* (i) Toilet facilities may be either fixed or portable.

(ii) Water-flushed toilets shall be connected to a sewer system or septic tank and shall be constructed and maintained in a manner which does not endanger the health of employees.

(iii) Portable toilets and other waste disposal systems not connected to sewer systems of septic tanks shall be constructed and maintained in accordance with § 1910.143 of this Chapter.

(iv) All toilet facilities shall have doors which can be closed and latched from the inside, and shall be otherwise constructed to insure privacy.

(v) Tiolet paper with holder shall be provided for every toilet facility.

(vi) All toilet facilities shall be kept clean and maintained in good working order.

(e) *Handwashing facilities*—(1) *General.* (i) Handwashing facilities shall utilize only potable water.

(ii) One handwashing facility shall be provided for each 40 employees or fraction thereof.

(iii) When persons other than employees are permitted the use of handwashing facilities in the field, the number of such facilities required under paragraph (e) (1) (ii) of this section shall be determined on the basis of the total number of employees and other persons permitted to use the facilities.

(2) *Location.* (i) Handwashing facilities shall be located within a five-minute walk of each employee's place of work in the field.

(ii) If the access road layout, ground terrain, or other physical condition prevents placing of handwashing facilities within a five-minute walk, such facilities shall be located at the point of vehicular access closest to the employees.

(iii) Where a crew, unit, or group consists of fewer than five (5) employees, the requirements of paragraph (e) (2) (i) of this section shall be considered satisfied if handwashing facilities are accessible and immediately available to employees by transportation provided by the employer.

(iv) Where agricultural field work is to be of a duration of under two (2) hours (including travel time to and from the workplace), the requirements of paragraph (e) of this section do not apply.

(3) *Maintenance.* (i) Soap or other cleansing agent shall be provided with each handwashing facility.

(ii) Single-use disposable hand towels, with a container for disposal, or roller towels properly maintained and supplied, shall be provided with each handwashing facility.

(iii) Waste water shall be disposed of in a manner which will not create a safety or health hazard.

(iv) All handwashing facilities shall be maintained in a clean and sanitary condition.

(4) *Identification.* (i) Water outlets used as handwashing facilities shall be conspicuously marked "Handwashing only, not for drinking."

(ii) All such markings shall be in English and, as appropriate, in the prevalent native language of the workers.

(f) *Field food consumption.* (1) If field food service is provided for employees, all such service facilities and operations shall be carried out in accordance with sound hygienic principles.

(2) In all places of employment where food service is provided, the food dispensed shall be wholesome, free from spoilage, and shall be processed, prepared, handled, and stored in such a manner as to be protected against contamination, spoilage, or growth of organisms.

(3) No food or beverage shall be stored in the immediate vicinity of a toilet or handwashing facility, or be exposed to toxic material.

(Sec. 6(b), Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655), Secretary of Labor's Order No. 12-71 (36 FR 8754), 29 CFR Part 1911)

Signed at Washington, D.C., this 21st day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12236 Filed 4-26-76;8:45 am]

[29 CFR Part 1952]

CALIFORNIA

Proposed Supplements to Approved Plan

1. *Background.* Part 1953 of the Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (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 18(c) of the Act and Part 1902 of this chapter. On May 1, 1973, a notice was published in the FEDERAL REGISTER concerning the approval of the California plan and of the adoption of Subpart K of Part 1952 containing the decision (38 FR 10717). On September 5, 1975; October 1, 1975; October 9, 1975; November 3, 1975, the State of California submitted supplements to its State plan for occupational safety and health involving developmental and State-initiated changes (see Subparts B and E of 29 CFR Part 1953 respectively).

2. *Description of supplements.* (a) *Recordkeeping and Reporting Requirements.* On September 5, 1975, the State submitted supplements concerning the recordkeeping and reporting requirements for private employers. An amendment to section 6410 of the California Labor Code authorizes the Division of Labor Statistics and Research, within the Department of Industrial Relations, to prescribe and provide the necessary forms for the maintenance of required records in the same manner and to the same extent that would be required if no State plan were in effect.

(b) *Inspections Scheduling System.* On October 1, the State submitted a supplement concerning the Inspection Scheduling System (ISS), one of the developmental goals in the State plan. The purpose of the System is to generate and distribute computer-generated employer lists to Regional Offices of the Division of Industrial Safety as part of a system for scheduling routine inspections. Size of firm and lost-workday incidence rate of the industry in which the firm is classified are the basis for selection from the data base. Firms have been included on the listing if they employ 20 or more persons and if the 3- or 4-digit SIC subgroup in which they are classified has a lost-workday incidence rate in excess of 4.0, the average for California's private nonfarm section of the economy in 1972.

(c) *Operations Manual.* On October 9, 1975, the State submitted a supplement concerning the Operations Manual for use by California compliance safety engineers. New procedures for such topics as the handling of discrimination complaints, field training, security, advance notice, etc., remain to be written for subsequent incorporation.

(d) *Deletion of State Fire Marshal's Participation.* On November 3, 1975, the State submitted a supplement concerning the termination of the Office of State Fire Marshal's participation in the State plan as a State-initiated change. In the original California plan, it was envisioned that the Office of State Fire Marshal would provide technical assistance and support to the Division of Industrial Safety in fire safety problems of an unusual or complex nature. Program experience has shown that the Division has had little need for the kind of technical assistance originally envisioned, and that the fire safety standards that deal with occupational safety and health can and are being enforced by the compliance safety engineers of the Division of Industrial Safety with appropriate training. By terminating the Fire Marshal program, funds can be redirected to the Division for fire safety enforcement and for other areas of the overall program in need of additional funding.

3. *Location of the plan and its 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 N3603, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator for Occupational Safety and Health, Room 9410, Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102; California Occupational Safety and Health Administration, 1006 4th Street, Third Floor, Sacramento, California 95814; California Occupational Safety and Health Administration, 455 Golden Gate Avenue, Room 2152, San Francisco, California 94102; and Division of Industrial Safety, 3460 Wilshire Boulevard, Los Angeles, California 90010.

4. *Public Participation.* Interested persons are hereby given until May 27, 1976, 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 Associate 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 of Labor for Occupational Safety and Health shall consider all relevant comments, data, 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 K of Part 1952 and initiate further appropriate proceedings if necessary.

(Secs. 8(g), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667).)

Signed at Washington, D.C., this 8th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor

[FR Doc.76-12233 Filed 4-26-76;8:45 am]

[29 CFR Part 1952]

WASHINGTON

Proposed Supplement to Approved Plan

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for the review of changes and progress in State plans which have been approved in accordance with Section 18 (c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington Plan and the adoption of Subpart F to Part 1952 containing this decision. On October 29, 1975 the State of Washington submitted to the Seattle Regional Office of the Occupational Safety and Health Administration a supplement to the plan involving developmental changes. Following regional review, the supplements were forwarded to the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) for his determination as to whether they should be approved. The supplement is described below.

2. *Description of the supplement.* Washington Administrative Rules. (Washington Administrative Code Chapter 296-350.) The State has submitted rules for the granting of variances, extension of abatement dates, citation posting, employee complaints, and rules allowing for employee representatives to receive copies of citations.

The rules are substantially identical or similar to the corresponding Federal rules. (Rules allowing for employee representatives to receive copies of citations have no Federal counterpart.)

3. *Location of the plan and its supplements for inspection and copying.* A copy of the plan and the supplement 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 N-3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Assistant Regional Administrator, Occupational Safety and Health Administration, Room 6048, 909 First Avenue, Seattle, Washington 98174; and the Department of Labor and Industries, General Administrative Building, Olympia, Washington 98504.

4. *Public participation.* Interested persons are hereby given until May 27, 1976 in which to submit written data, views, and arguments concerning whether the supplements should be approved. Such submissions are to be addressed to the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N-3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 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 supplement, make appropriate amendments to Subpart F of Part 1952 and initiate further proceedings, if necessary.

Signed at Washington, D.C., this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor

[FR Doc.76-12234 Filed 4-26-76;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-6/47]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON MARITIME LAW

Meeting

A meeting of the Subcommittee on Maritime Law of the Shipping Coordinating Committee will be held at 10:00 a.m. on Wednesday, May 26, 1976, in Room 1408 of the Department of State, 2201 C Street, N.W., Washington, D.C. The meeting will be open to the public.

The purpose of the meeting is to discuss the "Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage" which was drafted under the aegis of the Economic Commission for Europe in 1970. The Agreement, which will become effective on November 21, 1976, has not been signed by the United States. The principal item to be discussed will be the consideration of the U.S. position regarding the Agreement.

Any questions concerning this meeting should be directed to Mr. Richard Johe, Office of Maritime Affairs, Department of State. He may be reached by telephone on (area code 202) 632-1313.

Comments from the public will be welcomed.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

APRIL 19, 1976.

[FR Doc.76-12106 Filed 4-26-76;8:45 am]

[Public Notice CM-6/49]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group of radiocommunications of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Thursday, May 20, 1976, in Room 847 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C.

The purpose of the meeting is to review:—promulgation of navigational warnings to shipping;—training and qualifications of radio officers, radio operators and radio telephone operators;—operational standards for shipboard radio equipment;—operational requirements for emergency position indicating beacons and portable radio apparatus for survival craft;—matters resulting from the World Maritime Administrative Radio Conference of 1974 and the work of the International Radio Consultative Committee.

Further information on the meeting should be directed to LTCDR B. M. Chiswell, United States Coast Guard. He may be reached by telephone on (area code 202) 426-1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

APRIL 20, 1976.

[FR Doc.76-12105 Filed 4-26-76;8:45 am]

[Public Notice CM-6/48]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on container transport of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Wednesday, June 30, 1976, in Room 8334 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting will be to—review the following items on the Agenda for the 17th Session of the Subcommittee on Containers and Cargoes of the Intergovernmental Maritime Consultative Organization (IMCO) to be convened in London on July 12, 1976:

(1) Agenda Item 4—Preparation for and work of an Ad Hoc Intergovernmental Group on Standardization in Multimodal Container Transport.

(2) Agenda Item 5—International Convention for Safe Containers (CSC).

(3) Agenda Item 6—Safe Packing of Cargoes in Containers.

(4) Agenda Item 8—Relations with other organizations.

—review the final report of the Sixteenth Session of the Group of Rapporteurs on Container Transport (GRCT) which met in February, 1976.

—review status of implementation of the International Convention for Safe Containers (CSC).

—such other business as may arise.

Requests for further information on the meeting should be directed to Captain Charles E. Mathieu, United States Coast Guard. He may be reached by telephone on (area code 202) 426-1577.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

APRIL 15, 1976.

[FR Doc.76-12107 Filed 4-26-75;8:45 am]

[Public Notice CM-6/46]

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Meeting

The United States Advisory Commission on International Educational and Cultural Affairs will meet in open session on Monday, May 17, 1976. The meeting will be held in room 1410 of the Main State Department Building, 2201 C Street, N.W. It is expected to run from 9:30 a.m. until 12:30 p.m.

There will be two items on the agenda:

1. Discussion of the draft of the Commission's Twelfth Annual Report.

2. Plans for Commission activities in the year ahead.

Members of the general public may attend and participate in the discussion subject to the instructions of the Chairman. They will be accommodated up to the seating capacity of the meeting room.

For purposes of fulfilling bulding security requirements, anyone wishing to attend the meeting must advise the Staff Director by noon on May 14, 1976. He may be reached by telephone at (202) 632-2764.

W. E. WELD, Jr.,
Staff Director,
Commission Secretariat.

APRIL 20, 1976.

[FR Doc.76-12104 Filed 4-26-76;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

MULTI-METAL LITHOGRAPHIC PLATES FROM MEXICO

Antidumping

On March 24, 1976, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), indicating a possibility that multi-metal lithographic plates from Mexico are being, or are likely to be, 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").

There is evidence on record concerning injury to, likelihood of injury to, or prevention of establishment of an industry in the United States. Available information indicates that imports of the subject merchandise from Mexico during 1975 amounted to approximately .14 percent of domestic production. On the basis of such evidence, there is substantial doubt that there is injury to, likelihood of in-

jury to, or prevention of establishment of an industry in the United States by reason of such importations from Mexico. Accordingly, the United States International Trade Commission is being advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value. Should the United States International Trade Commission, within 30 days of receipt of the information cited in the preceding paragraph, advise the Secretary that there is no reasonable indication that an industry is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, the Department will publish promptly in the FEDERAL REGISTER a notice terminating the investigation. Otherwise, the investigation will continue to a conclusion.

A summary of price information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

APRIL 21, 1976.

[FR Doc.76-12042 Filed 4-26-76;8:45 am]

DEPARTMENT OF DEFENSE

DEFENSE SCIENCE BOARD TASK FORCE ON ELECTRONIC TEST EQUIPMENT

Cancelled Meeting

The Defense Science Board Task Force on Electronic Test Equipment cancels its meeting scheduled for 18 and 19 May 1976 at the National Center Building No. 1, Room 9W67, Jefferson Davis Highway, Arlington, Virginia, as published in the FEDERAL REGISTER of 5 April 1976 (41 FR Doc. 14440).

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

APRIL 21, 1976.

[FR Doc.76-12064 Filed 4-26-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

SHAWNEE INDIANS

Plan for the Use and Distribution of Shawnee Judgment Funds Awarded in Docket 334-B Before the Indian Claims Commission

APRIL 15, 1976.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The Act of October 19, 1973 (P.L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated by the Act of December 15, 1971, 85 Stat. 627, 642, in satisfaction of the award granted to the Absentee Shawnee Tribe of Oklahoma (on behalf of the Shawnee Nation) in Indian Claims Commission Docket 334-B. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated November 6, 1975, and was received (as recorded in the Congressional Record) by the House of Representatives on November 13, 1975, and by the Senate on November 17, 1975. Neither House of Congress having adopted a resolution disapproving it, the plan became effective on March 5, 1976, as provided by Section 5 of the 1973 Act, supra.

The plan reads as follows:

"The funds appropriated by the Act of December 15, 1971, 85 Stat. 627, 642, in satisfaction of the award granted to the Absentee Shawnee Tribe of Oklahoma (on behalf of the Shawnee Nation) in Docket 334-B before the Indian Claims Commission, including all interest and investment income accrued, less attorney fees and expenses, shall be used and distributed as herein provided.

The Secretary of the Interior (hereinafter 'Secretary') shall divide the funds between the Absentee Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee Indians of Oklahoma, in terms of 514/1261ths of the funds to the Absentee Shawnee Tribe and 747/1261ths to the Cherokee Band of Shawnee Indians.

ABSENTEE SHAWNEE TRIBE OF OKLAHOMA

A roll shall be prepared, in accordance with the procedures enacted by the tribal governing body and approved by the Secretary, of all members of the Absentee Shawnee Tribe of Oklahoma who were born on or prior to and living on the effective date of this plan.

Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution of eighty (80) percent of the Absentee Shawnee Tribe's share of the funds, in a sum as equal as possible, to all persons listed on this roll. No date shall be set for distribution of the funds to eligible enrollees, setting aside shares for appellants, until the appeal period provided for in the tribal procedures has expired.

The remaining twenty (20) percent of the funds shall be added to the funds held in trust by the Secretary in Account No. 14x416, "Proceeds of awards of Indian Claims Commission, Absentee Shawnee Tribe of Oklahoma." These funds shall be utilized for the Tribal Burial Assistance Program and for other tribal social or economic development programs, subject to the approval of the Secretary.

CHEROKEE BAND OF SHAWNEE INDIANS OF OKLAHOMA

Pursuant to rules and regulations published in the FEDERAL REGISTER, the Secretary shall prepare a roll based on the roll of Cherokee Shawnee compiled pursuant to the Act of March 2, 1889, 25 Stat. 994, and any other records which are acceptable to him, of all the lineal descendants, except members of the Absentee Shawnee Tribe of Oklahoma, of the Shawnee Nation as it existed in 1854, who were born on or prior to and living on the effective date of this plan. Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution of the totality of the Cherokee Shawnee share of the funds, in a sum as equal as possible, to each eligible Shawnee descendant so enrolled.

GENERAL PROVISIONS

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be placed in individual Indian money (IIM) accounts and handled under 25 CFR 104.5. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D.

Minors' per capita shares, in excess of $100, including all investment income accruing thereto, will be retained in individually segregated IIM accounts and shall not be disbursed until the minor attains the age of eighteen years, or the minors' shares, including all investment income, will be placed in a private trust as approved by the Secretary. In those cases where a minor would reach the age of eighteen within six months after establishment of a trust, such funds shall instead be retained in IIM accounts. Upon reaching the age of eighteen, unless under a legal disability, the beneficiary shall be entitled to withdraw the per capita share and accrued investment income thereon as provided in 25 CFR 104.3. If a beneficiary is under a legal disability upon attaining the age of eighteen, the per capita share and accrued investment income thereon shall be handled pursuant to 25 CFR 104.5. If a minor's per capita share is not in excess of one hundred dollars ($100.00), it may be expended for the minor's benefit as provided in 25 CFR 104.4.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.76-12066 Filed 4-26-76;8:45 am]

Bureau of Land Management

[CA 2277]

CALIFORNIA

Order Providing for Opening of Lands

APRIL 19, 1976.

By virtue of the authority contained in Section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. 818 (1970) and pursuant to the authority delegated by the State Director (37 F.R. 491, January 12, 1972) as amended, and pursuant to the determination of the Federal Power Commission in DA–1120, California, September 17, 1975, it is ordered as follows:

1. Pursuant to DA–1120 the Commission finds that the Power Project 818 as it affects the following described land is no longer needed for power and is vacated.

MOUNT DIABLO MERIDIAN

T. 16 N., R. 14 E.,
Sec. 22, N½NW¼, SW¼NW¼.

2. As found in DA–1120 the Commission offered no objection to the revocation of Power Site Classification No. 168 by the U.S. Geological Survey pursuant to its publication of notice (41 F.R. 11189) to the extent that it affects the following described land.

MOUNT DIABLO MERIDIAN

T. 16 N., R. 14 E.,
Sec. 14, N½SW¼.

The above described areas within the Tahoe National Forest aggregate approximately 200 acres.

The State of California has waived its preference right of application for highway rights-of-way or material sites afforded by Section 24 of said Act.

At 10 a.m. on June 1, 1976, the national forest lands shall become available for consummation of a pending Forest Service exchange, application CA 1827.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, Federal Office Building, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

WALTER F. HOLMES,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76–12112 Filed 4–26–76;8:45 am]

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application for Amendment

A permit was issued to the Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico, on November 10, 1975, pursuant to the Endangered Species Act of 1973: "May take and transport young and not to exceed 50 adult Colorado River squawfish (*Ptychocheilus lucius*) for purposes of scientific research and propagation."

A notice containing the application for the permit was published in the FEDERAL REGISTER on August 5, 1975 (40 FR 32849), soliciting public comments for a period of 30 days.

A notice of the issuance of the permit was published on March 5, 1976 (41 FR 9576)

A request for significant amendments to the permit has been received from the office of the Regional Director, Albuquerque, New Mexico. Published herewith are copies of the request for amendments and the terms of the permit. This request is being considered pursuant to section 13.23, Title 50 Code of Federal Regulations (see 39 FR 1162)

Subject: Request to Amend Endangered Species Permit No. PRT–225–C.

We request additional amendments to the subject permit (Colorado squawfish) to permit the transportation and transplanting into the wild of squawfish now held and/or captively produced in the future at our Willow Beach National Fish Hatchery.

Transplants back into the wild will be done in accordance with the Squawfish Recovery Plan, the recommendation of the Recovery Team, and with the concurrence of the respective State. All transplants will be limited to suitable waters within the species' historical range of the Colorado River system.

We are presently holding approximately 2,500 to 3,000 squawfish, of which less than 25 are adults or subadults taken from the wild. The remaining number has been produced in captivity at the hatchery as a result of our efforts to develop techniques of hatchery propagation for this endangered species. These efforts have been successful and we now must plan and carry our release attempts into the wild.

We also request that subject permit be amended to include the State of New Mexico under Section 10, "Location Where Authorized Activity May Be Conducted."

We further request the subject permit be amended to include authority to transport to the Fish Disease Control Laboratory, Fort Morgan, Colorado, 15 subadult squawfish for the purpose of scientific research (disease determination); and to transport and hold all squawfish presently at Willow Beach National Fish Hatchery to another suitable site while the Willow Beach facility is being disinfected.

R. J. STEPHENS.

To: Gene Hester, SAC—Permit Section, Washington, D.C.

From: Acting Regional Director, Region 2, Jerry L. Stegman.

Request interim approval to have Endangered Species Permit No. PRT 8–225–C amended to authorize the following immediate actions:

1. Sacrifice and ship up to 15 subadult Colorado squawfish (*Ptychocheilus lucius*) to permit laboratory analysis at Fish Disease Control Lab., Fort Morgan, CO to determine if species is carrier for I.P.N. disease. These subadult squawfish are progeny produced in summer of 1974 from wild stock acquired prior to 1973 Act which are being held at the Willow Beach National Fish Hatchery. Approximately 2,500 squawfish are currently being held at the hatchery.

2. Authorize the moving, transportation and holding of all squawfish presently at Willow Beach National Fish Hatchery to another suitable site while Willow Beach is being disinfected. Exact site not yet selected but it will be under the direct control of Service employees or cooperator.

DEPA...ENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

3-201 (7/74)

FEDERAL FISH AND WILDLIFE PER

2. AUTHORITY - STATUTES: 16 USC 1539(a)
REGULATIONS (Attached): 50 CFR 17.22

1. PERMITTEE
Regional Director
U.S. Fish and Wildlife Service
Post Office Box 1306
Albuquerque, New Mexico 87103

NUMBER: PRT 8-225-C

4. RENEWABLE	5. MAY COPY
[X] YES [ ] NO	[X] YES [ ] NO

6. EFFECTIVE	7. EXPIRES
NOV 10 1975	12/31/77

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

9. TYPE OF PERMIT: ENDANGERED SPECIES - SCIENTIFIC/PROPAGATION

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED: States of the Colorado River drainage; Colorado, Utah, Nevada, Arizona and California. Propagation activities to take place at Willow Beach National Fish Hatchery, Arizona

11. CONDITIONS AND AUTHORIZATIONS

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE and any person who is under the direct control of, or who is employed by or under contract to, the permittee.

D. May take and transport young and not to exceed 50 adult Colorado River squawfish (Ptychocheilus lucius) for purposes of scientific research and propagation.

E. Activities conducted under authority of this permit must be for official business only.

F. The containers in which the squawfish are shipped must be plainly marked, labeled or tagged giving the names and addresses of the shipper and consignee with an accurate description of the contents by number and species.

[X] ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON REVERSE ALSO APPLY

12. REPORTING REQUIREMENTS: A report of the activities conducted under authority of this permit must be submitted to the Director (FWS), P.O. Box 19183, Washington, D.C. 20036, by January 31st of the following year.

ISSUED BY: s/ Lynn A. Greenwalt for | TITLE: Chief, Division of Law Enforcement | DATE: NOV 10 1975

DISTRIBUTION

U.S. Government Printing Office 1974 - 624-618

G. Permittee must have a copy of this permit in his possession while conducting the activities authorized.

H. A duplicate of this permit must be attached to the container in which the squawfish are placed for storage, supervision, or care.

I. The loss, death, or destruction of the squawfish shall be reported within 24 hours to the Albuquerque USFWS office (505-766-2091) and in writing to the Director (FWS), Box 19183, Washington, D.C. 20036, within 10 days.

J. Maintain records as required in 50 CFR 13.46.

In keeping with the spirit of the Endangered Species Act of 1973, this notice is being published to allow public comment on the request for an amendment. Interested persons may comment on this amendment by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received within 30 days of the date of publication will be considered.

Dated: April 20, 1976.

BERTRAM S. FALBAUM,
Chief,
Division of Law Enforcement.

[FR Doc.76-12082 Filed 4-26-76;8:45 am]

Office of Hearings and Appeals

[Docket No. M 76-280]

ALLIED CHEMICAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Allied Chemical Corporation, Semet-Solvay Division, has filed a petition to modify the application of 30 CFR 75.1710 to its Shannon Branch Mine, Capels, McDowell County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

To be read in conjunction with Section 75.1710 is 30 CFR 75.1710-1 which in pertinent part provides:

* * * Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) On and after January 1, 1976, in coal mines having mining heights of 24 inches or more, but less than 36 inches, and

(6) On and after July 1, 1976, in coal mines having mining heights of less than 24 inches. * * *

The substance of Petitioner's statement is as follows:

1. Petitioner states that by memorandum dated September 20, 1973, the MESA Acting Assistant Administrator interpreted 30 CFR 75.1710-1 to mean that "mining height" as used in such section was "the distance from the floor to the finished roof less 12 inches."

2. Petitioner's Shannon Branch Mine typically has mining heights varying in height between 31 and 52 inches. Some areas have been encountered where the mining height is less than 31 inches. Petitioner is constantly encountering naturally occurring irregularities in the coal seams including local undulations and dips and rises.

3. The self-propelled electric face equipment operated in the subject mine is as follows: 120-M-Jeffrey Continuous Miner (37 inches); 9CM Joy Continuous Miner (32 inches); 35Y Lee Norse Continuous Miner (37 inches); 28E Lee Norse Continuous Miner (28 inches); 14 BU7 Loader (27 to 37 inches); 14 NU10 Loader (30 inches); 11 RU Cutting Machine; 15RU Cutting Machine (40½ inches); 300 Galis Roof Bolting Machine (27 inches); 380 Galis Roof Bolting Machine (29 inches); DJD-7H-C-2-S-8Hk Fletcher Roof Bolting Machine (32 inches); 48-S12-40 Torkar

Shuttle Car (46 inches); 6SC Shuttle Car (31 inches); 21 S.C. Shuttle Car (28 inches); 18 S.C. Shuttle Car; 10 S.C. Shuttle Car (41 inches); Joy Coal Drill (CD 71); Badger Coal Auger (40 inches); Model 74 S & S Scoop Battery; Model AR–75 Elkhorn Scoop—Battery; Model P744 Kersey Tractor—Battery; and ACME 275 Compressor.

4. Petitioner states that the aforesaid equipment has been in service for several years and when manufactured was not designed for the installation of canopies or cabs which would comply with the provisions of 30 CFR 75.1710–1 (a) and, at the same time, assure the safety of individual miners at the subject mine. Allied believes that much of said equipment is not constructed in a manner sufficient to support a canopy or cab.

5. Petitioner states that it has made numerous and repeated good faith experiments and efforts to discover, purchase and/or construct suitable canopies or cabs in order to comply with the provisions of 30 CFR 75.1710–1(a), and, at the same time, assure the safety of individual miners at the subject mine, but such experiments and efforts have been unsuccessful.

6. Petitioner maintains that technology does not presently exist to enable Allied to equip its self-propelled electric face equipment with suitable canopies or cabs in order to comply with the provisions of 30 CFR 75.1710–1(a) and, at the same time, assure the safety of individual miners at the subject mine.

7. It is Petitioner's position that the use of canopies or cabs on the self-propelled electric face equipment would result in the diminution of safety to the individual miners at the subject mine for the following reasons:

(a) While canopies or cabs may have the necessary height clearance some of the time, the necessary clearance frequently diminishes to zero when either the bottom or the full seam undulates or when rolls, dips or rises are encountered. This creates a hazard in that canopies or cabs damage or destroy roof bolts, headers, and ventilation devices. On occasion the canopies or cabs are torn off when they become wedged against the roof. A high probability of injury exists under such circumstances;

(b) When operating with a canopy or cab, the individual operator of self-propelled electric face equipment has his field of vision so severely obstructed and restricted that operation may become hazardous to the individual operator himself and to all of the persons in his working area;

(c) When operating with a canopy or cab, the individual operator must ride in such a cramped position that fatigue is more readily induced and reaction time is slowed and alertness impaired;

(d) When operating with a canopy or cab, because of the combination of severely limited vision and close confinement individual operators tend to lean out of the operating compartment in order to promote better vision and less fatigue, thereby increasing the risk of an individual operator being crushed between equipment and coal ribs;

(e) When operating with a canopy or cab, ingress to and egress from self-propelled electric face equipment is so restricted that the individual operator may be substantially hindered in rapidly escaping or may be held captive and unable to escape, when the action of the roof, smoke or fire, or some other unforeseen danger would clearly warrant such escape; and

(f) When operating with a canopy or cab, the close confinement, obstructed and restricted vision and severely limited ingress and egress encourages individual operators to attempt to manipulate the controls from outside of the equipment while standing between the equipment and the rib, thereby increasing the risk of an individual operator being crushed between equipment and coal ribs.

8. The individual operators of self-propelled electric face equipment in the subject mine are at all times under fully-supported roof in compliance with MESA approved roof-control plan. Petitioner avers that such roof support is deemed satisfactory for all other personnel in the mine, including the helpers on self-propelled electric face equipment.

9. Petitioner states that numerous UMWA employees at the subject mine have complained that installation of cabs or canopies on self-propelled electric face equipment in the present mining heights will reduce safety. In some cases, said employees have refused to operate self-propelled electric face equipment when hampered by a cab or canopy which reduces visibility, bumps or catches the roof or roof supports, more readily reduces fatigue, or prevents rapid escape from its confines.

10. Petitioner proposes the following alternative method for compliance with 30 CFR 75.1710–1(a) and maintenance of safe roof and rib conditions in connection with operation of self-propelled electric face equipment at the subject mine:

(a) Petitioner proposes to operate its present self-propelled electric face equipment as its alternate method of compliance with 30 CFR 75.1710–1(a);

(b) Petitioner will replace its present self-propelled electric face equipment as such equipment wears out with new redesigned smaller equipment with cabs or canopies installed to the extent that such cabs or canopies may be developed to satisfy the problems identified in this Petition;

(c) Petitioner will continue to perform research and experimentation to attempt to design a cab or canopy for each piece of its present self-propelled electric face equipment which would comply with the provisions of 30 CFR 75.1710–7 (a) and, at the same time, assure the safety of individual miners at the subject mine;

(d) If a workable design is discovered by Petitioner, said design will be implemented on an experimental basis for evaluation by Petitioner, MESA and UMWA personnel under actual working conditions. If said experimental operation is successful, Petitioner will retrofit those pieces of its self-propelled electric face equipment with the form of cab or canopy for which successful evaluation has been made;

(e) Petitioner will affirmatively seek ideas from UMWA personnel, MESA, and other members of the coal mining industry as to design for cabs and canopies for use in low coal;

(f) Petitioner will, by letter, advise MESA's local District Manager with jurisdiction over the subject mine of the progress being made, if so requested by the District Manager; and

(g) In addition to complying with the roof control plan in effect at the subject mine, Petitioner will reinstruct all face workers and section supervisory and inspection personnel in roof and rib fall recognition and prevention techniques as well as safe equipment operation.

11. Petitioner believes that, under present conditions, it is impossible to install or utilize canopies or cabs on the self-propelled electric face equipment in the subject mine which would provide the same degree of safety to miners as its present equipment provides.

12. Petitioner believes that its present self-propelled electric face equipment, and the adoption of its proposed alternate method, does and will at all times guarantee no less than the same measure of protection afforded the miners of the subject mine by the mandatory standard contained in 30 CFR 75.1710–1(a) and that the application of 30 CFR 75.1710–1(a) without modification to the subject mine will result in a diminution of safety to the miners in such mine as compared with the level of safety now afforded.

Request for Hearing or Comments. Persons interested in this petition may request a hearing on the petition or furnish comments on or before May 27, 1976. Such requests or comments must be filed with the Office of Hearings and and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

BRUCE A. BURNS,
Acting Director, Office of Hearings and Appeals.

APRIL 20, 1976.

[FR Doc.76–12103 Filed 4–26–76;8:45 am]

[Docket No. M 76–269]

CARMELLA COAL & MINERAL, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Carmella Coal & Mineral, Incorporated, has filed a petition to modify the application of 30 CFR 75.1710 to its 1A Mine, Letcher County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

To be read in conjunction with Section 75.1710 is 30 CFR 75.1710–1 which in pertinent part provides:

* * * Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active working of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) On and after January 1, 1976, in coal mines having mining heights of 24 inches or more, but less than 36 inches, and

(6) On and after July 1, 1976, in coal mines having mining heights of less than 24 inches. * * *

The substance of Petitioner's statement is as follows:

1. Petitioner seeks modification of the foregoing standard as it applies to a Model 512 Goodman cutting machine in Petitioner's Mine 1A. Said cutting machine is 28 inches in height.

2. Said 1A Mine is in the No. 3 Elkhorn Seam ranging from 30 to 38 inches. Petitioner maintains that it is constantly encountering ascending and descending grades, resulting in dips in both top and bottom.

3. Petitioner states that installation of a canopy on its cutting machine will create the hazards of limitation of operator visibility and cramped operator positions.

Requests for Hearing or Comments. Persons interested in this petition may request a hearing on the petition or furnish comments on or before May 27, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

BRUCE A. BURNS,
Acting Director, Office of Hearings and Appeals.

APRIL 20, 1976.

[FR Doc.76–12100 Filed 4–26–76;8:45 am]

[Docket No. M 76–271]

DOUBLE O COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Double O Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its 131 Mine, Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

To be read in conjunction with Section 75.1710 is 30 CFR 75.1710–1 which in pertinent part provides:

* * * Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) On and after January 1, 1976, in coal mines having mining heights of 24 inches or more, but less than 36 inches, and

(6) On and after July 1, 1976, in coal mines having mining heights of less than 24 inches. * * *

The substance of Petitioner's statement is as follows:

1. Petitioner's haulage equipment, with respect to which this modification is sought, consists of one (1) Kersey Scoop model 24, two (2) roof bolting machines, one (1) 14 BU Joy Loading Machine, and four (4) Porter Buggies.

2. Petitioner's No. 131 Mine is in the lower Elkhorn Seam and ranges from 36 to 42 inches in height. The coal seam has consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that, as a result of such dips in the coal bed, canopies must be installed so as to protect against their catching on the roof or destroying roof supports.

4. Petitioner states that installation of such canopies allows only a 23-inch vertical operating compartment, limiting the visibility of the equipment operator, and creating consequent hazards to such operator, and to other employees in the mine.

Request for Hearing or Comments. Persons interested in this petition may request a hearing on the petition or furnish comments on or before May 27, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

BRUCE A. BURNS,
Acting Director, Office of Hearings and Appeals.

APRIL 20, 1976.

[FR Doc.76–12101 Filed 4–26–76;8:45 am]

[Docket No. M 76–279]

UNITED POCAHONTAS COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861 (c) (1970), United Pocahontas Coal Company has filed a petition to modify the application of 30 CFR 75.1710 to its Algoma No. 14 Mine, McDowell, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

To be read in conjunction with Section 75.1710 is 30 CFR 75.1710–1 which in pertinent part provides:

* * * Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) On and after January 1, 1976, in coal mines having mining heights of 24 inches or more, but less than 36 inches, and

(6) On and after July 1, 1976, in coal mines having mining heights of less than 24 inches. * * *

The substance of Petitioner's statement is as follows:

1. Petitioner states that the United No. 14 Mine has an average mining height of 40 inches. Due to the limited clearance between equipment and roof support in a seam of this height, the operator must operate under conditions of reduced visibility. The addition of a cab or canopy reduces existing visibility to the point that hazards are created, described by Petitioner, as follows:

(a) In order to allow an operator even minimal visibility across the top of his machine, a canopy must add several inches of height to a piece of equipment. In a mining height of less than 48 inches, the dimensions of roof support used to supplement the regular bolting plan become very critical; thus, the strength of supplemental roof support must be limited in lower areas in order to accommodate the enlarged equipment;

(b) A canopy obscures an operator's view of overhead roof support, and this, along with the accompanying increase in equipment height, substantially increases the probability of roof support being dislodged through an error in judgment by the operator. While a roof fall is not normally the immediate result of such an occurrence, Petitioner states, the roof is weakened each time its support is disturbed;

(c) In mining heights under 48 inches, equipment operators use variations in seam height to great advantage. Whenever possible, switching and maneuvering operations are performed where seam height allows the best visibility. In order for a piece of equipment to be used on a given section, its canopy must be lowered to allow clearance under the lowest conditions on that section. Thus, the advantage of using higher areas for difficult maneuvering and the safety which goes with it are lost. The operator is forced to negotiate the entire section under the limiting conditions of only a part of it;

(d) Due to the severely reduced visibility caused by a cab or canopy in mining heights below 48 inches, an operator often must extend his head beyond the side support of the canopy in order to see ahead of his machine. Extending himself to the side of the equipment results in an unnatural operating position for the driver and, thus, reduces his ability to control the equipment. In this position, the operator is vulnerable to injury due to collision with the rib or other obstacles in tight clearance situations; and

(e) When an operator's vision is restricted by the addition of a cab or canopy, the increased hazard to persons working near the moving equipment is obvious. This hazard is made worse when side clearances are reduced due to the installation of a cab, thereby creating a "pinch-point" for persons who happen to be beside a machine while it is in motion.

2. Petitioner maintains that at present, technology is not available to allow it to install cabs or canopies on the equipment in use at the Algoma No. 14 Mine without creating serious safety hazards.

3. Petitioner avers that pursuant to a decision of the Interior Board of Mine Operations Appeals, a violation of a mandatory health or safety standard is not established where compliance is made impossible by the unavailability of equipment, materials or qualified technicians. On this basis, and until such time as equipment is available which meets the standards set forth in 30 CFR 75.1710-1, and which can be operated safely in the mining of coal at the Algoma No. 14 Mine, Petitioner requests a modification of subparagraphs (5) and (6) of the above standard, which require the installation and use of cabs or canopies at said mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before May 27, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

BRUCE A. BURNS,
Acting Director,
Office of Hearings and Appeals.

APRIL 20, 1976.

[FR Doc.76-12102 Filed 4-26-76;8:45 am]

National Park Service

[Order No. 83, Amdt. 1]

MANAGER, HARPERS FERRY CENTER

Delegation of Authority

National Park Service Order No. 83, approved April 8, 1974, and published in the FEDERAL REGISTER of April 18, 1974 (39 FR 13905) is hereby amended to change Section 2 Redelegation as follows:

Section 2. Redelegation. The Manager, Harpers Ferry Center may, in writing, redelegate to his officers and employees the authority delegated in this order and may authorize written redelegations of such authority except that contract and procurement authority may only be redelegated to the Assistant Manager, Administration and the Procurement and Property Management Officer. The Assistant Manager, Administration and the Procurement and Property Management Officer may in writing redelegate to their officers and employees contract and procurement authority not in excess of $50,000. Each redelegation shall be published in the FEDERAL REGISTER.

(205 DM as amended; 245 DM as amended; Sec. 2 of Reorganization Plan No. 3 of 1950)

Dated: April 21, 1976.

JOHN E. COOK,
Acting Director,
National Park Service.

[FR Doc.76-12049 Filed 4-26-76;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 16, 1976. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by May 7, 1976.

WILLIAM MURTAGH,
Acting Director, Office of Archeology and Historic Preservation.

ALABAMA

Lawrence County

Courtland vicinity, *Wheeler, Joseph, Plantation,* E of Courtland off AL 20.

Macon County

Shorter vicinity, *Atasi Site,* N of Shorter.

ARKANSAS

Stone County

Mountain View, *Stone County Courthouse,* Courthouse Sq.

CALIFORNIA

Santa Cruz County

Santa Cruz, *Mission Hill Area Historic District,* Mission St.

COLORADO

Larimer County

Estes Park vicinity, *Fall River Historic District,* W of Estes Park in Rocky Mountain National Park.

DELAWARE

Sussex County

Lewes vicinity, *Delaware Breakwaters and Lewes Harbor,* E of Lewes at Cape Henlopen.

IDAHO

Ada County

Boise, *Boise Capitol Area District,* 5th, 8th, State, and Bannock Sts.

Murphy vicinity, *Swan Falls Dam and Power Plant,* E of Murphy at Snake River (also in Owyhee County).

INDIANA

Jennings County

North Vernon, *Vernon Historic District,* IN 3/7, 1 mi. S of North Vernon.

LOUISIANA

Morehouse Parish

Oak Ridge vicinity, *Cedars Plantation,* 3 mi. W of Oak Ridge on SR 5503.

St. Landry Parish

Washington, *Lalanne, Dominique, House and Store,* Bridge and Dejean Sts.

MAINE

Androscoggin County

Auburn, *Little, Edward, House,* 217 Main St.
Lewiston, *Frye, Sen. William P., House,* 453–461 Main St.
Lewiston, *Lewiston City Hall,* Pine and Park Sts.
Lewiston, *Oak Street School,* Oak St.

Cumberland County

Scarborough vicinity, *Hunniwell, Richard, House,* W of Scarborough on Winnock's Neck and Old County Rds.

Lincoln County

Newcastle, *St. Andrew's Church,* Glidden St.
North Whitefield vicinity, *St. Denis Catholic Church,* ME 218 W of North Whitefield.

Oxford County

Bethel, *Gehring Clinic,* off ME 5.

Somerset County

Norridgewock, *Sophie May House,* Sophie May Lane.

York County

North Berwick vicinity, *Morrell House,* N of North Berwick on Bauneg Beg Pond Rd.

MARYLAND

Anne Arundel County

Annapolis, *Reynolds Tavern,* Church Circle.

Howard County

Ellicott City, *Ellicott City Historic District,* MD 144.

MASSACHUSETTS

Berkshire County

Interlaken, *Old Curtisville Historic District,* MA 183.

Bristol County

New Bedford, *County Street Historic District,* roughly bounded by Page, Acushnet, Middle, and Bedford Sts. (includes both sides of street).
Norton, *Clarke, Pitt, House,* 42 Mansfield Ave.
Norton, *Norton Center Historic District,* MA 123.

Essex County

Rockport, *Rockport Downtown Main Street District,* Main, Cleaves, Jewett, and School Sts.
Salem, *Salem Common Historic District,* MA 1A.
Topsfield, *Topsfield Town Common District,* High and Main Sts.

Plymouth County

Hull, *Telegraph Hill,* Boston Harbor.

NEBRASKA

Polk County

Osceola, *Mickey, Gov. John Hopwood, House,* S end of State St.

NEW MEXICO

Taos County

Taos vicinity, *La Morada de Nuestra Senora de Guadalupe,* E of Taos.

NEW YORK

Erie County

Buffalo, *Buffalo Gas Light Company Works,* 249 W. Genesee St.

NORTH CAROLINA

Randolph County

Coleridge, Coleridge Historic District, NC 22.

Robeson County

Pembroke, *Old Main, Pembroke State University,* NC 711.

Rowan County

Millbridge vicinity, *Kerr Mill,* W of Millbridge on Sloan Rd.

Washington County

Skinnersville, *Rehoboth Methodist Church,* U.S. 64, E of Skinnersville.

PENNSYLVANIA

Lackawanna County

Scranton, *Finch Building,* 424 Wyoming Ave.
Scranton, *St. Peter's Cathedral Complex,* 315 Wyoming Ave.

Mifflin County

Lewistown, Mifflin County Courthouse, 1 W. Market St.

Monroe County

Sciota vicinity, *Fenner-Snyder Mill,* N of Sciota on U.S. 209.

Montgomery County

Erdenheim, *Springfield Mill,* Northwestern Ave. between Germantown Ave. and Bethlehem Pike.

Philadelphia County

Philadelphia, *St. Augustine's Catholic Church,* 4th and New Sts.

Warren County

Irvine, *Irvine United Presbyterian Church,* off U.S. 6.

York County

York, *Laurel–Rex Fire Company House,* 41 S. Duke St.

[FR Doc.76–11878 Filed 4–26–76;8:45 am]

WATCH HILL CONCESSIONS, INC.

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice. (5–27–76) the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Watch Hill Concessions, Inc., authorizing it to provide concession facilities and services for the public at Fire Island National Seashore, for a period of five (5) years from January 1, 1975, through December 31, 1979.

An assessment of the environmental impack of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Office of the Superintendent, Fire Island National Seashore, or the North Atlantic Regional Office, National Park Service, 150 Causeway Street, Boston, Massachusetts.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1974, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before May 27, 1976.

Interested parties should contact the Assistant Director, Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: April 21, 1976.

RAYMOND L. FREEMAN,
Acting Associate Director,
National Park Service.

[FR Doc.76–12050 Filed 4–26–76;8:45 am]

Office of the Secretary

Committee on Enhanced Recovery Techniques for Oil and Gas in the United States

MEETING

Notice is hereby given for the following meeting:

The Technology Task Group of the National Petroleum Council's Committee on Enhanced Recovery Techniques for Oil and Gas in the United States will meet on Wednesday and Thursday, May 12 and 13, 1976 starting at 9:00 a.m. in the Amoco Educational Center, Sheraton Inn—Skyline East, Tulsa, Oklahoma.

The agenda includes the following items for discussion:

1. Review and discuss general projections.
2. Review and discuss associated process costs.
3. Discuss future assignments.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

The purpose of the National Petroleum Council is to provide to the Secretary of the Interior, upon request, advice, information and recommendations, upon any matter relating to petroleum or the petroleum industry.

The meeting will be open to the public to the extent that space and facilities permit. Any member of the public may file a written statement with the Council either before or after the meeting. Interested persons who wish to speak at the meeting must apply to the Council and obtain approval in accordance with its established procedures.

Further information about the meeting may be obtained from Ben Tafoya, Office of the Assistant Secretary—Energy and Minerals, Department of the Interior, Washington, D.C. (telephone: 343–6226).

Dated: April 22, 1976.

WILLIAM L. FISHER,
Assistant Secretary
of the Interior.

[FR Doc.76–12096 Filed 4–26–76;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A336]

NORTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following North Dakota Counties as a result of severe snowstorms and heavy snows from March 22 through April 30, 1975:

Dunn Mountrail
McKenzie

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 Public Law 94–68, and the provisions of 7 CFR 1832.3 (b) including the recommendation of Governor Arthur A. Link that such designation be made.

Applications for emergency loans must be received by this Department no later than June 14, 1976, for physical losses and January 14, 1977, 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 impractical and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 20th day of April, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76–12080 Filed 4–26–76;8:45 am]

Forest Service

MONTICELLO PLANNING UNIT

Availability of Final Environmental Statement

Pursuant to Section 102(2) (C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Monticello Planning Unit, Manti-LaSal National Forest, Utah. The Forest Service report number is USDA–FS–FES (Adm) R4–75–3.

The environmental statement identifies and evaluates the probable effects of the land use plan for the Monticello Planning Unit on the Manti-LaSal National Forest in southeastern Utah. The land use plan sets forth the allocation of lands to a variety of resource uses and activities, and provides management direction and decisions for all federally managed lands within the planning unit. The plan also provides for the protection and preservation of natural, scenic, archeologic, and wildlife values within the planning unit.

This final environmental statement was transmitted to CEQ on April 19, 1976.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th St. & Independence Ave., S.W., Washington, D.C. 20250.
Regional Planning Office, USDA, Forest Service, Federal Building, Room 4403, 324–25th Street, Ogden, Utah 84401.
Forest Supervisor, Manti-LaSal National Forest, 350 East Main Street, Price, Utah 84501.
District Forest Ranger, Monticello Ranger District, 185 N. 1st E., Monticello, Utah 84535.

A limited number of single copies are available upon request to Forest Supervisor Reed C. Christensen, Manti-LaSal National Forest, 350 East Main Street, Price, Utah 84501.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Dated: April 19, 1976.

P. M. REES,
Director,
Regional Planning and Budget.

[FR Doc.76–12113 Filed 4–26–76;8:45 am]

Rural Electrification Administration

EAST KENTUCKY POWER COOPERATIVE, INC.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement in accordance with Section 102(2) (C) of the National Environmental policy Act of 1969, in connection with a loan application from East Kentucky Power Cooperative, Inc. This project provides financing for the construction of Spurlock Unit No. 2, related substations and related transmission lines from the station to the new Avon substation and to the Stuart generating station.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., Room 4310, or at the borrower address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Richter at the address given above. Comments must be received on or before June 28, 1976, to be considered in connection with the proposed action.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 23d day of April 1976.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc.76–12365 Filed 4–23–76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

IMPORTERS' TEXTILE ADVISORY COMMITTEE

Change of Room for Meeting

On February 20, 1976, there was published in the FEDERAL REGISTER (41 FR 7800) a notice dated February 17, 1976 announcing a meeting of the Importers' Textile Advisory Committee at 10:30 a.m. on May 6, 1976, in Room 6802, Department of Commerce, 14th & Constitution Avenue NW., Washington, D.C. 20230.

The purpose of this notice is to announce that the room number of that meeting has been changed to Room 4830.

Dated: April 26, 1976.

ALAN POLANSKY,
Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.76–12394 Filed 4–26–76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEE

Meeting

In accordance with Section 10(a) (2) of Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of May 1976:

Minority Advisory Committee, Adamha, May 26–28.—Open Meeting, May 26, 1:30 p.m., DHEW Regional Office Building, Room 4417, 3531–35 Market Street, Philadelphia, Pennsylvania; 7:00 p.m., North Central Community Mental Health Center, 1531 W. Tioga Street. May 27, 9:00 a.m., North Central Community Mental Health Center, 1531 W. Tioga Street; 1:30 p.m., Hahnemann Mental Health Center, Hotel Philadelphia, 314

N. Broad Street. May 28, 9:00 a.m., DHEW Regional Office Building, 3531–35 Market Street. Contact: Ernest F. Hurst, Parklawn Building, Room 13C–15, 5600 Fishers Lane, Rockville, Maryland 20852, 301–443–3838.

Purpose: The Minority Advisory Committee, ADAMHA, advises the Secretary, Department of Health, Education, and Welfare, and the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, on needs, programs, and activities regarding minority alcohol, drug abuse, and mental health matters, and makes recommendations for possible solutions which meet the needs and concerns of minority groups throughout the United States. The Committee functions in an advisory capacity to the Administrator, ADAMHA, on these matters which relate to the National Institute on Alcohol Abuse and Alcoholism, National Institute on Drug Abuse, and the National Institute of Mental Health.

Agenda: This meeting will be open to the public. On May 26, 1:30 p.m., the Committee will discuss Reports on the FY 1976–77 Work Plans Priority Issues including (1) High Rates of Homicides and Suicides Among Minority Youth, (2) Credentialing Systems and Paraprofessionals, (3) Indian and Hispanic Health Services, (4) Indirect Space Cost, and (5) Volunteer Services. At 7:00 p.m., the Committee will meet with community representatives at the North Central Community Mental Health Center. On May 27, from 9:00 a.m. to 12 noon, there will be an agency visit to the North Central Community Mental Health Center. At 1:30 p.m., there will be an agency visit at the Hahnemann Mental Health Center. On May 28, the Committee will meet with Federal, State, and local officials for a review and discussion of Special Alcohol, Drug Abuse, and Mental Health Needs and Concerns of Minority Groups in Region III. Agenda items are subject to change as priorities dictate. Attendance by the public will be limited to space available.

Substantive program information may be obtained from the contact person listed above.

Mr. James C. Helsing, Deputy Director, Office of Public Affairs, ADAMHA, will furnish, on request, summaries of the meeting and a roster of the committee members. Mr. Helsing is located in Room 16–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, 301–443–3783.

Dated: April 21, 1976.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.76–12046 Filed 4–26–76;8:45 am]

Center for Disease Control

OCCUPATIONAL SAFETY AND HEALTH

Certain Chemical Agents; Request for Comments

Section 20(a)(3) of the Occupational Safety and Health Act of 1970 [(29 U.S.C. 669(a)(3)6)] provides that the Secretary of Health, Education, and Welfare, on the basis of information available to him, shall develop criteria dealing with toxic materials which will describe exposure levels that are safe for various periods of employment. Section 22(c) of the Act, authorizes the National Instiute for Occupational Safety and Health (NIOSH) to develop recommended occupational safety and health standards and to perform all functions of the Secretary of Health, Education, and Welfare, under sections 20 and 21 of the Act. NIOSH is proposing to develop criteria documents and recommended standards on the following substances and processes for completion in 1979–80:

Acetone
Cold Environments
Vibration
Acrolein
Oxalic Acid
p-Phenylene Diamine
Bromine
Organo-Isocyanates
Acetic Acid
Naphthalene
Hydrogen Chloride (HCL)
Ethylene Glycol Monomethyl Ether
Acrylonitrile
2,4-Dinitrophenol
Nitrotoluenes
Manganese and its compounds
Methyl Chloride
Nitro Benzenes
Sec-Amyl Acetate
Chloropicrin
Di-Phenyl Amine
Isopropyl Amine
Methyl Isocyanate
Tri-o-Cresyl Phosphate
Organic Mercury Compounds
Organic Lead Compounds
Roofing Industry
Printing Industry
Slaughtering and Rendering Plants
Tunneling and Caisson Workers

Prior to finalizing plans for the development of these documents, the public is invited to submit comments, including suggestions for additions or deletions, with accompanying documentation to the Director, Division of Criteria Documentation and Standards Development, NIOSH, 5600 Fishers Lane, Park Building, Room 3–18, Rockville, MD 20852, on or before June 1, 1976.

NIOSH is anticipating making a final decision in June 1976 on the documents to be developed in 1979–80.

All information received concerning these substances, except that information which is trade secret and protected by Section 15 of the Act, will be available for public inspection at the foregoing address.

Dated: April 21, 1976.

EDWARD J. BAIER,
Acting Director, National Institute for Occupational Safety and Health, Center for Disease Control.

[FR Doc.76–12047 Filed 4–26–76;8:45 am]

OCCUPATIONAL SAFETY AND HEALTH

Certain Chemical Agents; Request for Information

Section 20(a)(3) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)(3)] provides that the Secretary of Health, Education, and Welfare, on the basis of information available to him, shall develop criteria dealing with toxic materials which will describe exposure levels that are safe for various periods of employment. Section 22(c) of the Act authorizes the National Institute for Occupational Safety and Health (NIOSH) to develop recommended occupational safety and health standards and to perform all functions of the Secretary of Health, Education, and Welfare, under sections 20 and 21 of the Act. NIOSH is proposing to develop criteria documents containing recommended occupational health standards for the following substances and processes for completion in 1978–79:

Cobalt
Benzyl Chloride
Wood dust, non-allergenic
Ethylene chlorohydrin
Dichloroethyl ether
Carbon black
Dichloroacetylene
Methyl mercaptan
Butyl mercaptan
Perchloromethyl mercaptan
Ethyl mercaptan
Furfuryl alcohol
Alkali metal hydroxides
Cesium hydroxide
Lithium hydroxide
Potassium hydroxide
Rubidum hydroxide
Iron and its compounds (includes rouge)
Diazomethane
Boron tribromide
Boron oxide
Diglycidyl ether
n-butyl g.e.
Allyl g.e.
Isopropyl g.e.
Chlorinated Benzenes
Ozone
Foundries
Welding and Brazing

Each criteria document will include among other items an evaluation of available information relative to the areas listed below.

Any person having information or data in any of the areas listed below, or in other areas considered relevant to the establishment of a safe and healthful occupational environment involving these substances is requested to submit such information, with accompanying documentation to the Director, Division of Criteria Documentation and Standards Development, NIOSH, 5600 Fishers Lane, Park Building, Room 3–18, Rockville, MD 20852, on or before July 1, 1976.

1. Establishment of safe occupational environmental levels for such agents including levels for acute and chronic exposure to airborne concentrations of the chemical agents as well as safe practices concerning direct contact with such agents.

2. Establishment of biologic standards, i.e., the levels of such agents, metabolites, or other effects of exposure which may be present within man without his suffering ill effects taking into consideration (a) the correlation of airborne concentrations of, and extent of exposure to, such substances with effects on specific biologic systems of man such

as the circulatory, respiratory, urinary, and nervous system, and (b) the analytical methods for determining the amount of the substance which may be present within man.

3. Engineering controls, including ventilation, environmental temperature, humidity, and housekeeping and sanitation procedures, with attention to the technological feasibility of such controls.

4. Specifications for the conditions under which personal protective devices should be required.

5. Methods, including instruments, for air sampling and sample analysis of the chemical agents and methods of measuring levels of exposure to the physical agents.

6. The need for medical examinations for workers exposed to such agents, the frequency of such examinations, and the specific diagnostic tests which should be used and the rationale of their selection.

7. Work practices or procedures which may be instituted for control of the workplace environment in normal operations and those which may be instituted when occupational environmental levels are temporarily exceeded or where peak concentrations of chemical agents in man are reached.

8. The types of records concerning occupational exposure to such agents that employers should be required to maintain.

9. Warning devices and labels which should be required for the prevention of occupational diseases and hazards caused by such agents.

All information received concerning these substances, except that information which is trade secret and protected by Section 15 of the Act, will be available for public inspection at foregoing address.

Dated: April 21, 1976.

/s/ EDWARD J. BAIER,
Acting Director, National Institute for Occupational Safety and Health.

[FR Doc.76-12048 Filed 4-26-76;8:45 am]

Health Resources Administration

NATIONAL ADVISORY COUNCIL ON NURSE TRAINING

Cancellation of Meeting

In FEDERAL REGISTER Document 76-11145 appearing at page 16495 in the issue for Monday, April 19, 1976, the May 26-28 meeting of the "National Advisory Council on Nurse Training" has been cancelled.

Dated: April 21, 1976.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc.76-12081 Filed 4-26-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N-76-519; Land Sales Division File No. 76-44-IS]

LAKE MEAD RANCHEROS

Proceedings and Opportunity for Hearing

Notice is hereby given that: On March 4, 1976, the Department of Housing and Urban Development, Office of Interstate Land Sales Registration, attempted to serve upon Robert E. Brown, President, Arizona Florida Development Corporation, 8410 N.E. 1st Place, Miami, Florida 33138, a Notice of Proceedings and Opportunity for Hearing by certified mail and service of process was not possible since the addressee could not be located. Accordingly, pursuant to 75 U.S.C. 1706 (d) and 24 CFR 1770.45(b)(1), the Notice of Proceedings and Opportunity for Hearing is being issued as follows:

Notice of Proceedings and Opportunity for Hearing

I. The Secretary in administering the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701, et seq., and its Regulations finds her public files discloses that:

A. The Respondent is a Corporation organized under the laws of the State of Florida and has its principal office in Miami, Florida.

B. Robert E. Brown, is the President of the Respondent.

C. The mailing address of Respondent's last known principal office or place of business is 8410 N.E. First Place, Miami, Florida.

D. The Respondent, Arizona Florida Development Corporation filed a Statement of Record and Property Report for Lake Mesa Rancheros Located in Mohave County, which became effective November 17, 1969.

II. The Office of Interstate Land Sales Registration (OILSR) from its records or from other sources has obtained information which tends to show, and it so alleges that the Statement of Record and Property Report of the subdivision captioned above includes untrue statements of material fact or omits to state material facts required to be stated therein or necessary to make statements therein not misleading to wit:

1. Failure to file the revised first page of the Property Report and revised form of contract in the form and with the language as prescribed by Regulations 24 CFR 1710.110, Part B, 2, 4, 5, and 6 and 24 CFR 1710.105, Part VI, or 24 CFR 1710.120 Section II B, as amended, to disclose and conform to the amendments made in the Interstate Land Sales Full Disclosure Act (15 USC 1710 et seq.) by subsection 812(c)(1) of the Housing and Community Development Act of 1974 (Public Law 93-383) which subsection became effective October 21, 1974.

2. Failure to amend the filing in compliance with the Rules and Regulations of the Office of Interstate Land Sales Registration which became effective on December 1, 1973, 24 CFR 1710 et seq., as required by the Effective Date provision thereof.

III. In view of the allegations contained in Part II above, the Secretary will provide an oportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegation; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV. If the Respondent desires a hearing, he shall file a request for hearing accompanied by an answer within fifteen days after service of this Notice of Proceedings. Respondent is hereby notified that if he fails to file a response pursuant to 24 CFR 1720.140 and 1720.145 within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an order shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the order shall cease to be effective.

V. Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the General Counsel's Clerk for Administrative Proceedings, Room 10150, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI. It is hereby ordered That upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before Administrative Law Judge James W. Mast or other Administrative Judge as may be designated, in Room 7146, HUD Building, 451 Seventh Street, S.W. Washington, D.C. 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or her designee may fix by further order.

This Notice of Proceeding shall be served upon the Respondent pursuant to 24 CFR 1720.440 and/or 44 U.S.C. 1508.

Issued at Washington, D.C., April 21, 1976.

ALAN J. KAPPELER,
Acting Administrator, Interstate Land Sales.

[FR Doc.76-12035 Filed 4-26-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-76-3]

HILLSDALE COUNTY RAILROAD CO.

Petition for Exemption From Hours of Service Act

The Hillsdale County Railroad Company has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, 45 U.S.C. Secs. 61, 62, 63 and 64.

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-76-3, Room 5101, 400 Seventh Street, S.W., Washington, D.C., 20590. Communications received before June 4, 1976, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on April 22, 1976

R. LAWRENCE MCCAFFREY, Jr.,
Chief Counsel Designate,
Federal Railroad Administration.

[FR Doc.76-12051 Filed 4-26-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 25441; Order 76-4-118]

AIRLINE TARIFF PUBLISHING CO.

Order Authorizing Discussions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 22nd day of April, 1976.

By application dated March 19, 1976, Airline Tariff Publishing Company (ATPCO), as agent for carrier participants in its joint passenger fares tariffs, requests that the Board authorize carrier discussions directed toward improving present procedures for filing joint fares and developing standards to be applied in automating the publication of joint fares.

In support of its request, ATPCO states that identical discussion authority was initially authorized by the Board in Order 73-7-7, July 3, 1973; and that as a result of that authorization agreement C.A.B. 23940, which provided for automated publication of joint fares, was filed with the Board. Subsequently, the Board issued its decision in Phase 4 of the Domestic Passenger-Fare Investigation (Phase 4) and, because certain of the provisions of Agreement C.A.B. 23940 were inconsistent with that decision, the Board disapproved the Agreement in Order 75-4-80, April 16, 1975. However, the Board simultaneously renewed the discussion authority previously granted and as a result, Agreement C.A.B. 25255 was filed with and is presently pending before the Board.

ATPCO states that Agreement C.A.B. 25255 was made contingent upon favorable action by the Board on a petition for modification of Phase 4, which was only partially granted[1]; that joint fares have been revised subsequent to the filing of the Agreement based upon criteria inconsistent with the provisions thereof; and that it is therefore necessary to amend the Agreement. ATPCO contends that the Board has recognized in its past orders that an agreement providing for the orderly publication and maintenance of joint fares would be beneficial to both the industry and the public; and that since the initial request for discussion authority the joint fares tariffs have grown from approximately 152,000 routings to over 322,000 routings, thereby increasing the need for automation of the publishing procedures.

Upon consideration of ATPCO's application, we have determined to renew for an additional ninety-day period the discussion authority previously granted in Orders 73-7-7 and 75-4-80. As we stated in Order 75-4-80, we believe that an agreement automating the maintenance of joint fares would represent a significant step forward, particularly inso far as it would result in the publication of additional fares which are presently available only by publication of the carrier's fare-construction rules. Further, such an agreement should eliminate much of the paperwork now required for the routine maintenance of joint fares, and should thus improve the accuracy and completeness of the joint fares tariff. Finally, automated publication of present and additional joint fares should reduce the incidence of fare errors.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204(a), 404, 412, and 414 thereof,

It is ordered that:

1. Air Canada, Air New England, Inc., Aloha Airlines, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Canadian Pacific Air Lines, Limited, Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Eastern Provincial Airways (1963) Ltd., Frontier Airlines, Inc., Hawaiian Airlines, Inc., Hughes Air Corp. d/b/a Hughes Airwest, National Airlines, Inc., Nordair Ltee - Nordair Ltd., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pacific Western Airlines, Ltd., Pan American World Airways, Inc., Piedmont Aviation, Inc., Reeve Aleutian Airways, Inc., Southern Airways, Inc., Texas International Airlines, Inc., TransAir Limited, Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and Wien Air Alaska, Inc., may engage in meetings at which the Board's representatives may be present, for a 90-day period commencing with the date of service of this order to discuss, subject to the limitations set forth in Orders 73-7-7 and 75-4-80, the joint-fare matters set forth in the applications of Airline Tariff Publishing Company in Docket 25441;

2. The Director of the Bureau of Economics shall be given at least 48 hours notice of the time and place of any meetings called pursuant to the authority granted herein;

3. The carriers shall keep complete and accurate minutes of such discussions and a true copy of such minutes shall be filed with the Board's Docket Section not later than two weeks after the close of the discussions;

4. Any agreement or agreements reached as a result of such discussions shall be filed with the Board in accordance with section 412 of the Federal Aviation Act of 1958, and approved by the Board prior to being incorporated in a tariff filing or placed in effect; and

5. This order shall be served upon Air Canada, Air New England, Inc., Aloha Airlines, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Canadian Pacific Air Lines, Limited, Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Eastern Provincial Airways (1963) Ltd., Frontier Airlines, Inc., Hawaiian Airlines, Inc., Hughes Air Corp. d/b/a Hughes Airwest, National Airlines, Inc., Nordair Ltee-Nordair Ltd., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pacific Western Airlines, Ltd., Pan American World Airways, Inc., Piedmont Aviation, Inc., Reeve Aleutian Airways, Inc., Southern Airways, Inc., Texas International Airlines, Inc., TransAir Limited, Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., Wien Air Alaska, Inc., and Airline Tariff Publishing Company.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-12226 Filed 4-26-76;8:45 am]

[Docket No. 29036; Order 76-4-121]

AMERICAN AIRLINES, INC. ET AL.

Order Dismissing Complaint

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 22nd day of April, 1976.

By tariff revisions[1] marked to become effective April 25, 1976, American Airlines, Inc. (American), Eastern Air Lines, Inc. (Eastern), and Pan American World Airways, Inc. (Pan American) propose to increase fares in all mainland-Puerto Rico/Virgin Islands (PR/VI) markets except New York-San Juan by 3.5 percent.

By order 76-2-113, the Board permitted the carriers to increase New York-San Juan fares three percent and

[1] See Order 75-8-126.

[1] Revisions to American Airlines, Inc. Tariff C.A.B. No. 244; Eastern Air Lines, Inc., Tariff C.A.B. No. 417; and Air Tariffs Corporation Tariff C.A.B. No. 53.

fares in other PR/VI markets 0.5 percent. As noted by Eastern, the Board determined that adjusted return on investment (ROI) resulting from that increase would be 10.1 percent in the "all other markets" category [2], based on data for the year ended September 30, 1975. Using the same methodology employed by the Board, and the same base period, Eastern has determined that fares in "all other markets" can be increased by 3.5 percent without exceeding a 12 percent ROI for this part of the ratemaking entity. Specifically, Eastern calculates that the combined ROI for American and Eastern, with the requested increase, will be 11.97 percent for the "all other markets" category, and 11.75 for the entire mainland-Puerto Rico/Virgin Islands ratemaking entity. Subsequent to the date the foregoing justifications were filed, American and Eastern filed supplemental justifications updating their individual operating results to the year ended December 1975. Updated actual results for calendar year 1975 indicate that Eastern's net loss after taxes in the "all other markets" category increased about $500,000 from the year ended September 1975, while American's profits in this Subentity improved by about $348,000.[3]

The Commonwealth of Puerto Rico (Commonwealth) has filed a complaint against Eastern's proposal alleging that recent, frequent fare increases in the mainland-Puerto Rico/Virgin Islands market are having an adverse impact on the movement of traffic, and that the Board must not look only at whether a requested increase will produce a return on investment over 12 percent, but must also consider the effect of such an increase on the Commonwealth's attempts to restore the sagging tourist industry. It also challenges the use of Eastern's financial results in determining revenue need, contending that only American's results should be used since it is the more efficient carrier of the two.

Upon consideration of the filings, the complaint and answer thereto, and all other relevant matters, the Board has determined that the complaint does not set forth sufficient facts to warrant investigation and the request therefor, and consequently the request for suspension, will be denied and the complaint dismissed.

The Board has combined the individual operating results of American and Eastern for calendar year 1975, and has applied the same type of ratemaking adjustments as were made in reviewing other fare increase requests for this ratemaking entity. (See Orders 75–11–116 and 76–2–113.) As indicated in Appendix B, the 3.5 percent increase requested in "all other markets" fares produces an adjusted rate of return of 11.56 percent for American and Eastern combined, and an ROI of 10.71 percent for the entire ratemaking entity.[4] Accordingly, the requested increase will not produce excess profits, and cannot be considered unreasonable.

The Board does not accept the Commonwealth's contention that Eastern's results should not be considered in determining the reasonableness of passenger fares in this ratemaking entity. To begin with, we would point out that past disparities between the unit costs of American and Eastern have narrowed considerably in the past year so that today there is virtually no difference between the carriers' operating costs per available seat-mile. In terms of nonfuel operating costs, Eastern's costs per available seat-mile for calendar 1975 were slightly less than those of American. A significant portion of the difference between each carrier's experienced rates of return is related to American's fuel cost which is almost eight cents per gallon less than Eastern's, and the fact that Eastern's flight equipment is much newer and thus has a higher investment value. In the overall, we have no reason to conclude that Eastern's costs (including return) are inconsistent with the statutory standard of economical and efficient management.

Moreover, substantial adjustment is made to Eastern's reported results to bring its load factors up to the standards established for this market and, consequently, its lower reported load factors do not burden the overall fare level. Furthermore, as to the Commonwealth's request for special consideration for its tourism industry, it must be noted that application of the ratemaking standards established for this ratemaking entity in Order 74–10–78 result in a level of scheduled service fares which is quite favorable to Puerto Rico, particularly in relation to fares to destinations in other ratemaking entities.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered that:

1. The complaint in Docket 29036 be and hereby is dismissed; and

2. A copy of this order be served upon American Airlines, Inc., Eastern Air Lines, Inc., Pan American World Airways, Inc., and the Commonwealth of Puerto Rico.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[5]

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76–12227 Filed 4–26–76;8:45 am]

[2] "All other markets" include all operations in the mainland-Puerto Rico/Virgin Islands ratemaking entity except New York-San Juan.

[3] American carries about 17 percent of total industry traffic in the "all other markets" category.

[4] In determining revenue need, an estimate must be made of fuel prices at the time of tariff effectiveness which in turn is made part of the overall cost inflation factor used in bringing costs beyond the base period-calendar-year 1975. Both American and Eastern project a two-cent-per-gallon increase in the cost of fuel over that experienced for February 1976. For present purposes, the Board has allowed a six-tenth of one cent increase over the February price for Eastern, and a four-tenth of one cent increase for American based on their respective experienced costs. While these increases are lower than those estimated for 48-state operations in Order 76–2–120, fuel costs in the Puerto Rico/Virgin Islands entity, which are heavily influenced by the cost of purchases at a single point (New York), have been much more stable than the costs for 48-state service as a whole. In any event, our use of lower fuel costs does not affect the conclusion reached herein. The details of the Board's analyses will be available for public inspection in the Public Reference Room, Room 710, Monday, April 26, 1976.

[5] Appendix A, U.S. Mainland-Puerto Rico/Virgin Islands Market, actual operating results for the year ended December 31, 1975; and Appendix B, U.S. Mainland-Puerto Rico/Virgin Market, Summary of adjusted operating results for the 12 months ended December 31, 1975 with a 3.5 percent increase in all other markets, are filed as part of the original document.

[Docket 28795; Order 76–4–86]

THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

Authorization of Discussions

Issued under delegated authority April 19, 1976. Motion by Commuter Airline Association of America, Inc., to modify order authorizing discussions.

By order 76–3–36, dated March 5, 1976, the Board authorized intercarrier discussions concerning the creation of a multicarrier computerized reservation system. The order provided, inter alia, that "[a]ll U.S. certificated air carriers * * * shall be given an opportunity to participate in all discussions and activities held pursuant to this order."

By a motion filed with the Board on March 24, 1976, the Commuter Airline Association of America, Inc. (CAAA), requests that the Board modify order 76–3–36 to provide all commuter air carriers with an opportunity to participate in the subject discussions and activities. Because commuter air carriers are not certificated air carriers, they would be excluded from the discussions. CAAA presents that commuter air carriers are scheduled airlines whose services comprise an important and integral part of the national air transportation system. CAAA argues that the omission of commuter air carrier on-line and connecting schedules from consideration in any reservation system would constitute a disservice to the public by depriving agents and passengers of ready availability of connecting services which may represent the only effective service to small communities and indeed will affect the viability of those services through an adverse impact upon their marketability.

No answers to the motion have been filed.

Upon consideration of the motion we have decided to grant the request by CAAA and will remove any bar to participation by commuter air carriers in the discussions. The commuter airlines

do appear to have an interest in the discussions, and it remains the Board's intent, as stated in its order authorizing the discussions, "to ensure that any agreement that might be reached is one that has properly considered the views of all interested persons."

Pursuant to authority duly delegated by the Board in ordering paragraph 1(h) of order 76-3-36, to modify the subject discussion authority.

It is ordered That: Ordering paragraph 1(a) of order 76-3-36 is amended to read:

(a) All U.S. certificated air carriers, all commuter air carriers, and all interested travel agents and/or their trade associations shall be given an opportunity to participate in all discussions and activities held pursuant to this order;

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days of 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 shall also be published in the FEDERAL REGISTER.

By Bruce E. Cunningham, Director, Bureau of Operating Rights.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-12223 Filed 4-26-76;8:45 am]

[Docket No. 29166; Order 76-4-114]

CHINA AIRLINES, LTD.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of April, 1976.

By tariff revision filed for effect April 23, 1976, China Airlines, Ltd. proposes to reestablish 30/120-day excursion fares from the United States to various Far East countries through December 31, 1976. Similar fares expired on March 31, 1976.[1]

In support of its filing China Airlines cites Order 76-2-74 as a basis for continuation of the fares. In addition, the carrier notes that these fares were initially established by a U.S. carrier, which submitted its own justification, and that other carriers including China Airlines were forced to match in order to remain competitive. China Airlines alleges that the fares have now become established on the Pacific and are generally accepted as a valuable sales tool, that the traveling public has come to accept the fares, and that their removal would cause an undue hardship on travelers.

In a telegraphic complaint filed on March 29, 1976, Northwest Airlines, Inc. requests a suspension and investigation of the proposed fares on the grounds that they are not economic for individual travel and that the applicable conditions are not sufficient to reduce the threat of diversion from normal-fare traffic.

Upon full consideration of the tariff filing, the complaint, and all other relevant factors, the Board finds that the proposed fares may be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the fares should be suspended pending investigation.

In the Board's opinion, the arguments advanced by China Airlines reflect a misinterpretation of the facts surrounding the introduction of the fares, which were initially filed by Pan American in July 1975.[2] The alleged basis for Pan American's filing was to permit that carrier to be competitive with fares being offered by its competitors in the area, albeit not published in competing carriers' tariffs. The Board permitted the fares to become effective in light of the fact that the Board's Bureau of Enforcement had ascertained that the fares were, in fact, being offered illegally over the Pacific and that activities of this sort were then the subject of an extensive grand jury investigation in San Francisco.

On February 20, 1976 (Order 76-2-74 referred to by China Airlines), the Board approved an IATA agreement which included the 30/120-day excursion fares for effect through March 31, 1976. In that order, the Board addressed the issue of these fares, noting the very unstable competitive situation in the Pacific area and the fact that it was then the subject of an extensive grand jury investigation. The Board was specific in cautioning that interim approval of these fares should not be construed as acceptance of their economic soundness, and that the Board's approval of their continuance beyond March 31, 1976 would require full and specific justification.[3] No such justification has been presented by China Airlines. Our own analysis of the proposed fare is that on a Los Angeles-Taipei flight it would yield approximately 5.08 cents per passenger mile. The forecast operating costs for U.S. carriers in the Pacific for 1976 average 6.39 cents per revenue passenger-mile. We cannot therefore conclude on our analysis that the proposed fare is cost-justified.

It is clear, therefore, that the Board did not willingly approve implementation of these fares and, in fact, expressed grave reservations regarding their continuance beyond March 31, 1976. The San Francisco grand jury has since acted, and the court has issued injunctions against the carriers' illegal pricing. As Pan American notes in its justification accompanying its May 1, 1976 tariffs, "with the effectiveness of the expected consent decree it should no longer be necessary to have these fares for the U.S. originating market." Under these circumstances, we are unable to conclude that fares implemented to meet illegal competitive activities should be continued when those activities can now be expected to be foreclosed.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, 801, and 1002 thereof,

It is ordered that:

1. An investigation be instituted to determine whether the provisions in Rule 299, on 19th Revised Page 82-K, and Table 123, on 44th Revised Pages 311 and 312, to Passenger Fares Tariff No. PF-4, C.A.B. No. 44, issued by Air Tariffs Corporation, Agent, and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to take appropriate action to prevent the use of such provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the tariff provisions specified in paragraph 1 above are suspended and their use deferred from April 23, 1976 to and including April 22, 1977, 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 suspension ordered in paragraph 2 above shall not stay the cancellation of 16th Revised Page 82-K and 41st Revised Pages 311 and 312 to Passenger Fares Tariff No. PF-4, C.A.B. No. 44;

4. This order shall be submitted to the President[4] and shall become effective on April 23, 1976;

5. The investigation ordered herein be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be designated;

6. Copies of this order be filed in the aforesaid tariff and be served upon China Airlines, Ltd.; and

7. Except to the extent granted herein, the complaint of Northwest Airlines, Inc., in Docket 29069, be and hereby is dismissed.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-12224 Filed 4-26-76;8:45 am]

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[1] Air Tariffs Corporation, Agent, Passenger Fares Tariff No. PF-4, C.A.B. No. 44, Rule 299 and Table 123 in Section 5. The fares at issue are proposed at extremely low levels and are less restrictive than other fares established at higher levels. For example, the normal economy round-trip fare from San Francisco to Taipei is $1,162; the 14/21-day excursion fare is $1,032; the restrictive individual inclusive-tour fare valid for 14/35 days, which requires a specified minimum dollar amount of ground accommodations, is $986. The proposed 30/120-day excursion fare is $690 and is below the carriers' experienced costs in the affected markets.

[2] Both Pan American and China Airlines use the same tariff agent and the basis for Pan American's filing should be well known to China Airlines.

[3] We would note that overall transpacific tariff filings by both Pan American and Northwest for effect May 1, 1976 do not include this fare in the structure.

[4] This order was submitted to the President on April 12, 1976.

[Docket No. 29167; Order 76-4-115]

DEUTSCHE LUFTHANSA AKTIENGESELLSCHAFT

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 12th day of April, 1976.

By tariff revisions filed March 24, 1976 for effectiveness April 23, 1976, Deutsche Lufthansa Aktiengesellschaft (Lufthansa) proposes new charges for cancellation of cargo charter contracts prior to departure.[1] The cancellation charges, proposed as fixed percentages of the total charter price, would be set at 25 percent for cancellations three or more days before departure; 50 percent for cancellations two days before departure; 75 percent for cancellations one day before departure; and 100 percent for cancellations less than one day before departure.

In support of the proposed charges, Lufthansa asserts that cargo charters differ from passenger charters in that the usual lead time for arranging the charter is only two to eight days, while passenger charters are usually contracted for nine to 12 months in advance; that the cargo charterer is usually an experienced shipper with the cargo under his complete dominion and control; that Lufthansa maintains only one freighter for charter service which is stationed in Germany and which must be positioned in the United States to handle a U.S.-originating charter thus, most, if not all, of the expense of operating the charter is incurred the day before scheduled departure; that accommodation of an alternate charter in the event of cancellation of the first charter is almost invariably precluded by the nature of cargo charter operations; that the charges represent liquidated damages for the charterer's failure to carry out his part of the bargain; that forcing the carrier to absorb the expenses of canceled charters would encourage a "no-show" attitude; and finally, that the proposed charges are applied elsewhere worldwide, and no other government has objected.

Upon consideration of the tariff filing and all other relevant matters, the Board finds that the proposed charges may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board has also concluded to suspend the proposal pending investigation.

The Board has permitted carriers to apply flat percentage charges for charter cancellations, but generally such charges apply only to passenger charters. The Board does not object to similar application of cancellation charges to cargo charters, but is not persuaded that the levels proposed by Lufthansa, which range up to 100 percent of the total charter price, are just and reasonable. The generally applicable charge for passenger charter cancellations is 10 percent which would appear sufficient to safeguard the carrier's interests and serve as an adequate deterrent against frivolous charter contracts. Lufthansa has provided no data which would indicate that the costs actually incurred in the event of cancellation justify charges in the magnitude of 25 to 100 percent, or that cancellation-related costs are significantly greater for cargo than for passenger charters. If anything, Lufthansa's assertion that the lead time on cargo charters usually ranges from two to eight days, while passenger charters are contracted for many months in advance, would indicate that the carrier is better able to obtain a substitute cargo charter than in the case of a passenger charter cancellation. Each cancellation does not necessarily involve the operation of ferry mileage. Furthermore, the tariff rules currently provide that the cost of the initial ferry flight to position an aircraft to pick up a charter shipment is paid by the shipper in any event.[2] In the absence of more explicit information on the carrier's cost of cargo charter cancellations, the Board concludes that the charges here proposed represent an unwarranted penalty for the charterer.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 801, and 1002(j) thereof,

It is ordered That:

1. An investigation be instituted to determine whether the charges and provisions on 4th Revised Page 14, Air Tariffs Corporation, Agent, Tariff C.A.B. No. 60 and rules, regulations, and practices affecting such 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 take appropriate action to prevent the use of such charges and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the charges and provisions on the tariff page specified in ordering paragraph 1 above are suspended and their use deferred to and including April 23, 1977 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. This order shall be submitted to the President[3] and shall become effective April 23, 1976;

4. The investigation ordered herein be assigned for hearing before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

5. A copy of this order be served upon Air Tariffs Corporation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-12225 Filed 4-26-76;8:45 am]

[1] 4th Revised Page 14, Air Tariffs Corporation, Agent, Tariff C.A.B. No. 60.

[2] Additionally, there are many circumstances such as natural disasters, fires, breakdown of surface transport by reason of mechanical failure, etc. which would make it impossible for the charterer to deliver the shipment to the airport in time to fulfill the conditions of the contract, although a new contract could be concluded for a different date.

[3] This order was submitted to the President on April 12, 1976.

CIVIL SERVICE COMMISSION

DEPARTMENT OF THE INTERIOR

Noncareer Executive Assignment; Correction

In the FEDERAL REGISTER of April 13, 1976 (FR Doc. 76-10540), appearing on page 15440, the position of Deputy Director, National Park Service, was revoked in error.

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

[FR Doc.76-12041 Filed 4-26-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 529-4]

NATIONAL AIR POLLUTION CONTROL TECHNIQUES ADVISORY COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held at 9:00 a.m. on May 18 and 19, 1976, at the Crystal Mall, Building 2, Room 1112, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, telephone (703) 557-8273.

The purpose of the meeting will be to discuss New Source Performance Standards to be proposed under Section 111 of the Clean Air Act for carbon black plants, sintering plants in steel mills, and coal gasification plants.

All meetings are open to the public. Anyone wishing to attend or submit a paper should contact Mr. Don R. Goodwin, Director, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

The telephone number and area code are (919) 668-8146, extension 271.

Dated: April 22, 1976.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.76-12242 Filed 4-26-76;8:45 am]

[FRL 523-5]

ADMINISTRATOR'S PESTICIDE POLICY ADVISORY COMMITTEE

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following committee meeting:

Name: Administrator's Pesticide Policy Advisory Committee.

Date: May 13–14, 1976.

Place: Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., Room 3906, Mall. Seating capacity of the conference room is limited.

Time: 9:00 a.m.–4:00 p.m. (approximately).

Proposed Agenda: A detailed agenda is under development and will be mailed to all persons on the Committee's mailing list several days prior to the meeting. Generally, the meeting will consist of reports and consideration of recommendations from the three subcommittees on meetings each of them had during March and April. The subcommittees cover the subjects of the pesticides strategy, risk/benefit analysis, and use and exposure. The Committee will also discuss plans for a series of public forums to be held during the second week of August. Part of the day and a half session will be devoted to subcommittee meetings, part to the full Committee.

The Committee meeting is open to the public. All communications regarding this Committee, including requests to be placed on the Committee's mailing list, should be addressed to Mr. David K. Sabock, Executive Secretary, Administrator's Pesticide Policy Advisory Committee, Office of Water and Hazardous Materials (WH-556), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. (Telephone 202–755–0405).

Date: April 22, 1976.

ANDREW W. BREIDENBACH, Ph. D.,
Assistant Administrator for Water and Hazardous Materials, WH–556.

[FR Doc.76–12243 Filed 4–26–76;8:45 am]

[FRL 528–7]

ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Availability of Agency Comments

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of March 16, 1976 and March 31, 1976.

Appendix I contains a listing of the draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classification of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, and the source of the EPA review as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agencies' regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listing in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions and EPA comments referenced herein may be obtained by writing the Public Information Reference Unit, (PM–213), Environmental Protection Agency, Room 2922, Waterside Mall SW, Washington, DC 20460, telephone 202/755–2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: April 14, 1976.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

APPENDIX I.—*Draft environmental impact statements for which comments were issued between Mar. 16 and 31, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Agriculture:			
D-AFS-G65012-LA	Management of Caney unit, Kisatchie National Forest, Webster and Claiborne Parishes, La.	LO-1	G
D-AFS-J65034-CO	East River and Upper Crystal land use plan, Gunnison and White River National Forests, Colo.	3	I
D-AFS-K61009-00	Truckee and Little Truckee Rivers planning unit, land use plan, Tahoe and Toiyabe National Forests, Placer and Sierra Counties, Calif.; Washoe County, Nev. (USDA-FS-R4-R5-ADM-76-2-D).	ER-2	J
D-AFS-K65011-AZ	Timber management program, Prescott National Forest, Yavapai and Coconino Counties, Ariz. (USDA-FS-DES-(ADM)-R3-76-03).	ER-2	J
D-AFS-L61062-ID	Twelvemile planning unit, land use plan, Salmon National Forest, Lemhi County, Idaho (USDA-FS-DES-(ADM)-R4-76-10).	ER-2	K
D-AFS-L61056-ID	Red River planning unit, multiple use plan, Nezperce National Forest, Idaho County, Idaho (USDA-FS-R1(17)-DES-ADM-R1-76-11).	LO-2	K
D-AFS-L82001-00	Cooperative western spruce budworm pest management plan, spring and summer 1976, Oregon and Washington (USDA-FS-R6-DES(ADM)-76-7).	LO-1	K
D-SCS-H36022-IA	Little River watershed, Decatur County, Iowa	ER-2	H
D-SCS-H36024-IA	The Little Sioux River watershed flood prevention project, Iowa (USDA-SCS-EIS-WS-76-1).	ER-2	H
Department of Commerce:			
D-NOA-A64045-00	Proposed listing of the green sea turtle, loggerhead sea turtle and Pacific Ridley sea turtle as threatened species under the Endangered Species Act of 1973.	ER-2	A
D-NOA-B91000-00	Salmon for New England	LO-1	B
Corps of Engineers:			
DS-COE-C36020-NY	Flood control project, Saw Mill River, Yonkers, N.Y.	LO-2	C
D-COE-E35020-NC	Morehead City Harbor, deepening a portion of The harbor, North Carolina.	LO-2	E
D-COE-E36035-MS	Steele Bayou basin flood protection, Greenville, Washington, and Bolivar Counties, Miss.	ER-2	E
D-COE-G34019-NM	Operation and maintenance, Conchas Lake, Canadian River, N. Mex.	LO-1	G
D-COE-G36042-LA	Lake Ponchartrain, north shore, St. Tammany Parish, La.	LO-2	G
D-COE-G36043-LA	Bayou Segnette Waterway and Barataria Bay Waterway, Jefferson Parish, La.	ER-2	G
D-COE-H08000-MO	162 kV transmission line crossings, Lake of the Ozarks, Camden County, Mo.	LO-2	H
DS-COE-L36007-00	McNary second powerhouse, Washington and Oregon	LO-1	K
Energy Research and Development Administration:			
D-ERD-A00117-NM	Intense neutron source facility, scientific laboratory, Los Alamos, N. Mex. (ERDA-1548).	LO-2	A
D-ERD-A07000-00	Synthetic fuels commercialization program (ERDA-1547).	ER-2	A
General Services Administration:			
D-GSA-C81002-NY	Federal Correctional Institution, Otisville, Orange County, N.Y.	LO-2	C
D-GSA-E81010-FL	Proposed courthouse annex, Miami, Dade County, Fla. (EFL-76002).	LO-1	E
D-GSA-E81011-FL	Motor pool and vehicle maintenance facility, Miami, Dade County, Fla. (EFL-76003).	LO-2	E

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of Housing and Urban Development:			
D-HUD-D85004-MD	Box Hill development, Bel Air, Harford County, Md.	ER-2	D
D-HUD-G85011-NM	Extension of water and sewer trunk lines (CDGB), Hobbs, Lea County, N. Mex.	LO-1	G
D-HUD-J85003-CO	Woodwest, planned unit development, Larimer County, Colo.	LO-1	I
D-HUD-K40035-CA	Buena Ventura Drive, Redding, Shasta County, Calif. (HUD-R09).	3	J
D-HUD-K85007-CA	Low-income multiservice center, Livermore, Contra Costa County, Calif.	LO-2	J
New England River Basin Commission:			
D-NRB-B36009-00	The river's reach, flood damage reduction and flood plain management, Connecticut River basin, Conn.	LO-1	B
Nuclear Regulatory Commission:			
D-NRC-C05003-NY	Sterling power project unit 1, Rochester Gas and Electric Corp., Docket No. STN 50-485, Cayuga County, N.Y. (NUREG-75/003).	ER-2	C
Department of Transportation:			
D-FAA-C51002-NY	Establishment of an instrument landing system and medium intensity approach lighting system, Westchester County Airport, N.Y.	LO-2	C
D-FAA-E51010-FL	Replacement airport for the Everglades Jetport, Miami, Fla.	ER-2	E
D-FAA-E51011-MS	Laurel Municipal Airport, Laurel, Jones County, Miss.	LO-2	E
D-FAA-E51012-TN	Gibson County Airport, Trenton, Tenn.	LO-2	E
D-FAA-L51004-WA	Proposed development of Richland Airport, Richland, Wash.	LO-1	K
DA-FHW-A54023-MD	Northwest Expressway, relocated Route 140, Baltimore County, Md.	LO-1	D
D-FHW-C40020-NY	NY-240, Orchard Park Road, Erie County, N.Y. (FHWA-NY-EIS-75-05-D)	LO-2	C
D-FHW-E10070-TN	TN-36, north Erwin to south Johnson City, Unicoi, Carter and Washington Counties, Tenn. (FHWA-TN-EIS-75-03-D).	LO-2	E
D-FHW-F40019-IL	I-255, Jefferson Barracks Bridge to north of Columbia, Monroe County, Ill. (FHWA-IL-EIS-75-03-D).	LO-2	F
D-FHW-F40056-WI	WI-35, River Falls bypass to Hudson Road, Pierce and St. Croix Counties, Wisc. (FHWA-WIS-EIS-75-10-D).	LO-2	F
F-FHW-G40018-AR	U.S. 71 relocation, Fayetteville, McKinzie Creek, Benton County, Ark.	LO-2	G
D-FHW-H40019-MO	MO-185, Franklin and Washington Counties, Mo. (FHWA-MO-EIS-75-03-D)	3	H
D-FHW-J40018-CO	Union Boulevard, Colorado Springs, El Paso County, Colo. (FHWA-COLO-EIS-75-10-D).	ER-2	I
D-FHW-K40033-CA	Sacramento river crossing, I-5 to CA-273, Shasta County, Calif. (FHWA-CA-EIS-76-01-D).	LO-2	J
D-FHW-K40037-NV	I-80, Elko, and Elko County, Nev. (FHWA-NV-EIS-76-01-D)	LO-2	J

APPENDIX II—DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objection. EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental reservations. EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally unsatisfactory. EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all)

ADEQUACY OF THE STATEMENT

Category 1—Adequate. The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient information. EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate. EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final environmental impact statements for which comments were issued between March 16 and 31, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Corps of Engineers:			
F-COE-C36013-NY.	Operations and maintenance, Great Sodus Bay Harbor, Wayne County, Little Sodus Bay Harbor, Cayuga County, Oswego Harbor, Oswego County, N.Y.	EPA's concerns were adequately addressed in the final EIS.	D
F-COE-F07002-IL..	Collins generating station of the Commonwealth, Edison Co., Grundy County, Ill.	Generally, EPA's concerns were adequately addressed in the final EIS. From information provided in the final EIS and stationary source dispersion modeling, EPA has determined that ambient air violations could possibly be exceeded. However, taking into account the predictive accuracy of the models, the likelihood of an air quality violation is remote. To assure ambient air quality is maintained, EPA recommended that an operational network of continuous SO_2 monitoring be maintained.	F
F-COE-F32019-OH.	Ashtabula Harbor, operation and maintenance, Ashtabula County, Ohio.	Generally, EPA's concerns were adequately addressed in the final EIS. However, EPA has requested Corps of Engineers fulfill their responsibilities to properly maintain the harbor in compliance with section 13 of the 1899 Rivers and Harbors Act and section 404 of Public Law 92-500.	
Department of Housing and Urban Development:			
F-HUD-D89015-PA.	Eastwick urban renewal, Philadelphia, Pa.	EPA's concerns were adequately addressed in the final EIS.	D
F-HUD-F38001-IL..	Project No. 38, drainageway cleaning (CDBG), Carbondale, Ill.	EPA's concerns were adequately addressed in the final EIS.	F
Department of Transportation:			
F-FAA-D51002-VA.	Brookneal Municipal Airport, Campbell County, Va.	EPA's concerns were adequately addressed in the final EIS.	D
NF-FHW-A41774-OH.	OH-107, Montpelier, Williams County, Ohio.	EPA's concerns were adequately addressed in the negative final EIS.	F
F-FHW-A41901-VA.	I-595, Arlington County, Va.	EPA's concerns were adequately addressed in the final EIS.	D
F-FHW-F40005-WI..	WI-19, Waterloo-Watertown Road, Hubbleton Bridge and approaches, Dodge and Jefferson Counties, Wis. (FHWA-WIS-EIS-74-10-F).	EPA's concerns were adequately addressed in the final EIS.	F

APPENDIX IV—*Final environmental impact statements which were reviewed and not commented on between Mar. 16 and 31, 1976*

Identifying No.	Title	Source of review
Department of Agriculture:		
F-AFS-L61042-AK	West Chichagof-Yakobi Island study area Alaska (USDA-FS-R10-FES-ADM-75-10).	K
F-AFS-L-61046-ID	Horse Creek administrative research project, Nezperce National Forest, Idaho County, Idaho (USDA-FS-R1-FES-ADM-75-5).	K
F-AFS-L65012-ID	Proposed timber management plan, Payette National Forest, Washington, Idaho, Adams, and Valley Counties, Idaho (USDA-FS-FES-ADM-R4-75-1).	K
F-AFS-L65014-OO	Vegetation management with herbicides, northwest region, oregon, Washington, and Del Norte and Siskyiou Counties, Calif. (USDA-FS-DES-R6-75-18).	K
F-AFS-L65015-AK	Alaska Lumber & Pulp Co. Timber sale 1976-1981 operting period, Tongass National Forest, Alaska (USDA-FS-WO-FES-ADM-76-03).	K
F-REA-G05002-LA	Big Cajon No. 2, Point Coupee Parish, La. (USDA-REA-EIS (ADM)-75-12-F).	G
F-SCS-E36016-MS	Shuqualak Creek watershed project, Noxubee and Kemper Counties, Miss.	E
F-SCS-E36022-NC	Second Broad River watershed project, McDowell, Rutherford, and Cleveland Counties, N.C. (USDA-SCS-EIS-WS-(ADM)-74-5-(F)-NC).	E
F-SCS-E36038-NC	Bear Swamp watershed project, Chowan and Perquimans Counties, N.C. (USDA-SCS-WS-EIS(ADM)-75-6-(F)-NC).	E
Corps of Engineers:		
F-COE-D32003-WV	Kanawaha River navigation system, Fayette, Mason, Kanawaha, and Putnam Counties, W. Va.	D
F-COE-D32004-PA	Operation and maintenance of the navigation system, Allegheny River (mile 0 to mile 72), Pa.	D
F-COE-E32007-KY	Kentucky River navigation project, operation and maintenance, eastern Kentucky.	E
F-COE-E32016-FL	Longboat Pass navigation project, Manatee County, Fla.	E
F-COE-E35007-SC	Georgetown Harbor, maintenance dredging, Georgetown County, S.C.	E
F-COE-G34015-TX	Maintenance dredging, Galveston Harbor and channel, Galveston County, Tex.	G
F-COE-L36013-OR	Operation and maintenance of jetties and dredging project, Tillamook Estuary, Tillamook County, Oreg.	K

Identifying No.	Title	Source of review
Department of Defense:		
F-USA-G11001-NM	White Sands Missile Range, Otero County, N.M.	G
Department of Health, Education and Welfare:		
F-HEW-A81078-MO	St. Francis Medical Center, Cape Girardeau, Mo.	H
Department of Housing and Urban Development:		
F-HUD-E28006-AL	Tallapossa County water supply system (CDBG), Davision—New site, Tallapossa County, Ala.	E
Department of the Interior:		
F-NPS-G65006-NM	Bandelier National Monument, Los Alamos, Santa Fe and Sandoval Counties, N. Mex. (FES-76-11).	G
F-NPS-K61002-AZ	Development concept plan, Grand Canyon Village, Grand Canyon National Park, Ariz. (FES-76-9).	J
Federal Power Commission:		
F-FPC-G03002-00	Arkansas-Louisiana Gas Co., Docket No. 71-122, Natural gas curtailment plan.	A
Department of Transportation:		
FS-DOT-A40097-CT	I-86, Manchester to Vernon, Hartford, and Tolland Counties, Conn. (FHWA-CONN-EIS-76-13-F).	B
F-FHW-A41898-KS	Improvement of Clinton Parkway, Lawrence, Douglas County, Kans.	H
F-FHW-A42194-AR	U.S. 67, Bald Knob to Newport, White and Jackson Counties, Ark. (FHW-ARK-EIS-75-01-F).	G
F-FHW-A42302-FL	U.S. 27, FL-25, from State Road 820 to South Bay, Dade and Palm Beach Counties, Fla.	E
F-FHW-C40011-NY	I-88, New York	C
F-FHW-E40007-TN	TN-55, bypass, McMinnville, Warren County, Tenn.	E
F-FHW-E40008-AL	West Lee Street Interchange, Chickasaw, Mobile County, Ala.	E
F-FHW-L40024-WA	WA-500, junction I-5 at 39th Street to WA-503, Vancouver, Clark County, Wash.	K
Veterans' Administration:		
F-VAD-E81006-GA	420 bed replacement and relocation, Veterans' Administration Hospital, Augusta, Richmond County, Ga.	E

APPENDIX V.—*Regulations, legislation and other Federal agency actions for which Comments were issued between Mar. 16 and 31, 1976*

Identifying No.	Title	General nature of comments	Source for copies of comments
Department of the Interior:			
R-BLM-A01033-00	43 CFR Pt. 3520, prospecting permittees, issuance of leases.	EPA made general comments regarding the role of the National Environmental Policy Act in affecting the Department of the Interior discretionary authorities with respect to permit issuance and the imposition of lease stipulations. Other comments related to the need for including definition of cost in the regulations the reporting of revenue, and the determination of preference right leases.	A
G-DOI-A07091-00	Guidelines for preparation of environmental reports for fossil fueled steam electric generating stations.	EPA feels that Department of the Interior presented a comprehensive set of guidelines which should contribute significantly to the preparation of environmental impact statements for fossil fuel steam electric generating stations. However, EPA feels that more explicit guidance is necessary on the acceptable methodology for electric power demand projections and the calculation of economic costs and benefits. In addition, the "Socioeconomic Profile" section of the guidelines should be described in terms of the West as well as the East.	A
Department of Transportation:			
R-DOT-A20017-00	49 CFR Pts. 170-189, hazard information systems.	EPA's comments on the proposed rulemaking reflected the Agency's concerns regarding hazardous waste management and Agency responsibility to respond to hazardous substances spills in order to prevent or minimize danger to the public health or welfare. The Union Carbide proposal with suggested additions was chosen by EPA as representing the most favorable system of any of those presented in the DOT proposal.	A
R-FAA-AS8011-00	14 CFR Pt. 36, subsonic transport category large airplanes and subsonic turbojet powered airplanes, proposed noise reduction stages and acoustical change requirements.	EPA withheld substantive comments on the proposed rulemaking in view of the promulgation of EPA's aircraft noise regulations to be proposed in the near future.	A

APPENDIX VI—SOURCE FOR COPIES OF EPA COMMENTS

A. Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall, SW, Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, 1421 Peachtree Street, NE, Atlanta, Georgia 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Texas 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc.76-12026 Filed 4-26-76;8:45 am]

[FRL 503-1]

MARINE SANITATION DEVICE

Standard for New Mexico

On January 20, 1976, notice was given that the State of New Mexico had petitioned the Administrator, Environmental Protection Agency, to determine, pursuant to section 312(f) (3) and (4) of Pub. L. 92-500, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all waters of the State of New Mexico, and that the protection and enhancement of the quality of all of the waters of the State requires that the discharge of any sewage, whether treated or not, be prohibited (41 F.R. 2858, January 20, 1976).

Section 312(f) (3) states, "[A]fter the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such waters to which such petition would apply."

Section 312(f) (4) states, "[I]f the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a ves-

sel of any sewage (whether treated or not) into such waters."

Following an examination of the petition and supporting information, and in consideration of all comments received pursuant to the January 20 FEDERAL REGISTER notice, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all waters of the State of New Mexico pursuant to section 312(f) (3) of Pub. L. 92-500. The information submitted to me is not compelling in its support of a positive determination under section 312(f) (4) of Pub. L. 92-500. Thus, my determination in this notice is made pursuant to section 312(f) (3) only.

In its petition, the State of New Mexico certified that there are only four lakes in the State having a vessel population which includes vessels equipped with marine sanitation devices. These are Conchas, Elephant Butte, Navajo and Ute Lakes, all of which are administered by the State Park and Recreation Commission. Other lakes in the State are too small or have no facilities that accommodate larger vessels; however, the smaller lakes, if used by larger boats with marine toilets, are used by such vessels intermittently on a daily basis. If there is need to pump out a marine toilet at one of the smaller lakes, mobile pump-out units can be used.

Elephant Butte Lake has a pump-out facility located at the marina from which the sewage is pumped to a septic tank onshore. Most vessels are moored within one and one-half miles of the pump-out facility, but some vessels, which are moored at a site approximately five to six miles from the pump-out facility, are provided a mobile truck with a pump for waste removal. The State has noted no operational inefficiency of the septic tank because of the disposal of holding-tank wastes. Conchas Lake, Ute Lake and Navajo Lake State Parks have self-propelled pontoon pump-out boats from which the collected sewage is transported to a mobile pump truck onshore and taken to a designated area and buried in compliance with the State Environmental Improvement Agency regulations. The pontoon pump-out boats service all areas of the lake.

The State certifies that the operating hours of the pump-out facilities on the four above-mentioned lakes are from 7:00 a.m. to 6:00 p.m. seven days a week in the summer months and from 8:00 a.m. to 5:00 p.m. seven days a week during the winter months. The petition certifies further that no watercraft is excluded because of insufficient water depth adjacent to any pump-out facilities.

The Agency has received no comments in opposition to the New Mexico petition on the merits.

Dated: April 21, 1976.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.76-12244 Filed 4-26-76;8:45 am]

[FRL 529-2]

STANDARDS OF PERFORMANCE OF NEW STATIONARY SOURCES

Notice of Delegation of Authority to State of South Dakota

On December 23, 1971 (36 FR 24876), March 8, 1974 (39 FR 9308), August 6, 1975 (40 FR 33152), and September 23, 1975 (40 FR 43850), pursuant to Section 111 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated regulations establishing Standard of Performance for five categories, seven categories, one category, and five categories of New Stationary Sources (NSPS), respectively. Section 111(c) directs the Administrator to delegate his authority to implement and enforce the standards to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

On December 4, 1975, the Governor of South Dakota submitted to EPA a request for delegation of authority to implement and enforce certain New Source Performance Standards. Included with that request were copies of South Dakota regulations which incorporate, with certain exceptions, the Federal emission standards and testing procedures set forth in 40 CFR Part 60. After a thorough review of the request, the appropriate State regulations, and the State statutes which provide the State with requisite authority to enforce NSPS, the Regional Administrator has determined that delegation is appropriate with respect to the source categories set forth in the following official letter to the Governor of South Dakota, subject to the conditions set forth therein:

Hon. RICHARD F. KNEIP,
Governor of South Dakota, State Capitol, Pierre, S. Dak. 57501.

DEAR GOVERNOR KNEIP: This is in response to your letter of December 4, 1975, requesting that EPA delegate to the State of South Dakota primary authority to implement and enforce Standards of Performance for twelve categories of New Stationary Sources.

We have reviewed the laws of South Dakota and the rules and regulations of the South Dakota Department of Environmental Protection, and have determined that they provide adequate and effective procedures for implementing and enforcing Standards of Performance for ten of the twelve categories. Therefore, we hereby delegate the following authority to the State of South Dakota:

A. Authority to implement and enforce Standards of Performance for the following categories of New Stationary Sources located within the State: incinerators; Portland cement plants; sulfuric acid plants; asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary lead smelters; secondary brass and bronze ingot production plants; iron and steel plants; and sewage treatment plants.

B. Delegation of authority for fossil fuel-fired steam generators and nitric acid plants has been denied because the State regulations do not contain limitations for nitrogen oxide emissions. Control of these two new source categories, and all other source categories for which Standards of Performance have been developed since the date of request, remain under the authority of EPA. The State is urged to revise its regulations concerning nitrogen oxide emissions so that delegation of authority for fossil fuel-fired steam generators and nitric acid plants can be completed.

This delegation of authority is further subject to the following conditions:

1. Enforcement of the Standards of Performance in the State of South Dakota will be the primary responsibility of the Department of Environmental Protection. If the Department determines that such enforcement is not feasible and so notifies EPA, or if the Department acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended.

2. Acceptance of this delegation does not commit the State of South Dakota to request or accept delegation of remaining portions of current standards, or any future standards and requirements which may hereafter be promulgated.

3. The delegation to the State of South Dakota does not include authority to implement and enforce Standards of Performance for sources owned or operated by the United States which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Part 60.

4. The State of South Dakota will not grant variances to the New Source Standards of the Administrative Rules of South Dakota (SDAR) Chapter 34:-10:12, unless such variances do not delay compliance with the Federal standards of 40 CFR Part 60. Should the Department of Environmental Protection grant a variance which delays compliance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulation, and may initiate enforcement action against that source pursuant to Section 113 of the Clean Air Act. The granting of such variances by the Department shall also constitute grounds for revocation of delegation by EPA.

5. The Department of Environmental Protection and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed of the current status of subject sources in the State of South Dakota, and of the interpretation of applicable regulations.

6. If at any time there is a conflict between a State and Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent.

If the State does not have authority to enforce the more stringent Federal regulation, that portion of the delegation may be revoked. In the latter case the State shall notify the owners or operators of affected facilities that they will be subject to the Federal regulations until such time as EPA determines that sufficient changes have been made in the State regulations to justify re-delegation.

7. The Department of Environmental Protection will utilize the methods specified in 40 CFR Part 60 in performing source tests pursuant to the regulations.

8. If the Regional Administrator determines that a state procedure for enforcing or implementing the Standards of Performance is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Department.

9. The State of South Dakota must notify EPA of any activity that does not qualify as a "modification" under SDAR 34:10:01:01(18), but which in the State's opinion might meet the Federal modification or reconstruction standards of 40 CFR 60.2(h), 60.14, or 60.15.

10. Until such time as South Dakota's notification and record keeping requirements correspond, in the opinion of EPA, to those of 40 CFR 60.7, it shall notify the owners or operators of affected facilities that they are subject to the requirements of that regulation. If the State does not have authority to enforce this more stringent regulation, then EPA shall exercise its concurrent regulatory authority.

11. The Department of Environmental Protection shall: notify EPA of any changes in performance test methodology; inform EPA of the basis for any performance test waivers; and postpone the use of any departmentally-approved alternate or equivalent tests until these are approved by the Administrator.

12. Until such time as South Dakota implements continuous monitoring requirements that correspond, in the opinion of EPA, to those of 40 CFR 60.13, it shall notify the owners or operators of affected facilities that they are subject to the requirements of that regulation. If the State does not have authority to enforce this regulation, then EPA shall exercise its concurrent regulatory authority.

13. In order to satisfy Section 114 of the Clean Air Act and 40 CFR 60.9, in any instance in which the Department of Environmental Quality is unable under its own authority to release emissions data to the public, the State shall so notify EPA. EPA may then take whatever action it deems necessary to obtain the release of such data.

14. Until such time as South Dakota requires continuous monitoring of sulfur oxides from affected sulfuric acid plants, it shall notify the owners or operators of such facilities that they are subject to the requirements of 40 CFR 60.84. If the State does not have authority to enforce this regulation, then EPA shall exercise its concurrent regulatory authority.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The Notice will state, among other things, that effective immediately, except as noted above, all reports required pursuant to Federal regulations from sources located in South Dakota shall be submitted to the Department of Environmental Protection, Joe Foss Building, Pierre, South Dakota 57501. Any such reports which have been or may be received by EPA Region VIII will be promptly transmitted to the Department. Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all the terms of this delegation.

My best personal regards.

Sincerely yours,

JOHN A. GREEN,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified the Governor on March 25, 1976, that authority to implement and enforce the standards of performance for these categories of new stationary sources was delegated to the State of South Dakota.

Copies of the request for delegation of authority are available for public inspection at the Region VIII offices of the Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

Effective immediately, all reports required pursuant to the Standards of Performance for the New Stationary Sources listed in the above letter should be submitted to both the EPA Region VIII Office and the State Agency, at the following address:

South Dakota Department of Environmental Protection Joe Foss Building, Pierre, South Dakota 57501.

However, reports required pursuant to 40 CFR 60.7(c) (excess emissions and malfunctions) should be sent to the State Agency only.

This notice is issued under the authority of Section 111 of the Clean Air Act, as amended 42 U.S.C. 1857c-6.

JOHN A. GREEN,
Regional Administrator.

Dated: March 26, 1976.

[FR Doc.76-12246 Filed 4-26-76;8:45 am]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RECORDS AND REPORTS

Employer Information Report EEO-1; Extension of Deadline for Filing Report

Notice is hereby given that the 1976 deadline for filing Equal Employment Opportunity Employer Information Report EEO-1 required by 29 CFR 1602.7 is extended from March 31, 1976 to June 30, 1976. The period for which statistics for report EEO-1 must be obtained remains unchanged.

Signed at Washington, D.C. this 21st day of April, 1976.

LOWELL W. PERRY,
Chairman, Equal Employment Opportunity Commission.

[FR Doc.76-12157 Filed 4-26-76;8:45 am]

RECORDS AND REPORTS

Employer Information Report EEO-1, Apprenticeship Information Reports EEO-2, and EEO-2E, and Local Union Report EEO-3; New Race/Ethnic Categories

Preamble. In memoranda from the Office of Management and Budget and the General Accounting Office dated April 15, 1975 and September 9, 1975 respectively the Commission was advised that its survey forms must use the standard race/ethnic categories. This change does not require new recordkeeping. The change to the standard race/ethnic categories on the EEO-1, EEO-2, EEO-2E, and EEO-3 is primarily one of nomenclature and does not involve radical departures from the current definitions. The changes are as follows:

1. The category "White not of Hispanic origin" is added as a specific category, and includes by definition persons of the Indian Subcontinent. Otherwise this category corresponds to the residual group, that is, all those persons who were not classified into one of the four specific minority categories on the survey forms.

2. "Negro" is changed to read "Black not of Hispanic origin". The definition remains the same except that the title itself now excludes those persons of hispanic origin who might otherwise have been reported as Black by virtue of race.

3. "Spanish Surnamed American" is changed to "Hispanic" and includes in addition to persons of Mexican, Puerto Rican, and Cuban or Spanish origin, as defined in the former category, persons of Central or South America and other Spanish culture regardless of race.

4. "Oriental" is replaced by the category "Asian or Pacific Islander", and expressly includes persons of South East Asian and Pacific Island origins, who previously might or might not have been reported in the "Oriental" category.

5. "American Indian" is replaced by "American Indian or Alaskan Native". The definition for this category is restricted to persons having origins in any of the original peoples of North America.

As these changes are minor, employers should have no difficulty implementing them, and will have ample time to change their internal records to reflect the new categories.

Notice. The Equal Employment Opportunity Commission hereby gives notice that the Equal Employment Opportunity Employer Information Report EEO-1 as required by 29 CFR 1602.07 for 1977 and for subsequent years will reflect five (5) new race/ethnic categories. The same race/ethnic categories will also be reflected on the Apprenticeship Information Reports EO-2 and EEO-2E, 29 CFR 1602.15, and the Local Union Report EEO-3, 29 CFR 1602.22 for 1976 and subsequent years. The five race/ethnic categories are defined as follows:

1. *White (not of Hispanic origin):* All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian subcontinent.

2. *Black (not of Hispanic origin):* All persons having origins in any of the black racial groups.

3. *Hispanic:* All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

4. *Asian or Pacific Islanders:* All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

5. *American Indian or Alaskan Native:* All persons having origins in any of the original peoples of North America.

Signed at Washington, D.C. this 21st day of April 1976.

LOWELL W. PERRY,
Chairman, Equal Employment Opportunity Commission.

[FR Doc.76-12158 Filed 4-26-76;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

EXPANSION OF THE U.S. URANIUM ENRICHMENT CAPACITY PROGRAM

[ERDA-1543]

Availability of Final Environmental Statement

Notice is hereby given that the Final Environmental Statement, Expansion of U.S. Uranium Enrichment Capacity, ERDA-1543 (April 1976), has been issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared in support of ERDA's administrative actions related to expansion of the U.S. uranium enrichment capacity and the President's message and legislative proposal sent to Congress on June 26, 1975.

Copies of the final statement are available for public inspection in the ERDA public document rooms located at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Alburquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9500 South Case Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations Office, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Copies have been furnished to those who commented on the draft statement that was issued by the Energy Research and Development Administration as ERDA-1543, June 30, 1975. Copies are also available for public inspection at designated Federal Depository Libraries.

A limited number of single copies of the final statement are available for distribution by the Technical Information Center, P.O. Box 62, Oak Ridge, Tennessee 37830, (615) 483-8611, extension 34672. The statement is also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Germantown, Maryland, this 23 day of April 1976.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.76-12329 Filed 4-26-76;8:45 am]

GRANT PROCEDURES

Implementation of Interim Grant Procedures

1. *Purpose.* This notice establishes an interim grant procedure, and a grant instrument for basic and applied research with educational and nonprofit institutions pending establishment of an ERDA Grant Manual which will contain full implementation of ERDA's broad grant authority.

2. *Effective date.* The interim grant procedure is effective upon publication in the FEDERAL REGISTER. Interested persons may submit comments within 90 days to: Director of Procurement, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Comments received will be considered during the development of the ERDA Grant Manual. The proposed Manual will be published in the FEDERAL REGISTER for public comment prior to publication.

3. *Expiration date.* This interim procedure will remain in effect until superseded by the ERDA Grant Manual.

4. *General authority to make grants.* ERDA is authorized to make grants by P.L. 93-438, Energy Reorganization Act of 1974; P.L. 93-577, Federal Nonnuclear Energy Research and Development Act of 1974; P.L. 85-934, the Grant Act; and P.L. 83-703, the Atomic Energy Act of 1954, as amended.

5. *Authority to execute grant awards.* The statutory authority given to the Administrator to execute grants has been redelegated by ERDA Immediate Action Director No. 0100-2 dated January 29, 1975. The Director of Procurement currently is authorized to execute grants or redelegate such authority as the need exists. Those individuals who receive the redelegated authority from the Director of Procurement to award grants are grants officers.

6. *Establishment of additional grant instruments.* The Director of Procurement is authorized to establish grant instruments as needed to meet ERDA program needs which are authorized by statute but not included in this notice. Ultimately, any additional grant instruments will be included in the ERDA Grant Manual when published.

7. *Cost sharing.* 41 CFR 9-4.56 is the basic guidance for the ERDA policy on cost sharing. Grants will incorporate specific terms, conditions, acounting records requirements, and audit requirements, if any, with respect to cost sharing arrangements which are agreed to by the Grants Officer and Grantee. Cost sharing may be reflected in the grant budget and grant face page where approprite.

8. *Use of grant or special research support agreement (SRSA).* The special research support agrement (SRSA) contract in ERDA Procurement Regulation 9-16.5002-8 is to be used to procure research under a contract which provides for ERDA direction and controls. The grant instrument in paragraph 11 is to be used as a mechanism to support or assist basic and applied research where minimum monitoring and few controls are necessary. The Grants Officer is responsible to determine that the appropriate instrument (contract or grant) is utilized.

9. *Deviations.* The grant instrument in paragraph 11 should be used as provided except that paragraphs 2, Reports and publications; and, 8, Payment may be revised by the Grants Officer to accommodate to particular situations. Deviation approval must be obtained from the Director of Procurement when changes to paragraphs other than 2 or 8, addition or deletions to the grant instrument, or use of the instrument for other than its stated purposes or for awards of $500,000 or more are desired. Requests which are to be submitted by the Grants Officer should be supported by a description of the proposed deviation, the proposed language, and the rationale.

10. *Submission and evaluation of proposals.*

a. Submission. Proposals for ERDA awards may be submitted in response to various ERDA solicitations. In addition, ERDA may also receive unsolicited proposals for awards. Grant budgets in unsolicited proposals should follow the general format provided in Appendix B to this notice. Unsolicited proposals from educational institutions should be submitted to Office of University Programs, and unsolicited proposals from other than educational institutions should be submitted to Director of Procurement, Proposal Processing Unit, C-167, Energy Research and Development Administration, Washington, D.C., 20545.

11. *Establishment of grant for basic and applied research.*

a. *Content of grant instrument.* The grant is composed of a grant face page and ERDA grant provisions for basic and applied research. The face page is discussed in paragraph c. The applicable ERDA grant provisions are provided in Appendix A.

b. *Use of grant instrument.* The grant instrument described in paragraph 11.a. may be used to support or assist basic and applied research performed by institutions of higher education, and nonprofit organizations, such as (but not limited to) research institutes, educational associations, and health centers. For the purpose of this procedure, basic research is that type of research which is directed toward increase of knowledge in

the sciences where the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research consists of that type of effort which normally follows basic research, attempts to determine and expand the potentialities of new scientific discoveries, or improvements in technology, materials, processes, methods, devices and techniques, and attempts to "advance the state of the art". Applied research does not include any such efforts when their principal aim is the design, development or test of specific articles or services to be offered for sale, which are within the meaning of development. Development is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering. The grant may be used under $500,000. This policy will be in effect until the ERDA Grant Manual, which will provide a full complement of grant instruments, is published. The grant may be for more than one but not more than a three year period.

1. *Grant fact page.* The grant face page, which will be completed by ERDA at the issuance of the grant, will contain all of the data particular to a grant award. The grant face page will include most of the following data elements: grant number and date, grant period, title of project, reports required, type of grantee (educational, nonprofit), amount awarded, name and address of principal investigator, name and address of grants and project officers, method of payment, accounting data, ERDA issuing office, grantee name and address, and date of proposal if incorporated by reference.

ROBERT F. ALLNUTT,
Acting Director of Procurement.

APPENDIX A

ERDA GRANT PROVISIONS FOR BASIC AND APPLIED RESEARCH (EDUCATIONAL AND NONPROFIT ORGANIZATIONS)

This grant is subject to the following provisions:

1. *General.*

a. This grant award is composed of a grant face page which may incorporate the Grantee's proposal by reference and the ERDA Grant Provisions for Basic and Applied Research.

b. This grant award constitutes acceptance by the U.S. Energy Research and Development Administration (ERDA) of the Grantee's proposal and budget unless otherwise indicated on the face page.

c. The Grantee is obligated to conduct such project oversight as may be appropriate, to manage the funds with prudence, and to comply with the provisions outlined herein. Within this framework, the Principal Investigator (PI) or Program Director (PD) named on the grant face page is responsible for the scientific or technical direction of the project and for preparation of required reports.

d. This grant is funded on a cost reimbursement basis not to exceed the amount awarded as indicated on the face page and is subject to a refund of unexpended funds to ERDA. There is no commitment for further additional ERDA funding beyond the amount awarded in this grant.

2. *Reports and publications.*

Publication to accomplish widest practicable and appropriate dissemination of research results is encouraged at any time during course of the investigation. Examples of appropriate media for such dissemination are the learned journals, the proceedings of professional groups and ERDA scientific and technical publications. Grantees may elect to publish the results of their work by whichever media they feel most appropriate. Grantees should specify the intended means of dissemination prior to award. Publications and reports prepared under this grant shall contain the following acknowledgement statement, "This (material) was prepared with the support of the U.S. Energy Research and Development Administration Grant No. _____. However, any opinions findings, conclusions, or recommendations expressed herein are those of the author(s) and do not necessarily reflect the views of ERDA."

a. Journal publication. When results obtained under this grant are to be published in a technical journal, or in transactions or proceedings of a technical meeting, three copies of a preprint or manuscript of each such publication shall be provided to the ERDA Program Officer for comment prior to the grantee's submission for publication. Three copies of a reprint shall be provided to the Program Officer promptly after publication.

b. Formal ERDA publication. If the Grantee wishes ERDA to publish grant results in a formal ERDA report, a specific request to this effect, accompanied by three draft copies of the material and a summary report of approximately 200 words covering the purpose and scope of the project, should be submitted to the ERDA Program Officer for review. Such review generally should not exceed 30 days. Material submitted for publication by ERDA in a formal report must comply with the highest standards of scientific publishing methodology.

Following ERDA approval for ERDA publication, one camera ready or a reproducible, and three copies shall be submitted by the Grantee to the Program Officer. The format for this report, if any, will be specified by the Program Officer.

c. Progress reports. Brief, informal Progress Reports which are quarterly, unless otherwise directed by the Grants Officer, will include a concise statement of the research accomplished during the report period. Grantees are encouraged to publish in the open literature and submit interim reports whenever the research has reached a point where it is logical to summarize the results or a research phase has been completed.

d. Final reports. Within 90 days after expiration of the grant period, the Grantee shall submit a Final Report which summarizes the results of the entire project and a final fiscal report in the same format as the preaward proposed budget.

The Progress and Final Reports should be identified as such and may consist, in whole or in part, of references to and abstracts of published material resulting from the grant.

e. Copies. One copy of the foregoing reports shall be submitted to the Grants Officer and three copies to the ERDA Program Officer at the addresses indicated on the face page.

3. *Extension of grants.*

It is the ERDA policy to provide maximum continuity in the funding of grant-supported projects. This grant may be extended for additional periods of time consistent with ERDA funding and program requirements. Any extension requiring additional funding must be supported by an unsolicited proposal in quadruplicate, submitted at least three months in advance of the expiration date of the grant period. Grantees are expected to bring their projects to a conclusion within the funds provided. It is stressed that ERDA is under no obligation to provide additional funding if the project cannot be completed within the awarded grant funds.

Unsolicited proposals referenced in this paragraph from educational institutions should be submitted to:

Energy Research and Development Administration, Office of University Programs, Washington, DC 20545.

Unsolicited proposals from other than educational institutions should be submitted to:

Energy Research and Development Administration, Director of Procurement, Proposal Processing Unit C-167, Washington, DC 20545.

If the grant period shown on the face page must be extended for more than 30 days without additional funding, such an extension must be submitted to the Grants Officer for written approval.

4. *Revocation.*

This grant may be revoked in whole or in part by ERDA. In the event of revocation, the Grantee shall refund to ERDA any unexpended funds that it has received under the grant, except such portion thereof as may be required by the Grantee to meet commitments which had, in the judgment of ERDA, become firm prior to the effective date of revocation and are otherwise appropriate. The Grantee should notify the Grants Officer whenever there is reason to believe that circumstances that may impair the successful continuation of the grant may require that the grant be revoked or modified.

5. *Travel.*

Domestic travel is an appropriate charge to research grants, and prior authorization for specific trips is not required. Foreign travel must be clearly essential to the research effort and must, to be charged against this grant, have prior explicit approval of the Grants Officer regardless to its inclusion in the approved grant budget. The Grantee agrees to use U.S. Flag air carriers to the maximum extent practicable when international air transportation becomes necessary under this grant. Except as provided in Section J.44.C of FMC 73-8, the difference in cost between first-class air accommodations and less than first-class accommodations is unallowable.

6. *Allowable costs.*

Allowability of costs shall be determined in accordance with Federal Management Circular 73-8 for Educational Institutions and the Federal Procurement Regulations Subpart 1-15.2 for nonprofit organizations. The extent of cost sharing, if any, is indicated on the face page.

7. *Examination, audit, and retention of records.*

a. The Grantee shall maintain books and accounting records, in accordance with generally accepted accounting practices, sufficient to reflect properly all direct and indirect costs incurred or anticipated as a result of commitments made during the grant period and any unobligated balances.

b. The Administrator of ERDA and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Grantee and any subgrantees or contractors under this grant to make audits, examinations, excerpts and transcripts at all reasonable times during the life of the grant and during the required record retention period.

Financial records, supporting documents, statistical records, and all other records

pertinent to this grant shall be retained for a period of three years following the expiration date except that records shall be retained beyond the three-year period if any audit findings, litigations or claims involving the records have not been resolved.

8. *Payment.* Payments can be made to grantees through a letter of credit, in advance by Treasury checks, or a reimbursement by Treasury checks. Payments up to 60 percent of the grant award may be paid following execution of this grant. An additional 35 percent may be paid upon request by the grantee at the time when additional funds are needed. The remaining 5 percent may be paid upon submission of the final report. The documents to be submitted for payment will be specified by the Grants Officer and submitted for payment to the address given on the face page.

Funds received by the Grantee but not obligated in accordance with the grant prior to the expiration of the grant period shall be considered excess payments and shall be refunded by check made payable to the Energy Research and Development Administration or in accordance with instructions provided by the ERDA Grants Officer.

9. *Equipment.*

Title to equipment purchased or fabricated with grant funds shall vest in the Grantee upon acquisition unless otherwise provided. The Grantee shall maintain property records in accordance with generally accepted property accounting procedures. Acquisition of equipment costing in excess of $1,000 and not included in the approved proposal budget requires the prior approval of the ERDA Grants Officer unless such equipment is merely a different model of an item shown in the approved proposal budget. Acquisition of excess government personal property which is to be paid for with grant funds requires prior approval of the Grants Officer.

ERDA grant funds shall not be used to purchase general purpose equipment such as office furniture, furnishings, office equipment, conventional motor vehicles, automatic data processing equipment or other items of a non-technical nature; exceptions to this require prior approval of ERDA Grants Officer and must be fully justified as essential to the research under the grant. The Government reserves the right to require transfer to it or to a third party named by the Government of title to items of equipment purchased at a cost in excess of $1,000. This right may be exercised at any time, but no later than 180 days after receipt of the final equipment inventory report. Any charges for packing, crating and shipping which may be involved in such transfers will be at the expense of the Government.

Title to Government-Furnished Equipment will remain in the Government except for that Government-Furnished Equipment provided to the Grantee pursuant to Public Law 83-703, the Atomic Energy Act of 1954, Section 31(b) in which case title shall pass to the grantee. Such property will be maintained in accordance with instructions provided by the ERDA Grants Officer.

Final equipment inventory reports covering purchased items in excess of $1,000 and Government-furnished equipment will be forwarded to the ERDA Grants Officer within 90 days following the expiration date of the grant. Items costing in excess of $1,000 should be individually listed.

10. *Patent rights (short form).*

(a) Definitions.

(1) "Subject Invention" means any invention or discovery of the Grantee conceived or first actually reduced to practice in the course of or under this grant, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the Patent Laws of the United States of America or any foreign country.

(2) "Patent Counsel" means the ERDA Patent Counsel assistant the procuring or granting activity.

(b) Invention disclosures and reports.

(1) The Grantee shall furnish the Grants Officer or Patent Counsel:

(i) A written report containing full and complete technical information concerning each Subject Invention within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under this grant, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Grantee. The report shall identify the grant and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical biological, or electrical characteristics of the invention;

(ii) Upon request, but not more than annually, interim reports on an ERDA-approved form listing Subject Inventions for that period and certifying that all Subject Inventions have been disclosed or that there were no such inventions; and

(iii) A final report on an ERDA-approved form within 3 months after completion of the grant work listing all Subject Inventions have been disclosed or that there were no such inventions.

(2) The Grantee agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the grant.

(c) Allocation of principal rights.

(1) Assignment to the Government. The Grantee agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Grantee under paragraphs (c)(2) and (d) of this clause.

(2) Greater rights determination. The Grantee or the employee-inventor with authorization of the Grantee may request greater rights than the nonexclusive license and the right to request foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the procedures and criteria of 41 CFR 9-9.109-6. A request for a determination of whether the Grantee or the employee-inventor is entitled to retain such greater rights must be submitted to the Administration at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause or not later than 3 months thereafter or such longer period as may be authorized by the Grants Officer or Patent Counsel for good cause shown in writing by the Grantee. The information to be submitted for a greater rights determination is specified in 41 CFR 9-9.109-6(e).

(d) Minimum rights to the Grantee. The Grantee reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. Revocation shall be in accordance with the procedure of paragraph (c)(2) and (3) of the clause in 41 CFR 9-9.107(a). The Grantee also has the right to request foreign rights in accordance with the procedures of paragraph (c)(4) of the clause in 41 CFR 9-9.107-5(a).

(e) Employee and Subcontractor agreements.

Unless otherwise authorized in writing by the Grants Officer, the Grantee shall:

(1) Obtain patent agreements to effectuate the provisions of the Patent Rights clause from all persons in its employ who perform any part of the work under this grant except nontechnical personnel, such as clerical employees and manual laborers.

(2) Unless otherwise authorized or directed by the Grants Officer in accordance with 41 CFR 9-9.107-4(f), the Grantee shall include the Patent Rights clause of 41 CFR 9-9.107-5(a) or 41 CFR 9-9.107-6, as appropriate, modified to identify the parties in any subcontract hereunder; and,

(3) Promptly notify the Grants Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the subcontractor, the work to be performed under the subcontract, and the dates of award, and estimated completion. Upon the request of the Grants Officer the Grantee shall furnish a copy of the subcontract to such requestor.

(f) Atomic Energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Grantee or its employees with respect to any invention or discovery made or conceived in the course of or under this grant.

(2) Except as otherwise authorized in writing by the Grants Officer, the Grantee will obtain patent agreements to effectuate the provisions of paragraph (f)(1) of this clause from all persons who perform any part of the work under this grant, except such clerical and manual labor personnel as will not have access to technical data.

11. *Rights in data.*

The Grantee grants to the Government a royalty-free, nonexclusive, irrevocable license to publish, transate, reproduce, use and dispose of, and to authorize others to do so, a data, including copyrightable material, reports, drawings, blueprints, and technical information resulting from the performance of work under this grant. ERDA reserves the right to require delivery of all of the foregoing data.

12. *Security.*

Normally, ERDA research grants do not involve classified information. However, if information is sought or developed by the Grantee that should be classified in the interests of national security, the ERDA Grants Officer shall be notified immediately.

The Grantee may ask ERDA to revoke this grant if the grant unexpectedly becomes involved with classified information and the Grantee decides that further performance would be inappropriate.

13. *Civil rights.*

This grant is subject to the provisions of the Civil Rights Act of 1964, Title IV, Sex Discrimination, of the Energy Reorganization Act of 1974, and the implementing ERDA regulations in 10 CFR Chapter 1, Part 4.

The Grantee agrees that no person in the United States shall, on the ground of race, sex, color or national origin, be excluded from participation in, be deprived the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Grantee receives financial support from ERDA.

14. *Contracts and/or subagreements.*

a. All contracts or other subagreements under this grant not provided for and approved in the proposal budget require the prior consent of the Grants Officer as to the

purpose and type of subagreement or contract.

b. It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services be placed with small business concerns. The Grantee agrees to accomplish the maximum amount of contracting to small business concerns that is reasonable, appropriate, and consistent with the efficient performance of this grant.

c. The grantee agrees to conduct contract transactions including purchase orders to provide open and free competition to the maximum extent practical.

15. *Additional ERDA approvals.* Notification to, and ERDA prior approval by the Grants Officer is required for the following:

a. Change in the principal investigator or continuation of the research work for any one period in excess of three months without direction by an approved principal investigator.

b. Change in the phenomenon or phenomena under study or significant change in the project from what was initially intended by the grant.

c. Contracting or transfer of the performance of the research effort or grant in whole or part to another organization.

APPENDIX B.—*Energy Research and Development Administration, Research Grant, Grant Budget*

Institution and address	ERDA program	Grant period From ____ To ____
Grant number	Principal investigator(s)	

Cost categories	*Amount*
1. Salaries and wages (list by labor category or individual)	$
Salaries	$
Fringe benefits	
2. Equipment (list separately each piece of equipment as required in the grant)	
3. Travel	
Domestic	
Foreign	
4. Other direct costs (if none, state none)	
Supplies and materials (indicate significant items or items of a special nature)	
Publications	
Machine shop costs	
Computer services	
Other	
5. Indirect charges (indicate percent and expenditures to which percent is applied)	
6. Total costs	
7. Amount of grant	
Percent and amount to be contributed by (name of institution)	
Percent and amount to be contributed by ERDA	

Signature of principal investigator	Typed or printed name	Date

(Name and title of authorized representative)

(Signature) (Date)

[FR Doc.76-12160 Filed 4-26-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-337]

TAX CERTIFICATES

Issuance

APRIL 21, 1976.

1. On July 16, 1970 we issued a Public Notice, FCC 70-774, 19 RR 2d 1831, concerning the issuance of tax certificates pursuant to Section 1071 of the Internal Revenue Code. We there gave notice that where a broadcast licensee, owning interests inconsistent with the new policy (the "one-to-a-market" policy) established in the First Report and Order in Docket No. 18110, 22 FCC 2d 306, 18 RR 2d 1735, disposed of any such interest(s) in order to come into compliance with the policy, we would issue a tax certificate covering such divestitures. In that notice we set down certain guidelines which would govern the issuance of tax certificates in such voluntary divestiture situations. We there stated that we would require a "causal relationship" showing between the adoption of the new or changed policy and the sale in question, which showing would include the requirement that the sale occur within a "reasonable time span" such as "one license period" from the adoption of the policy.

2. In our Second Report and Order in Docket No. 18110, 50 FCC 2d 1085, 32 RR 2d at 995 (1975), we stated in Note 45 that we would grant tax certificates in connection with voluntary divestitures which result in compliance with our new policies regarding common ownership of daily newspapers and broadcasting stations in the same market.

3. Upon reevaluation of our Tax Certificate policy we have decided that in certain circumstances some of the guidelines set forth in our 1970 Public Notice are unnecessary. Section 1071 of the Internal Revenue Code reads in pertinent part as follows:

> If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Section 1033.

We think that the above statutory language, as we now construe it, will permit the issuance of tax certificates without any "reasonable time span" or "causal relationship" showing in the following circumstances:

(1) Where a new policy or change in our policy requires that the station (or CATV, or newspaper or interest therein) be divested—such sales or divestments are obviously involuntary and would be "necessary" to effectuate the new or changed policy; and

(2) Where a party voluntarily sells a facility or interest therein, the retention of which is inconsistent with a new or changed policy, but which has been "grandfathered in" by the new or changed policy. Here, the sale would obviously be voluntary but would clearly be "appropriate" to effectuate the new or changed policy.

4. Under situation (2) above, tax certificates will be issued for the voluntary divestitures of interests in facilities which are inconsistent with our "one-to-a-market" and newspaper-broadcasting cross-ownership rules adopted in Docket No. 18110 and for the divestiture of interests in commonly owned facilities with objectionable overlap of signals under our multiple ownership rules where the common ownership of such facilites has been "grandfathered" by our rules.

5. We wish to make it clear, however, that for a tax certificate under (2) above there must have been an existing interest in a facility or combination of facilities which interests were inconsistent with the new or changed policy when such policy was adopted by the Commission. As we announced in our Public Notice FCC-56-919, released September 27, 1956, and as we reiterated in KTFI Broadcasters, Inc., 42 FCC 2d 578 (1973), where a party acquires one facility on condition that it divest itself of an existing facility (or interest therein) the retention of which would be inconsistent with our multiple ownership policies, no tax certificate will be issued in connection with such divestment. Such transactions are wholly voluntary and clearly do not effectuate a new or changed policy of the Commission.

Action by the Commission April 14, 1976. Commissioners Wiley (Chairman), Lee, Reid, Hooks, Washburn and Robinson with Commissioner Quello dissenting.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.76-12219 Filed 4-26-76;8:45 am]

[Docket No. 20611, File No. BRH-1402; Docket No. 20612, File No. BPH-9223; FCC 76R-113]

UNITED BROADCASTING COMPANY (KBAY), ET AL.

Construction Permit

By the Review Board: Board Member Kessler dissenting[1] with statement. Board Member Chlbaum dissenting as to additon of Rule 1.526 issue.

1. This proceeding involves the mutually exclusive applications of United Broadcasting Company (United) for renewal of license of its FM broadcast Station KBAY(FM), operating on Channel

[1] Dissenting statement filed as part of the original document.

262 in San Jose, California, and of Public Communicators, Inc. (PCI) for a construction permit to establish a new FM broadcast station, operating on the same channel in San Jose. By Order, 40 FR 51501, published November 5, 1975, the Chief of the Broadcast Bureau, acting pursuant to delegated authority, designated the applications for hearing under the standard comparative issue. Presently before the Review Board is a petition to enlarge issues, filed November 20, 1975, by United seeking the addition of numerous issues against PCI.[2]

LEGAL QUALIFICATIONS ISSUES—SECTIONS 312(a)(7) AND 310(b) (REQUESTED ISSUES I AND II)

2. In support of its request for legal qualifications issues, United refers to provisions of the PCI corporate charter and By-laws which, it alleges, contravene Section 312(a)(7) and Section 310(b) of the Communications Act of 1934, as amended.[3] United first points to paragraph II(c) of PCI's Articles of Incorporation which provides:

> No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

According to United, the PCI charter thus precludes "any participation or intervention in any political campaign on behalf of any candidate for public office" in contravention of the reasonable access requirement of Section 312(a)(7). With respect to the alleged contravention of Section 310(b), United notes that Section 1 of Artice IV of the PCI By-laws provides for 15 directors; that Section 2(b) provides that the directors shall "* * * conduct, manage and control the affairs and business of the corporation * * *;" that the directors are elected for three year terms, one-third at each annual meeting; and that Section 4 of Article IV provides that "* * * when the composition of the board is less than one third poor people, unemployed, marginally employed, receiving public assistance * * * or less than one third female or less than one third ethnic minority representation, the name or names of person(s) in the appropriate subgroup(s) above must be placed in nomination before the election may proceed." United argues that judged collectively, these provisions and other provisions of the By-laws indicate that directors who control the corporation can be removed at will,[4] and that, as evidenced by deletions and additions to the PCI Board since the filing of the original application,[5] a transfer of control can occur at any time.

3. The Review Board agrees with the Broadcast Bureau that the requested issues are unwarranted. In our view, United's allegations are based purely on a plain misreading of the relevant provisions of PCI's corporate charter and By-laws. Moreover, in its response, PCI asserts with regard to Section 312(a)(7), that it would provide access to all political candidates on a non-partisan basis, arguing that paragraph II(c) of the Articles of Incorporation shows that it "would not become a clearing house of information or propaganda for any particular candidate, party or political tendency." As for the requested Section 310(b) issue, the Board notes that petitioner has failed to demonstrate that any unauthorized transfer of control has taken place and, as a consequence, its allegations in this respect must be regarded as hypothetical. In short, there is no basis for the supposition that PCI would not seek authorization for a transfer of control at such future time as the composition of the majority of its directors changes.[6]

FINANCIAL ISSUE (REQUESTED ISSUES III AND IV)

4. United requests issues to determine whether PCI has sufficient capital contributions to construct its proposed facility and to meet its initial operating costs for either three months or one year and, additionally, to determine whether PCI has a basis for its estimate of revenues during its first year and whether or not PCI may reasonably rely upon such revenues to yield necessary funds. United also questions PCI's operating cost estimates, observing that PCI's original application contained an annual budget of $23,100[7] for its proposed facility and that on October 11, 1975, PCI amended this proposed annual budget to $53,400[8] without correlating the upward revision in estimates to any specific items. As an example, petitioner points out that in its original application PCI showed $5,350 for an antenna system, RF generating equipment, monitoring and test equipment, and program origination equipment, whereas its October 1975 amendment only shows "Equipment" $7,350. Similarly, notes United, PCI fails to itemize its higher estimates for studio, miscellaneous costs and operating costs in its October 1975 amendment. But, in any event, United submits the affidavit of Alfred E. Towne, a con-

[2] Other related pleadings before the Board for consideration are: (a) newly discovered evidence in support of requested issue XVI, filed November 28, 1975, by United (b) response to petition to enlarge issues, filed December 1, 1975, by PCI; (c) comments, filed December 22, 1975, by the Broadcast Bureau; (d) errata to (c), filed January 16, 1976, by the Broadcast Bureau; (e) reply to (b) and (c), filed January 6, 1976, by United; (f) supplement to reply, filed January 12, 1976, by United; (g) modification of (c), filed January 16, 1976, by the Broadcast Bureau; (h) United's comments re (g), filed January 23, 1976; (i) motion for leave to file affidavit and affidavit, filed March 23, 1976, by United; and (j) comments on (i), filed April 1, 1976, by the Broadcast Bureau. Pleadings (a), (g) and (h) are supplemental pleadings which are not authorized by the Commission's Rules, and no motions for leave to file supplements have been filed. Nevertheless, the additional pleadings are unopposed and are pertinent to our resolution of this case. We will, therefore, consider the supplemental pleadings. In contrast, the affidavit filed by United on March 23, 1976, which is not only grossly untimely but apparently only an attempt to augment its initial showing with respect to a requested issue, will not be accepted. The Board also notes that in filing its response PCI has failed to comply with the subscription and verification requirement of Rule 1.52 which provides, in pertinent part, that a party who is not represented by an attorney shall sign and verify the document and state his address. We would caution PCI that although we will consider the opposition in this instance, any similarly defective pleadings submitted hereafter will be stricken for this deficiency.

[3] Section 312(a)(7) of the Communications Act of 1934, as amended, states: The Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Section 310(b) of the Communications Act of 1934, as amended, provides, in pertinent part: No construction permit or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

[4] Article IV, Section II of PCI's By-laws stipulates that a director may be removed from office, for cause, by the vote of the majority of the directors.

[5] PCI's original application listed the names of 15 directors. On June 24, 1975, PCI amended its application to delete three directors and add two new directors. A further amendment, filed November 21, 1975, and accepted by Order of the Presiding Judge, FCC 76M-74, released January 15, 1976, deleted a director and added an additional director. At present, therefore, PCI has 14 directors.

[6] In its reply pleading, United raises a new argument concerning PCI's ability to comply with the fairness doctrine because of its non-profit status. This allegation will be disregarded since the Commission's Rules provide that a reply pleading shall be limited to matters contained in the opposition pleading. See Rules 1.45 and 1.294. See also Industrial Business Corporation, 40 FCC 2d 69, 26 RR 2d 1447 (Rev. Bd. 1973).

[7] In its application, PCI lists total construction costs at $7,950 and estimated cost of operation for the first year at $23,100 for a total first year cost of $31,050. Although PCI argues that a three month financial test is appropriate since it is seeking to supplant an existing licensee, the figures it presents, in main part, are given in terms of an annual budget. Using the three month test, PCI's estimated cost of operation for the first three months would be approximately $5,775 and its total costs would be $13,725.

[8] Although counsel for the Broadcast Bureau apparently received a copy of PCI's October 1975 amendment which it states was filed October 15, 1975, PCI failed to file a petition for leave to amend and the amendment (which was filed after the adoption of the designation Order on October 9, 1975) was not properly filed with the Commission. Consequently, the Administrative Law Judge has not ruled on the amendment.

sulting engineer, dated November 11, 1975, in which Mr. Towne states that PCI has provided insufficient estimates for the equipment costs at its proposed station. Specifically, Mr. Towne avers that the cost of remote control equipment (STL) alone is approximately $5,000; that the cost to modify the old transmitter, adapting it to remote control and supplying all necessary control relays would cost another $2,000; that only $1,750 is proposed by PCI for an installed antenna while the transmission line alone costs about $1,200; and that the $2,000 proposed for studio equipment and station construction is unrealistic. PCI's operating estimates are also deficient, contends United, because PCI has not allocated funds for such items as employee salaries, insurance and payroll taxes, music license fees such as ASCAP, BMI and SESAC, an original record library, equipment maintenance (PCI proposes used equipment), liability insurance on PCI assets, accounting costs and promotion costs. In addition, United continues, PCI has underestimated such costs as power, program material, news service, telephone and FM leased line charges, audience surveys and consulting engineering services.[9] Moreover, United argues that PCI has not provided for the interest it will be obliged to pay any lender advancing funds.

5. United also argues that PCI will not have sufficient funds available[10] to meet its estimated costs because the loan documents submitted by PCI reveal that those individuals who are to lend money to the applicant do not possess the financial ability to do so. Referring to the October 1975 amendment in which PCI states that it has loan commitments of $41,456, United contends that the balance sheets of a number of the lenders show insufficient liquid assets to meet their commitments. Moreover, United emphasizes that the loan commitments are based upon a very specific condition precedent which provides that the commitment becomes binding upon the lender only when PCI is awarded a construction permit by the FCC, and constructs and operates its station substantially as represented to the FCC and to the prospective lender.

6. Finally, United asserts that an inquiry into PCI's estimated revenues[11] and ability to operate for a period of one year after construction is warranted on the basis of the Commission's pronouncement in Ultravision Broadcasting Company, 1 FCC 2d 544, 548, 5 RR 2d 343, 348 (1965), that "where operation during the first year is dependent upon estimated advertising revenues, the applicants will be required to establish the validity of the estimate." Conceding that in Orange Nine, Inc., 7 FCC 2d 788, 9 RR 2d 1157 (1967), review denied FCC 67-960, released August 14, 1967, and Salter Broadcasting Co., 6 FCC 2d 809, 9 RR 2d 577 (1967), the Commission only imposed a three month financial standard where the applicants were seeking to replace stations with established records of advertising revenues stretching over a long period of time. United argues that the instant proceeding is distinguishable because PCI would drastically change the programming of the existing station, including advertising policy; PCI would depart from KBAY's existing commercial practices by charging a top spot rate of $3.00 per minute in contrast to KBAY's top spot rate of $30.00 per minute; and PCI proposes to eliminate stereo and vertical polarization from the existing service. The Broadcast Bureau supports the addition of a broad-based financial issue.

7. In opposition, PCI submits the notarized statement of Jeremy Lansman, dated November 29, 1975, who states that he "firmly believe[s] that a station can be built for less than the sum available to PCI. * * *" Mr. Lansman attaches a list of items needed for "A Possible Inexpensive FM Stereo Station" and shows their respective costs as totaling $6,585, which he indicates is within the PCI construction budget. PCI further contends that its pledges are fully backed by liquid and other assets and that it "can probably expect to get bank and equipment loans as well in the first year." Contrary to United's assertion, PCI argues that the three month standard must be applied in evaluating its financial showing. Adding that it anticipates substantial first year revenues, PCI contends that $3.00 per minute will not be its top commercial rate. PCI also attaches a letter from Robert D. Hawk, Executive Director of the Community Media Center, to David McNeil, President of PCI, stating that his organization is prepared to share studio space at an estimated cost of about $35.00 per month.

8. The Review Board is of the view that an issue concerning the financial qualifications of PCI should be added. As an initial matter, it is well established that the Board must consider whether a financial issue is warranted on the basis of the applicant's proposal of record. See Edward G. Atsinger, III, 30 FCC 2d 493, 22 RR 2d 236 (Rev. Bd. 1971), and Kitty-hawk Broadcasting Corp., 8 FCC 2d 217, 9 RR 2d 1283 (Rev. Bd. 1967). In light of the present unaccepted status of PCI's October 1975 amendment (see n. 7, supra), PCI's original application remains its proposal of record.[12] On this basis, we find that petitioner, through the affidavits of Mr. Towne, Mr. Gunzendorfer, and Mr. Exline, each experienced in radio broadcast operations in the region, has raised substantial questions concerning the reasonableness of PCI's estimated costs of construction and operating expenses to which PCI has not satisfactorily responded. See Lafourche Valley Enterprises, Inc., 30 FCC 2d 539, 22 RR 2d 228 (Rev. Bd. 1971) and James B. Francis, 17 FCC 2d 596, 16 RR 2d 55 (Rev. Bd. 1969). The statement of Jeremy Lansman, submitted by PCI, does not establish his qualifications as an engineering consultant, and thus his competence to reasonably estimate equipment costs, and more important, the statement is not concerned with the same proposal as that set forth in PCI's application.[13] Nor does Mr. Lansman's statement respond to many of the additional items characterized as necessary by United. Moreover, PCI states in its July 22, 1975 amendment that rent for its proposed transmitter site will cost $500 per month, yet no allocation for this sum is provided in its application and, in response to United's request for a staffing issue (see para. 22, infra), PCI suddenly proposes to increase its allocation for salaries and payroll taxes from $8,503, as specified in its application, to $22,000.[14] To meet its expected cost of construction and initial operation, PCI relies, according to its application, on $31,500 in loan pledges and $5,855 in the promised loan of studio equipment. As noted above, however, petitioner's estimates of the expenses to be anticipated by PCI far exceeds PCI's estimates. Apart from the discrepancy in cost estimates, our review of the pledge commitments contained in the July 1975 amendment to PCI's application discloses that the balance sheets submitted by Myrna A. Fabbri and Phillip Jacklin do not show sufficient liquid assets to support their respective pledges of $8,000 and $2,500. Therefore, a question exists as to whether PCI actually has available $10,500 of its $31,500 in pledges. Under these circumstances, inquiry into PCI's estimates of expenses and available funds is clearly warranted.[15]

[9] In support of these allegations, United attaches to its petition the affidavits of two radio and television consultants, Wilton Gunzendorfer and William A. Exline. United also submits the affidavit of Vivian Cooper, the bookkeeper for Station KBAY(FM), who sets forth KBAY's 1974 operating costs which totaled $277,275.

[10] PCI's original application shows total funds available of $37,355 consisting of $31,500 in pledges and $5,855 in the form of a promised loan of studio equipment.

[11] PCI estimates revenues for the first year at $50,000 in its application and, according to United, at $61,200 in its October 1975 amendment.

[12] In any case, it does not appear that PCI's amendment adequately responds to the problems set forth by United.

[13] Mr. Lansman also represents that the applicant will be able to rent telephone lines rather than use an STL as originally proposed, although he does not project a cost for telephone line rental. In its reply, United states that Station KBAY does not use such lines because properly balanced lines from San Jose to the crest of the transmitter site, Loma Prieta, do not exist and in a supplement to its reply, filed January 12, 1976, United attaches the affidavit of Paul J. Phillips, a communications analyst, who estimates on the basis of information provided him by Pacific Telephone employees, that PCI will have a minimum cost of $8,618 for telephone service and installation the first year.

[14] The Commission has held, however, that such revenue-related items as music royalties and dues are not necessary to its assessment of an applicant's financial qualifications. See Dubois County Broadcasting, 53 FCC 2d 828, 34 RR 2d 10 (1975), and cases cited therein.

[15] PCI's mere assertion, in its opposition, that it "can probably expect to get bank and equipment loans as well in the first year" does not establish with any assurance that it will be able to obtain additional funds.

9. The Board does not agree, however, with United's contention that PCI should be required to demonstrate its financial ability to operate for a period of one year after construction of the station. Rather, we believe that the standard set forth in Orange Nine, Inc., supra, and Salter Broadcasting Co., supra, requiring an applicant seeking to replace a station with an established record of advertising revenues to show that it has sufficient funds to construct and operate the proposed station for three months without revenues, must be applied here. There is no indication that the Commission intended a different policy to apply if the applicant proposes some changes in the programming or advertising practices of the station and, indeed, United has not shown that there will be any significant changes. PCI states, in its response, that it proposes a musical entertainment format substantially identical to KBAY's, and PCI also disputes the charge that $3.00 per minute will be its "top" commercial rate.[16] Finally, it is our view that, contrary to the position of the Broadcast Bureau, PCI is not required at this time to "substantiate its proposed revenues for the three month period" because there is no indication in the original application that PCI is relying on revenues to meet its costs of construction and operation for the first three months. Should PCI propose to rely on revenues at some later date, it would be required to substantiate its estimated revenues for the three month period. Moline Television Corp., 12 FCC 2d 770, 13 RR 2d 77 (Rev. Bd. 1968).[17]

ANTENNA SITE AVAILABILITY/SUITABILITY ISSUE (REQUESTED ISSUE V)

10. Noting that by its amendment dated July 22, 1975, to FCC Form 301, Section V–G, PCI proposes to use the same tower that KBAY (FM) is presently using and to mount its antenna in the same position as the existing KBAY system, United urges that an issue is raised as to whether the transmitter and tower site is, in fact, available to PCI. United points out that PCI is relying on a letter from Richard D. Spight, President of Television Communications, Inc. (TCI), dated May 12, 1975 and attached to PCI's July 22, 1975 amendment, in which Mr. Spight states: " * * * our company presently leases to the operator of radio station KBAY FM; and in the event that the F.C.C. awards that license to you or any other group, we would also lease space to the surviving licensee." However, asserts petitioner, KBAY's antenna is presently located on a tower owned by Gill Industries, which allegedly has not indicated that it would be willing to lease tower space to PCI. In support, United attaches the November 13, 1975 affidavit of Robert M. Hosfeldt, Vice President of Gill Industries. Affiant Hosfeldt states that Gill Industries owns a tower on Loma Prieta Peak in Santa Clara County and that United subleases space on the tower for its KBAY(FM) antenna; that PCI has never contacted him concerning its use of this tower; and that there are no financial arrangements with PCI for such use. In addition, United asserts that the letter to PCI from Mr. Spight does not mention a price and is not a binding commitment by TCI to lease space. United also questions whether the site is suitable for the proposed PCI antenna. While PCI proposes to mount its antenna in the same position as the existing KBAY(FM) system, argues United, it proposes a different antenna with much larger elements than KBAY's and PCI has presented no engineering data to establish that the larger antenna will meet the adverse environmental conditions on Loma Prieta or that PCI's proposal to change the antenna elements will not have any adverse effect on Station KNIV's radiation pattern. In its comments, the Bureau supports the addition of a site availability issue.

11. PCI responds that it will use the same tower as KBAY and "must assume that it will be available" on the basis of Mr. Spight's letter. PCI adds that "[i]n extremis [its] budget can accommodate the construction of a tower nearby on land leased from Mr. Spight." As to the suitability of the site, PCI argues that United misrepresented the size differences between the two antennas in question and that the PCI antenna will be lighter and smaller than the KBAY antenna because PCI's antenna will have six horizontal bays (replacing KBAY's four) and no vertical bays.

12. In the Board's view, the conflicting affidavits presented by United and PCI raise substantial questions as to the availability of PCI's proposed antenna site. While the Commission does not require a binding agreement but only a showing of reasonable assurance that a site will be available, see Ken Stephens, 53 FCC 2d 383, —— RR 2d —— (Rev. Bd. 1975); Eastside Broadcasting Co., FCC 63R–528, 1 RR 2d 763 (Rev. Bd. 1963), in the instant proceeding, the relationship between Gill Industries, which owns the tower, and TCI, which subleases space on the KNIV tower to Station KBAY, is unclear.[18] Thus, although TCI has indicated that it would make the site available, a substantial question remains as to whether TCI has the authority to make such a commitment. Furthermore, although PCI claims that it can, if necessary, construct a tower nearby on land leased from Mr. Spight, it has not amended its application to specify a new site. Under these circumstances, the addition of a site availability issue is warranted. Cf. Lawrence County Broadcasting Corp., 8 FCC 2d 597, 10 RR 2d 471 (Rev. Bd. 1967). Insofar as United requests an issue as to the suitability of PCI's proposed antenna site, its allegations fail to satisfy either the specificity or support requirements of Section 1.229 (c) of the Commission's Rules. Accordingly, that portion of United's request will be denied.[19]

AREAS AND POPULATIONS ISSUE AND TECHNICAL COMPARISON ISSUE (REQUESTED ISSUES VI AND VII)

13. United argues, in support of its request for an areas and populations issue, that part of the reason for KBAY's extensive coverage is the vertically polarized component of its signal which can be received at a greater distance than a horizontal signal.[20] Since PCI's application indicates that it proposes to use only horizontal polarization for its transmitting antenna, United alleges that the result will be a substantial degradation in service leading to a loss in the areas and populations served. Petitioner also requests an issue "to determine on a technical basis which of the proposals before the Commission is more likely to serve the public interest" based on PCI's proposals to eliminate vertical polarization and to present monaural programming as opposed to the allegedly publicly preferred stereo programming of the present licensee. In addition, United claims that the issue should include an inquiry as to PCI's request for FM "Grandfather Status." Although KBAY operates its facilities under the "grandfather" exemptions of the revised FM broadcast rules (In the Matter of Revision of FM Rules, FCC 62–1243, 23 RR 1845 (1962)),[21] United maintains that "PCI should be treated like a new applicant and be required to operate with facilities no greater than 50 kw and 500 feet or seek waivers showing specifically why it should be allowed to operate a facility with higher power * * *." PCI, in opposition, asserts that its proposed transmitter may easily be modified for stereo broadcasting, referring to the November 29, 1975 affidavit of Jeremy Lansman who states that "PCI could have proposed a full stereo operation with circular polarization within the proposed PCI budget."

14. The requested issues will be denied. We have previously held that the benefits accruing from stereo service may be explored under the standard comparative issue, Brookhaven Broadcasting

[16] PCI's application states that music will consist of 67.4 percent of its total broadcast week and that its $50,000 revenue estimate is based on an average charge of $3.00 per commercial minute. Furthermore, United's allegation that PCI's proposal to eliminate stereo and vertical polarization will significantly affect the station's reception in car FM radios, thereby possibly affecting revenues, is speculative.

[17] United's request for a Rule 1.514 issue relating to PCI's financial showing will be denied since United has failed to substantiate its vague allegation that PCI has not complied with the rule.

[18] United's reply pleading indicates that TCI leases land to KBAY and subleases space on the KNTV tower on Loma Prieta Peak to KBAY.

[19] Moreover, United has not shown any violation of Rule 73.211(d) pertaining to power and antenna height requirements.

[20] United refers to an attached copy of "A Study Into the Effects Of Vertically Polarized Radiation In FM Broadcasting" by Peter Onnigian of the Jampro Antenna Company to support its request.

[21] Therein, the Commission provided that stations in operation at the time of the 1962 FM reclassification would be permitted to operate at heights and power in excess of that prescribed for future stations.

Co., Inc., —— FCC 2d ——, —— RR 2d —— (Rev. Bd., released January 24, 1975), and, similarly, differences in areas and populations and antenna polarization techniques are appropriate subjects for comparison of the applicants properly encompassed within the efficient use of frequency criterion of the standard comparative issue. See Guy S. Erway, 4 FCC 2d 40, 27 RR 2d 103 (Rev. Bd. 1973), and Report and Order In the Matter of Amendment of Section 73.316, 4 RR 2d 1582 (1965). However, as the Bureau has pointed out, requests for permission to adduce comparative coverage and efficient use of the frequency evidence should be directed to the Presiding Judge in the first instance. See Brookhaven Broadcasting Co., Inc., supra; Duncan Broadcasting Co., Inc., 40 FCC 2d 302, 26 RR 2d 1737 (Rev. Bd. 1973); Guy S. Erway, supra; JACO, Inc., 18 FCC 2d 677, 16 FR 2d 894 (Rev. Bd. 1969). Furthermore, it is the Board's view that United has failed to established that PCI should not be accorded KBAY's "grandfather" status in the event of a grant. There is no indication that PCI's proposal would occasion any new or additional problems such as increased interference. Rather, the proposal, if granted, would preserve the status quo, a fact which the Commission has regarded favorably in accepting competing applications in somewhat analogous situations. Cf. George T. Mobille, 51 FCC 2d 1165, 33 RR 2d (1975); Bronco Broadcasting Co., Inc., 50 FCC 2d 529, 531, 32 RR 2d 213, 216 (1974), reconsideration denied 33 RR 2d 952 (1975); Lorain Community Broadcasting Co., 5 FCC 2d 133, 8 RR 2d 985 (1966); *Beloit Broadcasters, Inc.* v. *FCC*, 125 U.S. App. D.C. 29, 365 F. 2d 962 (1966).

AVAILABILITY OF STUDIO EQUIPMENT AND RELATED MISREPRESENTATION ISSUES (REQUESTED ISSUES VIII AND IX)

15. United seeks addition of issues to determine whether certain studio equipment specified by PCI in its application will be available and whether or not PCI made misrepresentations to the Commission in representing the equipment's availability. In support, United attaches the affidavit of Dan Tapson, General Manager of Station KOME, San Jose, California, dated November 5, 1975. Mr. Tapson states in his affidavit that approximately four to six weeks earlier he had received a phone call from Jim Hilsabeck who identified himself as owner or co-owner of certain recording and stereo equipment from the Hilsabeck/Droese Production Studios which he was offering for sale and had been trying to sell to radio Station KSOL, San Mateo.[22] While his station did not purchase any of the equipment, avers Mr. Tapson, it was his understanding that if the station desired to purchase the equipment, it would be immediately available. United contends that since Mr. Hilsabeck is a director of PCI and, as one of the owners of Hilsabeck/Droese Production Studios, a signatory of the pledge of equipment to PCI,[23] there is a question as to whether the studio equipment specified by PCI and listed as an asset in PCI's financial showing is actually available for the proposed use. As a related matter, United alleges that PCI has misrepresented the availability of the equipment to the Commission because its director has offered the equipment for sale. PCI argues, in response, that it does not need the Hilsabeck equipment to stay within its budget, as shown by the November 29, 1975 affidavit of Jeremy Lansman attached to its pleading, and, therefore, it may or may not request Mr. Hilsabeck to deliver on his pledge. Moreover, continues PCI, Mr. Hilsabeck has given verbal assurance that the equipment is not now "for sale" and is still available to PCI on short notice.[24]

16. The Board believes, on the basis of all the information presented, that the equipment offered for sale by Mr. Hilsabeck appears to be the same equipment as that pledged to PCI; however, in light of the uncontradicted statement in PCI's opposition that the equipment is still available, we will not add the issue requested by United. The Board is also unable to find any misrepresentation on the part of PCI and will deny petitioner's requested misrepresentation issue. Nevertheless, PCI's response that it may or may not use the equipment represented in its application raises serious questions concerning the adequacy of its proposal. See California Stereo, Inc., 40 FCC 2d 283, 26 RR 2d 1713 (Rev. Bd. 1973). Cf. WVOC, Inc., 32 FCC 2d 765, 23 RR 2d 371 (Rev. Bd. 1971). In order to resolve these questions, the Board will specify an appropriate issue.

CROSS-INTEREST/CONFLICT OF INTEREST AND LACK OF CANDOR AND/OR RULE 1.514 ISSUES (REQUESTED ISSUES X AND XI)

17. United predicates its request for a cross-interest/conflict of interest issue on the allegation that at least six directors and one officer of PCI, Phil Jacklin, Leonard Krimerman, James White, Mary Jo Foote, George Conklin and Dick Cantu, are also members of the Committee for Open Media (COM),[25] an organization which, according to United, "attempts to influence programming of all stations in the Bay Area by means of negotiations, petitions to deny applications for renewal of licenses, and informal objections." Contending that a licensee must insulate its owners, directors and personnel from conflicts in the operation of the broadcast facility, United argues that "COM has a potentially significant opportunity to impair competition and violate the Commission's cross-interest policy." Specifically, United charges that the common members and directors of COM and PCI can bring regulatory pressure to bear on their broadcast competitors and would be in a position to divert any actions of COM designed to criticize or attack PCI. United also contends that PCI's failure to report the membership of its directors in COM should be explored under the Commission's conflict of interest or lack of candor standards.

18. Both PCI and the Broadcast Bureau oppose the requested issues. PCI maintains that it has reported the membership of its directors in COM.[26] In any case, however, PCI argues that membership in COM is not contrary to the Commission's cross-interest policy and "is no more a conflict of interest than * * * KBAY's membership in the National Association of Broadcasters." The Bureau comments that United's speculation that COM may violate the Commission's cross-interest policy does not meet the requirements of Section 1.229.

19. The Board will deny the requested issues. As we have previously noted, the Commission's cross-interest policy, stemming from the duopoly or overlap prohibitions of the multiple ownership rules (Section 73.240 of the Rules, in the case of FM stations), proscribes cross-interests by licensees in two facilities of the same type serving substantially the same area. See Prairieland Broadcasters, 48 FCC 2d 819, 31 RR 2d 275 (Rev. Bd. 1974). The policy has also been applied in situations involving interests other than broadcast facilities such as Eastern Broadcasting Corporation, 30 FCC 2d 745, 22 RR 2d 472 (Rev. Bd. 1971), review dismissed FCC 71-1081, released October 21, 1971, cited by petitioner, where a principal stockholder of the applicant for an FM station was President and major stockholder of an advertising agency in the same community. In Eastern, however, the Board found that a disqualifying cross-interest issue was warranted on the basis of specific allegations of fact which revealed certain potential dangers, that is, that because of his dual role the principal was privy to rate structures and the internal operations of his broadcast competitors; that he had the potential to direct his agency's new advertising accounts to his own station; and that by "suggestion" he could and did influence program selection at stations throughout his proposed service area. 30 FCC 2d at 754-55, 22 RR 2d at 483. The Board finds no similar justification for extending the cross-interest policy to the circumstances

[22] Mr. Tapson states that Mr. Hilsabeck offered the following equipment for sale: 1 McMartin Model B-502 Five Mixer Audio Control Console-Stereo, 2 Russco Cue-Master 3-speed turntables, 2 Russco Model RA-12 12 inch tone arms, 2 Ramko Turntable Pre-Amps Model SP-8E, 2 Otari MX 7000 2SP Two-channel Stereo Record/reproducer in portable case, 2 Studio Monitor Speakers.

[23] The equipment pledge to PCI (totalling $5,855), dated October 21, 1974, and signed by Douglas Droese and James R. Hilsabeck, Jr., includes equipment of the same description as that set forth in n. 21, supra, and also includes additional equipment.

[24] The Bureau opposes addition of the requested issues.

[25] The officer to whom United refers is Phil Jacklin who is listed as Treasurer of PCI in its amendment filed November 21, 1975.

[26] For instance, PCI asserts that in Exhibit 6 of its petition to enlarge issues, filed November 21, 1975, it noted that Myrna Fabbri is a Treasurer of COM and Bill Hartman is a member of COM, and in its November 21, 1975 amendment it listed Dick Cantu as a member and Vice President of COM.

of the instant case; clearly Eastern is not factually similar to this case. It is also speculative that the objectives of COM will conflict with PCI's obligation to operate its proposed station in the public interest; consequently, a conflict of interest issue is warranted.[27] See H. S. Hagan Jr., 49 FCC 2d 952, 31 RR 2d 1617 (Rev. Bd. 1974). Finally, United's requested lack of candor or Rule 1.514 issue[28] must be denied. There is no requirement in FCC Form 301 that an applicant set forth the names of organizations in which its directors are members, and there is no indication in the pleadings that COM is the principal occupation or business of any of PCI's directors.[29]

VIABLE APPLICATION ISSUE (REQUESTED ISSUE XII)

20. Petitioner alleges, in support of its requested issue, that PCI's application is defective because PCI's amendment to Sections V–B and V–G of FCC Form 301, filed July 22, 1975, stating that PCI proposes to use the site currently used by KBAY(FM), incorporates by reference the technical information contained in the KBAY (FM) file.[30] United points out that Instruction E to FCC Form 301 provides in pertinent part:

> Information called for by this application which is already on file with the Commission * * * need not be refiled in this application provided (1) the information is now on file in another application or FCC Form filed by or on behalf of this applicant. * * *

Since the information in KBAY's file is not part of an application filed by or on behalf of PCI. United contends that PCI has contravened the Commission's instructions. Moreover, argues United, PCI should not be permitted to benefit from the material in the KBAY file, and thus a question exists as to whether PCI's application is complete. PCI observes, in response, that its application is substantially complete and that the Commission has liberally interpreted the concept of "substantially complete," citing Central Florida Enterprises, Inc., 22 FCC 2d 260, 18 RR 2d 883 (1970).

21. In the Board's estimation, a viable application issue is unwarranted. We note that in the modification of its comments, filed January 16, 1976, the Broadcast Bureau states that although PCI has technically violated Instruction E of FCC Form 301, "it is and has been the Bureau's policy to allow such incorporation by reference when the proposed site is the same as that of the station whose file is incorporated and when the technical information has been on file and a matter of public record, as in the case of an existing licensee. * * *" Commission precedent supports the Bureau's position. Cf. Central Florida Enterprises, Inc., supra, and George E. Oleson, FCC 66–838, 5 FCC 2d 58 (1966), reconsideration denied 6 FCC 2d 502 (1967). Therefore, the requested issue will be denied.

STAFFING ISSUE (REQUESTED ISSUE XIII)

22. United next alleges that PCI's staffing proposal of four full-time paid employees to operate its station 168 hours per week is "woefully deficient."[31] Although PCI's application indicates that the four employees will be supplemented by a considerable number of volunteers, petitioner observes that PCI has not provided any data to show that volunteers will be obtained[32] or adequately supervised. United further asserts that since PCI's proposal also provides that one of its employees will be a paid volunteer coordinator for the news staff, only three people will remain to handle operations. And, of these three (and of the proposed volunteers), United avers, there is no indication that one or more will hold an appropriate grade of radio operator license, as required by Rule 73.93. Nor, contends United, has PCI set forth any staffing plan to demonstrate how it will effectuate its proposal, which contemplates a "tremendous" amount of programming that requires staff attention, including thirteen separate programs which will be locally produced. According to United, the above deficiencies are compounded by the fact that PCI also plans a large amount of news and public affairs programming and will not be affiliated with a network.

23. The Review Board concurs with the assessment of the Broadcast Bureau that a substantial question has been raised as to the adequacy of PCI's stuff to effectuate its proposed operation of 168 hours per week. There is no indication in PCI's application as to what duties and responsibilities it intends to assign to each of its four full-time employees. On its face, PCI's staffing plan appears unrealistic in light of the extensive public affairs programming and local news coverage proposed.[33] Moreover, in its response to United's requested issue, PCI asserts that its station will be staffed almost exclusively by volunteers whom it will train to operate the station and to obtain FCC operators' permits.[34] Yet, PCI fails to provide any assurance that its proposed volunteer help will actually be available other than its general statement that "the vast population of the Bay Area can easily produce enough quality volunteers." Under these circumstances, a staffing issue is clearly warranted. See Lester H. Allen, 17 FCC 2d 439, 16 RR 2d 19 (Rev. Bd. 1969); Community Broadcasting Co. of Hartsville, 16 FCC 2d 647, 15 RR 2d 814 (Rev. Bd. 1969).[35]

RULE 1.526 ISSUE (REQUESTED ISSUE XIV)

24. Petitioner, in support of its requested Rule 1.526 issue,[36] attaches the affidavits of Roger J. Metzler and Barbara Dickinson, dated November 7, 1975 and November 6, 1975, respectively. In his affidavit, Mr. Metzler states that on September 23, 1975 and October 23, 1975, he went to the San Jose Public Library, Main Branch, Business Records Section, to examine the public file of PCI, and that on both occasions he could not find in the file letters from the FCC to PCI or a copy of the Broadcast Procedure Manual. He further states that he was informed that the file had been missing for some time and had just recently been found. Ms. Dickinson, an employee of the San Jose Public Library, avers, in her November 6, 1975 affidavit, that several months earlier a patron had requested to see the PCI public file but that the librarians were unable to find the file after a search of the department and even after PCI provided information as to the location where it had placed the envelope. Ms. Dickinson adds that

[27] United submits with its reply pleading a copy of a petition to deny license renewal, filed by COM on October 25, 1974. The exhibit will be disregarded in view of our policy that an applicant may not attempt to cure an otherwise defective petition to enlarge issues with buttressing material submitted in its reply where the information contained therein was readily available and could have been included in the original petition. Belo Broadcasting Corporation, 49 FCC 2d 181, 31 RR 2d 961 (Rev. Bd. 1974); Industrial Business Corporation, 40 FCC 2d 69, 26 RR 2d 1447 (Rev. Bd. 1973). In addition, United's suggestion, raised for the first time, in its reply, that COM "may even be the undisclosed principal in this application" is based entirely on surmise. Consequently, it will be disregarded (see note 5, supra).

[28] Although United refers to PCI's failure to report its directors' membership in COM as requiring inquiry under the Commission's conflict of interest standards, the Board fails to see how a conflict of interest is involved. We have treated United's request as one for a Rule 1.514 issue since that rule pertains to information required to information required to be supplied in the application.

[29] Table II of FCC Form 301 asks for the principal occupation and businesses in which each party (to the application) named is engaged at the present time or has been engaged at any time during the past five years, and, in addition, any other business or financial enterprise in which such party has now or within the past 5 years has had either a 25 percent or greater interest or any official relationship.

[30] United premises its "Petition to Return The Public Communicators, Inc. (PCI) Application As Patently Not in Accordance With the Commission's Rules," filed January 7, 1976 with the Commission, on the same facts that are before the Board in connection with this requested issue.

[31] In support, United refers to the attached affidavits of Wilton Gunzendorfer and William A. Exline.

[32] United asserts that since PCI estimates that ten to fifteen volunteers will equal approximately one and a half staff positions, PCI would need between 91 and 130 volunteers if it were to continue Station KBAY's programming.

[33] In Exhibit 11 to its application, PCI states that it will devote 50 percent of its news programming to local news and 15 percent to regional news.

[34] PCI does not rebut United's allegation that it will not have on hand an employee holding an appropriate grade of radio operator license or permit.

[35] To the extent that United's allegations concern the adequacy of PCI's proposed staff salaries, they have been dealt with in the context of the financial issue, supra.

[36] Rule 1:526 provides, in pertinent part, that "Every applicant for a construction permit for a new station in the broadcast services shall maintain for public inspection a file for such station containing * * *" a copy of the application and all letters, exhibits, amendments, etc. related thereto.

the file was finally located "out of place" after approximately one week had elapsed. According to United, since the librarians were unable to locate the file until a week after it was requested, a question is raised as to the file's availability to the public from the very first day PCI placed the file in the library.

25. Although PCI argues, in response to United's charges, that its file was initially available in the "E.I.R. and miscellaneous reports" Section of the library adjacent to the Business Section, and that the librarians were able to direct PCI directors McNeil, Jacklin and others to the file, it does not supply any supporting affidavits. When Mr. McNeil failed to find the file in the specified location at the end of May 1975, claims PCI, he was told by the librarian on duty that the file had been given "a drawer of its own" and was shown to the file without difficulty. PCI maintains that its directors have regularly consulted the file and it has received no complaints concerning the availability of the file or the completeness of its contents. The Bureau also opposes United's request.

26. The Board will add an issue as to the availability of PCI's public file.[27] It is undisputed that PCI's public file was not available for public inspection at the specified location for a period of at least a week. In this connection, although it appears that the file was only "out of place," it is the applicant's responsibility to ensure that a copy of its application is always available for public inspection during normal business hours, and the applicant "cannot attempt to delegate its responsibility to maintain such a file to the custodian involved." Kennebec Western Broadcasting Company, 51 FCC 2d 1154, 1157, 33 RR 2d 343, 348 (Rev. Bd. 1975); Centreville Broadcasting Company, FCC 71R-62, 21 RR 2d 216 (Rev. Bd. 1971). However, since there is no showing of any intent on the part of PCI to conceal information from the public or any prejudice to United, the requested issue will be added on a comparative basis only. See Kennebec Western Broadcasting Company, supra; B.B.C., Inc., 41 FCC 2d 241, 27 RR 2d 1110 (Rev. Bd. 1973).

CONTROL OVER FOREIGN LANGUAGE PROGRAMMING ISSUE (REQUESTED ISSUE XV)

27. Pointing to the Commission's Memorandum Opinion and Order, Foreign Language Programs, 39 FCC 2d 1037, 26 RR 2d 1427 (1973), in which the Commission sets forth some methods of exercising licensee control over foreign language programming and adds that it will leave to the licensee the determination of what particular procedures are necessary for the exercise of such proper control in each individual case, United argues that "there can be no question that some procedures are necessary." United claims that an issue should be added to determine PCI internal procedures for exercising proper control over its proposed foreign language programming[28] because PCI has allegedly ignored the problem. PCI responds that it plans to begin foreign language programming in Spanish because PCI board members can control the content and that it will expand to other languages only with appropriate controls, such as the use of volunteer monitors. In addition, PCI contends that all such foreign language broadcasts will be actual translations of PCI spot messages produced in English. In reply, United argues that PCI's plan to recruit volunteer monitors itself raises questions that must be explored at hearing, citing Sierra Madre Broadcasting Co., 47 FCC 2d 424, 31 RR 2d 369 (1974).

28. The requested issue will not be added. As indicated by the Bureau, neither the FCC Form 301 instructions nor the Commission's Rules require an applicant to submit procedures regarding its proposed foreign language programming. Moreover, the Commission has emphasized that it will not question a licensee's means of program control "so long as no substantial evidence is offered that control is inadequate * * *." Wolfe Broadcasting Corporation, 32 FCC 2d 761, 763, 23 RR 2d 396, 400 (1971), cited in Foreign Language Programs, supra.[29]

RULE 1.65 ISSUE (REQUESTED ISSUE XVI)

29. United bases its request for a Rule 1.65 issue on the alleged failure of PCI to amend its application (1) to reflect the fact that its application for an AM license was dismissed;[30] (2) to list James R. Hilsabeck, Jr.'s other business interests; and (3) to report changes in its officers and directors.[31] Specifically, petitioner argues that PCI did not amend the instant application to reflect the dismissal of its application for KLOK(AM), San Jose, California; that PCI did not mention in Section II, Table II of Form 301 the business and financial interest of James R. Hilsabeck, Jr. in Hilsabeck/Droese Production Studios, the pledgor of $5,855 in equipment to PCI; and that PCI did not inform the Commission until its amendment dated June 24, 1975, that new officers were elected April 13, 1975, and that there were three deletions from and two additions to the Board of Directors. Additionally, in its supplement, filed November 28, 1975, United complains that PCI's "Petition to Enlarge and Particularize the Issues for Hearing," filed November 21, 1975, reveals for the first time that Pat Williams is now a member of the PCI Board of Directors and Rod McElroy is apparently no longer a director (see n. 4, supra).

30. Both PCI and the Broadcast Bureau oppose addition of the requested issue, the Bureau contending that the reporting failures cited by United are not of sufficient magnitude to require inquiry. PCI argues that it had referred to the AM application in its FM application and it did not regard the dismissal of its application for KLOK(AM) as a substantial change in its application for the FM license. PCI further contends that the failure to report Hilsabeck's connection with Hilsabeck/Droese Production Studios was "trivial" and that "it was as surprised as anyone" to discover that the "changes [in its officers and directors] had not been sent along."

31. The Board will deny the requested issue. While the Commission requires full disclosure of other pending applications, PCI's failure to reveal the dismissal of its application for KLOK(AM) appears to have been merely an inadvertent error which cannot be regarded as having any adverse significance with respect to the ultimate resolution of this proceeding. With regard to PCI's omission of Hilsabeck's business interest in Hilsabeck/Droese Production Studios, the existence of that business connection was apparent from an examination of the entire application, and, in any event, we fail to perceive the significance of the omission. Finally, although PCI should have more promptly reported the changes among its officers and directors in accordance with the provisions of Rule 1.65, petitioner has neither alleged nor demonstrated that the changes in PCI's officers and directors are so numerous as to have an effect on the legal, financial or other qualifications of PCI. See Pioneer Broadcasting Company, 54 FCC 2d 383, —— RR 2d —— (Rev. Ed. 1975). See also paragraph 3, supra. In sum, since United has not shown how the omitted information should be decisionally significant, the above allegations do not warrant a Rule 1.65 issue.[32]

[27] No inquiry regarding the completeness of the public file is warranted. United has failed to specify what correspondence from the FCC is allegedly missing from PCI's file in accordance with the specificity provisions of Rule 1.229(c) and, as correctly noted by the Bureau, Rule 1.326(a)(1) does not require applicants for a construction permit for a new station in the broadcast services to keep a copy of the Broadcast Procedure Manual in their file.

[28] In the amendment to its application, filed July 22, 1975, PCI states that it will broadcast Free Speech Messages in Spanish, Japanese, Cantonese, Tagalog and Portuguese.

[29] While the Commission did question the use of "voluntary" monitors who were apparently unpaid in its letter to the Sierra Madre Broadcasting Company following a field investigation of Station KMAX(FM), Arcadia, California, the investigation had revealed that KMAX did not adequately inform the monitors of its programming policies or the Commission's rules and policies so that the monitors would be able to report possible infractions of rules or deviations from policy.

[30] PCI's application for KLOK(AM) was dismissed by Commission Memorandum Opinion and Order, FCC 75-784, 54 FCC 2d 390 (1975).

[31] Insofar as United predicates its request on PCI's failure to reveal to the Commission the extent of its directors' membership in COM, the substance of the allegation has been dealt with in para. 19, supra.

[32] The additional allegations raised in petitioner's reply pleading relate to PCI's failure to amend its financial proposal to reflect several statements made in opposition to the financial issue sought by United. United has not shown that PCI's proposed changes were planned by PCI more than 30 days prior to the filing of the opposition and, thus, its request must be disregarded as speculative. In any event, we will not consider new allegations raised for the first time in a responsive pleading. See n. 5, supra.

ASCERTAINMENT ISSUE (REQUESTED ISSUE XVII)

32. In support of its requested issue, United alleges that PCI's ascertainment efforts are deficient in a number of respects. First, United contends that PCI's community leader interviews do not reveal consultations with leaders from several major communities in portions of its secondary coverage area,[43] such as the cities of San Francisco and Monterey and all of the outlying counties. Second, avers United, PCI has failed to meet the requirements of Questions and Answers 9 and 10 of the Primer,[44] which set forth specific types of demographic data an applicant is required to submit, since PCI has not described any governmental activities, public service organizations or other activities making its proposed community of license distinctive and has provided only a sparse description of economic activities. A correlate deficiency, according to petitioner, is the fact that PCI's determination of the composition of its community can be readily challenged in light of PCI's failure to identify leaders of certain significant groups which United contends exist within the community, such as "agriculture," "environment," and "the military."[45][46] As a final matter, United charges that PCI's compilation of the community problems it ascertained into ten broad categories does not comply with Question and Answer 22 of the Primer requiring an applicant to list all ascertained community problems that are not clearly frivolous. PCI remarks, in response, that it has, in fact, interviewed members of agricultural, environmental and military groups.[47]

33. We believe that an issue is warranted with respect to certain apparent deficiencies in PCI's ascertainment process. First of all, while PCI did consult with community leaders from San Francisco and Monterey,[48] it failed to interview leaders from other counties within the proposed service area, i.e., Alameda, Contra Costa, Marin, Merced, Napa, Santa Cruz, San Benito, San Joaquin, Solano and Stanislaus. Since Questions and Answers 6 and 7 of the Primer require an applicant to consult leaders from areas outside the principal city of license who can be expected to have a broad overview of community problems or to explain why it chooses not to serve a major community within its service contours, and PCI has offered no explanation for its failure to interview any leaders in these areas, we must conclude that its efforts in this regard warrant further inquiry, See Bangor Broadcasting Corp., 50 FCC 2d 222, 32 RR 2d 409 (Rev. Bd. 1974), review denied FC 75–1095, released October 1, 1975. Furthermore, Question and Answer 9 of the Primer requires such data as is necessary to indicate, among other things, the governmental activities and public service organizations in the community. We find an absence of adequate data in this respect.[49] The Primer further provides, Question and Answer 10, that an objecting party may additional challenge the applicant's selection of community leaders by making a showing that a significant group has been omitted. We believe that the index of the Directory of Social Agencies and Services of the Social Planning Council of Santa Clara County, Inc., submitted by United as Exhibit 14 to its petition to enlarge, contains a sufficient indication that there are numerous educational and civic organizations to warrant further inquiry on this score in the hearing. We do not find that United's contentions concerning the areas of agriculture, the environment and the military are sufficiently supported to indicate the necessity for an issue directed to those aspects of PCI's community leader survey. Finally, Question and Answer 22 of the Primer requires the applicant to list all ascertained community problems, and Exhibit 9 to PCI's application apparently lists only those matters deemed significant. Therefore, an ascertainment issue directed to this question will also be added. See Bangor Broadcasting Corp., supra, and Frank M. Cowles, 37 FCC 2d 405, 25 RR 2d 475 (Rev. Bd. 1972), review denied FCC 73–877, released August 22, 1973.[50]

INEPTNESS ISSUE (REQUESTED ISSUE XVIII)

34. As its final request, United seeks the addition of an ineptness issue based on some of the arguments advanced in support of its requested viable application issue, ascertainment issue, Rule 1.526 issue and Rule 1.65 issue, as well as a number of new allegations. In particular, United argues that on at least ten occasions, PCI failed to comply with the Commission's Rules and Regulations concerning the filing of its application and amendments; that PCI's balance sheet, Exhibit 5 to FCC Form 301, is dated (October 31, 1974) after the signature date on the Form 301 (October 28, 1974); that the balance sheet lists a value of $500,000 for an FM license and $1,000,000 for an AM license although neither facility is licensed to PCI; that PCI amended its financial information on October 11, 1975 without itemizing costs as called for in Questions 1(b) and 1(c) of Section III, page 2, FCC Form 301; that PCI's amendment to Section V–G, dated July 22, 1975, states "no change" in response to Question 5 calling for a description of the antenna system whereas PCI proposed a second different antenna system; and that PCI failed to state the name and position of the person who would determine the day-to-day programming and direct the operation of the station in either its original application or amendment of June 24, 1975. In its comments, the Bureau opposes addition of an ineptness issue but supports addition of an improper certification issue absent an explanation by PCI that the application was signed after all exhibits had been attached.

35. PCI explains, in its response, that its Form 301 was signed after all parts of the application were typed and that "the exhibit in question was typed on

[43] PCI states in its application that its primary service area will be the city of San Jose and Santa Clara County and its secondary coverage area will include the cities of Berkeley, Monterey, Oakland and San Francisco, and the counties of Alameda, Contra Costa, Marin, Merced, Monterey, Napa, San Francisco, Santa Cruz, San Benito, San Joaquin, Solano and Stanislaus.

[44] See *"Primer on Ascertainment of Community Problems by Broadcast Applicants,"* 27 FCC 2d 650, 21 RR 2d 1507 (1971).

[45] United attaches the supporting affidavit of Harold Brogger, Marketing Director of the California Prune Advisory Board, dated November 12, 1975, stating that agriculture "is still a significant part of the Santa Clara Valley economy" and the affidavit of Frank Stanton, Deputy Administrative Assistant to Congressman Norman Y. Mineta, dated November 13, 1975, estimating the number of military employees in the county to be about 4,000.

[46] United does not contend that PCI did not attempt to make contacts with all of these groups; rather, in part, petitioner alleges that its contacts were not made with appropriate leaders. For example, United questions whether an anti-war activist can be regarded as a suitable representative of the military establishment.

[47] For example, PCI states its interviews with various members of the United Farm Workers; with Mr. Kurzweil, a candidate for the post of County Tax Assessor; and with Robert Tweedt, a member of the Agricultural Committee, Commission of the Californias. PCI also states that it interviewed Janet Gray Hayes, the "Conservationist of the Year" and chairwoman of the League of Women Voters' Environmental Health Committee and Peter Tweedt, Administrator for the California Commission on Marine and Coastal Resources and representative to the State Lands Commission. With regard to military interests, PCI refers to its interviews with Vince Dijanick, a member of Vietnam Veterans Against the War; Dr. Paul Hanley, a retired Air Force colonel and graduate of the U.S. Military Academy; Robert Moynahan of the Office of Veterans' Affairs; and George Milias, a former Assistant Secretary of Defense.

[48] As noted by the Broadcast Bureau, PCI's interviewees from San Francisco are Franklin Chan, Bernard Eichevery, Steward Hoover and the Reverend Jacqueline Meadows, and PCI has interviewed Thomas Pelikan of Monterey.

[49] The fact that PCI's application shows interviews with leaders from certain public service organizations, civil groups, and governmental bodies, is not sufficient to overcome its failure to specify the groups comprising its proposed community. See Jerry Lawrence, 48 FCC 2d 373, 31 RR 2d 59 (Rev. Bd. 1974).

[50] The Board also notes that there is no assurance that PCI's survey of the general public resulted in a genuine random sample as required by Primer, Q. & A 13(b). PCI's statement in its application that 96 persons "were interviewed in person in public areas, using a random choice procedure" does not demonstrate that the public places were selected to achieve a random sample or that such a sample was obtained. See Gilbert Broadcasting Corp., 55 FCC 2d 570, 34 RR 2d 1673 (Rev. Bd. 238, 32 RR 2d 1290 (Rev. Bd. 1975), review denied FCC 75–1282, released November 25, 1975.

It perhaps should be noted here that, in accordance with the Commission's recent Report and Order concerning adjudicatory regulation, FCC 76–237, released April 2, 1976, we will draft the ascertainment issue narrowly in order to define the scope of the matters to be explored at the hearing. See also 47 U.S.C. § 309(e).

October 30 but dated evidently with the end of the month in mind." PCI further states that it listed the "values" of its potential license(s) as evidence of its ability to raise bank and equipment loans once the license is obtained.

36. Initially, the Review Board believes that an improper certification issue is required in the instant proceeding. A serious question has been raised by United as to whether PCI has complied with the signature certification requirements of FCC Form 301. David McNeil, President of PCI, signed the application on October 28, 1974, thereby acknowledging that he has familiarized himself with the instructions concerning signature requirements and certifying that the statements contained in the application were true, complete and correct. The typed date on Exhibit 5, PCI's balance sheet, however, is October 31, 1974. PCI's statement that the balance sheet was typed on October 30 fails to adequately explain the discrepancy, and PCI has not attached any supporting affidavit from Mr. McNeil. Consequently, an issue will be added inquiring as to the circumstances surrounding the preparation of PCI's application. See Post-Newsweek Stations, Florida, Inc., 54 FCC 2d 254, 34 RR 2d 676 (Rev. Bd. 1975).

37. Turning to the requested ineptness issue, it is the Board's opinion that although PCI's handling of its application has not been faultless, the allegations presented by United are not sufficient, either individually or collectively, to merit addition of the requested issue. In arriving at this conclusion, we are giving full consideration to the fact that PCI is a new applicant and is prosecuting its application without benefit or an attorney although, of course, it is still expected to comply with the Commission's Rules. We have stated in previous cases that "ineptness issues will be added only where an applicant's conduct has concerned relevant matters of major significance, and where the conduct has disclosed a pattern of carelessness and inadvertence." Tung Broadcasting Co., FCC 72R–62, 23 RR 2d 1185, 1187 (Rev. Bd. 1972); Edward G. Atsinger, III, 29 FCC 2d 443, 21 RR 2d 1039 (Rev. Bd. 1971). The type of conduct ordinarily considered necessary for addition of such an issue involves serious and repeated violations of Commission Rules. See, *e.g.*, Athens Broadcasting Co., Inc., 37 FCC 2d 374, 25 RR 2d 483 (Rev. Bd. 1972); The Heart of the Black Hills Stations, 32 FCC 2d 196, 23 RR 2d 203 (1971), reconsideration denied 25 RR 2d 10 (1972), aff'd per curiam (U.S. App. D.C., February 26, 1973), cert. denied 414 U.S. 1002 (1973); Marvin C. Hanz, 22 FCC 2d 147, 18 RR 2d 830 (Rev. Bd. 1970), review denied FCC 70–724, released July 8, 1970. We have denied petitioner's requested Rule 1.65 and viable application issues, and the financial issue, staffing issue, ascertainment issue, improper certification issue and comparative Rule 1.526 issue specified herein provide ample opportunity for examination of any related errors or omissions by PCI. United has not provided any detail as to the ten instances in which PCI allegedly has failed to comply with the Commission's Rules regarding the filing of its application and amendments nor has United supported its allegation that a different antenna system is proposed. Furthermore, we are satisfied with United's explanation in its application and response as to why it assigned values to the AM and FM licenses. Thus, the Board will not add the requested issue.

38. Accordingly, it is ordered, That the motion for leave to file affidavit, filed March 23, 1976, by United Broadcasting Company, is denied; and

39. It is further ordered, That the petition to enlarge issues, filed November 20, 1975, by United Broadcasting Company, is granted to the extent indicated herein, and is denied in all other respects; and

40. It is further ordered, That the issues in this proceeding are enlarged to include the following issues:

(a) To determine with respect to the application of Public Communicators, Inc., the reasonableness of its estimated costs to construct and operate its proposed station for a period of three months, whether it will have available sufficient funds to meet those costs, and whether, in view of the evidence adduced, Public Communicators, Inc. is financially qualified to construct and operate its proposed station.

(b) To determine whether Public Communicators, Inc. has reasonable assurance of the availability of its proposed transmitter site.

(c) To determine whether Public Communicators, Inc. possesses sufficient and suitable technical equipment to operate its proposed station and, if not, the effect thereof upon the applicant's technical qualifications.

(d) To determine whether the staff proposed by Public Communicators, Inc. is adequate to effectuate its proposed operation.

(e) To determine whether Public Communicators, Inc. has maintained its public file at the location specified by it as required by Section 1.526 of the Commission's Rules, and, if not, the effect on its comparative qualifications to be a Commission licensee.

(f) To determine the effects made by Public Communicators, Inc. to ascertain the public's needs and interests, in the following respects:

(1) whether PCI interviewed community leaders in areas beyond the proposed city of license;

(2) whether PCI's demographic data is sufficient with respect to governmental organizations, public service organizations, and civic and educational activities in San Jose and, if so, whether PCI adequately interviewed representatives of these organizations and activities;

(3) whether PCI properly listed the ascertained community problems in San Jose; and

(4) whether PCI's survey of the general public included consultations with a random sample of members of the general public, and whether, in light thereof, it has complied with the requirements of the Primer on Ascertainment of Community Problems by Broadcast Applicants.

(g) To determine whether the application of Public Communicators, Inc. was properly certified and executed by a principal thereof in accordance with FCC requirements, and in light of the evidence adduced, whether Public Communicators, Inc. possesses the requisite and/or comparative qualifications to be a Commission licensee.

41. It is further ordered, That the burden of proceeding with the introduction of evidence under issues (b) and (g) shall be on United Broadcasting Company; that the burden of proceeding under issues (a), (c), (d) and (f) shall be on Public Communicators, Inc.; and that the burden of proof under issues (a), (b), (c), (d), (f) and (g) added herein shall be on Public Communicators, Inc.

Adopted: April 20, 1976.

Released: April 23, 1976.

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.76-12220 Filed 4-26-76;8:45 am]

[Docket No. 20651, File No. BPH-8933, Docket No. 20652, File No. BPH-9044; FCC 76R-114]

WGUF, INC., ET AL.

Construction Permits

By the Review Board: Board Member Kessler not participating.

1. This proceeding involves the mutually exclusive applications of WGUF, Inc. (WGUF) and Mississippi Gulfshore Broadcasting Company (Gulfshore) for construction permits for a new FM broadcast station at Gulfport, Mississippi. Presently before the Review Board is a petition for enlargement of issues, filed December 29, 1975, by Gulfshore, which seeks the addition of Section 1.514,[1] Section 1.65,[2] financial, and AM-FM duplication issues against WGUF.[3]

[1] Section 1.514 of the Commission's Rules requires that an applicant include all the information called for by the particular form on which the application is required to be filed.

[2] Section 1.65 of the Commission's Rules requires that an applicant report to the Commission substantial changes—those which may be of decisional significance from the standpoint of the public interest, and those which the Commission must be aware of in order to reach a realistic decision.

[3] Also before the Review Board are the following related pleadings: (a) opposition, filed January 27, 1976, by WGUF; (b) comments, filed January 27, 1976, by the Broadcast Bureau; (c) supplement to opposition, filed February 20, 1976, by WGUF; (d) letter, filed February 23, 1976, by WGUF; (e) reply, filed February 24, 1976, by Gulfshore; (f) opposition to acceptance of supplement to opposition, filed February 25, 1976, by Gulfshore; and (g) motion for leave to file supplement and supplement to (b), filed March 16, 1976, by the Bureau. Although WGUF's supplement is an unauthorized pleading, it will be accepted since it merely directs the Board's attention to an amendment which has been accepted by the Presiding Judge. See para. 3, *infra*. We will also grant the Bureau's motion for leave to file supplement and accept the supplement, wherein the Bureau comments on WGUF's amendment.

SECTIONS 1.514 AND 1.65 ISSUES

2. In support of its request for Rule 1.514 and Rule 1.65 issues, Gulfshore first points out that WGUF amended its application on May 5, 1975, to reflect that the applicant had changed its status from a partnership to a corporation with no change in ownership interests, and that WGUF amended its application on June 30, 1975, to show that it had recalled all outstanding stock and reissued forty-eight hundred shares of common stock.[4] Petitioner alleges that by the June 30 amendment, the stock interests of the three previous owners were reduced from 33⅓%, to 25% each and the new issuance introduced to the corporation as a 25% owner one Holton Turnbough. Gulfshore submits that evidentiary exploration is warranted because, although Turnbough is its president and a director, the applicant has failed to disclose information regarding Turnbough's legal qualifications, personal background, and business interests, as required in Section II of Form 301. The Broadcast Bureau agrees that a substantial question exists concerning WGUF's compliance with Section 1.65 of the Commission's Rules and that an issue is warranted against WGUF absent an amendment setting forth the required information accompanied by a satisfactory explanation for its delay in filing the amendment.

3. In opposition, WGUF asserts that it has fully disclosed information establishing Turnbough's legal qualifications in the license files for those stations in which he has interests in Mississippi and Alabama.[5] WGUF also asserts that Turnbough's other broadcast interests were cross-referenced in the WGUF, Inc. ownership report, filed July 16, 1975, and expressly keynoted to the instant application. In its supplement to opposition, WGUF submits a copy of an amendment to its application, dated February 20, 1976, which contains a completed legal qualifications section with respect to Turnbough.[6] This information was not submitted earlier, WGUF states, because it believed that cross-referencing to Turnbough's interests was sufficient.

4. The Review Board will add a Rule 1.65 issue against WGUF. Although WGUF's June 30, 1975, amendment disclosed Turnbough's 25% stock ownership and position in the FM application, it did not reveal that he was also a principal in three other broadcast stations. These interests clearly could be decisionally significant since they bear directly upon the diversification factor under the comparative issue. Moreover, the fact that Turnbough's broadcast interests have been reported in other applications, in ownership files, and in WGUF's recently accepted February 20, 1976, amendment does not overcome its failure to report these interests in this proceeding within thirty days of Turnbough's entry in to the corporation as required by Rule 1.65. However, there is no indication that WGUF's omission involved any deliberate attempt to conceal information. Accordingly, we will add the issue on a comparative basis only.[7]

FINANCIAL ISSUE AND FURTHER SECTION 1.65 ISSUE

5. Petitioner avers that WGUF has failed to provide for financing of its corporate proposal. Specifically, Gulfshore argues that when WGUF was a partnership, it relied on loan commitments from its three partners, but that WGUF has not amended its application to reflect that any loan commitments have been extended to it subsequent to incorporation. Further, Gulfshore argues that WGUF has not shown that the partnership's proposed equipment lease financing will be available to the corporation.[8] Gulfshore maintains that financial and Rule 1.65 issues are warranted with respect to these matters. The Bureau agrees that a substantial question is raised regarding the applicant's financial qualifications. Specifically, the Bureau states that the addition of Turnbough has reduced the ownership interest of each partner from 33⅓% to 25%, and that such reduction raises unanswered questions as to whether the owners' contributions have been correspondingly reduced and whether Turnbough will contribute any funds, The Bureau submits that WGUF should address these questions and should supply a new letter of commitment from the proposed equipment manufacturer, as well as a corporate balance sheet.

6. In opposition, WGUF maintains that Gulfshore's allegations with respect to its failure to transfer the partners' loan commitments from the partnership to the corporation are without merit. In support, WGUF asserts that its partnership agreement expressly states that upon incorporation all assets and liabilities of the partnership shall be transferred to the corporation, and that the promised contributions of the partners are assets and were automatically transferred to the corporation.[9] In its February 20, 1976, amendment, submitted in its supplement to opposition, WGUF submits a current corporate balance sheet as well as financial statements for its four stockholders. WGUF states that it has 63,000 in available funds, consisting of $15,750 in contributions from each of its four shareholders, with which to meet estimated costs of $27,805, consisting of $16,550 operating costs and $11,255 construction costs, which leaves a surplus of $35,195.[10] Also, under cover of a letter addressed to the Board, WGUF submits a copy of its equipment credit, revised to specify the corporation as the applicant.

7. The Bureau, in its supplemental comments, argues that WGUF's February 20, 1976, amendment does not establish the applicant's financial qualifications. First, the Bureau submits that WGUF has not furnished a statement from Turnbough agreeing to contribute $15,750. Second, the Bureau asserts, WGUF has failed to justify its reduced costs. Specifically questionable, the Bureau asserts, are (a) WGUF's new estimate of $5,000 for purchase of "used transmitter, antenna and coax," whereas its previous equipment letter listed these items for $12,915; (b) the reduction of legal, engineering, and, accounting costs from $2,000 to $1,200; and (c) the claimed economies resulting from joint operation with WGUF's AM station in view of the fact that the current WGUF balance sheet submitted in the February 20, 1976 amendment reflects a net current deficit of $21,569.

8. The Review Board will add a financial issue against WGUF. First, as the Bureau correctly notes, the aplicant has not furnished a copy of the agreement by which one of its principals, Turnbough, is obligated to advance $15,750; accordingly, this commitment cannot be credited to the applicant. See FCC Form 301, Section III, page 3, item 4(a). Although WGUF's amendment shows a surplus of available funds over estimated costs on its face greater than Turnbough's commitment, we believe the substantial reduction in costs reported in the amendment raises questions which cannot be answered by reliance on the claimed surplus. Specifically, WGUF now proposes to purchase used transmitter, antenna, and transmission line equipment for less than half the cost listed for identical items in its equipment manufacturer's letter; however, no showing whatsoever is made by the applicant that such equipment is in fact available to it at the price claimed. Furthermore, WGUF has reduced its estimate for salary cost from $27,250 to $5,200, without any corresponding amendment to its original staffing proposal of four employees or detailed explanation

[4] The applicant's name was changed from Gulf Broadcasting Company to WGUF, Inc. Gulf Broadcasting was a partnership composed of Robert Barber, F. M. Smith, and George Sliman.

[5] Specifically, WGUF states that Turnbough is an officer, director, and shareholder in the following standard broadcast stations: WGUF, Gulfport, Mississippi; WLAU, Laurel, Mississippi; WLIQ, Mobile, Alabama.

[6] This amendment was accepted, by Order, FCC 76M-345, released March 22, 1976.

[7] A Rule 1.514 issue would be inappropriate since Turnbough's interest did not arise until after the original application was filed.

[8] Petitioner asserts that a financial commitment cannot be presumed since the corporation is an entirely different entity from the predecessor partnership. Gulfshore also asserts that WGUF has failed to supply information concerning its financial status in view of expenses incurred in placing co-owned Station WGUF on the air.

[9] WGUF attaches a copy of the partnership agreement as support.

[10] WGUF's partnership predecessor originally relied upon $63,000, consisting of $21,000 from each of its three partners, and a $12,180.99 net equipment credit, to meet estimated costs of $73,395.00, consisting of $45,500 operating and $27,895.00 construction costs. WGUF attributes the reduced costs to its decision to operate its proposed FM station jointly with its AM station in Gulfport.

for the reduction.[11] In addition, professional costs have been reduced by WGUF without explanation, and the reduction appears unreasonable in view of the pendency of a comparative hearing. Thus, we conclude that further examination of WGUF's financial proposal at hearing is warranted. However, we will not add a further Rule 1.65 issue since petitioner's allegations are not sufficient to show that WGUF violated the requirements of that Rule.

AM–FM DUPLICATION ISSUE

9. Gulfshore alleges that evidence regarding program duplication should be admissible under the standard comparative issue since it proposes independent programming while WGUF proposes to duplicate the programming of its commonly-owned standard broadcast station during 67% of its broadcast time.[12] The Bureau agrees that evidence concerning proposed duplicated programming could be received under the comparative issue when the designation Order is silent on the question, but states such evidence should be limited to a showing of the benefits and detriments to be derived from the proposed duplication.[13]

10. In opposition, WGUF avers that the rationale in *Sudbury, supra,* will not be applicable upon the acceptance of its amended application by the Administrative Law Judge.[14] In this regard, WGUF asserts that *Sudbury, supra,* should be distinguished because 50% duplication was proposed in that case while its duplication will be reduced from 67% to only one half of the news, public affairs, and "other" programming presented daily from 10:00 a.m. to 6:00 p.m. Further, WGUF asserts that since all the programming to be duplicated under its amendment will be news, public affairs, or "other," a substantial countervailing benefit exists because of its type. Finally, WGUF notes that only a total of 16.9% duplication is proposed over a typical week and that, therefore, no issue is warranted.[15]

11. In a Memorandum Opinion and Order released March 1, 1976 (FCC 76M–257), the Presiding Judge rejected that portion of WGUF's January 26, 1976 amendment which sought to reduce its proposed duplicated programming. Accordingly, we must look to WGUF's proposal of record which is for 67% duplication. In our view, such a significant level of duplication requires that evidence regarding program duplication be admitted and, in view of the fact that the Commission has not addressed this matter in the designation Order, we shall now specify that evidence regarding program duplication is admissible under the standard comparative issue. We emphasize, however, that the parties will be limited at hearing to a showing of the benefits and detriments to be derived from the duplicated programming and that a full comparison of the applicants' proposed programming will not be allowed. *Jones T. Sudbury, supra; Bangor Broadcasting Corp., supra.*

12. Accordingly, it is ordered, That the Motion for Leave to File Supplement, filed March 16, 1976, by the Broadcast Bureau, is granted and that the supplement is accepted; and

13. It is further ordered, That the Petition for Enlargement of Issues, filed December 29, 1975, by Mississippi Gulfshore Broadcasting Company, is granted to the extent indicated herein, and is denied in all other respects; and

14. It is further ordered, That the issues in this proceeding are enlarged as follows:

(a) To determine whether WGUF, Inc. has violated Rule 1.65 by failing to timely report information regarding the legal qualifications and business interests of Holton Turnbough and, if so, the effect on its comparative qualifications;

(b) To determine the basis of WGUF, Inc.'s estimated costs for transmitter and related equipment, salaries, and professional fees, and whether such estimates are reasonable; and

(c) To determine whether WGUF, Inc. will have available $15,750 from Holton Turnbough and, if not, whether sufficient additional funds are available to the applicant to meet its requirements, including any additional funds necessary in light of the evidence adduced under issue (b); and

(d) To determine in light of the evidence adduced under issues (b) and (c) whether WGUF, Inc. is financially qualified to construct and operate its proposed station.

15. And it is further ordered, That the burdens of proceeding with the introduction of evidence and of proof under issue (b) and the burden of proof under all of the issues shall be on WGUF, Inc.

Adopted: April 20, 1976.

Released: April 23, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.76–12119 Filed 4–26–76;8:45 am]

[11] The salary savings appears to derive from the applicant's proposed reliance on the automated operation of WGUF's AM facility in Gulfport. However, it is impossible to say, based on the brief description contained in the amendment, whether staff at the AM facility would be able to operate the FM proposal so as to make the latter a feasible operation. Further, it is unclear from the applicant's brief notation next to its salary estimate of "one additional person" whether this refers to an addition to the AM staff or the originally proposed FM staff.

[12] Petitioner cites *Jones T. Sudbury,* 8 FCC 2d 360, 10 RR 2d 114 (1967), in support.

[13] The Bureau cites *Atlantic Broadcasting Company,* 5 FCC 2d 717, 8 RR 2d 991 (1967); *Jones T. Sudbury,* 8 FCC 2d 360, 10 RR 2d 114 (1967); *Policy Statement on Comparative Broadcast Hearings,* 1 FCC 2d 393, 5 RR 2d 1901 (1965); and *Bangor Broadcasting Corp.,* ____ FCC 2d ____, 21 RR 2d 953 (Rev. Bd. 1971), in support.

[14] On January 26, 1976, WGUF submitted a petition for leave to amend which, *inter alia,* sought to reduce its proposed AM duplication from 56 hours (67%) to 14 hours, 10 minutes (16.9%).

[15] WGUF cites *Community Communicators of Ohio, Inc.,* 6 FCC 2d 284, 285, 9 RR 2d 225, 227 (Rev. Bd. 1967), in support.

FEDERAL HOME LOAN BANK BOARD

[No. AC–10]

PRUDENTIAL FEDERAL SAVINGS AND LOAN ASSOCIATION, SALT LAKE CITY, UTAH

Approval of Amendment to Conversion Application

Notice of Final Action

Correction

In FR Doc. 76–11371 appearing in the FEDERAL REGISTER, Tuesday, April 20, 1976 on page 16614, the fourth line of the heading was inadvertently omitted. The heading is corrected to read as written above.

FEDERAL MARITIME COMMISSION

[Agreement No. 9958–2]

ATLANTICA LINE CONSORTIUM

Conditional Approval; Order

An agreement among the members of the Atlantica Line consortium has been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, and has been assigned Federal Maritime Commission Number 9958–2.

Agreement No. 9958–2 amends the basic agreement by providing that the agreement shall also extend to arrangements or agreements of the company (1) with other modes of transportation concerning inland movements, (2) concerning intermodal shipments, inland rates, rules, charges, joint water-land movements and other practices and conditions as enumerated therein concerning inland movements, and (3) such other matters as may be ancillary to the transportation of intermodal shipments from and/or to inland points of origin or destination, whether moving on a through bill of lading or otherwise.

This intermodal authority is sought, in part, to allow Atlantica to conduct minibridge (land-water) services to and from U.S. Pacific Coast ports. We find the language of the amendment as filed to be insufficient to effect the intent of the parties in this respect. Therefore, as a condition of approval we are requiring Atlantica to add language to the amendment which explicitly describes the minibridge authority.

In addition, since the language of the amendment which will be approved after the modification required herein is made

is broader than the language of the amendment as filed, and since this order is the first publication of that broader language, we are also conditioning our approval upon the absence of comments upon, protests against, or requests for hearing upon the amendment, modified as required herein.

Examination of Agreement No. 9958–2, as modified herein, in view of facts now known, fails to show it to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest or violative of the Shipping Act, 1916.

Therefore, it is ordered, That Agreement No. 9958–2 is approved pursuant to Section 15 of the Shipping Act, 1916, on the condition that:

1. it be modified at line 4 to delete the words "or ports" and substitute therefor the words "and to or from ports on the U.S. Pacific Coast," so that Article 3a(i) reads as follows:

(i) with other modes of transportation for the movement of cargo to and/or from inland points and to or from ports on the U.S. Pacific Coast moving between loading and discharge ports covered by this Agreement, whether moving under through bills of lading or otherwise;

2. the Commission does not receive, on or before May 6, 1976, comments upon, protests against, or requests for hearing upon Agreement No. 9958–2, modified as required by clause 1 of this paragraph; and

3. the Commission receives, on or before May 6, 1976, a complete copy of Agreement No. 9958–2, modified as required in clause 1 of this paragraph, signed by all parties to Agreement No. 9958–2, or a duly authorized representative thereof.

It is further ordered, That the approval contained herein shall be effective on the date all three of the conditions contained in the first ordering paragraph hereof are met.

It is further ordered, That this order be published in the FEDERAL REGISTER.

By the Commission, April 22, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76–12267 Filed 4–26–76;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ER76–445]

BOSTON EDISON CO.

Electric Rates: Fuel Adjustment Clauses; Order Denying and Granting Applications for Rehearing and Allowing Intervention

APRIL 16, 1976.

On March 17, 1976 the Towns of Concord, Norwood, and Wellesly, Massachusetts (Customers) filed a petition for rehearing of the Commission's February 27, 1976 order in the above referenced proceeding. Because the petition does not raise any issue of law or fact sufficient to change the disposition in the February 27 order, the Commission shall deny the Customer's petition. In addition, the Customers make a formal petition to intervene which shall be granted.

Customer's argue that as a matter of law Order No. 517 prohibits the use of "zero-lag" fuel adjustment clauses (FAC).[1] The Commission does not believe that a proper resolution can be made of this issue absent briefs following a hearing. This procedure will allow full development of the factual setting in which the legal issue must be decided. Accordingly, the Commission affirms its decision to order hearings in this proceeding.

Further, the Customers reiterate their claim that the filing should be rejected as an undue burden upon the Customers and for failure to comply with the Commission's Regulations. The Commission's Regulations do not require the filing of a complete cost of service in support of a FAC filing. See Section 35.14 of the Commission's Rules and Regulations. The accompanying surcharge is a subsidiary part of the entire FAC filing. Accordingly, no general cost of service study is required. It follows therefore, that the Commission can not reject the filing for failure to comply with the Regulations. Customers' other allegations are not sufficient to require rejection of the filing under the standards of *Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F. 2d 1341, *cert. den.* 405 U.S. 989 (1972).

On March 26, 1976, Boston Edison Company (Edison) also filed an Application for Rehearing of the February 27 order. The thrust of Edison's application is that, if it prevails on the merits of its appeal[2] of the Commission's actions in Edison's major rate increase proceeding in Docket No. ER76–90, and thereby its S–4 rates which are the subject of that earlier docket become effective on February 27, 1976, the filing herein in Docket No. ER76–445 should be deemed as mooted and withdrawn. We believe the result sought is appropriate and therefore shall grant Edison's application, to the extent that it prevails on appeal and its S–4 rates become effective on February 27, 1976.

The Commission finds: (1) The Customers have raised no issue or law or fact sufficient to alter the Commission's actions in the February 27 order.

(2) The Customers petition to intervene should be granted.

(3) Edison's Application for Rehearing should be granted.

The Commission orders: (A) The Customers petition for rehearing is denied.

(B) The Customers are hereby permitted to intervene in this proceeding, subject to the Rules and Regulations of the Commission; Provided, however, that the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in the respective petitions to intervene; and Provided, further, that the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(C) Edison's Application for Rehearing is hereby granted and the filing herein will be deemed mooted and withdrawn to the extent that Edison prevails in its appeal of Commission action in Docket No. ER76–90 and its S–4 rates become effective on February 27, 1976.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.76–12054 Filed 4–26–76;8:45 am]

[1] A "zero-lag" FAC uses an estimate of current monthly fuel expenses for billing purposes. An adjustment is then made in subsequent months to correct any deviations in actual costs from the original estimate.

[2] D. C. Cir. Case No. 75–2123.

[Docket No. RP76–73]

DISTRIGAS OF MASSACHUSETTS CORPORATION

Order Accepting for Filing Subject to Conditions, and Suspending Proposed Tariff, Denying Waiver, Instituting Section 5 Investigation, Consolidating and Establishing Procedures

APRIL 16, 1976.

On March 18, 1976 Distrigas of Massachusetts Corporation (DOMAC) tendered for filing its FPC Gas Tariff, Original Volume No. 1 by which it proposes to replace numerous existing contracts for LNG sales with a tariff having uniform services and rates for services applicable to all its LNG customers. The tariff is based on a cost of service formula tied to the cost of DOMAC's purchases of LNG from its affiliated supplier, Distrigas Corporation (Distrigas). Review and consideration of this filing indicates that good cause has not been shown to waive the Commission Regulations to permit the proposed cost of service rate schedules to take effect; DOMAC's tariff, other than the rate schedules, should be accepted for filing subject to conditions and suspended for five months; the matter set for hearing; and, a Section 5 investigation instituted to determine the propriety of the cost of service rate schedules for possible prospective application.

DOMAC presently serves its LNG customers under individual contracts. DOMAC proposes by this filing to replace those contracts with a single tariff establishing uniform services and rates for services applicable to all its LNG customers. The proposed tariff provides for cost of service rate schedules, Rates Schedules GS–1 and BO–1, through which DOMAC will recover fully its payments to Distrigas for purchases of LNG. The billing under these rate schedules would be based on the ratio of the customer's entitlement (Annual Contract Quantity) to the total entitlement for

all customers, regardless of the volumes actually delivered by DOMAC (Section 3, Rate Schedule GS–1). Based on the twelve month period ending December 31, 1975, as adjusted the proposed tariff would increase DOMAC's revenues by $8.3 million annually. This increase is needed, according to DOMAC, to meet increased costs of operation, particularly increasing costs of terminalling LNG. The proposed tariff, although standardizing a number of services and rates for services, does not provide all the services which were available to different customers under the existing contracts, e.g., certain contracts provided for storage, but the proposed tariff does not. Finally, services under the individual contracts were authorized by temporary certificates approved by the Commission; permanent certificates have not yet been issued.

Public notice of DOMAC's proposed tariff was issued on March 26, 1976 with comments, protests or petitions to intervene due on or before April 7, 1976. No comments, protests or petitions to intervene have been received as of this time.

DOMAC's filing presents initially the question of whether the cost of service rate schedules proposed are proper. Section 154.38(d)(1) of the Commission's Regulations provides:

> Except as permitted in Sections 154.52 and 154.82, all rates shal be clearly stated in cents or in dollars and cents per unit. See also Section 154.38(d)(3).

The exception in 154.52(a) provides for the Commission to accept a rate schedule "computed on a cost-formula basis" for good cause shown. DOMAC's filing does not present the requisite good cause and, therefore, the Commission will not grant waiver of 154.38(d)(1) in order to permit acceptance of DOMAC's proposed cost of service rate schedules.

Because the Commission does not find the requisite good cause to permit waiver of Section 154.38(d)(1), DOMAC's proposed cost of service rate schedules will not be accepted for filing. However, the Commission believes it proper to institute a Section 5 investigation for the purpose of determining whether cost of service rate schedules are proper for DOMAC's operations. This Section 5 investigation will be consolidated with the hearing hereinafter ordered in the instant case for purposes of hearing and decision. If the cost of service rate schedule is found to be proper for DOMAC, its application and operation will be prospective only.

The Commission believes that certain conditions must be ordered in this case to protect the public interest from two problems arising from DOMAC's filing. DOMAC's proposed tariff applies to both its interstate and intrastate customers. Intrastate here means sales within the state of importation. The question of whether the Commission has jurisdiction over the sales of LNG in the state of importation was remanded for further findings by the Circuit Court of Appeals for the District of Columbia in *Distrigas Corporation* v. *FPC*, 495 F. 2d 1057 (D.C. Cir. 1972). This issue is presently a part of the proceedings in Docket No. CP70–196. The Commission believes that any decision in the instant proceeding should be conditioned on the outcome in Docket No. CP70–196 with regard to the question of the Commission's jurisdiction over intrastate sales of LNG by DOMAC. The decision in this case will be conditioned also on the determination of DOMAC's permanent certificate authorization presently the subject of the proceeding in Docket Nos. CP74–137 and CP73–135.

DOMAC has included in its cost of plant a barge, "Massachusetts", presently owned by Coastal Cryogencies Tankship Corporation, an affiliated company. (Statement C) Because the barge is owned by an affiliate, DOMAC will be required to file revised tariff sheets showing the elimination of this barge from rate base.

DOMAC has restated its reserves for depreciation to eliminate all accruals up to December 31, 1975. This action is based upon DOMAC's contention that since it has been in a loss position from its inception, no depreciation expense has been recouped from the ratepayer. The Commission believes this contention has no merit. It is well settled that past losses may not be made up in present or future rates. Atlantic Seaboard Corp. and Virginia Gas Transmission Corp., 11 FPC 43, 48 (and cases cited therein) (1952). Accordingly, DOMAC will be required to file revised tariff sheets which include as part of its depreciation reserves all accruals up to December 31, 1975.

The Commission's review of DOMAC's proposed filing has revealed that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The Commission, therefore, will suspend the operation of DOMAC's proposed filing for the full statutory period of five months until September 19, 1976. Prior to September 19, 1976, DOMAC shall file substitute tariff sheets to become effective, subject to refund, as of September 19, 1976, which (1) contain revised rate schedules GS–1 and BO–1 showing a fixed rate charge, rather than the present cost of service rate and (2) which show the elimination of the barge "Massachusetts" from rate base. This action does not preclude any party, including the Staff, from presenting evidence showing that different or additional provisions should be included in the tariff.

The Commission finds: (1) DOMAC's proposed tariff should be accepted for filing, subject to the conditions hereinafter ordered, suspended for five months, and the use thereof deferred until September 19, 1976, as hereinafter ordered and conditioned.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of DOMAC's proposed tariff.

(3) Good cause does not exist to grant waiver of Section 154.38(d)(1) of the Commission's Regulations.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 5 thereof, the Commission's Rules of Practice and Procedure, and the regulations under the Natural Gas Act, a public hearing shall be held for the purpose of determining the lawfulness and reasonableness of DOMAC's proposed tariff.

(B) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before August 4, 1976. (See Administrative Order No. 157).

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose, (See Delegation of Authority, 18 CFR 3.5(d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish all procedural dates and to rule upon all motions (with the exceptions of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(D) Pending hearing and a decision thereon, DOMAC's proposed tariff is accepted for filing and suspended for five months and the use thereof deferred until September 19, 1976, at which time they shall be permitted to be collected, subject to refund; *Provided, however,* That DOMAC shall file within 30 days of the issuance of this order substitute rate schedules GS–1 and BO–1 showing a fixed rate charge; *Provided further,* That DOMAC shall file within 30 days of the issuance of this order tariff sheets showing the elimination of the LNG barge, "Massachusetts," from rate base; and, *Provided further,* DOMAC shall file within 30 days of issuance of this order tariff sheets showing in its depreciation reserves all accruals up to December 31, 1975 in addition to those amounts presently included therein.

(E) Waiver of Section 154.38(d)(1) of the Regulations is hereby denied.

(F) Any decision in this proceeding is conditioned upon the outcome of the proceeding in Docket No. CP70–196 regarding the Commission's jurisdiction over DOMAC's intrastate sales; it is also conditioned upon the outcome in Docket Nos. CP74–137 and CP73–135 regarding DOMAC's permanent certificate authorization.

(G) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

(H) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12055 Filed 4-26-76;8:45 am]

[Docket No. RI76-120]

INEXCO OIL CO.

Petition for Special Relief

APRIL 16, 1976.

Take notice that on March 29, 1976, Inexco Oil Company (Petitioner), 1100 Milam Building, Houston, Texas 77002, filed a petition for special relief in Docket No. RI76-120, pursuant to § 2.56a(g) of the Statements of General Policy and Interpretations and § 1.7(b) of the Commission's Rules of Practice and Procedure. Petitioner states that the sale of gas is to be made to Southern Natural Gas Company from wells in the Logansport Field, DeSoto Parish, Louisiana. Based upon its known and anticipated drilling costs and operating expenses in the Logansport Field, Petitioner states that it cannot economically justify any further drilling at a price of less than $1.00 per Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12060 Filed 4-26-76;8:45 am]

[Project No. 2106]

PACIFIC GAS AND ELECTRIC CO.

Application for Approval of Exhibits F, J, K, L, and M

APRIL 16, 1976.

Public notice is hereby given that an application was filed on November 6, 1968, and supplemented on November 7, 1968, May 23 and June 12, 1969, November 27, 1972, and May 2, 1975, under the Federal Power Act, 16 U.S.C. § § 791a-925r, by Pacific Gas and Electric Company (Correspondence to: W. M. Gallavan, Vice President—Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106) for approval of certain exhibits relating to McCloud-Pit Project No. 2106—California.

The project is located on the McCloud and Pit Rivers in Shasta County, California, near the City of Central Valley. Licensee seeks Commission approval of Exhibits F, J, K, L, and M filed in accordance with Article 5 of the project license issued on August 18, 1961. These exhibits show the project as it was constructed, incorporating minor changes made in the project boundary, land rights, and project facilities during construction.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 7, 1976, file with the Federal Power Commission, 825 North Capitol St. N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1975). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12059 Filed 4-26-76;8:45 am]

[Docket No. RP73-64 (PGA76-2)]

SOUTHERN NATURAL GAS CO.

Proposed Changes in FPC Gas Tariff

APRIL 16, 1976.

Take notice that Southern Natural Gas Company (Southern), on April 13, 1976, tendered for filing proposed changes in its FPC Gas Tariff, Sixth Revised Volume No. 1, to become effective May 1, 1976. Such filing is pursuant to and in accordance with the Commission's Opinion No. 749-A issued February 27, 1976 and to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FPC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes would increase Southern's rates as a result of the following items:

(1) A special Current Adjustment for an increase in cost of purchased gas to jurisdictional customers of $9,101,298, or 1.690¢ per Mcf.

(2) A special Surcharge Adjustment increase for Unrecovered Purchased Gas Costs of 4.322¢ per Mcf above the present Surcharge Adjustment of 2.372¢ per Mcf.

Southern says that such filing is pursuant to and in acocrdance with the Commission's Opinion No. 749-A issued February 27, 1976. In Opinion No. 749-A, the Commission authorized pipeline companies to make a special one-time PGA filing on or before March 31, 1976 in order to provide for a 30-day notice period to become effective May 1, 1976 to track increases in the cost of purchased gas attributable to producer rate increases under Opinion No. 749. Further, the Commission said that this procedure

" * * * would enable pipelines purchasing from other pipelines to make appropriate filings. We will entertain requests by these pipelines for waiver of the notice requirements in order to obtain effective dates coincident with the effectiveness of filings made by their pipeline suppliers provided such requests are not for periods in excess of fifteen (15) days."

Southern purchases gas from United Gas Pipe Line Company (United) which filed a special PGA filing on or about March 30, 1976. Southern requests whatever waivers of the notice requirements are necessary in order to place this PGA increase into effect on May 1, 1976.

Copies of the filing are being served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 4, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12057 Filed 4-26-76;8:45 am]

[Docket Nos. RP72-99 and RP75-75 (EPGA Nos. 76-1 and 76-2)]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Submission of Information Required by Commission Orders

APRIL 16, 1976.

Take notice that on March 1, 1976 (as supplemented on March 3, 1976) and March 26, 1976, respectively, Transcontinental Gas Pipe Line Corporation (Transco) submitted certain information concerning emergency purchases, as required by Commission orders issued in the captioned dockets on January 30, 1976 (EPGA No. 76-1) and February 27, 1976 (EPGA No. 76-2). Transco states that the information submitted includes a discussion of: (1) the pipeline's need for the gas; (2) the availability of other gas supplies; (3) the amount of gas purchased under each 60-day transaction; (4) a comparison of each emergency purchase price with appropriate market prices in the same or nearby areas, and (5) the relationship between the purchaser and seller. Transco indicates that copies of such information have been served upon all its customers and interested State Commissions and upon all parties to the captioned dockets.

Copies of Transco's submittal are on file with the Commission and are available for public inspection. Any person desiring to comment on matters concerned therein should file such comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 8, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12056 Filed 4-26-76;8:45 am]

[Docket Nos. RP71-41 and RP72-75; Docket Nos. RP70-29, et al and RP72-98]

UNITED GAS PIPE LINE COMPANY; TEXAS EASTERN TRANSMISSION CORPORATION

Proposed Plan of Refund

APRIL 16, 1976.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 5, 1976 tendered for filing a proposed plan of refund to flow-through monies received from United Gas Pipe Line Company (United) pursuant to FPC Opinion No. 671 in Docket Nos. RP71-41 and RP72-75.

Texas Eastern proposed to flow-through to its jurisdictional customers refunds received from United totaling $1,342,348 by crediting the balance of its Gas Cost Adjustment Account by such amount as provided for in Section 23.8 of the General Terms and Conditions of its FPC Gas Tariff, Fourth Revised Volume No. 1.

Copies of this filing were served upon the company's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 4, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12058 Filed 4-26-76;8:45 am]

[Docket No. CI76-432]

CABOT CORP.

Application

APRIL 19, 1976.

Take notice that on March 25, 1976, Cabot Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed in Docket No. CI76-432 an application pursuant to Section 7(c) of the Natural Gas Act, under protest and subject to the full reservation of its rights to assert herein or in the Colorado Interstate Gas Company proceeding in Docket No. CP75-323, et al., that the Commission has no jurisdiction over the subject or similar sales, for a certificate of public convenience and necessity authorizing the sale by Applicant to The Sylvania Corporation (Sylvania) of Applicant's undivided 16.667 percent share of the gas produced from the Sylvania No. 1 well, Spacing Unit No. 1, Thomas Corner Field, Town of Bath, Steuben County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the gas covered by this application would be delivered to Columbia Gas Transmission Corporation (Columbia), for the account of Sylvania and Columbia would transport and resell the gas in New York City and/or environs, such gas to be wholly produced, sold, transported, and consumed in the State of New York. Further, it is stated that Columbia would deliver like volumes as delivered to it by Applicant to Sylvania at Columbia's Ellwood City compressor station in Beaver County, Pennsylvania. Applicant alleges that the gas delivered by it to Columbia for Sylvania's account, although wholly produced, sold, transported, and consumed in the State of New York, would be transported in an interstate pipeline along with gas subject to the jurisdiction of the Commission being transported by Columbia from out of New York State.

Applicant further states that it is aware of the fact that the Commission and the Commission Staff have taken the position that gas sold and delivered into an interstate pipeline, although wholly produced, transported, sold, and consumed in the state of production, is a sale in interstate commerce subject to the jurisdiction of the Commission. Further, it is alleged that the Staff will not process the application for certificate authorization to implement an exchange agreement between Columbia and Sylvania, now pending in Docket No. CP76-19, for approval until the stream from the Sylvania No. 1 well supplying the exchange has been certificated by the Commission. Accordingly, under protest and without admitting the Commission's jurisdiction over the subject sale, and reserving all rights to contest any decision herein, or in the proceeding in Docket No. CP75-323, et al., holding such sales or either of them to be jurisdictional, nevertheless files herein for authorization for the subject sale under gas purchase agreement, dated August 29, 1972, as amended September 1, 1972, and as further amended by the exchange agreement, so that deliveries from said well may be commenced.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 12, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to interevne in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdictions conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12136 Filed 4-26-76;8:45 am]

[Docket No. RP76-85]

CITIES SERVICE GAS CO.

Petition for a Declaratory Order

APRIL 20, 1976.

Take notice that on April 12, 1976, Cities Service Gas Company (Cities), filed a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, for a declaratory order determining that rate base treatment be allowed for advances made pursuant to an oral advance payment agreement between Cities and Belco Petroleum Corporation (Belco) which was reached before 10:49 a.m. EST on December 31, 1975, but which was signed after 10:49 a.m. EST on December 31, 1975, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The petition states that Cities and Belco had been negotiating for some time prior to December 31, 1975, for the purpose of completing and signing an advance payment agreement. The petition also states that as a result of such negotiations, Cities and Belco reached an oral agreement prior to 10:49 a.m. EST on December 31, 1975. The agreement was then typed and reviewed to make sure that the provisions which had agreed upon had been included in the typed copy. The typed agreement was then signed after 10:49 a.m. EST on December 31, 1975.

The petition further states that the oral agreement reached by Cities and Belco prior to 10:49 a.m. EST on December 31, 1975, is an enforceable contractual commitment and that, as such, advances made pursuant to this agreement should be allowed rate base treatment.

Any person desiring to be heard or to make any protect with reference to said petition should on or before May 7, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12131 Filed 4-26-76;8:45 am]

[Docket No. CP76-331]

COLORADO INTERSTATE GAS CO.

Application

APRIL 19, 1976.

Take notice that on April 9, 1976, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP76-331 an application pursuant to Section 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing the transportation for and exchange with Northwest Pipeline Corporation (Northwest) of natural gas in Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Northwest would deliver gas under its control from the Barrel Springs Area of Carbon County, Wyoming, to Applicant at Applicant's newly installed metering facility located adjacent to Western Transmission Corporation's (Western) pipeline in Carbon County. Applicant would have a continuing option to purchase 25 percent of the gas delivered by Northwest plus Northwest's cost of service, currently said to be 6.9 cents per Mcf of gas, for costs incurred from the source of supply to the point of delivery to Applicant; and Applicant would redeliver by displacement thermally equivalent volumes, less those purchased by Applicant, at an existing point of interconnection between Applicant and Northwest near Green River, Sweetwater County, Wyoming, or other mutually agreeable points. Redeliveries near Green River would be accomplished by Northwest's reducing those volumes which Applicant is entitled to purchase from Northwest at that point. The agreement between Applicant and Northwest is said to be for a principal term of ten years and for year to year thereafter.

The application states further that Western would redeliver to Applicant at an existing interconnection between the two companies in Sweetwater County all gas controlled by Applicant from certain areas in Carbon County and tendered to Western by Applicant for transportation. Applicant would pay Western a transportation charge equal to the differential rate, currently said to be 9.0 cents per Mcf of gas, set forth in Western's Rate Schedule F between Western's gas cost and Western's selling price to Applicant, as provided by order accompanying Commission Opinion No. 616 or modifications thereof. Applicant notes that Western would not require additional facilities to receive and redeliver the gas. The agreement between Applicant and Western is said to be for a principle term of five years and year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12140 Filed 4-26-76;8:45 am]

CONSOLIDATED GAS SUPPLY CORP.

[Docket No. RP75-91]

Further Extension of Procedural Dates

APRIL 19, 1976.

On March 29, 1976, Rochester Gas & Elcetric Corporation filed a motion to extend the procedural dates fixed by order issued May 19, 1975, as most recently modified by notice issued February 23, 1976, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Intervenor, Testimony, May 19, 1976.
Service of Company, Rebuttal, June 9, 1976.
Hearing, June 29, 1976 (10 a.m., e.d.t.).

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12139 Filed 4-26-76;8:45 am]

[Docket Nos. CP75-96, et al.; CP75-249]

EL PASO ALASKA CO. ET AL. AND PACIFIC INTERSTATE TRANSMISSION CO.

Supplement to Application

APRIL 19, 1976.

Take notice that on March 11, 1976,[1] Pacific Interstate Transmission Company (Applicant), 720 West Eighth Street, Los Angeles, California 90017, filed in Docket No. CP75-249 the third supplement to its application filed in said docket pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, by which supplement Applicant sets forth a plan whereby gas Applicant expects to purchase from the North Slope of Alaska would be transported through a single pipeline system from Kingsgate, British Columbia, to Stanfield, Oregon, with other gas destined for markets in the western United States, all as more fully set forth in the supplement on file with the Commission and open to public inspection.

The supplement states that on March 3, 1975, Applicant filed in the instant docket an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to Southern California Gas Company (SoCal). Concurrently therewith, Applicant notes, Applicant field in Docket No. CP75-248 an application pursuant to Section 3 of the Natural Gas Act for authorization to export natural gas from Alaska to Canada and to import natural gas from Canada to the contiguous states of the United States. Applicant states that it contemplated utilization of the proposed pipeline systems of Alaskan Arctic Gas Pipeline Company and Canadian Arctic Gas Pipeline Limited to move its purchased gas to a point on the United States-Canada border near Kingsgate and that Applicant anticipated that from Kingsgate the gas would be transported by Interstate Transmission Associates (Arctic) to interconnections with other pipelines for delivery to western region markets and in particular to southern California.

In the instant supplement Applicant states that it has entered into an agreement with Pacific Gas Transmission Company (PGT), pursuant to which PGT would transport an average of 437,000 Mcf per day of Applicant's North

[1] The supplement was initially tendered for filing on March 11, 1976, however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act was not paid until April 12, 1976; thus, filing was not completed until the latter date.

Slope gas from Kingsgate to Stanfield, at which point PGT would deliver an average of up to 200,000 Mcf per day to Northwest Pipeline Corporation (Northwest) for the account of Applicant, and that PGT would transport and deliver the balance of 237,000 Mcf per day to Pacific Gas and Electric Company (PG and E) near Malin, Oregon. It is said that volumes equivalent to the 200,000 Mcf per day delivered to Northwest would be made available to El Paso Natural Gas Company (El Paso) near Ignacio, Colorado, and that El Paso would deliver such volumes to SoCal at existing delivery points on the California border. Further, it is said, volumes equivalent to 237,000 Mcf per day delivered to PG and E would be made available to SoCal at points of delivery on PG and E's existing transmission system.

Any person desiring to be heard or to make any protest with reference to said supplement should on or before May 11, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed petitions to intervene, notices of intervention, or protests in the instant docket or in the consolidated proceeding in Docket No. CP75-96, et al., need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12135 Filed 4-26-76;8:45 am]

[Docket No. ER76-609]

FLORIDA POWER & LIGHT CO.

Filing of Service Agreement

APRIL 20, 1976.

Take notice that on April 12, 1976, Florida Power & Light Company (FP&L) tendered for filing an unexecuted Service Agreement and Exhibit A to FP&L's FPC Electric Tariff, Original Volume No. 1, for service from FP&L to the City of Starke, Florida. FP&L requests an effective date of October 2, 1975.

FP&L proposes that the rate for service to Starke from October 2, 1975 until April 1, 1976, be the rate finally ordered in Docket No. E-8008 and the rate for service on and after April 1, 1976, be the rate finally ordered in Docket No. ER76-211.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 3, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12130 Filed 4-26-76;8:45 am]

[Docket No. RP75-94]

GREAT LAKES GAS TRANSMISSION CO.

Further Extension of Procedural Dates

APRIL 20, 1976.

On April 9, 1976, Great Lakes Gas Transmission Company filed a motion to extend the procedural dates fixed by order issued June 13, 1975, as most recently modified by notice issued March 10, 1976, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Intervenor, Testimony, June 4, 1976.
Service of Company, Rebuttal, June 9, 1976.
Hearing, August 10, 1976, (10 a.m., e.d.t.).

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12149 Filed 4-26-76;8:45 am]

[Docket No. ER76-614]

THE HARTFORD ELECTRIC LIGHT CO.

Purchase Agreement

APRIL 20, 1976.

Take notice that on April 14, 1976, The Hartford Electric Light Company (HELCO) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units, dated March 22, 1976 between (1) HELCO and The Connecticut Light and Power Company (CL&P) and (2) the Town of Braintree, Massachusetts Municipal Electric Light Department (Braintree).

HELCO states that the Purchase Agreement provides for a sale to Braintree of a specified percentage of capacity and energy from four gas turbine generating units during the period from April 1, 1976 to October 31, 1976, and from five gas turbine generating units during the period from November 1, 1976 to the termination of the Purchase Agreement, together with related transmission service.

HELCO requests that the Commission waive the thirty-day notice period and permit the rate schedule filed to become effective on April 1, 1976.

HELCO states that copies of this rate schedule have been mailed or delivered to HELCO, Hartford, Connecticut; CL&P, Hartford, Connecticut and Braintree, East Braintree, Massachusetts.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol, Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 10, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commision and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12133 Filed 4-26-76;8:45 am]

[Docket No. ER76-617]

INDIANA & MICHIGAN ELECTRIC CO.

Tariff Change

APRIL 21, 1976.

Take notice that American Electric Power Service Corporation (AEP) on April 15, 1976 tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (Indiana), Modification No. 7 dated April 1, 1976 to the Interconnection Agreement dated December 30, 1960, between Indiana and Indianapolis Power & Light Company, designated Indiana Rate Schedule FPC No. 21.

Section 1 of Modification No. 7 provides for an increase in the Demand Charge for Short Term Power from $0.45 to $0.50 per kilowatt per week and from $0.11 to $0.125 per kilowatt per day for Short Term Power sold for period of less than one week. Section 2 provides for an increase in the Demand Charge for Limited Term Power from $2.50 to $2.75 per kilowatt per month, both schedules proposed to become effective May 15, 1976. Applicant states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 7, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12144 Filed 4-26-76;8:45 am]

[Docket No. ER76-613]

IOWA ELECTRIC LIGHT & POWER CO.

Filing of Operating and Transmission Agreement

APRIL 20, 1976.

Take notice that on April 14, 1976, Iowa Electric Light and Power Company (Iowa Electric) tendered for filing six copies of an Operating and Transmission Agreement dated December 15, 1971, between Iowa Electric and Central Iowa Power Cooperative (CIPCO). The agreement supersedes a previous agreement dated November 26, 1946 designated as Iowa Electric FPC Rate Schedule No. 31.

Iowa Electric states that the new agreement became effective as of January 1, 1972 and that the company believes its filing does not constitute a rate filing since the agreement contains no schedule of rates, but recognizes changes in the relationships between the two signatories and changes in the physical facilities of each, including the new Duane Arnold Energy Center, a nuclear fueled electric generating station.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commision's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 7, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12132 Filed 4-26-76;8:45 am]

[Docket No. CP76-334]

IOWA-ILLINOIS GAS & ELECTRIC CO.

Application

APRIL 19, 1976.

Take notice that on April 13, 1976, Iowa-Illinois Gas and Electric Company (Applicant), P.O. Box 4350, Davenport, Iowa 52808, filed in Docket No. CP76-334 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 0.40 mile of 4-inch pipeline and pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.40 mile of 6-inch replacement pipeline in Iowa City, Iowa, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that approximately 720 feet of the 4-inch pipeline would be abandoned in place and that approximately 1,380 feet would be converted to intermediate pressure and operated as part of Applicant's distribution system. Applicant states further that the 6-inch pipeline would improve flow capability and operating pressure at Applicant's Benton Street Station. It is said that flow capability would be increased from 13,400 Mcf of gas per day to 14,400 Mcf of gas per day and pressure at the Benton Street Station would be increased from 185 to 245 psig. The application indicates that increased flow capability and pressure level at this location are required to meet present and future load and to provide adequate and reliable service in this section of Iowa City.

Applicant estimates the cost of the proposed pipeline at $25,229 and states that it would be financed with current working funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held wihout further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing wil 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. PLUMB,
Secretary.

[FR Doc.76-12123 Filed 4-26-76;8:45 am]

[Docket No. ES76-49]

IOWA SOUTHERN UTILITIES CO.

Application

APRIL 19, 1976.

Take notice that on April 13, 1976, Iowa Southern Utilities Company (Applicant) filed an application for an order pursuant to § 204 of the Federal Power Act authorizing the issuance of Common Stock of the Company pursuant to an Employee Stock Ownership Plan (ESOP Plan) within the meaning of § 301 of the Tax Reduction Act of 1975 for as long as the ESOP Plan so qualifies.

Applicant is incorporated under the laws of the State of Delaware with its principal business office at Centerville, Iowa and is engaged in the electric utility business in 24 counties in Iowa.

The Common Stock will be issued to a trust for the benefit of the Company's employees qualifying for the plan.

The proceeds from the issuance of the Common Stock will be used to reduce the amount of income tax payable for 1975 by the Company. Any person desiring to be heard or to make any protest with reference to the application should on or before May 14, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12120 Filed 4-26-76;8:45 am]

[Docket Nos. ER76-39; ER76-363]

KANSAS POWER AND LIGHT CO.

Extension of Time

APRIL 20, 1976.

On April 14, 1976, Kansas Power and Light Company (KPL) filed a motion to extend the time for filing testimony concerning the renewal contract filed by KPL with respect to Clay Center, Kansas, pursuant to order issued March 15, 1976, in the above-entitled proceeding. The motion states that Staff Counsel and the Intervenors do not object to the requested extension.

Notice is hereby given that the time within which Kansas Power and Light must file the above testimony is extended from April 15, 1976 to and including April 26, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12127 Filed 4-26-76;8:45 am]

[Docket No. CP75-200]

MICHIGAN CONSOLIDATED GAS CO.

Amendment to Application

APRIL 19, 1976.

Take notice that on March 29, 1976, Michigan Consolidated Gas Company (Consolidated), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP75-200, pursuant to Section 7(c) of the Natural Gas Act, (1) an amendment to its application for a certificate of public convenience and necessity in said docket to provide for the storage by Consolidated for Michigan Wisconsin Pipe Line Company (Michigan Wisconsine) of 9 million Mcf, rather than 5 million Mcf, of gas in 1976, and 5 million Mcf of gas in 1977 and (2) an application to amend the temporary certificate granted Consolidated by the Commis-

sion's order issued June 2, 1975, in the subject docket (53 FPC ____) to permit Consolidated to continue to provide storage service for Michigan Wisconsin pending issuance of a final decision in the consolidated proceedings in Docket No. CP74-316, et al., all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is said that the order of June 2, 1975, issued a temporary certificate authorizing Consolidated to provide storage service for Michigan Wisconsin during the 1975-76 storage season and that the storage service proposed by Consolidated in the subject docket is intended as an interim arrangement to assist Michigan Wisconsin, pending its acquisition and development of storage and related facilities, in providing long-term storage service to Northern Natural Gas Company (Northern), Natural Gas Pipeline Company of America (Natural), and The Peoples Gas Light and Coke Company (Peoples).

Consolidated states that the reason for the instant filings is that Michigan Wisconsin has experienced a one-year delay in its gas storage acquisition and development program as proposed and that the granting of the requested authorizations will enable it to provide the storage service needed by Northern, Natural, and Peoples to maintain their respective existing levels of winter period service.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 14, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Persons who have heretofore filed petitions to intervene, notices of intervention, or protests in the instant docket or in the consolidated proceeding in Docket No. CP74-316, et al., need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12142 Filed 4-26-76;8:45 am]

[Docket No. RP75-108]

NATURAL GAS PIPELINE CO. OF AMERICA

Further Extension of Procedural Dates

APRIL 19, 1976.

On April 7, 1976, Natural Gas Pipeline Company of America filed a motion to extend the procedural dates fixed by order issued June 30, 1975, as most recently modified by notice issued February 26, 1976, in the above-designated proceeding.

The motion states that there is no opposition to the requested extension.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Intervenor Testimony, May 31, 1976.
Service of Company Rebuttal, July 1, 1976.
Hearing, July 20, 1976 (10:00 A.M., EDT).

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12143 Filed 4-26-76;8:45 am]

[Docket No. E-9554]

NORTHERN ELECTRIC COOPERATIVE ASSOC.

Application

APRIL 19, 1976.

On April 9, 1976, Northern Electric Cooperative Association (NEC) filed an application for a Presidential Permit requesting authorization to construct, operate and maintain at the international boundary between the United States and Canada a single phase 14,400 volt 60 cycle line connecting NEC with the facilities of Canadian Sandpoint Power Association.

Applicant also requests authority to export electric energy in a total amount not to exceed 150,000 kwh annually at an aggregate rate of transmission not to exceed 200 kw, over the above-mentioned facilities.

Any person desiring to be heard or to make any protest with reference to such application should, on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12121 Filed 4-26-76;8:45 am]

[Docket No. G-10632]

NORTHERN ILLINOIS GAS CO.

Application for Continuing Exemption

APRIL 19, 1976.

Take notice that on March 29, 1976,[1] Northern Illinois Gas Company (Applicant), P.O. Box 190, Aurora, Illinois 60507, filed in Docket No. G-10632 an application pursuant to Section 1(c) of the Natural Gas Act for a continuing exemption from the provisions of the Natural Gas Act and the Regulations thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a public utility engaged in the business of selling and distributing gas in the State of Illinois subject to the jurisdiction of the Illinois Commerce Commission and that it has been exempted from the provisions of the Natural Gas Act and the orders, rules, and regulations of the Commission by order issued July 25, 1956, in Docket No. G-10632.

It is said that Applicant contemplates effecting an agreement and plan of merger and reorganization and that two new corporations have been formed: NICOR Inc. and New Utility, Inc., with New Utility, Inc., a wholly-owned subsidiary of NICOR Inc. Applicant states that with stockholder approval, Applicant will be merged into NICOR Inc. and the outstanding shares of Applicant's common, preference and preferred stock will be converted on a share-for-share basis into like shares of common, preference, and preferred stock of NICOR, Inc. It is indicated that immediately following the merger, NICOR Inc. will transfer to New Utility, Inc., the business and all assets and liabilities which were Applicant's immediately prior to the merger and that New Utility, Inc., will then change its name to Northern Illinois Gas Company (New NI-Gas) and will continue the operation of Applicant's business. Applicant states that the Illinois Commerce Commission has authorized it thereupon to abandon its gas utility business and new NI-Gas thereafter to transact said business under a new certificate of public convenience and necessity issued by the Illinois Commission. Further, it is stated that all of new NI-Gas' operations will continue to be conducted solely within the State of Illinois, just as Applicant's are today, and that all of the natural gas which new NI-Gas will receive from out-of-state sources will be ultimately consumed within the State of Illinois.

Applicant alleges that the natural gas rates, service, and facilities of new NI-Gas will be subject to the regulatory jurisdiction of the Illinois Commission and that such Commission will exercise such jurisdiction. Accordingly, Applicant requests that the Commission issue an order continuing the exempt status of new NI-Gas under the Section 1(c) of the Natural Gas Act in connection with the implementation of its plan of merger and reorganization.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 13, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests

[1] It is noted that although the application was tendered for filing March 29, 1976, it was not accompanied by the fee required by Section 159.1 of the Regulations and thus filing was not completed until the fee was paid March 30, 1976.

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12134 Filed 4-26-76;8:45 am]

[Docket No. CP75-304]

NORTHERN NATURAL GAS CO.

Amendment to Application

APRIL 19, 1976.

Take notice that on April 12, 1976, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP75-304 an amendment to its application filed in said docket pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a deferred exchange of natural gas with Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), by which amendment Applicant proposes to exchange gas for a term longer than that initially proposed, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant initially proposed to deliver to Michigan Wisconsin from April 27, 1975, through September 27, 1975, up to 10,400,000 Mcf of natural gas in exchange for redeliveries by Michigan Wisconsin from March 27, 1977, through September 27, 1977, or during the same period of 1978 or both. Under certain conditions the volumes not redelivered by Michigan Wisconsin would be used by Michigan Wisconsin for Applicant's account as base gas in support of a long-term storage service to be provided by Michigan Wisconsin.

Applicant states that it commenced deliveries under a temporary certificate issued May 8, 1975, and that, due to conditions beyond the control of both parties, Michigan Wisconsin was able to accept during the summer of 1975 only 2,100,000 Mcf of the 10,400,000 Mcf exchange volume. Applicant states further that it has entered into an amendatory agreement with Michigan Wisconsin which provides that deliveries of 10,400,000 Mcf of gas might be made by Applicant to Michigan Wisconsin from April 27, 1975, through September 27, 1975, and April 27, 1976, through September 27, 1976, and that redeliveries would be made by Michigan Wisconsin from March 27, 1977, through September 27, 1977, or during the same periods of 1978 and 1979 or during all three periods. Said agreement also provides for the use of unredelivered gas for Applicant's benefit in the development of storage fields by Michigan Wisconsin. Accordingly, Applicant requests authorization to exchange gas with Michigan Wisconsin for a term in excess of that initially proposed.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 3, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person who has heretofore filed a petition to intervene, notice of intervention, or protest in the instant docket need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12122 Filed 4-26-76;8:45 am]

[Docket No. ER76-607]

PENNSYLVANIA ELECTRIC CO.

Rate Change

APRIL 19, 1976.

Take notice that on April 8, 1976, Pennsylvania Electric Company ("Penelec") tendered for filing rate schedule revisions providing for temporary charges to recover fuel costs otherwise unrecoverable (1) for all-requirements service to Waterford Electric Light Co., Wellsboro Electric Co., Elkland Electric Co., Rockingham Electric Co., Windbar Electric Co., West Penn Power Co. (at Lobo substation) and the Boroughs of Berlin, East Conemaugh, Hooversville, Smethport, Summerhill and Girard, Pennylvania, and (2) for partial requirement service to Allegheny Electric Cooperative, Inc. ("Allegheny"). Penelec states that its filing is designed to recover unbilled fuel costs incurred during the last two months of 1975, January 1976 and the first 25 days of February 1976 which would have been recovered under fuel adjustment clauses providing for "billing lag" that were superseded effective February 26, 1976 pursuant to Commission Order of December 24, 1975 in Docket No. ER76-301. Penelec states that the fuel costs the temporary charges would recover would not be recovered under the revised rates made effective by that order.

Penelec states that the amounts to be recovered by the charges are $330,662 for service to its all-requirements customers and $1,088,067 for service to Allegheny. The charges will be applied at the rate of 1.8 mills per kilowatt hour for the all-requirements customers and 2.7 mills per kilowatt hour for Allegheny until the above amounts plus applicable gross recovered. An effective date of May 9, 1976 is requested for the proposed charges.

According to Penelec, copies of the filing were served upon the affected jurisdictional customers and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8, 1.10). All such petitions or protests should be filed on or before May.3, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12148 Filed 4-26-76;8:45 am]

[Docket No. ER76-618]

PENNSYLVANIA POWER & LIGHT CO.

Tariff Change

APRIL 20, 1976.

Take notice that Pennsylvania Power & Light Company (PP&L) on April 15, 1976, tendered for filing a Supplemental Agreement dated April 5, 1976, to the Interconnection Agreement dated October 30, 1964, between Metropolitan Edison Company (ME) (Rate Schedule FPC No. 23) and Pennsylvania Power & Light Company (PL) (Rate Schedule FPC No. 38), as amended.

According to PP&L the Supplemental Agreement provides for the establishment of the Shillington Backup Interconnection by the connection of PL's 66 KV line from its Shillington Substation to ME's airbreak switch at its Lincoln Park Substation.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 5, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12128 Filed 4-26-76;8:45 am]

[Docket No. RI76-75]

PETROLEUM CORPORATION OF TEXAS

Petition for Special Relief

APRIL 19, 1976.

Take notice that on March 29, 1976, Petroleum Corporation of Texas (Petitioner), P.O. Box 911, Breckinridge,

Texas 76024, filed a petition for special relief in Docket No. R176–75, pursuant to Order No. 481. Petitioner's Rate Schedule No. 47 covers the McClure and Russell Units, Finney County, Kansas and Rate Schedule No. 45 covers the Kennedy "B" Gas Unit in Texas County, Oklahoma. Petitioner states that it has reworked said wells in order to prevent premature abandonment and due to economic reasons Petitioner is seeking a rate of 26 cents per Mcf for the sale of gas to Northern Natural Gas Company.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–12125 Filed 4–26–76;8:45 am]

[Project No. 2729]

POWER AUTHORITY OF THE STATE OF NEW YORK

Supplement to Revised Application for License for Unconstructed Project

APRIL 21, 1976.

Public notice was given on June 7, 1973, and August 21, 1973, with respect to an application for a major license under the Federal Power Act (16 U.S.C. 791a–825r) filed on March 30, 1973 and revised July 24, 1973 by Power Authority of the State of New York (Correspondence to: Mr. George T. Berry, General Manager and Chief Engineer, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019 and to John C. Mason, Esquire, Morgan, Lewis & Bockius, 1800 M Street, N.W. Washington, D.C. 20036) for the proposed Breakabeen Pumped Storage Project No. 2729 which would be located on Schoharie Creek, a tributary of the Mohawk River in Schoharie County, New Yok, near the Towns of Blenheim, Fulton and Gilboa. The proposed project would affect the interests of interstate or foreign commerce.

Further public notice is hereby given that a supplement to the July 24, 1973 revised application was filed on October 31, 1975 by Applicant, a municipality within the meaning of Section 3(7) of the Federal Power Act. The supplement provides environmental and cost data with respect to an additional pumped storage site as a possible alternative to the proposed Breakabeen site. The additional alternative is known as Prattsville and is located in the Towns of Prattsville in Greene County, Gilboa and Conesville in Schoharie County, and Roxbury in Delaware County on Schoharie Creek southerly of and upstream from the Applicant's existing 1000 megawatt Blenheim-Gilboa Pumped Storage Project No. 2685. A project at the Prattsville site would utilize the existing Schoharie Reservoir which is owned and operated by the City of New York as part of its water supply system. The upper reservoir would be located on Dog Hill to the east of Schoharie Reservoir. The supplemental filing also provides updated capital cost data on the primary and alternate sites as of January 1, 1975.

The alternate sites being considered by Applicant, besides Prattsville, are: (1) Gardiner, located on the Shawangunk Creek in the Towns of Rochester, Gardiner and Shawangunk in Ulster County, New York; (2) Livingstonville, located in Catskill Creek in the Town of Broome in Schoharie County, New York; and (3) Port Jervis North, located on the Neversing River in the Towns of Deerpark in Orange County and Forestburg in Sullivan County, New York. A further alternate site being considered by the FPC Staff is Canandiagua, located within the towns of Canandaigua, Gorham, and South Bristol in Ontario County, and Middlesex and Italy in Yates County. The lower reservoir would be the existing Canandaigua Lake and the upper reservoir would be located on South Hill, near the southeast end of Canandaigua Lake.

The FPC staff draft environmental impact statement discussing the proposed Breakabeen Project No. 2729 as well as each of the aforementioned alternate sites was issued April 9, 1976 and is available at FPC offices in Washington, D.C. and New York City.

Unless previously granted intervention in this matter, any person desiring to be heard or to make protest with reference to this matter should on or before June 8, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The July 24, 1973 revised application and the October 31, 1975 supplement thereto are on file with the Commission and are available for public inspection at the Commission's offices in Washington, D.C. and at Applicant's offices in New York City and in Gilboa, Prattsville and Catskill, New York.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–12145 Filed 4–26–76;8:45 am]

[Docket No. ER76–610]

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Filing of Agreement

APRIL 19, 1976.

Take notice that Public Service Company of New Hampshire (PSNH) on April 13, 1976, tendered for filing as an initial rate schedule a Transmission Contract with Burlington Electric Department, City of Burlington, Vermont (the Buyer).

Under the Contract, PSNH transmitted through its system an entitlement of power which the Buyer purchased from The Hartford Electric Light Company.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of February 9, 1976.

According to PSNH, a copy of the filing was served upon the Buyer.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20002, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 3, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–12138 Filed 4–26–76;8:45 am]

[Docket No. CP76–314]

SOUTHERN TRANSMISSION CORP.

Application

APRIL 20, 1976.

Take notice that on March 30, 1976, Southern Transmission Corporation (Applicant), 1114 Avenue of the Americas, New York, New York 10036, filed in Docket No. CP76–314 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a natural gas pipeline in Mississippi and Tennessee and the transportation of natural gas by means thereof, all as more fully set forth in the application in this proceeding.

It is stated that Applicant, a wholly-owned subsidiary of W. R. Grace & Co. (Grace), was organized for the purpose of constructing, owning and operating the proposed pipeline and to transport natural gas owned by Grace in the Corinne-Strong Field Area (Corinne Reserves) and to transport natural gas purchased in the future by Grace in Monroe County, Mississippi, and adjacent areas, to the anhydrous ammonia and urea fer-

tilizer plant owned by Grace in Shelby County, Tennessee (Grace Plant). Specifically, Applicant proposes to construct and operate approximately 148 miles of 8⅝-inch O.D. pipeline and related facilities from a point approximately 7 miles southwest of Aberdeen in Monroe County to a point in Shelby County 12 miles north of Memphis, the location of the Grace Plant. Additionally, Applicant proposes to construct and operate a compressor station with an installed horsepower of 1,500 near the central gathering point for the Corinne Reserves.

It is indicated that the proposed pipeline would transport and deliver to the Grace Plant between 15,000 Mcf of gas per day, and 16,725 Mcf of gas per day during the first 4¼ fiscal years. Applicant states that subject to the production requirements at the Grace Plant and the limitations of the Corinne reserves and other reserves, the Grace Plant plans to take the volumes of gas made available through the proposed pipeline to supplement natural gas made available by Memphis Light, Gas and Water Division of the City of Memphis (Memphis Light), currently the sole supplier of gas to the Grace Plant.

Applicant asserts that the gas reserve estimates show that a volume of 81,949,000 Mcf represents a reasonable estimate of the total proved and probable gas reserves recoverable thru 1995 in the Corinne Reserves. Further, it is asserted that based on an estimated 12¼ year useful life to Grace of the Corinne Reserves beginning April 1, 1977, and ending June 30, 1989, total deliverable proved reserves are 61,949,000 Mcf and total deliverable proved and probable reserves are 78,700,000 Mcf. Applicant states that Grace owns and would take, and Applicant would transport, half of the deliverable amounts and that the remaining half of the gas in Corinne Reserve was sold by Grace and certain other fractional owners of said gas to Mississippi Valley Gas.

The application shows the total estimated cost of the proposed facilities to be $15,763,000 and that Applicant plans to finance the proposed facilities through $15,763,000 in long-term loans and equity contributions by Gace and/or through suitable financing commitments with banks or other institutional lenders.

Applicant alleges that at the Grace Plant there is no feasible alternative for natural gas as a feedstock for the production of ammonia and that there is no feasible alternative for ammonia as a feedstock for the production of urea. Moreover, Applicant asserts that there are no alternate fuels available for the related process gas uses with out impairing the capability of the Grace Plant to produce agricultural fertilizers, its primary product, and without exposing the plant to substantial damage and its personnel to the risk of physical danger.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12146 Filed 4-26-76;8:45 am]

[Docket No. CP76-311]

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC.

Application

APRIL 19, 1976.

Take notice that on March 30, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP76-311 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Block 66, West Cameron Area, offshore Louisiana, and onshore Cameron Parish, Louisiana, in order to attach and move onshore reserves committed to Applicant by Atlantic Richfield Company (Arco) and Getty Oil Company (Getty) (sometimes referred to as producers) from West Cameron Blocks 34, 35, 66, and 67, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities:

(a) 1.36 miles of 8-inch pipeline between producers' A and B platforms in West Cameron Block 66.

(b) 5.3 miles of 16-inch pipeline extending from producers' A platform in West Cameron Block 66 to Applicant's platform in West Cameron Block 68.

(c) 2.7 miles of 20-inch onshore loop line extending westward from Station 507-F.

(d) Measurement and dehydration facilities and two 600 horsepower compressor units with related facilities to be located at two points on Applicant's Grand Chenier Line.

The application indicates that the total cost of the proposed facilities is estimated to be $6,758,500.

Applicant states that the proposed facilities would enable it to attach substantial additional gas supplies and move such supplies onshore to its system. Applicant estimates that the reserves underlying these blocks total approximately 173,850,000 Mcf of gas with an initial deliverability of approximately 80,000 Mcf per day. Of such total reserves, it is stated that 97,979,000 Mcf are committed to Applicant by Arco and Getty under the terms of advance payment agreements and that Applicant and Arco and Getty expect to finalize and execute gas purchase agreements in the near future. Applicant asserts that the advance payment agreements entitle Arco and Getty to retain a portion of their gas reserves for their own future use onshore and that the agreement with Arco provides for the retention by Arco of 50 percent of its reserves for its own use and the agreement with Getty provides for the retention by Getty of 25 percent of its reserves for its own use. However, Applicant alleges, under the terms of the gas purchase agreements as presently proposed, Arco would retain only 25 percent of its reserves and Getty would retain only 20 percent. Further, Applicant asserts that it is also negotiating with Continental Oil Company (Continental), the owner of the remaining 75,871,000 Mcf of said estimated gas reserves, for a gas purchase agreement which would provide that Continental would commit 50 percent of its reserves to Applicant and retain 50 percent of its reserves for its own use. The advance payment agreements also provide, it is stated, that Applicant would at a future date, and upon Commission approval, transport all or a portion of the gas retained by each of the producers to a point or points onshore for their individual use.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12126 Filed 4-26-76;8:45 am]

[Docket No. RP71-11 (PGA76-3)]

TENNESSEE NATURAL GAS LINES, INC.

Notice of Proposed Rate Change Under Tariff Rate Adjustment Provisions

APRIL 20, 1976.

Take notice that on April 13, 1976, Tennessee Natural Gas Lines, Inc. ("Tennessee Natural"), tendered for filing proposed changes to First Revised Volume No. 1 of its FPC Gas Tariff to be effective on May 1, 1976, consisting of the following revised tariff sheets:

Fifteenth Revised Sheet No. PGA-1 and Tenth Revised Sheet No. PGA-2.

Tennessee Natural states that the purpose of the instant filing is to make a PGA rate adjustment pursuant to the purchased gas adjustment provisions of Rate Schedules G-1 and SWS-1 of its FPC Gas Tariff to reflect a PGA rate change of its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. ("Tennessee Gas"), proposed to become effective on May 1, 1976, which is entirely based upon producer price increases granted by the Commission in Opinion No. 749 and 749-A.

Tennessee Natural states that it did not receive the filing by its supplier in time to make the instant PGA rate filing any sooner and requests waiver of any requirement necessary to permit its proposed rate change to become effective on May 1, 1976, the same date as that of its supplier.

Tennessee Natural states that copies of the filing have been mailed to its jurisdictional customer and the affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 28, 1976, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12129 Filed 4-26-76;8:45 am]

[Docket Nos. RP74-48; and RP75-3]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Settlement Conference

APRIL 21, 1976.

On April 15, 1976, Transcontinental Gas Pipe Line Corporation (Transco) filed in the captioned dockets a "Motion . . . to Convene Settlement Conference", which montion states, in part, as follows:

> Transco desires to explore the possibility of settlement of the issue of the propriety of inclusion of costs related to expenditures in the unsuccessful search for alternate gas supplies. This issue was reserved for hearing and decision in Article III, Section 8 of the Settlement Agreement in the captioned dockets. This issue, among others, was the subject of an initial decision by Presiding Administrative Law Judge Isaac D. Benkin on December 22, 1975 and is now pending before the Commission on exceptions. In this regard, Transco is filing concurrently a motion to the commission requesting that the decision on this single issue be held in abeyance pending the outcome of the settlement conference.
>
> At such conference, Transco will be prepared to present an offer of settlement to the parties.

Accordingly, take notice that a conference for the purpose requested by Transco will be convened at 10:00 A.M. on Wednesday, May 5, 1976, in Room 5200 at the offices of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. All parties to the captioned proceeding, interested state commissions, and any other interested parties are invited to attend.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12147 Filed 4-26-76;8:45 am]

[Docket Nos. RP73-3, et al. (PGA76-1)]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Submission of Information Required by Commission Order

APRIL 19, 1976.

Take notice that on March 29, 1976, Transcontinental Gas Pipe Line Corporation (Transco) submitted information concerning certain emergency purchases, as required by Commission order issued February 27, 1976, in the captioned docket. Transco states that the information submitted includes a discussion of: (1) the pipeline's need for the gas; (2) the availability of other gas supplies; (3) the amount of gas purchased under each 60-day transaction; (4) a comparison of each emergency purchase price with appropriate market prices in the same or nearby areas, and (5) the relationship between the purchaser and seller. Transco states further that copies of such information have been served upon its customers as well as interested State Commissions.

Copies of Transco's submittal are on file with the Commission and are available for public inspection. Any person desiring to comment on matters concerned therein should file such comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 8, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12141 Filed 4-26-76;8:45 am]

[Project No. 2463]

VIRGINIA ELECTRIC AND POWER CO.

Application for Surrender of Major License

APRIL 19, 1976.

Public notice is hereby given that an application was filed on June 5, 1975, and supplemented February 27, 1976, under the Federal Power Act (16 U.S.C. §§ 791a-825r) by Virginia Electric and Power Company (Correspondence to: C. M. Stallings, Vice President—Power Supply and Production Operators, Virginia Electric and Power Company, Richmond, Virginia 23261) for Commission approval of surrender of the major license for Park Hydroelectric Project No. 2463. The project is located in Richmond, Virginia on the Chesapeake and Ohio canal, paralleling the James River, a navigable waterway of the United States.

The constructed Park Hydroelectric Project consists of: (1) a short headrace from the Chesapeake and Ohio canal to the plant; (2) a short penstock connecting the headrace to the scroll case; (3) a concrete powerhouse containing one 3,380 horsepower water wheel connected to one 2,100 kW generator; and (4) appurtenant electrical and mechanical facilities. Power generated by the project was used by the Applicant for public utility purposes.

The project has not been operated since it was damaged by flood in 1972, and Applicant states that the cost to rehabilitate it to produce electric energy is uneconomical. The Applicant is negotiating with the City of Richmond for the sale of a major portion of the land and certain of the non-generating facilities included in the project. The City of Richmond would intend to use the greater part of the project site for a sewage and drainage system. The James River Paper Company will retain the rights to 84 cfs in the canal under a lease that expires on October 31, 1978.

Any person desiring to be heard or to make any protest with reference to said

application should on or before June 10, 1976, file with the Federal Power Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1975). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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 conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act, 16 U.S.C. § 825g and § 825h, and the Commission's Rules of Practice and Procedure, specifically Section 1.32 (b), as amended by Order No. 518, a hearing on this application may be held before the Commission without further notice if no issue of substance is raised by any request to be heard, protest, or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for Applicant to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12137 Filed 4-26-76;8:45 am]

[Docket No. ER76-92]

WESTERN POWER DIVISION, CENTRAL TELEPHONE & UTILITIES CORP.

Filing of Revised Rate Schedules

APRIL 20, 1976.

Take notice that on April 6, 1976, Western Power Division, Central Telephone & Utilities Corporation (Western Power) tendered for filing Revised Rate Schedules and supporting exhibits reflecting the elimination of construction work in progress from rate base, in compliance with the order of the Federal Power Commission issued February 20, 1976.

Any person desiring to be heard or to protest said filing should file a petition to interevne or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 4, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-12124 Filed 4-26-76;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Staff, GAO, on April 21, 1976. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public of such receipt.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FPC forms are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed forms, comments (in triplicate) must be received on or before May 17, 1976, and should be addressed to Mr. Carl F. Bogar, Assistant Director, Office of Special Programs, United States General Accounting Office, Room 5216, 425 I Street, NW, Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-376-5425.

FEDERAL POWER COMMISSION

The Federal Power Commission requests clearance of minor material revisions to five schedule pages of the FPC Form No. 1, Annual Report for Public Utilities, Licensees and Others (Class A and Class B) prescribed by Section 141.1, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting of data concerning four new operating expenses accounts of the customer service and informational classification and one new account for general advertising expenses, effective for the reporting year 1976. Potential respondents are the 289 electric utilities and hydroelectric licensees (Classes A and B) presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response is one-half hour.

The Federal Power Commission requests clearance of minor material revisions to one schedule page of the FPC Form No. 1-F, Annual Report for Public Utilities and Licensees (Classes C and D) prescribed by Section 141.2, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting of data concerning one new operating expense account of the customer service and informational classification and another new account for general advertising expenses, effective for the reporting year 1976. Potential respondents are the 12 electric utilities and hydroelectric licensees (Classes C and D) presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response is one-half hour.

The Federal Power Commission requests clearance of minor material revisions to five schedule papes of the FPC Form No. 2, Annual Report of Natural Gas Companies (Classes A and B) prescribed by Section 260.1, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting of data concerning four new operating expenses accounts of the customer service and informational classification and one new account for general advertising expenses, effective for the reporting year 1976. Potential respondents are the 82 natural gas companies (Classes A and B) presently subject to the Commission's reporting requirements. FPC estimates the average additional burden per annual response is one-half hour.

The Federal Power Commission requests clearance of minor material revisions to one schedule page of the FPC Form No. T-A, Annual Report of Natural Gas Companies (Classes C and D) prescribed by Section 260.2, Title 18, Chapter I of the Code of Federal Regulations. The revisions are requested to provide for reporting of data concerning one new operating expense account of the customer service and informational classification and another new account for general advertising expenses, effective for the reporting year 1976. Potential respondents are the 24 natural gas companies (Classes C and D) presently subject to the Commission's reporting requirement. FPC estimates the average additional burden per annual response is one-half hour.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.76-12075 Filed 4-26-76;8:45 am]

INTERNATIONAL TRADE COMMISSION

[AA1921-134A and 135A]

PRIMARY LEAD METAL FROM AUSTRALIA AND CANADA

Determination of No Likelihood of Injury

On January 5, 1976, the United States International Trade Commission received a letter from the Department of the Treasury with respect to primary lead metal from Australia and Canada which was published in the FEDERAL REGISTER of January 8, 1976 (41 F.R. 1502). The Commission on January 26, 1976, instituted investigation No. AA1921-134A and 135A to determine whether, if the findings of dumping on such primary

lead metal from Australia and Canada* were revoked, an industry in the United States would likely be injured by reason of the importation into the United States of such primary lead metal at less than fair value as specified in the aforementioned letter from the Department of the Treasury.

Notice of the institution of the investigation and of the public hearing was published in the FEDERAL REGISTER (41 F.R. 4076). The hearing was held on February 24–26, 1976.

In arriving at its determination the Commission gave due consideration to written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission from questionnaires, personal interviews, and other sources.

The United States International Trade Commission has unanimously determined that, if the findings of dumping on primary lead metal were revoked, an industry in the United States would not likely be injured by reason of the importation of primary lead metal from Australia and Canada into the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended, as specified in the aforementioned letter received January 5, 1976, from the Department of the Treasury.

STATEMENT OF REASONS OF CHAIRMAN WILL E. LEONARD, VICE CHAIRMAN DANIEL MINCHEW,[1] AND COMMISSIONER ITALO H. ABLONDI

On January 10, 1974, the U.S. Tariff Commission (now the U.S. International Trade Commission) determined (with us dissenting) under section 201(a) of the Antidumping Act, 1921, as amended, that an industry in the United States was being, or was likely to be, injured by reason of the importation of primary lead metal from Australia and Canada that the Department of the Treasury (Treasury) had determined was being, or was likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act.[2] Treasury issued two findings of dumping (Treasury Decisions 74–127 and 74–128) based in part upon that Commission determination.

On January 5, 1976, Treasury forwarded to the Commission "for such review as it deems appropriate" a petition addressed to Treasury requesting revocation of the above outstanding dumping findings on imports of primary lead metal from Australia and Canada (T.D. 74–127 and T.D. 74–128). The petition requesting revocation in effect asked the Commission to review its determination of January 10, 1974, and to revoke that determination. The letter from Treasury transmitting the petition included updated foreign market and export price information, as well as a judgment as to what that information revealed concerning whether there would have been a likelihood of sales at less than fair value in the absence of the outstanding dumping findings.

On January 22, 1976, the Commission instituted investigation No. AA1921–134A/135A to determine whether, if the findings of dumping on such primary lead metal were revoked, an industry in the United States would likely be injured by reason of the importation of such primary lead metal at less than fair value as specified in the letter from Treasury of January 5, 1976.

DETERMINATION

In the instant investigation (investigation No. AA1921–134A/135A) we determine that, if the findings of dumping on primary lead metal from Australia and Canada were revoked, an industry in the United States would not likely be injured by reason of the importation into the United States of such primary lead metal at less than fair value as specified in the aforementioned January 5, 1976, letter from Treasury.

NATURE OF THIS INVESTIGATION

This investigation is not being conducted by the Commission under section 201(a) of the Antidumping Act, which provides:

> * * * The Commission shall determine within three months [after the Secretary of the Treasury determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value] whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Rather, this investigation is a review of the previously-referred-to Commission determination of January 10, 1974, under section 201(a) involving primary lead metal from Australia and Canada. The scope of this review is controlled by the notice issued by the Commission of the institution of this investigation.

The Commission's authority to review its outstanding determinations under the Antidumping Act is an inherent authority. As one commentator has noted, "every tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately modify its judgment, decree, or order." 2 Davis, Administrative Law Treatise, § 13.09, at 606 (1958). The United States Supreme Court stated, "administrative authorities must be permitted, consistently with the obligations of due process, to adjust their rules and policies to the demands of changing circumstances." Permian Basin Area Rate Cases, 390 U.S. 747, 784 (1968). The Court of Appeals for the District of Columbia has stated, "[t]he power to reconsider is inherent in the power to decide." *Albertson v. Federal Communications Commission*, 182 F.2d 397 (D.C. Cir. 1950). Absent contrary legislative intent or other affirmative evidence, an agency may reconsider and modify its determination due to such factors as changed conditions as long as the administrative action is conducted within a reasonable time period. *Bookman v. U.S.*, 453 F.2d 1263 (Ct. Cl. 1972).

With respect to legislative intent, the report of the Senate Committee on Finance on the bill which became the Trade Act of 1974 states regarding Commission practice under the Antidumping Act:

> (4) *Review of agency determinations and findings.*—The Antidumping Act does not contain specific provisions for the review by each agency of its individual determinations or of the findings of dumping issued by Treasury. However, both Treasury and the Commission have the authority to review, modify, or revoke their determinations. The Treasury by regulation has long exercised this function, initially and until 1954, with respect to both less-than-fair-value and injury determinations, and after 1954 with respect to its single determination of less-than-fair-value imports. In 1954, the Commission was given the authority to make the injury determinations under the Antidumping Act, and it has continued Treasury's practice as is recently evidenced by its review of several outstanding injury determinations, one of which was an inherent part of an outstanding finding of dumping issued by the Treasury.[3]

The Senate-House Conference Committee which considered amendments to the Antidumping Act in the bill on which the Committee on Finance was reporting did not disavow the above-quoted language regarding Commission practice.

As indicated by the Senate Committee on Finance above, the Commission has in the past reviewed outstanding injury determinations. In fact, in September 1974 the Commission issued its determination upon review in Northern Bleached Hardwood Kraft Pulp From Canada,[4] finding that if the outstanding finding of dumping in that case were revoked an industry in the United States would not be or would not likely be injured by reason of the importation of the subject merchandise from Canada sold, or likely to be sold, at LTFV.

THE DOMESTIC INDUSTRIES

There are three separate and distinct U.S. industries focused upon in this in-

*On January 10, 1974, the Commission termined by a 2 to 2 vote in investigations Nos. AA1921–134 and 135 that an industry in the United States is likely to be injured by reason of the importation of primary lead metal from Australia and Canada that is being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. The findings of dumping were published in the FEDERAL REGISTER on April 17, 1974 (39 F.R. 13783).

[1] Vice Chairman Minchew states that any references to the previous determination of the Commission on primary lead are, of course, inapplicable to his decision in this case since he did not participate in that determination. However, from having read the opinions in the earlier case, he has no difficulty in joining with Chairman Leonard and Commissioner Ablondi in the present case.

[2] The Commission determination is found in "Primary Lead Metal From Australia and Canada: Determination of Injury or Likelihood Thereof in Investigations Nos. AA1921–134 and 135 * * *," TC Publication 639, January 1974.

[3] Trade Reform Act of 1974, Report of the Committee on Finance, United States Senate, * * *, S. Rept. No. 93–1298 (93d Cong., 2d sess.), 1974, at p. 181.

[4] TC Publication 687, September 1974.

vestigation that might be directly affected by LTFV imports of primary lead metal. The first of these consists of the U.S. facilities devoted to the mining and milling of lead ores and concentrates (the only significant market for domestically produced lead ores and concentrates in the U.S. industry producing primary lead metal; therefore, the welfare of the mining and milling industry is dependent upon the demand for raw materials generated by the primary lead smelting and refining industry); the second industry consists of the facilities used in the smelting and refining of primary lead metal; and the third consists of the facilities used in smelting and refining secondary lead metal. The first two industries referred to above are the same as were found in the section 201(a) investigation of primary lead metal referred to previously. The third industry is new to this review proceeding.

Primary lead metal is produced from lead ores and concentrates, and secondary lead metal is recovered from scrap material. Historically, the great bulk of U.S. output of secondary lead has consisted of lead alloys, whereas virtually all of the U.S. production of primary lead metal has been pure lead. This situation has changed in the last several years, and in 1975 approximately 24 percent of total U.S. production of pure lead metal was supplied by secondary producers. The pure lead metal supplied by such producers is directly substitutable for pure lead metal produced by primary producers on the basis of both price and quality. Thus, it is appropriate to look at the facilities devoted to such secondary production, since potential LTFV imports could have an impact upon such facilities. Further, while the product produced in the smelting and refining of secondary lead metal is directly substitutable for primary lead metal, the raw materials for it, the processes used in its production, and the skills of the workers employed in its production are quite different from those involving primary lead metal. Therefore, the facilities used in producing it should be considered as a separate industry.

NO PRESENT INJURY

In the notice of institution of the investigation, the Commission indicated, as previously stated, that it was investigating to determine whether, if the outstanding findings on dumping of primary lead metal were revoked, an industry in the United States would likely be injured by reason of the importation of such lead from Australia and Canada into the United States at less than fair value as specified in the aforementioned letter from Treasury of January 5, 1976. The Commission's notice did not try to ascertain whether an industry were injured, because clearly there can be no present injury by reason of the subject LTFV importation; since the imposition of dumpting duties under T.D. 74-127 and T.D. 74-128, referred to previously, there has in effect been no importation at LTFV.

NO LIKELIHOOD OF INJURY [1]

A number of indicators point to a rather healthy present situation in the various industries being considered in this investigation and indicate that they will compete well with imports in the future:

(1) Lead prices have traditionally been subject to numerous price changes, both upward and downward. The most marked price decline in recent years occurred in 1975, when the price declined from 24.5 cents per pound to 19 cents, or by 5.5 cents per pound. This sharp decline is attributable to the reduced demand for lead during the economic recession; such a decline clearly may not be attributed to LTFV imports from Australia and Canada because there were in effect no such imports in that year. During March–April 1976 the U.S. lead producers increased the price of lead by 3.5 to 4 cents per pound. These recent price increases represent an 18-to-21-percent increase in the price of lead within a period of less than 6 weeks.

(2) reported to the Commission indicate that in recession year 1975 the ratio of net operating profits to net sales for five firms which accounted for 79 percent of total industry output of lead-bearing ores and concentrates was 46 percent on their lead mining and milling operations. During the same year the ratio of net operating profits to net sales for three firms which accounted for 70 percent of total industry output of primary lead metal was 16 percent on their lead smelter and refinery operations. The only financial data obtained by the Commission with respect to secondary lead producers indicate that one large secondary producer operated at a moderate level of profit in 1975.

(3) In 1968, 338,000 tons of primary lead were imported, compared with 86,000 tons in 1975. Of the decrease, only approximately 80,000 tons can in any fashion be attributed to the outstanding dumping finding involving imports from Australia and Canada. This sustained decline (75 percent) in lead imports illustrates that the domestic lead industry has been able to compete effectively in the U.S. market and that the United States, which possesses some of the largest and richest ore reserves in the world, is becoming self-sufficient in lead.

(4) Presentations made to the Commission by both importers and domestic producers indicate that there will be growth in future lead consumption even though consumption in certain products such as lead additives for gasoline may decline. The interested parties in this investigation did not agree on the future growth rate for lead, but both importers and domestic producers predicted sharply higher U.S. consumption in 1976 than in 1975, with additional growth in demand forecast for 1977 and 1978.

In the Commission's previous investigation on this merchandise, it was specifically found in one opinion that present or future LTFV sales were not an identifiable cause of present injury then or of any possible injury that might in the future befall the U.S. industries being considered.[2] It was indicated that a number of demand and supply factors were expected to influence the U.S. market for lead during the next several years, so much so as to obscure any part that LTFV imports from Australia or Canada might play.[3]

Many of the same factors which led to that finding are still present today, including environmental considerations, changes in the uses of lead, and changes in the demand for lead. On the basis of this review proceeding, no reason is found to change this finding regarding causation made in that previous investigation, and such finding is reaffirmed.

CONCLUSION

In light of the above-described present healthy condition of the three industries being considered in this investigation, their future prospects, and the failure to find possible future LTFV imports from Australia and Canada an identifiable cause of any future injury to the domestic industries, we determine that, if the findings of dumping on primary lead from Australia and Canada were revoked, and industry in the United States would not likely be injured by reason of the importation of such merchandise into the United States at LTFV as specified in the letter received January 5, 1976, from the Treasury.

CONCURRING VIEWS OF COMMISSIONERS GEORGE M. MOORE AND JOSEPH O. PARKER

The question presented to the Commission in this proceeding is as follows:

If the findings of dumping on primary lead metal as described in the letter from the Department of the Treasury on January 5, 1976, were revoked, would an industry in the United States be likely to be injured by reason of the importation of primary lead metal from Australia and Canada into the United States at less than fair value as specified in the aforementioned letter from the Department of the Treasury?

Regardless of how an industry in the United States is defined, the answer to the foregoing question is in the negative. At the least, the industry in the United States with which the Commission is concerned consists of the domestic facilities of U.S. producers devoted to the mining and milling of lead-bearing ores

[1] Although in this investigation no attempt is made to consider the impact of the subject Australian imports separately from that of the subject Canadian imports (such separate treatment would not change our determination herein), we still adhere to our treatment of the question of the cumulative impact of imports as set out in "Primary Lead Metal From Australia and Canada. * * *," supra note 2, p. 3, at pp. 12–13, and 22–24.

[1] "Primary Lead Metal From Australia and Canada: Determination of Injury or Likelihood Thereof, Investigation Nos. AA1921–134 and 135 * * *, TC Publication 630, January 1974, pp. 16–21.

[2] Ibid., p. 20.

and concentrates and the smelting and refining of primary lead.

In our opinion, in view of the evidence presented to the Commission during this investigation which shows (1) the projected increase in domestic consumption of primary lead, (2) the current healthy state of the domestic industry defined above, (3) the profitability of operations of that industry in recent years, (4) the marked increase in the domestic prices of lead metal which have become effective in recent months, and (5) the assurances of Australian and Canadian producers that their imports of primary lead into the United States at less than fair value will not be sold below prevailing domestic market prices if the dumping findings are revoked, it is clear that an industry in the United States is not likely to be injured.

CONCURRING VIEWS OF COMMISSIONER CATHERINE BEDELL

The Commission has unanimously determined that if the findings of dumping on primary lead from Australia and Canada were revoked an industry in the United States would not be likely to be injured by reason of the importation of such merchandise into the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended, as specified in the letter received January 5, 1976, from the Department of the Treasury. As a consequence of this negative determination by the Commission, the findings of dumping issued by the Treasury in April 1974 will be revoked. Inasmuch as my affirmative determination of January 10, 1974, under section 201(a) of the Antidumping Act, 1921, was in part the basis upon which the findings of dumping were issued by the Treasury, I believe it is incumbent upon me to explain the changed circumstances that now prompt my negative determination in the instant investigation.

THE INDUSTRY INVOLVED

In my January 10, 1974, determination, I considered the impact of LTFV imports on the U.S. industry consisting of facilities in the United States devoted to the production of primary lead, i.e., the mines and mills that produce lead-bearing ores or concentrates, and the smelters and refineries that produce primary lead metal. In that determination I expressed the view that the economic factors then involved clearly pointed to likelihood of injury to such domestic industry in the immediate future.

In making my present negative determination based upon changed circumstances, I have considered the impact that terminating the findings of dumping would have not only on the domestic facilities devoted to the production of primary lead but also on those devoted to the production of secondary lead, i.e., lead recovered from scrap material. Historically, the great bulk of the U.S. output of secondary lead has consisted of lead alloys, whereas virtually all the U.S. production of primary lead has been pure lead metal. In recent years the situation has changed. By 1975, according to information obtained in this investigation, approximately 24 percent of the total U.S. production of pure lead metal was supplied by secondary producers. Since primary and secondary lead are interchangeable in many applications and compete directly with each other in the market place, my determination of no likelihood of injury in this case is based upon consideration of the impact on both the primary and secondary lead industries.

EFFECT OF ISSUING FINDINGS OF DUMPING

Between 1968 and 1973, the share of the domestic lead market supplied by imports from Australia and Canada remained fairly stable at an average of 8 percent. The issuance by Treasury in April 1974 of findings of dumping with respect to LTFV imports of primary lead from Australia and Canada resulted in cessation of imports from Australia and a substantial decline in imports from Canada. The U.S. market share of these two countries fell to 1.9 percent in 1975. The Canadian suppliers adjusted their home market prices so that their prices to the United States were not at LTFV.

During the past 2 years, while the dumping findings have been in effect, the domestic lead market has been characterized by frequent price changes and high profits for domestic producers. U.S. producers raised the price of lead from 19 to 22.5 and 23 cents per pound during March-April 1976. This substantial price increase, coupled with the anticipated increase in consumption, indicates further increases in profitability for domestic producers. Production and employment have remained relatively stable. The outlook for the domestic battery industry is excellent. While the situation with respect to lead consumption in gasoline remains uncertain, the projected overall consumption of lead in 1976–78 is more favorable to the domestic industry than those projections made in January 1974.

THE EFFECT OF REVOCATION OF THE DUMPING FINDINGS

It is believed that when the dumping findings are revoked by Treasury, imports of lead metal from Australia and Canada will increase and will probably, in due course, account for their traditional share of the U.S. Market. Although this may decrease domestic producers' sales and profits, the good economic health of the industry should be maintained by rising consumption and extremely strong profit margins. Of greater importance, in light of the purpose of the statute under which this determination is rendered, is the fact that the foreign suppliers and U.S. importers have assured the Commission that their selling prices in the United States will be at the prevailing U.S. market prices. This should guarantee that the reentry of Australia and Canada into the U.S. market and their probable recapture of their traditional shares of the market will be accomplished by fair, competitive pricing practices. Although their selling prices may be at LTFV after consideration of the amount of the U.S. duty, transportation costs, and possible currency exchange fluctuations, I am satisfied by the assurances given and other factors that discounting below the prevailing market price will not be practiced. Therefore, the dumping that may occur under the circumstances noted above will not be at discriminatory, i.e., culpable, or unfair, prices.

By order of the Commission

Issued: April 21, 1976

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.76-12045 Filed 4-26-76;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a meeting of the Federal Graphics Evaluation Advisory Panel to the National Council on the Arts will be held on May 25, 1976 from 9:30 a.m.-5:00 p.m. in Room 1127 of the Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

A portion of this meeting will be open to the public on May 25 from 9:30 a.m.-1:30 p.m. and from 2:30 p.m.-5:30 p.m. on a space available basis. Accommodations are limited. Interested person may submit written statements with the committee. During the open session the Graphics of the Federal Communications Commission will be discussed.

The remaining sessions of this meeting on May 25 from 1:30-2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on Federal Graphics under the National Foundation on the Arts and the Humanities Act of 1965, as amended in accordance with the President's Directives of May 16, 1972, August 23, 1974, and June 26, 1975, on Improvement of Federal Graphics. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of June 16, 1975, these sessions, which involve matters exempt from the requirements of public disclosure under the provision of the Freedom of Information Act (5 U.S.C. 552(b)(5)), will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6377.

ROBERT M. SIMS, *Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.*

[FR Doc.76-12118 Filed 4-26-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

SUBPANEL ON ALTERNATIVES IN HIGHER EDUCATION

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Alternatives in Higher Education (AHE), Advisory Panel for Science Education Projects.

Date and time: May 14, 1976—9 a.m. to 1 p.m.

Place: Rm. 651, National Science Foundation, 5225 Wisconsin Avenue, NW., Washington, D.C.

Type of Meeting: Closed.

Contact person: Dr. Alice Withrow, Program Manager, AHE, Rm. W–622, National Science Foundation, Washington, D.C. 20550, telephone 202–282–7910.

Purpose of subpanel: To provide advice and recommendations concerning support in the Alternatives in Higher Education Program.

Agenda: To review and evaluate specific education proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to close meeting: The determination made by the Committee Management Officer pursuant to the provisions of Section 10(d) of Public Law 92–463.

M. REBECCA WINKLER,
Acting Committee Management Officer.

APRIL 21, 1976.

[FR Doc.76–12241 Filed 4–26–76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

Lists of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on April 21, 1976 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received: the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division with OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202–395–4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service:

Peach Tree Survey (Texas), single-time, peach growers, Hulett, D. T., 395–4730.

Farm Classification Questionnaire (Tennessee), single-time, farmers belonging to two REA co-ops, Hulett, D. T., 395–4730.

DEPARTMENT OF LABOR

Bureau of Labor Statistics:

Supplementary Data System, BLS 99, annually, State workers' compensation agencies, Ellett, C. A., 395–5867.

Report on Occupational Employment, BLS 2877, other (see SF–83I), nonagricultural establishments, Strasser, A., 395–5867.

DEPARTMENT OF THE INTERIOR

Bureau of Mines, Bituminous Coal and Lignite State Surface Mined Land Survey, 6–1381–X, single-time, coal producing states, Hulett, D. T., 395–4730.

REVISIONS

DEPARTMENT OF COMMERCE

Maritime Administration, Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing, MA–518, monthly, U.S. exporter, Caywood, D. P., 395–3443.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration, Manual for Preservation of Borrowers' Records (Electric); REA 180–2, REA Electric borrowers, Marsha Traynham, 395–4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76–12280 Filed 4–26–76;8:45 am]

CLEARANCE OF REPORTS

Lists of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on April 20, 1976 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202–395–4529), or from the reviewer listed.

NEW FORMS

VETERANS ADMINISTRATION

Study to Evaluate the Achievement of the Major Objectives of VA Education Assistance Programs, FL–24–927, FL–24–927A, single-time, inactive trainees, Human Resources Division, Raynsford, R., 395–3532.

U.S. CIVIL SERVICE COMMISSION

Survey of Pay Rates of $36,000 or More in Public Corporations and Authorities, IP–28, single-time, public corporations and authorities, Executive Development and Labor Relations, Caywood, D. P., 395–4704.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Application for Indemnification Under the Arts and Artifacts Indemnity Act, semiannually, Caywood, D. P., 395–3443.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, External User Questionnaire on Weather Data Needs, single-time, Caywood, D. P., 395–3443.

Coast Guard, Importation of Recreational Boats and Products Subject to U.S. Customs Regulations and U.S. Coast Guard Regulation Declaration Form, CG–5096, on occasion, companies that bring pleasure boats into U.S., Lowry, R. L., 395–3772.

DEPARTMENT OF DEFENSE

Department of the Air Force, AFSC/AFLCR 66–24, vehicles and related support equipment, on occasion, aerospace industry, Lowry, R. L., 395–3772.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary, HUD-Minority Builder Successful Methods Study—Successful and Unsuccessful Builder Questionnaire, single-time, construction firms, Community and Veterans Affairs Division, Sunderhauf, M. B., 395–3532.

DEPARTMENT OF TRANSPORTATION

Coast Guard, U.S. Coast Guard Auxiliary—Opinionnaire, single-time, former auxiliarists, Maria Gonzalez, 395–6132.

REVISIONS

VETERANS ADMINISTRATION

Monthly Certification of Training Under Chapter 34, Title 38, U.S.C., 22–6553D monthly, veteran and training establishments, Caywood, D. P., 395–3443.

Application for Home Loan Guaranty—Alteration, Improvement, or Repair Loan, 26–1802, on occasion, veterans, Caywood, D. P., 395–3443.

DEPARTMENT OF COMMERCE

Bureau of Census, (part of 1980 decennial census of population and housing), Population and Housing Forms—1976 Census of Camden, N.J., DF–1, DF–2, DF–3, SC–702, SC–703, single-time, all households in Camden, N.J., George Hall, Sunderhauf, M. B., 395–6140.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76–12281 Filed 4–26–76;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Docket No. 301-7]

NATIONAL CANNERS ASSOCIATION

Complaint

F.R. Doc. 76-10475 appearing at page 15385 et seq. in the FEDERAL REGISTER for Monday, April 12, 1976 is corrected as follows: On page 15388, line 7 in the last paragraph of the notice (center column of page) should read "that views be submitted by May 16, 1976."

MORTON POMERANZ,
Chairman, Section 301 Committee, Office of Special Representative for Trade Negotiations.

[FR Doc.76-12044 Filed 4-26-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 19492; 70-5843]

ALLEGHENY POWER SYSTEM, INC.

Proposal To Indemnify Surety Company for Bonds Posted in Connection With Coal Mining Operations

APRIL 20, 1976.

Notice is hereby given that Allegheny Power System, Inc. ("APS"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 12(c) and 12(f) of the Act as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Allegheny Pittsburgh Coal Company ("AP Coal"), a subsidiary coal company of APS, owns approximately 3,000 acres of coal lands in Webster County, West Virginia, with an estimated 22 million tons of recoverable coal having an average sulfur content of 1%, based on preliminary drilling. It is stated that AP Coal has now received permits for the mining of 1634 acres and expects to file permit applications for an additional 433 acres within the next 12 months. AP Coal plans to surface mine (strip mine) the coal which is expected to be burned at the APS Harrison Steam Electric Generating Station.

APS states that under West Virginia law a condition precedent to the issuance of necessary mining permits is the posting of bond (or the deposit of cash or negotiable securities) in the amount of $1,000 per acre for acres to be mined. The bond is to guarantee that mining operations will be in accordance with the permit issued to mine the property and that all necessary reclamation work will be completed. APS further states that current requirements are that such a bond be posted by a surety which is independent of the coal company.

AP Coal has accordingly arranged for Safeco Insurance Companies ("Safeco") to provide such bond or bonds from time to time as permits are applied for and are issued. Safeco has indicated that for AP Coal to obtain the most economic rate on the surety contract, it is necessary for Safeco to be indemnified by a known company with an acceptable credit rating. APS therefore proposes to enter into an indemnity agreement or agreements whereby APS will indemnify Safeco for any loss or expense incurred by Safeco in connection with a bond or bonds issued by Safeco as surety for AP Coal. The maximum amount of indemnity from APS to Safeco at any one time outstanding will not exceed $2,500,000. As surety bonds are released, after all reclamation activities have been completed, the amount of the indemnity will decreased accordingly.

Safeco has provided the necessary bonds for acreage on which permits have already been granted on the basis that APS will, subject to requisite regulatory approval, indemnify Safeco for any losses. It is stated that AP Coal has agreed not to commence mining operations unless such indemnification has been provided or sufficient collateral has been deposited with Safeco.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,200, including legal fees not to exceed $200.

Notice is further given that any interested person may, not later than May 17, 1976, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed, or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12067 Filed 4-26-76;8:45 am]

[Release No. 12357; SR Amex-76-9]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, New York, 10006, submitted on March 8, 1976, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act") to amend Amex Rule 7 as permitted by paragraph (a)(2) of Rule 10a-1 under the Act. The proposed rule change would require that the permissibility of short sales effected on the Amex be governed by application of the "tick test" to the last sale on the Amex, instead of the last sale reported in the consolidated transaction reporting system.

Publication of the submission was made in the FEDERAL REGISTER on March 19, 1976 (41 FR 11631) [1] and interested persons were invited to submit written data, views and arguments concerning the submission by April 19, 1976. No comments have been received concerning the Amex proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular the requirements of Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12068 Filed 4-26-76;8:45 am]

[Release No. 9253; 811-1720]

COMPASS GROWTH FUND, INC.

Filing of Application Pursuant to Section 8(f) of the Investment Company Act of 1940 for an Order Declaring That the Company Has Ceased To Be an Investment Company

APRIL 20, 1976.

In the Matter of: Compass Growth Fund, Inc., 20 Exchange Place, New Yory, New York 10015.

Notice is hereby given that on February 23, 1976, Compass Growth Fund, Inc. ("Applicant"), registered as an open-end, diversified management investment company under the Investment Company Act of 1940 ("Act") filed application pursuant to Section 8(f) of the Act for an order of the Commission declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated under the laws of Delaware on August 8, 1968, and

[1] See also Securities Exchange Act Release No. 12202 (March 12, 1976).

registered under the Act on August 21, 1968.

At a Special Meeting of Stockholders of Applicant on September 19, 1975, the stockholders approved the sale of substantially all of Applicant's assets in exchange for shares of common stock of Massachusetts Investors Growth Stock Fund, Inc. ("Massachusetts Fund"), a diversified, open-end company registered under the Act.

On September 29, 1975, the sale was consummated and the shares of Massachusetts Fund common stock were distributed to the shareholders of Applicant. Applicant filed a Certificate of Dissolution with the Office of the Secretary of the State of Delaware and was thereby dissolved.

Applicant asserts that it has either paid or made provision for payment of all of its liabilities.

Section 8(f) of the Act provides, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than May 17, 1976, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in of an attorney at law, by certificate) shall be filed contemporaneously with the request as provided by Rule O-5 of the Rules and Regulations promulgated under the Act. An order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12069 Filed 4-26-76;8:45 am]

[File No. 500-1]

EQUITY FUNDING CORP. OF AMERICA AND ORION CAPITAL CORP.

Notice of Suspension of Trading

APRIL 20, 1976.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Equity Funding Corporation of America, including Orion Capital Corporation, being traded on a national securities exchange or otherwise, is required in the public interest and for the protection of investors;

Therefore, Pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from April 21, 1976 through April 30, 1976.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12070 Filed 4-26-76;8:45 am]

[Rel. No. 9255; 812-3798]

HIGHLAND CAPITAL CORP., ET AL.

Filing of Application for an Order Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder

APRIL 20, 1976.

Notice is hereby given that Highland Capital Corporation ("Highland"), 20 Exchange Place, New York, New York 10005, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, Vitt Media International, Inc. ("VMI"), and Samuel B. Vitt ("Vitt") (collectively referred to as "Applicants"), 437 Madison Avenue, New York, New York 10022, filed an application on April 17, 1975, and amendments thereto on September 8, 1975 and March 29, 1976, for an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder permitting the Aplicants to engage in the joint transaction described below. 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.

VMI, a Delaware corporation organized in September 1969, is principally engaged in the business of rendering media time buying services. VMI has 735,438 shares of common stock issued and outstanding, with 460,000 or approximately 62.5% of such shares being owned by Vitt, and 200,000 or approximately 27.2% of such shares being owned by Highland. Vitt is the founder, president and chief executive, a director, and the principal stockholder of VMI.

Pursuant to an agreement dated October 3, 1969 (the "1969 Purchase Agreement") among Applicants and certain other persons, Highland purchased 200,000 shares of VMI's prefered stock. Under the terms of the 1969 Purchase Agreement, Vitt convenanted that, so long as he remained the controlling stockholder of VMI, he would not permit VMI to engage in the following transactions without the written consent of a majority of the holders of the preferred stock: (1) amend the terms of his employment agreement and those of certain other persons with VMI; (2) pay or declare cash dividends in excess of $20,000 annually; (3) change the number of capital shares outstanding by stock split, recapitalization, or other similar action (except that the preferred stock could be called for redemption); (4) sell, lease, or otherwise transfer all or substantially all of VMI's assets; (5) pay salaries to Vitt and certain other persons in excess of stated amounts; (6) amend the certificate of incorporation in any manner adverse to the holders of the preferred stock; (7) issue common stock or preferred stock except to persons who become full time employees of VMI and not in excess of 20,000 shares of common stock; (8) create or issue options or securities convertible into common stock of VMI except options to purchase not in excess of 20,000 shares of common stock issued to key employees under a stock option plan. In addition, Vitt convenanted to vote all of his shares to elect as a director of VMI one person designated by Highland.

On September 9, 1974, in accordance with the terms of the 1969 Purchase Agreement and the provisions of VMI's Certificate of Incorporation, Highland converted its 200,000 shares of preferred stock into 200,000 shares of VMI common stock. On the same date, Highland also entered into an agreement with VMI and Vitt (the "1974 Agreement") which, when consummated, would give Highland and the benefit of certain covenants for so long as Highland continues to hold at least 50% of the 200,000 shares of common stock issued on the conversion of the preferred stock. Such covenants provide that Vitt will not permit VMI to take any of the following actions if Highland objects after notice of VMI's intent to do them: (1) amend, modify or otherwise change any of the terms or conditions of two specific employment agreements (including that of Vitt) with VMI; (2) change the number of VMI capital shares outstanding by stock split, recapitalization, or similar action; (3) sell, lease, or otherwise transfer all or substantially all of VMI's assets; (4) pay salaries to two persons (including Vitt) in excess of certain stated amounts; (5) issue more than 20,000 additional shares of common stock; or (6) issue any options or securities convertible into in excess of 20,000 shares of VMI common stock issuable upon exercise of employee stock options. In addition, such covenants provide that Vitt will vote his shares of VMI for the election as a director of VMI of one person designated by Highland. Under the 1974 Agreement,

VMI has the option at any time and at the price of $1.00 per share to repurchase all of Highland's holdings of VMI common stock, and if Highland refuses to sell its holdings to VMI upon the exercise by VMI of such option then all the covenants running from Vitt to Highland under the 1974 Agreement would terminate.

SECTION 17(d) AND RULE 17d–1

Under the terms of the 1974 Agreement among Highland, VMI, and Vitt, Highland, in consideration for the conversion of its VMI preferred stock, would receive from VMI and Vitt the benefit of substantially the same covenants as a common stockholder of VMI as it enjoyed as a preferred stockholder under the 1969 Purchase Agreement. Rule 17d–1(c) under the Act defines the term "joint enterprise or other joint arrangement" to mean, in pertinent part, any written contract or arrangement whereby a registered investment company and any affiliated person of such a person have a joint or joint and several participation, Rule 17d–1, adopted by the Commission pursuant to Section 17(d) of the Act, provides, in pertinent part, that no affiliated person of any registered investment company and no affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered company is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by an order. It also provides that in passing upon such application the Commission will consider whether the participation of such registered investment company in such joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants. Since Highland owns more than 5% of the outstanding voting securities of VMI, Highland and VMI may each be considered an "affiliated person" of the other as that term is defined in Section 2(a)(3) of the Act. Vitt, also an affiliated person of VMI, is, therefore, an affiliated person of an affiliated person of Highland. Consummation of the 1974 Agreement among Highland, VMI and Vitt is conditioned on the receipt of an order, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting the joint agreement.

Applicants submit that the purpose of the 1974 Agreement is to put Highland in substantially the same position as a holder of VMI common stock as it had as a holder of VMI preferred stock under the 1969 Purchase Agreement. Applicants state the covenants running to Highland under the 1974 Agreement are substantially identical to the covenants under the 1969 Purchase Agreement. It is asserted that VMI's option under the 1974 Agreement to redeem its common stock held by Highland at $1.00 per share is substantially the same as the right VMI had pursuant to its Certificate of Incorporation to redeem at $1.00 per share its preferred stock formerly held by Highland. A refusal by Highland to honor the option would have the effect of terminating the covenants under the 1974 Agreement. A similar result would have occurred if VMI elected to redeem its preferred stock and if Highland, in order to avoid such redemption, has converted its holdings into VMI common stock, which conversion would have terminated the covenants running to Highland under the 1969 Purchase Agreement.

Applicants further submit that Highland's participation in the 1974 agreement is consistent with its investment policies and with the policies and purposes of the Act. Based on the foregoing, Applicants request an order, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting the consummation of the 1974 Agreement among Highland, VMI, and Vitt.

Notice is further given that any interested person may, not later than May 14, 1976, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc 76-12071 Filed 4-26-76;8:45 am]

[Release No. 9252; 812-3933]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO.

Filing of Application for Order Pursuant to Section 17(d) of the Act and Rule 17d–1 Thereunder

APRIL 20, 1976.

In the Matter of Massachusetts Mutual Life Insurance Co., 1295 State Street, Springfield, Massachusetts 01111.

Notice is hereby given that Massachusetts Mutual Life Insurance Company ("Applicant"), a mutual life insurance company organized under the laws of the Commonwealth of Masschusetts, has filed an application pursuant to Section 17(d) of the Investment Company Act of 1940 (the "Act") and Rule 17d–1 thereunder for an order of the Commission permitting Applicant to engage in the transaction described below. 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.

Pursuant to an order of the Commission issued on August 19, 1971 (Investment Company Act Release No. 6690), Applicant, which acts as investment adviser of MassMutual Corporate Investors, Inc. (the "Fund"), a nondiversified, closed-end management investment company registered under the Act, is permitted to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement, and to exercise warrants, conversion privileges, and other rights at the same time as the Fund. This order is subject to several conditions, one of which requires, generally, that purchases at direct placement of securities which would be consistent with the investment policies of the Fund be shared equally by Applicant and the Fund. Another condition is that once Applicant and the Fund have acquired interests in an issuer neither Applicant nor the Fund, unless otherwise permitted by order of the Commission, may acquire any further interest in such issuer other than interests in all respects identical.

Applicant wishes to purchase at direct placement $4,000,000 in principal amount of a new issue of 9.95% Senior Notes, due 1988 ("Senior Notes") of Victoria Station Incorporated ("Victoria"). Applicant requests an order from the Commission permitting it to acquire the Senior Notes because Applicant and the Fund presently hold $1,000,000 in principal amount each of the 9¼% Subordinated Notes due 1986 ("Subordinated Notes") issued by Victoria on March 28, 1974 with accompanying shares of comon stock. The shares of common stock held by Applicant and the Fund were sold pursuant to an underwritten public offering on J dy 7, 1975.

Under Section 17(d) of the Act, and Rule 17d–1 thereunder, an affiliated person of a registered investment company may not effect any transaction in which such investment company is a joint participant without the permission of the Commission. In passing upon applications for orders granting such permission, the Commission is required to consider whether the participation of the investment company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

Applicant submits that its proposed acquisition of the Senior Notes is not

disadvantageous to the Fund and is consistent with the provisions, policies, and purposes of the Act. The Fund's investment policy restricts it to investment in long-term obligations and preferred stocks which are purchased directly from issuers and which have "equity features." Applicant represents that the Senior Notes lack such equity features and are therefore not appropriate investments for the Fund. Applicant states that the proposed sale of Senior Notes to it is in no way connected with the sale of the Subordinated Notes to Applicant and the Fund in 1974 other than by virtue of the fact that Applicant established a relationship with Victoria at that time through the acquisition of the Subordinated Notes. Although the Subordinated Notes will be subordinate in right of payment to the Senior Notes, Applicant submits that the proposed investment by it will not be disadvantageous to the Fund because Victoria will be receiving significant new value in consideration for issuing the Senior Notes. Applicant further submits that, if it does not purchase the Senior Notes, Victoria will not be restricted from selling the Senior Notes to other investors to which the Subordinated Notes held by the Fund would also be subordinate in right of payment.

Applicant believes that the Senior Notes would be an attractive investment and submit that it will be disadvantaged if not permitted to acquire a portion of the Senior Notes.

Notice is further given that any interested person may, not later than May 17, 1976, 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 of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses set forth above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following May , 1976, unless the Commission thereafter orders a hearing upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12072 Filed 4-26-76;8:45 am]

[Release No. 19493; 31-634; 70-5839]

PENNSYLVANIA POWER & LIGHT CO.

Application by Exempt Holding Company To Acquire All Outstanding Securities of Non-Affiliated Electric Utility Company; Request for Continued Exemption Pursuant to Section 3(a)(2)

APRIL 20, 1976.

In the Matter of Pennsylvania Power & Light Co., Two North Ninth Street, Allentown, Pennsylvania 18101.

Notice is hereby given that Pennsylvania Power & Light Company ("PP&L"), an exempt holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 3(a)(2), 9(a)(2) and 10 of the Act and Rule 12(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

PP&L is an electric utility company and a holding company exempted from the provisions of the Act, except Section 9(a)(2) thereof, by an order (HCAR No. 13203, June 18, 1956) issued pursuant to Section 3(a)(2) of the Act. PP&L proposes to acquire, pursuant to a purchase agreement ("Agreement"), from Hershey Estates all of the outstanding shares of capital stock of Hershey Electric Company ("Hershey Electric"), consisting of 714 shares of common stock par value $50 per share, for $4,000,000 cash, subject to adjustment as provided in the Agreement. The Agreement also provides that PP&L will purchase from Hershey Estates, at the unpaid principal amount thereof, a note issued by Hershey Electric amounting at December 31, 1975 to $1,031,250, bearing interest on the unpaid balance thereof at the rate of 5¼% per annum, payable in semiannual principal installments of $41,250, PP&L will also arrange for the repayment, at the principal amount thereof, of all other debt of Hershey Electric owed to Hershey Estates as of the date of settlement. It is estimated that the total consideration which will be payable by PP&L to Hershey Estates in connection with the purchase of Hershey Electric will amount to approximately $8,000,000. The settlement date will be the thirtieth day (or next business day if such thirtieth day falls on a Saturday, Sunday or holiday) after the date when the last of all necessary regulatory approvals has been received by PP&L, unless a mutually agreeable earlier date is established by PP&L, Hershey Estates and Hershey Electric.

PP&L furnishes electric service to over 917,000 customers in central eastern Pennsylvania and derives 99% of its operating revenues from the supply of such service. PP&L derives the balance of its revenues from supplying steam for heating and other purposes in the city of Harrisburg. As of December 31, 1975, the net plant in service of PP&L amounted to $1,594,165,000, its operating revenues for the calendar year 1975 amounted to $554,129,000 and its net income for the same period was $97,541,000. The total generating capacity of PP&L is 5,641,000 kilowatts and the maximum one hour demand on the system was 4,122,000 kilowatts.

PP&L also owns 50% of the voting securities of Safe Harbor Water Power Corporation ("Safe Harbor"). The remaining 50% of Safe Harbor's voting securities are held by Baltimore Gas & Electric Co. ("BG&E"). In 1975 Safe Harbor had operating revenues of $4,242,000 and net income of $829,375. The net plant in service of Safe Harbor was $15,578,824 as of December 31, 1975. Under an operating agreement with BG&E, PP&L will purchase, through April 22, 1980, one-third of the 230,000 kw output of Safe Harbor.

Hershey Electric furnishes electric service in and around Hershey, Pennsylvania to approximately 5,500 customers. The net utility plant of Hershey Electric amounted to $6,870,000 as of December 31, 1975, operating revnues for the calendar year 1975 amounted to $8,690,000, and its net income was $358,000. Hershey Electric operates no generating facilities and currently purchases electricity for all its electric power requirements from Metropolitan Edison Company ("Metropolitan Edison"). As of December 31, 1975, the combined net utility plant of Safe Harbor and Hershey Electric amounted to 1.4% of that of PP&L. During the calendar year 1975 the combined operating revenues of Safe Harbor and Hershey Electric amounted to 2.3% of those of PP&L and the combined net income of Safe Harbor and Hershey Electric was 1.2% of that of PP&L.

The service areas of PP&L and Hershey Electric are contiguous and a substation of PP&L is located two miles from Hershey. PP&L states that it plans to effect a physical interconnection with the electric facilities of Hershey Electric through its above mentioned substation. PP&L further states, however, that until the loads served by Hershey Electric increase to a point requiring the installation of additional facilities it plans to serve Hershey Electric with power supplied from the PP&L system through existing transmission facilities between Metropolitan Edison and Hershey Electric. Negotiations are currently being conducted between PP&L and Metropolitan Edison;

any contractual arrangements arrived at are subject to the jurisdiction of the Federal Power Commission. PP&L intends eventually to merge Hershey Electric into PP&L, and following such merger, to make PP&L's rates applicable to Hershey Electric's customers.

PP&L states that the voting securities of Hershey Electric, which is not itself a holding company, are controlled by the trustee of an inter vivos trust ("Hershey Trust") established for charitable and educational purposes by an instrument executed prior to January 1, 1935. Hershey Trust owns all of the stock of Hershey Estates which in turns owns all the stock of Hershey Electric. The beneficial interests in Hershey Trust are not represented by transferable certificates.

PP&L believes that the proposed transaction is in the public interest and in the interest of investors and consumers because the completion of the proposed transaction will tend toward the economical and efficient development of PP&L's integrated electric system and that ultimately the rates which PP&L charges its customers will be made applicable to the customers of Hershey Electric. Such rates are presently lower in general than the rates charged by Hershey Electric to its customers and lower than the rates charged by Metropolitan Edison to its retail customers. PP&L also submits that the consideration to be paid by PP&L to Hershey Estates for the capital stock of Hershey Electric bears a fair relation to the sums invested in Hershey Electric and to the utility assets of Hershey Electric underlying the securities proposed to be acquired by PP&L; that the transaction will not tend towards interlocking relations or the concentration of control of public utility companies of a kind or to an extent detrimental to the public interest or the interest of investors or consumers, and that the acquisition by PP&L of the securities of Hershey Electric will not unduly complicate the capital structure of PP&L and will not be detrimental to the public interest or the interest of investors or consumers or the proper functioning of the PP&L system.

No associate company or affiliate of PP&L or any affiliate of any such associate company has any material interest, direct or indirect, in the proposed transaction.

Since PP&L, Safe Harbor and Hershey Electric is each organized under the laws of the Commonwealth of Pennsylvania; and since PP&L, Safe Harbor and Hershey Electric is each, and together will be, predominantly a public utility company whose operations as such do not extend beyond the Commonwealth of Pennsylvania, PP&L requests that the order of the Commission authorizing the proposed transaction supplement the order of June 18, 1956, by ordering that PP&L, Safe Harbor and Hershey Electric be exempted from the provisions of the Act applicable to PP&L as a holding company and to Safe Harbor and Hershey Electric as subsidiary companies thereof.

The fees and expenses to be incurred in connection with this transaction are estimated at $20,000, including legal fees of $15,000. The proposed transaction is subject to the jurisdiction of the Pennsylvania Public Utility Commission. It is stated that no other State commission and no Federal commission, other than this Commission has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 14, 1976, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12073 Filed 4-26-76;8:45 am]

[Rel. No. 9254; 811-1242]

SECOND CONGRESS STREET FUND, INC.

Filing of Application for Order Pursuant to Section 8(f) of the Act Declaring That Company Has Ceased To Be an Investment Company

In the Matter of

Second Congress Street Fund, Inc., 35 Congress Street, Boston, Massachusetts 02109.

Notice is hereby given that on March 4, 1976, Second Congress Street Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified management investment company, filed an application pursuant to Section 8(f) of the Act for an order of the Commission declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant was incorporated under the laws of the Commonwealth of Massachusetts on September 16, 1963, and registered under the Act on December 9, 1963. On July 8, 1975, Applicants shareholders approved an Agreement of Merger merging Applicant into Congress Street Fund, Inc. The merger became effective on July 11, 1975 and the separate existence and corporate organization of Applicant thereupon ceased.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than May 17, 1976, 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 of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address above. Proof of such service (by affidavit or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-12074 Filed 4-26-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #1231]

ALABAMA

Declaration of Disaster Area

Autauga, Cullman, Elmore, Marion, Shelby, Talladega and Tuscaloosa Counties within the State of Alabama constitute a disaster area because of damage resulting from tornadoes and flooding during the period March 12-22, 1976. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on

June 15, 1976; and for economic injury until the close of business on January 15, 1977, at:

Small Business Administration, District Office, 908 South 20th Street, Birmingham, Alabama 35205.

or other locally announced locations.

Dated April 16, 1976.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.76-12109 Filed 4-26-76;8:45 am]

BALTIMORE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration, Baltimore District Advisory Council will hold a public meeting at 10:30 a.m., Friday, May 21, 1976, and conclude at 4:00 p.m., Saturday, May 22, 1976, at the Hagerstown Junior College in Hagerstown, Maryland, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call Gerard J. Lang, U.S. Small Business Administration, 7800 York Road, Towson, Maryland 21204, (301) 922-2150.

Dated: April 16, 1976.

MARY LOU GRIER,
Deputy Advocate for Advisory Councils.

[FR Doc.76-12061 Filed 4-26-76;8:45 a.m.]

MASSACHUSETTS CAPITAL CORPORATION LICENSE NO. 01/01-0018

Filing of Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to 13 CFR 107.701 (1976) for transfer of ownership and control of Massachusetts Capital Corporation (Masscap), a Massachusetts corporation, and a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), having its office at 111 Devonshire Street, Boston, Massachusetts 02109.

Masscap Investment Co., Inc., (MICI) a newly formed Massachusetts corporation, proposes to acquire 70 percent of Masscap's capital stock from Kane Financial Corporation (100 percent owned by CNA Financial Corporation who is controlled by Loews Corporation) and the 7.7 Masscap interest held by Messrs. David G. Funk and David V. Harkins. MICI's voting stock is owned by Messrs. Funk and Harkins and the non-voting stock is owned by Transco Realty Trust (Transco). Transco is a real estate investment trust organized under the laws of the Commonwealth of Massachusetts. Transco is a public company whose stock is traded on the Boston Exchange. Its only 10 percent or more shareholder is Lee Gray, Pound Ridge, New York 10756. Transco's principal office is located at 1 West Avenue, Larchmont, New York 10538.

Mr. Robert H. Castellini, 915 Congress Street, Cincinnati, Ohio 05246, an individual, proposes to acquire the remaining 10 percent of the Masscap stock held by Kane.

The officers, directors and shareholders of Masscap after the proposed transfer of control would be as follows:

Name:	*Title and percent ownership*
David V. Harkins	President and director
Maurice Wiener	Chairman of the Board and director
David G. Funk	Director
Lee Gray	Vice president and director
William D. Clements	Treasurer
Thomas E. Weesner	Clerk
MICI	77.7 percent
CBC	10.0 percent
Wallace A. Sprague	1.0 percent
Samuel Robinson	1.3 percent
Robert H. Castellini	10.0 percent

Messrs. Harkins, Wiener, Funk, Sprague, Robinson, and Weisner were previously associated with the licensee.

The geographical area in which Masscap will principally conduct its operations will continue to be the Commonwealth of Massachusetts. Its office will continue to be located at 111 Devonshire Street, Boston, Massachusetts 02109.

Matters involved in SBA's consideration of the application for transfer of controls include the general business reputation and character of the proposed new owners, and the probability of a successful operation of Masscap under their control and management in accordance with the Act and Regulations.

Notice is further given that any person may submit comments on the proposed transfer of control to the Associate Administrator for Finance and Investment, Small Business Adminstration, 1441 "L" Street NW., Washington, D.C. 20416, within 10 days after the date of publication of this Notice.

A similar Notice shall be published by Masscap in a newspaper of general circulation in Boston, Massachusetts, Larchmont, New York, and Cincinnati, Ohio.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: April 14, 1976.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.76-12063 Filed 4-26-76;8:45 am]

[Declaration of Disaster Loan Area #1232]

NORTH DAKOTA

Declaration of Disaster Loan Area

As a result of the President's declaration, I find that Bottineau, Burke, Divide, McHenry, Mountrail, Renville, Rolette, Ward and Williams Counties, and adjacent counties within the State of North Dakota, constitute a disaster area because of damage resulting from flooding beginning about March 18, 1976. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 15, 1976, and for economic injury until the close of business on January 15, 1977, at:

Small Business Administration, District Office, 653 Second Avenue North—Room 218, Fargo, North Dakota 58102.

or other locally announced locations.

Dated: April 16, 1976.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.76-12110 Filed 4-26-76;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

CONNECTICUT STATE STANDARDS

Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the FEDERAL REGISTER (39 FR 1012) of the approval of the Connecticut plan and the adoption of Subpart X to Part 1952 containing the decision.

The Connecticut plan provides for the adoption of Federal standards as State standards. Section 1952.300(c) of Subpart X sets forth the State's schedule for the adoption of Federal standards. By letters dated January 30, 1976 from Frank Santaguida, Commissioner, Connecticut Department of Labor to Edwin J. Riley, Jr., Acting Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1910, as published in the FEDERAL REGISTER, Volume 39, Number 125, dated June 27, 1974; 29 CFR Parts 1915, 1916, 1917, 1918 and 1919 as published in the FEDERAL REGISTER, Volume 39, Number 119 dated June 19, 1974; 29 CFR Part 1926 as published in the FEDERAL REGISTER, Volume 39, Number 122, dated June 24, 1974; Revision to § 1926.750(b)(2) FEDERAL REGISTER dated July 2, 1974; Correction to § 1915.84(b)(1) and (2) FEDERAL REGISTER dated July 10, 1974; Correction to § 1917.84(b)(1) and (2) FEDERAL REGISTER dated July 16, 1974; Deletion of § 1910.267a, FEDERAL REGISTER dated August 12, 1974; Revision of § 1910.93q, FEDERAL REGISTER dated October 4, 1974; Correction to § 1910.93q, FEDERAL REGISTER dated December 3, 1974; Amendment to § 1910.211 and § 1910.217, FEDERAL REGISTER dated December 3, 1974; Correction to § 1910.217, FEDERAL REGISTER dated December 26, 1974; Amendment to

§ 1910.67, § 1910.70, § 1910.183, § 1910.184, § 1910.189, § 1910.190, § 1910.268, § 1910.269, § 1910.275, FEDERAL REGISTER dated March 26, 1975; Adopted 29 CFR Part 1928 FEDERAL REGISTER dated April 25, 1975; Deletion of § 1910.141(d)(2)(i) FEDERAL REGISTER dated April 28, 1975; Correction to Part § 1928, FEDERAL REGISTER dated May 16, 1975; Adopt § 1910.184 FEDERAL REGISTER dated June 27, 1975. These standards, which are contained in the Conecticut Occupational Safety and Health Standards for General Industry, Maritime Employment, Construction Safety and Health Regulations and Agriculture, were promulgated pursuant to Chapter 571, Section 31-372 of the Connecticut State Laws.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and accordingly should be approved. The detailed standards comparison is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, John F. Kennedy Federal Building, Room 1804, Government Center, Boston, Massachusetts 02203; State of Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109; and the Technical Data Center, Room N3620, 200 Constitution Avenue, Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Connecticut State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal Standards which were promulgated in accordance with Federal law including meeting requirements for public participation and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State Law and further participation would be repetitious.

This decision is effective April 27, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Boston, Massachusetts this 5th of March 1976.

EDWIN J. RILEY,
Acting Regional Administrator.

[FR Doc.76-12237 Filed 4-26-76;8:45 am]

CITATION GUIDELINES IN MULTI-EMPLOYER WORKSITES

Request for Public Comment

The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) (OSHA) requires, in part, that every employer covered under the Act furnish his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct. The Act authorizes the Department of Labor to conduct inspections, and to issue citations requiring abatement of alleged violative conditions and to propose penalties.

The following proposed guideline is directed to the issue of OSHA policy for the issuance of citations on multi-employer worksites where employees of a number of contractors are present at the same workplace. Specifically, this proposed guideline will focus on identifying the employer subject to citation under the Act either because his employees are exposed to a workplace hazard or because he is responsible for that hazard. The present policy of the Occupational Safety and Health Administration of the U.S. Department of Labor has been to cite each employer whose employees are actually or potentially exposed to hazardous conditions, regardless of whether the hazard is created by that employer. However, an employer is not cited if his employees are not actually or potentially exposed. Occupational Safety and Health Administration, "Field Operations Manual", U.S. Gov't Printing Office, 1974, Ch. X, F(b).

The Occupational Safety and Health Review Commission has consistently upheld the position that employee exposure to hazardous conditions is the principal basis for employer responsibility under the Act and that each employer has the duty of protecting his employees from exposure to hazardous conditions regardless of whether he is responsible for creating the hazards or has the power or authority over their abatement. E.g. "Secretary v. R. H. Bishop Co.," OSHRC Docket No. 637, CCH, ESHG Para. 17,930 (Rev. Com'n, May 30, 1974). In addition, the Commission has applied the exposure doctrine to employers whose employees are exposed, regardless of whether those employers are general contractors or subcontractors.

A significant body of appellate law has evolved on the issue of citations at multi-employer worksites. Thus, the Fourth Circuit Court of Appeals held in "Brennan v. Giles and Cotting," 504 F. 2d 1255 (1974) that a general contractor was absolved of joint responsibility for the safety of a subcontractor's employees. In reaching this decision, the Court indicated that the Secretary had not issued regulations dealing with compliance responsibilities in multi-employer situations. Therefore, the Court deferred to the Commission's determination that, in the absence of exposure by the general contractor's employees, he is not jointly responsible for the safety of a subcontractor's employees, simply because the general has over-all safety responsibility for the worksite.

In other court action, the Second Circuit Court of Appeals in "Brennan v. Underhill Construction Corp.," 513 F. 2d 1032, (1975), expanded the basis of employer responsibility to include the creation or control of hazardous conditions which are accessible to either employees of the cited employer or those of other worksite employers engaged in a common undertaking.

In "Anning-Johnson & Workinger Electric, Inc. v. OSHRC & Brennan," 516 F. 2d 1081 (1975), the Seventh Circuit Court of Appeals rejected the Secretary's policy that simple exposure to nonserious violations of promulgated standards imposes responsibility on the employer who exposes his employees but does not create the hazard. Balancing the purpose of the Act with the realities of the workplace, the Court distinguished between exposure to serious and nonserious violations. It held that on multi-employer construction worksites, responsibility could not be predicated solely on exposure of an employer's employees to nonserious violations of promulgated standards. The Court specifically did not rule upon the Secretary's policy of imposing responsibility on an employer for exposing his employees to hazardous conditions which are serious as defined in section 17(k) of the Act, or imposing responsibility on subcontractors who create, cause, or are "otherwise responsible" for hazardous conditions to which employees are exposed.

As a result of these court decisions and the Department's experience in enforcing the Act, the Occupational Safety and Health Administration has reviewed its current policy of citing only the employer who has exposed his employees without regard to direct causation of the hazard or over-all responsibility for its abatement. This proposed guideline attempts to redefine that policy and identify the employer most responsible for and/or in the best position to abate a hazardous working condition.

STATEMENT OF POLICY

The Occupational Safety and Health Act was enacted to assure so far as possible every working man and woman in the nation safe and healthful working conditions. 29 U.S.C. 651. To achieve this purpose the Act authorizes the Secretary of Labor to issue mandatory safety

standards and to insure compliance with the Act's requirements through an effective enforcement program, 29 U.S.C. 651 (3), (4), (10). Pursuant to his enforcement powers the Secretary is empowered to issue citations which carry abatement dates and proposed penalties to an employer who violates section 5 of the Act.

To further the Act's objectives and most effectively use the enforcement tools at his disposal, the Secretary hereby proposes the following policy guidelines in citing employers for OSHA violations discovered on multi-employer worksites.

1. The Secretary may issue citations to an employer on a multi-employer worksite who creates or causes hazardous conditions to which his employees or those of any other contractor or subcontractor engaged in activities on the multi-employer worksite are exposed. By issuing a citation to such employer, the Secretary will be citing the employer directly responsible for the hazardous working condition. For example: A subcontractor who has immediate control over and responsibility for an operational phase of a multi-employer worksite, including the responsibility for the erection of guardrails, would be cited for a failure to erect perimeter guarding in violation of 29 CFR 1926.500 (d)(1), regardless of whether his employees are actually or potentially exposed to the hazardous working condition, if any employees of another employer, engaged in worksite activity are exposed to the hazard.

2. The Secretary may also cite the employer who has the ability to abate the hazardous condition regardless of whether he created the hazard in the first instance. In determining ability to effectuate abatement, the Secretary will consider whether the employer has control over the workers, material and equipment necessary to abate the hazard or whether the employer has the authority to order the abatement of the hazard created by another employer. This latter category includes the employer, such as the general contractor, construction manager, architect, engineering firm, or owner who has safety responsibility for the worksite, as well as subcontractors who have safety responsibility over specific operational aspects of a worksite. The following are a series of examples: [A] A subcontractor, "S1", who has immediate control over and responsibility for building, maintaining and supervising floor opening covers on a multi-employer worksite would be cited for failure to guard a floor opening (29 CFR 1926.500(b)(1)) where a floor opening cover or toeboard is removed or destroyed, even though the cover was removed by employees of another subcontractor, "S2", and regardless of whether the employees of S1 were exposed to the hazard so long as any employees, of another employer engaged in the worksite activity was exposed. In addition, under paragraph (1) above, S2 could also be cited for the violation. [B] A safety consultant or engineer with responsibility for maintaining and authority to enforce over-all worksite safety, could be cited for a safety violation about which he knew or could have known but to took no effective action to remedy. [C] A general contractor with over-all safety responsibility including the authority to order and require abatement, could be cited for a violation of 29 CFR 1926.500 (d)(1) where he has failed to discharge his safety responsibilities by requiring the abatement of perimeter guarding violations, even in the absence of exposure of his employees to the hazard.

3. In those cases involving violative conditions which, generally, are readily apparent, the Secretary may cite not only the employer who controls or is responsible for the violative conditions, but also the employer who permits his employees to ze exposed to the hazardous conditions, regardless of whether the latter employer created the hazard or has the power to abate it. Thus, responsibility based on exposure would be limited to violations which are readily apparent, rather than esoteric and hidden. An employer who exposes his employees to such workplace hazards must, even in the absence of the ability physically to abate, protect his employees from continuing exposure by alerting the employer with the power to abate and by taking affirmative action rendering the hazards inaccessible to his employees. As the Court implied in "Anning-Johnson", protection of employees in these circumstances may require a subcontractor to cease or limit work until the hazard is abated.

For example: [A] An electrical subcontractor permitting his employees who were not provided with safety belts or lifelines to be exposed to an open-sided 7th floor which was not guarded by any type of guardrail protection could be cited under this section for a violation of 29 CFR 1926.500(d)(1). The employer who had the responsibility for erecting and/or maintaining the guardrails could additionally be cited under paragraph 1. [B] an electrical subcontractor who permitted his employees to be exposed to the direct rays of an arc welding or cutting operation could be cited under this section for violation of 29 CFR 1926.352(e). The welding subcontractor who has the responsibility for erecting the shielding screens could additionally be cited under paragraph 1.

Citations will chiefly be issued under this subparagraph where it is difficult to establish which subcontractor created or controlled the hazardous conditions, where no single subcontractor created the hazard, or where the creating subcontractor does not have the present ability to abate.

A number of cases involving the issue of employer liability at multi-employer construction sites are currently pending on review before the Occupational Safety and Health Review Commission. If any decisions are handed down in these cases, the Secretary will consider them in arriving at his ultimate decision.

Interested persons are invited to comment on the proposed guideline. Written data, views, and arguments concerning the proposal must be submitted in quadruplicate to Barry White, Associate Assistant Secretary for Regional Programs, Room N-3603, 200 Constitution Avenue, N.W., Washington, D.C. 20210, no later than May 27, 1976.

Signed at Washington, D.C., this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12238 Filed 4-26-76;8:45 am]

[Dockets SCP 11, 12]

STANDARDS COMPLETION PROJECT

Availability of Draft Technical Standards

On March 18, 1974, the Assistant Secretary of Labor for Occupational Safety and Health announced the joint OSHA/NIOSH Standards Completion Project. The purpose of the project is to issue completed standards for all of the toxic materials listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000 (formerly Tables G-1, G-2, and G-3 of 29 CFR 1910.93), with the exception of some substances which are or will be the subjects of NIOSH Criteria Documents. These exceptions will be the subject of separate rulemaking proceedings, outside of the Standards Completion Project.

Section 1910.1000 lists exposure limits for certain hazardous or toxic substances. The new standards will establish requirements for monitoring employee exposure, medical surveillance, methods of compliance, handling and use of each substance, employee training, recordkeeping, sanitation, and housekeeping, among other things. In addition, the proposals are also designed to enable employers to better understand and comply with existing OSHA standards. The exposure limits listed in § 1910.1000 are not at issue in the proposals, and no changes to these limits will be proposed or made in the standards issued as part of the Standards Completion Project.

Drafts of the technical content of proposed standards for the following substances, designated Set K, Standards Completion Project, have been prepared:

Acrylonitrile	Aniline
Ethylamine	Ethylenediamine
Morpholine	

Also prepared are drafts of the technical content of proposed standards for the group of substances designated Set L. These substances are:

Acetic Anhydride	Phenol
Acetonitrile	Phenylhydrazine
Cresol, all isomers	Pyridine
Dimethylaniline	Sulfuric Acid
Hydrogen Bromide	o-Toluidine
Hydrogen Fluoride	Xylidine

These draft technical standards reflect only the technical intent of NIOSH and OSHA and do not necessarily contain the specific language which will appear in the proposed standards. Copies of the draft technical standards on the above listed substances are available for inspection or for purchase, at the standard copying fee, at the Occupational

Safety and Health Administration, U.S. Department of Labor, Room N3620, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Copies are also available at any of the following OSHA Regional and Area Offices:

REGIONAL OFFICES

U.S. Department of Labor, Occupational Safety and Health Administration, 18 Oliver Street, Boston, Massachusetts 02110.

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036.

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, N.W.—Suite 587, Atlanta, Georgia 30309.

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 32nd Floor—Room 3263, Chicago, Illinois 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building, Room 602, Griffin at Young, Dallas, Texas 75202.

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street—Room 3000, Kansas City, Missouri 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 15010, 1961 Stout Street, Denver, Colorado 80202.

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue—Box 36017, San Francisco, California 94102.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6048, 909 First Avenue, Seattle, Washington 98174.

AREA OFFICES

U.S. Department of Labor, Occupational Safety and Health Administration, Custom House Building—Room 703, State Street, Boston, Massachusetts 02109.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 426, 55 Pleasant Street, Concord, New Hampshire 03301.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 617B, 450 Main Street, Hartford, Connecticut 06103.

U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office and Courthouse Building, 436 Dwight Street—Room 501, Springfield, Massachusetts 01103.

U.S. Department of Labor, Occupational Safety and Health Administration, 90 Church Street—Room 1405, New York, New York 10007.

U.S. Department of Labor, Occupational Safety and Health Administration, Belle Mead GSA Depot Building T3, Belle Mead, New Jersey 08502.

U.S. Department of Labor, Occupational Safety and Health Administration, 519 Federal Street, Room 403, Camden, New Jersey 08101.

U.S. Department of Labor, Occupational Safety and Health Administration, 271 Cadman Plaza, Room 629, Brooklyn, New York 11201.

U.S. Department of Labor, Occupational Safety and Health Administration, 200 Mamaroneck Avenue, Room 302, White Plains, New York 10601.

U.S. Department of Labor, Occupational Safety and Health Administration, 136-21 Roosevelt Avenue, Flushing, New York 11354.

U.S. Department of Labor, Occupational Safety and Health Administration, 100 State Street, Rochester, New York 14614.

U.S. Department of Labor, Occupational Safety and Health Administration, 2 E Blackwell Street, Dover, New Jersey 07801.

U.S. Department of Labor, Occupational Safety and Health Administration, Teterboro Airport Prof. Building, 377 Route 17—Room 206, Hasbrouck Hts., New Jersey 07604.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, 970 Broad Street—Street Room 1435C, Newark, New Jersey 07102.

U.S. Department of Labor, Occupational Safety and Health Administration, Clinton Avenue and N. Pearl Street, Room 132, Albany, New York 12207.

U.S. Department of Labor, Occupational Safety and Health Administration, 111 W. Huron Street, Room 1002, Buffalo, New York 14202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 203—Midtown Plaza, 700 East Water Street, Syracuse, New York 13210.

U.S. Department of Labor, Occupational Safety and Health Administration, 370 Old Country Road, Garden City, Long Island, New York 11530.

U.S. Department of Labor, Occupational Safety and Health Administration, Condominium San Alberto Building, 605 Condado Avenue—Room 328, Santurce, Puerto Rico 00907.

U.S. Department of Labor, Occupational Safety and Health Administration, William J. Green, Jr., Federal Building, 600 Arch Street—Room 4456, Philadelphia, Pennsylvania 19106.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 1110-A, 31 Hopkins Plaza—Charles Center, Baltimore, Maryland 21201.

U.S. Department of Labor, Occupational Safety and Health Administration, Room LL2, 400 First Street, N.W., Washington, D.C. 20210.

U.S. Department of Labor, Occupational Safety and Health Administration, Charleston National Plaza—Suite 1726, 700 Virginia Street, Charleston, West Virginia 25301.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 802—Jonnet Building, 4039 William Penn Highway, Monroeville, Pennsylvania 15146.

U.S. Department of Labor, Occupational Safety and Health Administration, IBE Building—Room 701, 69 Public Square, Wilkes-Barre, Pennsylvania 18701.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 6018, 400 N. 8th Street—P.O. Box 10186, Richmond, Virginia 23240.

U.S. Department of Labor, Occupational Safety and Health Administration, Building 10—Suite 33, La Vista Perimeter Park, Tucker, Georgia 30084.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building—Room 406, 310 New Bern Avenue, Raleigh, North Carolina 27601.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 204—Bridge Building, 3200 E. Oakland Park Boulevard, Fort Lauderdale, Florida 33303.

U.S. Department of Labor, Occupational Safety and Health Administration, 1000 Hayes Street—Suite 302, Nashville, Tennessee 37203.

U.S. Department of Labor, Occupational Safety and Health Administration, 2809 Art Museum Drive, Art Museum Plaza—Suite 4, Jacksonville, Florida 32207.

U.S. Department of Labor, Occupational Safety and Health Administration, Todd Mall—2047 Canyon Road, Birmingham, Alabama 35216.

U.S. Department of Labor, Occupational Safety and Health Administration, Suite 554-U—600 Federal Place, Louisville, Kentucky 40202.

U.S. Department of Labor, Occupational Safety and Health Administration, Enterprise Building—Suite 204, 6605 Abercorn Street, Savannah, Georgia 31405.

U.S. Department of Labor, Occupational Safety and Health Administration, Commerce Building—Room 600, 118 North Royal Street, Mobile, Alabama 36602.

U.S. Department of Labor, Occupational Safety and Health Administration, Riverside Plaza Shopping Center, 2720 Riverside Drive, Macon, Georgia 31204.

U.S. Department of Labor, Occupational Safety and Health Administration, 1710 Gervais Street—Room 205, Columbia, South Carolina 29201.

U.S. Department of Labor, Occupational Safety and Health Administration, 5760 I-55 North Frontage Road, Jackson, Mississippi 34211.

U.S. Department of Labor, Occupational Safety and Health Administration, Barnett Bank Building—Room 918, 1000 N. Ashley Drive, Tampa, Florida 33602.

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, 16th Floor, Chicago, Illinois 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 847 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

U.S. Department of Labor, Occupational Safety and Health Administration, 360 S. Third Street—Room 100, Columbus, Ohio 43215.

U.S. Department of Labor, Occupational Safety and Health Administration, Michigan Theatre Building—Room 626, 220 Bagley Avenue, Detroit, Michigan 48226.

U.S. Department of Labor, Occupational Safety and Health Administration, 110 South Fourth Street—Room 437, Minneapolis, Minnesota 55401.

U.S. Department of Labor, Occupational Safety and Health Administration, Clark Building—Room 400, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office and Courthouse, Room 423, 46 East Ohio Street, Indianapolis, Indiana 46202.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 4028—Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.

U.S. Department of Labor, Occupational Safety and Health Administration, 234 N. Summit—Room 734 Federal Office Building, Toledo, Ohio 43604.

U.S. Department of Labor, Occupational Safety and Health Administration, 223 N.E. Jefferson—3rd Floor, Peoria, Illinois 61602.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 2118, 2320 La Branch Street, Houston, Texas 77004.

U.S. Department of Labor, Occupational Safety and Health Administration, 1425 W. Pioneer Drive, Irving, Texas 75061.

U.S. Department of Labor, Occupational Safety and Health Administration, Room 421—Federal Building, 1205 Texas Avenue, Lubbock, Texas 79401.

U.S. Department of Labor, Occupational Safety and Health Administration, Riverview Professional Building, S. 77 Sunshine Strip, Suite 9, Harlingen, Texas 78550.

U.S. Department of Labor, Occupational Safety and Health Administration, 546 Carondelet Street—Room 202, New Orleans, Louisiana 70130.
U.S. Department of Labor, Occupational Safety and Health Administration, 2156 Wooddale Boulevard, Hoover Annex, Space A and B, Suite 3, Baton Rouge, Louisiana 70806.
U.S. Department of Labor, Occupational Safety and Health Administration, Room 512—Petroleum Building, 420 South Boulder, Tulsa, Oklahoma 74103.
U.S. Department of Labor, Occupational Safety and Health Administration, 50 Penn Place—Suite 408, Oklahoma City, Oklahoma 73118.
U.S. Department of Labor, Occupational Safety and Health Administration, Room 526—Donaghey Building, 103 East 7th Street, Little Rock, Arkansas 72201.
U.S. Department of Labor, Occupational Safety and Health Administration, American Bank Tower, Suite 310, 221 W. 6th Street, Austin, Texas 78701.
U.S. Department of Labor, Occupational Safety and Health Administration, Room 3114—Federal Building, 500 Gold Avenue, SW., P.O. Box 1428, Albuquerque, New Mexico 87103.
U.S. Department of Labor, Occupational Safety and Health Administration, 1627 Main Street—Room 1100, Kansas City, Missouri 64108.
U.S. Department of Labor, Occupational Safety and Health Administration, 210 North 12th Boulevard—Room 554, St. Louis, Missouri 63101.
U.S. Department of Labor, Occupational Safety and Health Administration, Petroleum Building, 221 South Broadway Street—Suite 512, Wichita, Kansas 67202.
U.S. Department of Labor, Occupational Safety and Health Administration, Room 638—210 Walnut Street, Des Moines, Iowa 50309.
U.S. Department of Labor, Occupational Safety and Health Administration, City National Bank Building, Harney and 16th Street—Room 303, Omaha, Nebraska 68102.
U.S. Department of Labor, Occupational Safety and Health Administration, 113 West 6th Street, North Platte, Nebraska 69101.
U.S. Department of Labor, Occupational Safety and Health Administration, 8527 W. Colfax Avenue, Lakewood, Colorado 80215.
U.S. Department of Labor, Occupational Safety and Health Administration, Suite 525—Petroleum Building, 2812 1st Avenue—North, Billings, Montana 59101.
U.S. Department of Labor, Occupational Safety and Health Administration, Russell Building, Highway 83 North, Route 1, Bismarck, North Dakota 58501.
U.S. Department of Labor, Occupational Safety and Health Administration, Court House Plaza Building—Room 403, 300 North Dakota Avenue, Sioux Falls, South Dakota 57102.
U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office Building—Room 452, 350 South Main Street, Salt Lake City, Utah 84101.
U.S. Department of Labor, Occupational Safety and Health Administration, 100 McAllister Street—Room 1706, San Francisco, California 94102.
U.S. Department of Labor, Occupational Safety and Health Administration, Suite 318—Amerco Towers, 2721 North Central Avenue, Phoenix, Arizona 85004.
U.S. Department of Labor, Occupational Safety and Health Administration, 333 Queen Street—Suite 505, Honolulu, Hawaii 96813.
U.S. Department of Labor, Occupational Safety and Health Administration, 1100 E. William Street, Suite 222, Carson City, Nevada 89701.
U.S. Department of Labor, Occupational Safety and Health Administration, Hartwell Building—Room 401, 19 Pine Avenue, Long Beach, California 90802.
U.S. Department of Labor, Occupational Safety and Health Administration, 121—107th Street, N.E., Bellevue, Washington 98004.
U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 227, 605 West 4th Avenue, Anchorage, Alaska 99501.
U.S. Department of Labor, Occupational Safety and Health Administration, Room 526—Pittock Block, 921 S.W. Washington Street, Portland, Oregon 97205.
U.S. Department of Labor, Occupational Safety and Health Administration, 1319 W. Idaho Street, Boise, Idaho 83702.

The draft technical standards will also be available for inspection and copying at the national and regional offices of the U.S. Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health, at the following addresses:

U.S. Department of HEW, National Institute for Occupational Safety and Health, 5600 Fishers Lane, Rockville, Maryland.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 1114 Commerce Street, Room 1612, Dallas, Texas 75202.
U.S. Department of HEW, National Institute for Occupational Safety and Health, P.O. Box 13716, Philadelphia, Pennsylvania 19108.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 9017 Federal Building, 19th and Stout Streets, Denver, Colorado 80202.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 50 Seventh Street, N.E., Atlanta, Georgia 30323.
U.S. Department of HEW, National Institute for Occupational Safety and Health, Arcade Building, 1321 Second Street, Seattle, Washington 98101.
U.S. Department of HEW, National Institute for Occupational Safety and Health, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 26 Federal Plaza, New York, New York 10007.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 601 East 12th Street, Kansas City, Missouri 64106.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 223 Federal Office Building, 50 Fulton Street, San Francisco, California 94102.
U.S. Department of HEW, National Institute for Occupational Safety and Health, 300 South Wacker Drive, Chicago, Illinois 60607.

It is anticipated that standards for the above listed substances will be proposed by OSHA in the near future. At that time, a formal comment period will be provided for the proposals. However, interested persons wishing to submit written data, views, and arguments on the draft technical standards at this time may submit them to the Docket Officer, Standards Completion Project, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3620, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Comments on Set K should be directed to Docket SCP-11. Those for set L should be directed to Docket SCP-12. These communications will be available for public inspection and copying at the above location. Information submitted in response to the Notice of Intent to Prepare an Environmental Impact Statement, published in the FEDERAL REGISTER on September 20, 1974 (39 FR 33843), need not be resubmitted.

Signed at Washington, D.C. this 19th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12239 Filed 4-26-76;8:45 am]

[V-75-35]

PRAIRIE TANK AND CONSTRUCTION CO., ET AL.

Grant of Variance

I. *Background.* Prairie Tank and Construction Company, P.O. Box 278, Plainfield, Illinois 68544; Tank Service, Inc., 3210 N. Lewis, P.O. Box 50099, Tulsa, Oklahoma 74150; Gorbett Brothers, Inc., 4001 Irving Boulevard, Dallas, Texas 75207; and General American Transportation Corporation, 120 S. Riverside Plaza, Chicago, Illinois 60606 made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the safety standards prescribed in 29 CFR 1926.451(a) (4), (5) and (10) which set general requirements for scaffolding. The General American Transportation Corporation also requested a variance from paragraph (6) which requires a screen between the toeboard and guardrail where persons are required to pass under the scaffold. Since personnel are not allowed under the scaffold, a variance from this paragraph is unnecessary.

The places of employment affected by these applications are all construction sites where the applicants are engaged in tank construction operations.

Notice of the applications and of the granting of an interim order, was published in the FEDERAL REGISTER on October 6, 1975 (40 FR 46165). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the application for a variance. No written comments or requests for a hearing have been received.

II. *Facts.* The applicants' businesses, which are part of the tank building industry, involve the erection of relatively large steel plate segments of circumferential rings. Due to the unique nature of the construction involved, special procedures, including special scaffolding, have been developed. For example, as opposed to more conventional scaffolds,

tank scaffolds must be highly portable and have a relatively low density of occupancy by workmen. These scaffolds are raised up the shell of the tank as new rings of steel are added and work is completed at the level below.

Most plate structures are fabricated from standard length plates obtained from steel mills. These plates, each approximately 31.416 feet long, normally have brackets welded to them while they are on the ground prior to being placed into position on the tank wall. Scaffolding and guardrail supports are then attached to these brackets. If the applicants were to comply with § 1926.451 (a) (5) which requires that guardrail supports be at intervals not to exceed 8 feet, and Table L–3 in § 1926.451(a) (10) which sets the maximum permissible span (distance between planking supports) for 2x10 inch full thickness undressed lumber at 10 feet, they assert it would be necessary to lay out each steel plate into sections with the brackets located approximately 7,854 feet apart. Instead, the applicants wish to lay out the plate into three equal sections with brackets located approximately 10 feet 6 inches apart.

The planks which the companies propose to use are rough full-dimensioned 2″x12″x12′ planks of Douglas Fir or Southern Yellow Pine of Select Structural Grade. General American Transportation Corporation also proposes the use of 3 planks 2″x10″x12′ as an alternative to 2 planks 2″x12″x12′.

The Douglas Fir has a fiber stress of 1,900 and a modulus of elasticity of 1,900,000, while the Southern Yellow Pine has a 2,500 fiber stress and a modulus of elasticity of 2,000,000. These characteristics of both types of planking meet the requirements of Scaffold Grade in § 1926.451(a) (10).

The tank scaffolds do not have toeboards as required by § 1926.451(a) (4) and (5). Instead, applicants have stated that most tools are placed in well-designed "loose tool" containers provided for that purpose. The area directly below and far enough away from the base of the scaffold to contain anything that falls from above is roped off. Because the contour of the steel plates of the tank face is curved and the adjacent edge of the scaffold platform is straight, there is an open space between them. As a result, applicants have installed taut wire rope on the scaffold brackets that extends midway between the innermost edge of the scaffold platform and the curved plate structure of the tank face to serve as a safety line in lieu of an inner guardrail assembly.

According to the General American Transportation Corporation application, less than 10 percent of the plank surface on the scaffold serves as a work location at any one time, and is normally occupied by approximately one person per 30 feet of scaffold length. About one-third of the employees work alone on the scaffolds, and the others work in groups of 2 or 3 with only one group located within a 10′6″ bracket span. The employees carry their tools and equipment from one location to the next as work progresses.

In addition, the applicants propose to attach the guardrail support brackets at the 10′6″ brackets rather than 8′ intervals as required by the standard. Angle irons would be used for supports and rope for guardrails. Prairie Tank and Construction, Tank Services, and Gorbett Brothers propose to use wire rope cables for guardrails, while General American Transportation Corporation proposes to use ⅝″ Manila rope.

III. *Decision.* Section 1926.451(a) (4) and (5) requires toeboards with a minimum height of 4″ on all open sides and ends of platforms more than 10 feet above the ground or floor. This is intended to keep tools and equipment from falling off the scaffold injuring people below. The applicants' system of keeping most tools in containers and roping off the area under and in close proximity to the scaffold accomplishes this purpose and thus provides a place of employment as safe as that required by the toeboard requirements of § 1926.451 (a) (4) and (5).

Table L–3 in § 1926.451(a) (10) sets the maximum permissible span between planking supports at 10 feet for 2x10 inch or wider planks of full thickness undressed lumber. The applicants have proposed to use Douglas Fir or Southern Yellow Pine of Select Structural Grade on 10′6″ spans. While all companies have proposed to utilize planking of full thickness 2″x12″x12′ dimensions, General American Transportation Corporation also proposed the alternative of using 3 planks of 2″x10″x12′ dimensions instead of 2 of the wider planks.

The increased strength of the full thickness Douglas Fir and Southern Yellow Pine over other commonly used types of scaffold planking would provide safe scaffolding even though the span is 6″ longer than the maximum span allowed under the standard.

Section 1926.451(a) (5) also requires that guardrail supports be placed at no more than 8 foot intervals. While applicants could comply with this requirement by attaching guardrail supports to the scaffolds, the applicants normally attach the guardrail supports, as well as the scaffolding supports to the brackets which are welded to the steel plates at 10′6″ intervals. This practice affords considerably more stable attachments for the guardrail assembly than would exist with wooden 2x4s attached to the scaffold at 8 foot intervals. Moreover, the wire rope cables used for guardrails and the angle irons used for supports are at least as strong as the wooden 2x4s permitted by § 1926.451(a) (5). The Manila rope proposed to be used by General American Transportation Corporation does not provide the same strength and margin of safety, and would not be permitted. Therefore, it is determined that the guardrail assemblies made of angle irons and wire rope cables, and supported by the brackets at 10′6″ intervals are as safe as those required by § 1926.451(a) (5).

Considerable discussion with members of the steel tank construction industry centered around requirement (c) in the interim order which was granted on October 6, 1975 (40 FR 46165). This paragraph required the use of a taut wire rope to divide any space exceeding 8″ on the inside of the scaffold. A visit was made to a steel tank under construction to observe the procedure first-hand. On the basis of this visit it was determined that setting the allowable space between the tank and the scaffold at 12″ would provide a safe place of employment to employees.

IV. *Order.* Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, section 107 of the Contract Work Hours and Safety Standards Act, as amended (83 Stat. 96; 40 U.S.C. 333), 29 CFR Part 1905, 29 CFR 1926.2 and Secretary of Labor's Order No. 12–71 (36 FR 8754), it is ordered that the above listed applicants be, and they are hereby, authorized to use the scaffolds described in their applications in their tank-building process at all construction projects where the applicants are engaged in construction operations in lieu of complying with the toeboard and span requirements in § 1926.451(a) (4), (5) and (10), provided that:

(a) The applicants' loose tools and equipment shall be kept in well-designed tool containers. This does not include fit-up bar, key plates, key channels, or long handled maul which may be placed on the scaffold plank during the time they are required to work. The loose tool containers shall be secured to prevent their upset or dislodgement from the scaffold area.

(b) Areas beneath and far enough away from the base of the scaffold to contain anything that falls from above shall be roped off and posted with clearly visible signs stating: "Danger Overhead Work."

(c) The space between the innermost edge of the scaffold platform and the curved plate structure of the tank shell shall not exceed 12″ without protective measures. A taut wire rope supported on scaffold brackets at plank level may be used to divide any space exceeding 12″ in lieu of using a guardrail or a tie-off system.

(d) Not more than 3 employees shall be working on a 10′6″ span of scaffold planking at any time.

(e) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be 10′6″ These brackets shall be welded to the steel plates.

(f) Scaffold planks of rough full-dimensioned 2″x12″x12′ Douglas Fir or Southern Yellow Pine of Select Structural Grade or equivalent planking shall be used. The Douglas Fir shall have at least a 1,900 fiber stress and 1,900,000 modules of elasticity, while the Yellow Pine shall have at least 2,500 fiber stress and 2,000,000 modules of elasticity. Three planks with full thickness 2″x10″x12′ dimensions may be used in lieu of two 2″x12″x12′ planks provided that they are clamped or bonded together at the midpoint of the span, in order to spread the weight of the employees.

(g) All planking shall be secured from movement or overlapped in accordance with § 1926.451(a) (12).

(h) Guardrails shall be constructed of taut wire rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall be at least of equivalent strength, stability and height as those required for the 8 foot span of 2" x 4" wood rails by 29 CFR 1926.451(a) (5). Guardrail supports shall be located at no greater than 10'6" intervals.

As soon as possible, the applicants shall give notice to affected employees of the terms of this order by the same means used to inform them of the application for variance.

Effective date. This order shall become effective on April 27, 1976, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 20th day of April 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-12240 Filed 4-26-76;8:45 am]

Office of the Secretary

[TA-W-758]

CALIFORNIA STRIP STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976 which was filed under Section 221 (a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of California Strip Steel Corp., a division of Washington Steel Corporation, Los Angeles, California (TA-W-758).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with stainless steel sheet—cold—rodded produced by California Strip Steel Corporation, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12006 Filed 4-26-76;8:45 am]

[TA-W-773]

CYCLOPS CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976, which was filed under Section 221 (a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Cyclops Corporation, Empire Detroit Division, Mansfield, Ohio (TA-W-773).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with rolls of steel (sheet) including stainless produced by Cyclops Corporation, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12007 Filed 4-26-76;8:45 am]

[TA-W-786]

GOODYEAR TIRE AND RUBBER CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On April 9, 1976, the Department of Labor received a petition dated April 6, 1976 which was filed under Section 221 (a) of the Trade Act of 1974 ("the Act") by the United Rubber Workers of America, on behalf of the workers and former workers of New Bedford, Massachusetts plant of Goodyear Tire and Rubber Company, Cincinnati, Ohio (TA-W-786).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with bicycle tires and tubes produced by Goodyear Tire and Rubber Company, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of April 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12008 Filed 4-26-76;8:45 am]

[TA-W-759]

GREEN RIVER STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976, which was filed under Section 221 (a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Green River Steel Corporation, subsidiary of Jessup Steel, Owensboro, Kentucky (TA-W-759).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with high grade steel bars, rounds, squares, also tool and carbon steel produced by Green River Steel Corporation, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12009 Filed 4-26-76;8:45 am]

[TA-W-793]

GTE SYLVANIA, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On April 9, 1976, the Department of Labor received a petition dated March 23, 1976 which was filed under Section 221 (a) of the Trade Act of 1974 ("the Act") by the United Electrical Radio and Machine Workers of America, on behalf of the workers and former workers of Emporium, Pennsylvania plant of GTE Sylvania, a division of General Telephone and Electronics, Inc., Stafford, Conn. (TA-W-793).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with yokes and receiving tubes produced by GTE Sylvania, Incorporated, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of April 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12010 Filed 4-26-76;8:45 am]

[TA-W-779]

NEVADA NORTHERN RAILWAY CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On April 2, 1976, the Department of Labor received a petition dated March 22, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Nevada Northern Railway Company, East Ely, Nevada (TA-W-779).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the ore haulage from mine to smelter by Nevada Northern Railway Company, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of April 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12011 Filed 4-26-76;8:45 am]

[TA-W-763]

OHIO STEEL TUBE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Ohio Steel Tube Company, Shelby, Ohio (TA-W-763).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in

Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with specialty steel tubing produced by Ohio Steel Tube Company, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12012 Filed 4-26-76;8:45 am]

[TA-W-748]

REPUBLIC STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Republic Steel Corporation, Birmingham, Alabama (TA-W-748).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with specialty steel—smelting plant produced by Republic Steel Corporation, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc76-12013 Filed 4-26-76;8:45 am]

[TA-W-792]

RUD-SHAW CLOTHING

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On April 8, 1976 the Department of Labor received a petition dated March 29, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing Workers of America, on behalf of the workers and former workers of Rud-Shaw Clothing, Brooklyn, New York (TA-W-792).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's jackets produced by Rud-Shaw Clothing, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12014 Filed 4-26-76;8:45 am]

[TA-W-762]

TELEDYNE, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of Teledyne, Incorporated, Columbia Summerville Division, Pittsburgh, Pennsylvania (TA-W-762).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with specialty steel tubing, produced by Teledyne, Incorporated, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date of which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12015 Filed 4-26-76;8:45 am]

[TA-W-783]

TRW/IRC

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On April 2, 1976, the Department of Labor received a petition dated March 26, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the International Union of Electrical, Radio and Machine Workers, on behalf of the workers and former Workers of the Boone, North Carolina plant of TRW/IRC, a division of TRW, Inc., Cleveland, Ohio (TA-W-783).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purposes of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with fixed resistors produced by TRW/IRC, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 2nd day of April 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12016 Filed 4-26-76;8:45 am]

[TA-W-784]

TRW/IRC

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On April 2, 1976, the Department of Labor received a petition dated March 26, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the International Union of Electrical, Radio and Machine Workers, on behalf of the workers and former workers of the Newland, North Carolina, plants of TRW/IRC, a division of TRW, Inc., Cleveland, Ohio (TA-W-784).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purposes of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with fixed resistors produced by TRW/IRC, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of April 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12017 Filed 4-26-76;8:45 am]

[TA-W-765]

UNITED STATES STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On March 29, 1976, the Department of Labor received a petition dated March 20, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America, on behalf of the workers and former workers of United States Steel Corporation, Waukegan, Illinois (TA-W-765).

Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with specialty steel wire and carbon wire produced by United States Steel Corporation, or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 1976.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 29th day of March 1976.

MARVIN M. FOOKS,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.76-12018 Filed 4-26-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[AB 2 Sub-No. 11]

LOUISVILLE AND NASHVILLE RAILROAD CO.

Abandonment Between Rowland and Lancaster in Lincoln and Garrard Counties, Kentucky

Present: Virginia Mae Brown, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

It appearing, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, et seq.; and good cause appearing therefor:

It is ordered, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Lincoln and Garrard Counties, Ky., on or before May 5, 1976 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this finding shall be given to the general public by depositing a copy of this order and the attached notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy of the notice to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to interested persons.

Dated at Washington, D.C., this 13th day of April 1976.

By the Commission, Commissioner Brown.

[SEAL] ROBERT L. OSWALD,
Secertary.

LOUISVILLE AND NASHVILE RAILROAD COMPANY ABANDONMENT BETWEEN ROWLAND AND LANCASTER IN LINCOLN AND GARRARD COUNTIES, KENTUCKY

The Interstate Commerce Commission hereby gives notice that by order dated May 13, 1976, it has been determined that the proposed abandonment by the Louisville and Nashville Railroad Company of its line of railroad between Rowland and Lancaster, a distance of 8.33 miles, in Lincoln and Garrard Counties, Ky., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human envirfonment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because of the low volume of traffic involved and the absence of any major historic, safety, or ecological consequences associated with the proposed abandonment. Highways in the vicinity of the subject line are able to accommodate the resultant slight diversion to truck transportation. Several industrial sites exist in the area adjacent to the rail line and abandonment would make these tracts less desirable for future development.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7692.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before May 20, 1976.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76-12156 Filed 4-26-76;8:45 am]

[Notice No. 234]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

APRIL 27, 1976.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to Sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, 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 May 17, 1976. Pursuant to Section 17(8) of the Interstate Commerce Act, the filing of such a 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 thier petitions with particularity.

No. MC-FC-76147. By order of April 19, 1976, the Motor Carrier Board approved the transfer to George Husack, Inc., Schnecksville, Pa., of Certificates No. MC 42604 and MC 42604 Sub-No. 1, issued May 1, 1942, and July 7, 1950, to Kenneth Hartzell, Walnutport, Pa., authorizing the transportation of coal and lumber from and to specified points in Pennsylvania and New Jersey, James A. Wimmer, Philip & Wimmer, 419 Delaware Avenue, Palmerton, Pa. 18071, attorney for Applicants.

No. MC-FC-76301. By order of April 21, 1976, the Motor Carrier Board approved the transfer to Clarence E. Nielson, Coon Rapids, Iowa, of Certificate Nos. 60073 and Sub-1, issued November 13, 1950, to Clarence Nielson and Floyd Nielson, a partnership, doing business as Nielson Brothers, Coon Rapids, Iowa, authorizing the transportation of specified commodities, between points and places in Iowa and Nebraska. Clarence E. Nielson, 795 North 6th Avenue, Coon Rapids, Iowa 50058, representative of applicants.

No MC-FC-76322. By order of April 21, 1976, the Motor Carrier Board approved the transfer to Swing Transport, Inc., Lexington, North Carolina, of Permits No. MC 115176 (Sub-Nos. 1, 2, 3, 4, and 5), issued August 25, 1961, May 24, 1968, March 27, 1969, October 24, 1972, and February 27, 1974, respectively, to Maybelle Transport Company and acquired by Fleet Transport Company, Inc., pursuant to No. MC-F-12353, approved May 1, 1975, and consummated July 1, 1975, authorizing the transportation of paper and paper products, from two specified plantsites in North Carolina and a plantsite in Tennessee to points in Georgia, South Carolina, Virginia, and Tennessee, and of ceramic products from Lexington, North Carolina, to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and from a single origin in each of the states of New Jersey, Tennessee, Georgia, and Pennsylvania, to Lexington, North Carolina. William P. Sullivan, Sullivan, Dubin, & Kingsley, 1819 H Street NW., Washington, D.C. 20006, attorney for transferee. Harlan Dodson III, Hooker, Keeble, Dodson, & Harris, P.O. Box 2524, Nashville, Tennessee 37219, attorney for transferor.

No. MC-FC-76363. By order entered April 20, 1976, the Motor Carrier Board approved the transfer to Eckert Trucking, Inc., Red Lion, Pa., of the operating rights set forth in Permits Nos. MC 70267, MC 70267 (Sub-No. 5), MC 70267 (Sub-No. 7), MC 70267 (Sub-No. 9), MC 70267 (Sub-No. 10), MC 70267 (Sub-No. 11), and MC 70267 (Sub-No. 13), issued February 2, 1950, July 5, 1950, January 17, 1957, January 22, 1959, November 20, 1958, February 27, 1961, and June 19, 1964, respectively, to El E. Wagner, Jr., York, Pa., authorizing the transportation of specified commodities from, to, and between points in Pennsylvania, West Virginia, Virginia, Delaware, New York, Maryland, North Carolina, Connecticut, Massachusetts, Rhode Island, and the District of Columbia. Norman T. Petow

Esquire, 43 North Duke Street, York, Pa., attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.76-12152 Filed 4-26-76;8:45 am]

[Notice No. 52]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 22, 1976.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR § 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the I.C.C. Field Office to which protests are to be transmitted.

MOTORS CARRIERS OF PROPERTY

No. MC 531 (Sub-No. 336TA), filed April 16, 1976. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, Houston, Tex. 77021. Applicant's representative: Wray E. Hughes (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Animal feed, liquid,* in bulk, in tank vehicles, from Westwego, La., to Waco, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Abbott Laboratories, 14th and Sheridan Road, North Chicago, Ill. 60064. Send protests to: John Mensing, District Supervisor, Interstate Commerce Commission, 8610 Federal Bldg., 515 Rusk, Houston, Tex. 77002.

No. MC 26396 (Sub-No. 128TA), filed April 12, 1976. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: Jeanne Charlesworth (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Processed sulphur,* in bags, from the ports of entry in Montana and North Dakota on the United States-Canadian Boundary line to points in Minnesota, Michigan, South Dakota, North Dakota, California, Idaho, Colorado, Iowa, Wisconsin, Illinois, Indiana, Missouri, Nebraska, Ohio, Kentucky, Kansas, Montana, Oregon, Washington, and Wyoming, restricted to shipments having a prior movement in foreign commerce from the plantsite near Didsbury, Alberta, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: G. T. Walsh, General Manager, Argi-Sul Canada Ltd., P.O. Box 3756, Station "B", Calgary, Alberta, Canada T2M 4N4. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Ave. North, Billings, Mont. 59101.

No. MC 39249 (Sub-No. 17TA), filed April 15, 1976. Applicant: MARTY'S EXPRESS, INC., 2335 Wheatsheaf Lane, Philadelphia, Pa. 19137. Applicant's representative: Ira G. Megdal, 499 Cooper Landing Road, P.O. Box 459-460, Cherry Hill, N.J. 08002. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail department stores, from Conwells Heights, Pa., to Lancaster and King of Prussia, Pa., and from Philadelphia, Pa., to Media, Harrisburg, Lancaster, and King of Prussia, Pa., restricted to traffic originating at or destined to a Gimbel's facility, for 180 days. Applicant intends to tack. Supporting shipper: Gimbel's Div. Brown & Williamson, Eighth and Market Streets, Philadelphia, Pa. 19103. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 61396 (Sub-No. 306TA), filed April 16, 1976. Applicant: HERMAN BROS. INC., 2565 St. Marys Ave., P.O. Box 189, Omaha, Nebr. 68101. Applicant's representative: John E. Smith II (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dry fertilizer,* in bulk, from Whiting, Iowa, to points in Nebraska, South Dakota, and Minnesota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chevron Chemical Company, E. R. Groth, Traffic Representative, Box 282, Fort Madison, Iowa 52627. Send protests to: Carroll Russell, District Supervisor, Suite 620, 110 North 14th St., Omaha, Nebr. 68101.

No. MC 63417 (Sub-No. 88TA), filed April 13, 1976. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, Va. 24034. Applicant's representative: William E. Bain (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *New furniture and furniture parts,* from Brookneal, Va., to points in Alabama, Arkansas, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia, for 180 days. Supporting shipper: Thomasville Furniture Industries, Inc., Thomasville, N.C. 27360. Send protests to: Danny R. Beeler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 210, Roanoke, Va. 24011.

No. MC 79525 (Sub-No. 3TA), filed April 14, 1976. Applicant: THE NORRIS BROTHERS CO., 2138 Davenport Ave., Cleveland, Ohio 44114. Applicant's representative: Ambrose A. Such, 5275 Ridge Road, Cleveland, Ohio 44129. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Commodities* as require special equipment or specialized handling on flat bed or low boy equipment, restricted to traffic having prior or subsequent movement by rail, between Fairport, Fairport Harbor, Madison, Painesville, and Perry, Ohio, on the one hand, and, on the other, Cleveland Electric Illuminating Company Power Plant, North Perry, Ohio, for 30 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cleveland Electric Illuminating Co., 55 Public Square, Cleveland, Ohio. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199.

No. MC 36556 (Sub-No. 30TA), filed April 13, 1976. Applicant: BLACKMON TRUCKING, INC., P.O. Box 186, Somers, Wis. 53171. Applicant's representative: Fred H. Figge (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Inedible animal feed ingredients, frozen,* from the plantsite and storage facilities of Bydalek Fur Farms, Inc., in Kenosha County, Wis., to the plantsite and warehouse facilities of General Food Corporation, at or near Lafayette, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bydalek Fur Farms, Inc., 5620 6th Place, Kenosha, Wis. 53140. Send protests to: John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 102567 (Sub-No. 189TA), filed April 8, 1976. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, La. 71010. Applicant's representative: Charles L. Taylor, Jr., 2040 North Loop West, Suite 208, Houston, Tex. 77018. Authority sought to operate as a *common carrier,* by motor vehicle,

over irregular routes, transporting: *Liquid chemicals* (except liquid bromine, in bulk, in tank vehicles), from Columbia County, Ark., to points in Alabama, Florida, Georgia, Illinois, Kansas, Kentucky, Missouri, and South Carolina, for 180 days. Supporting shipper: Dow Chemical U.S.A., Eastern Division, P.O. Box 3600, Cleveland, Ohio 44136. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 9038 Federal Bldg., 701 Loyola Ave., New Orleans, La. 70113.

No. MC 103051 (Sub-No. 368TA), filed April 9, 1976. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave. North, Nashville, Tenn. 37209. Applicant's representative: William G. North (Same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Vegetable oil,* in bulk, in tank vehicles, from Charlotte, N.C., to points in Alabama and Florida, for 180 days. Supporting shipper: The C & T Refinery, Inc., 2000 W. Broad St., Richmond, Va. 23220. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite A–422, U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 106674 (Sub-No. 193TA), filed April 13, 1976. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, Ind. 47977. Applicant's representative: Jerry L. Johnson (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wardrobes,* knocked down, *and chests,* from the plantsite of Woodlawn Products Corporation, at or near Elkhart, Ind., to Fort Bragg, N.C.; Fort Hood, Tex.; and Fort Aberdeen Proving Grounds, Md., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper, Woodlawn Products Corporation, 55786 Bullard Road, Elkhart, Ind. 46514. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 107295 (Sub-No. 810TA), filed April 14, 1976. Applicant: PRE-FAB TRANSIT CO., 100 South Main St., Farmer City, Ill. 61842. Applicant's representative: Richard D. Vollmer (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Hardwood flooring,* from Warren, Ark., to points in Maine, New Hampshire, and Rhode Island, for 180 days. Supporting shippers: J. E. Ives, Traffic Manager, Sykes Flooring Co., Inc., and Wilson Oak Flooring Co., Inc., P.O. Box 420, Warren, Ark. 71671. Send protests to: Harold C. Jolliff, District Supervisor, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 107403 (Sub-No. 970TA), filed April 15, 1976. Applicant: MATLACK, INC., 10 West Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Tallow,* in bulk, in tank vehicles, from Holden, La., to El Dorado, Ark., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Louisiana By-Products, Inc., d.b.a. Serco, P.O. Box 237, Holden, La. 70744. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 107496 (Sub-No. 1023TA), filed April 14, 1976. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, Des Moines, Iowa 50309. Applicant's representative: Earl Check (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Molasses, liquid feed, and liquid feed supplements,* in bulk, in tank vehicles, from the Cargill, Inc., plantsite at Sterling, Colo., to points in Wyoming, Colorado, Montana, South Dakota points on and west of U.S. 83, Kansas points on and west of U.S. Highway 281, and Nebraska points on and west of U.S. Highway 281, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cargill, Incorporated, 1412 Cargill Bldg., Minneapolis, Minn. 55402. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 107515 (Sub-No. 1004TA), filed April 14, 1976. Applicant: REFRIGERATED TRANSPORT COMPANY, INC., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Bruce E. Mitchell, Suite 375, 3379 Peachtree Road NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* in containers, in vehicles equipped with mechanical refrigeration, from the plantsite of the Upjohn Company, at or near Houston, Tex., to points in California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Washington, and West Virginia, for 180 days. Supporting shipper: The Upjohn Company, P.O. Box 685, LaPorte, Tex. 77571. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

No. MC 107515 (Sub-No. 1005TA), filed April 15, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, Ga. 30050. Applicant's representative: Richard M. Tettlebaum, Suite 375, 3379 Peachtree Road NE., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Candy and confectionery,* in vehicles equipped with mechanical refrigeration, from the plantsite and warehouse facilities of Peter Paul, Inc., at or near Frankfort, Ind., to points in Dallas and Houston, Tex., Atlanta, Ga., and Alabama, for 180 days. Supporting shipper: Peter Paul, Inc., New Haven Ave., Naugatuck, Conn. 06770. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

No. MC 108207 (Sub-No. 439TA), filed March 29, 1976. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz St., P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: Mike Smith (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Human blood plasma,* frozen, from Beaumont, Tex., and LaFayette, La., to Rochester, Mich., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southwest Plasma, Inc., 2914 South Fourth, Beaumont, Tex. 77701. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 113908 (Sub-No. 370TA) (Correction), filed March 22, 1976, published in the FEDERAL REGISTER issue of April 1, 1976, republished as corrected this issue. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale St., P.O. Box 3180 G.S.S., Springfield, Mo. 65804. Applicant's representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Brandy, rum, wine, wine products, neutral spirits, distilled spirits, alcoholic liquors, and alcohol,* in bulk (except brandy, rum, wine and wine products to Cincinnati, Ohio), from Atlanta and Roberta, Ga., and their respective commercial zones, to Cincinnati, Ohio, Edison, N.J., and Detroit, Mich., and their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Monarch Wine Company of Georgia, P.O. Box 6847, Atlanta, Ga. 30315. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106. The purpose of this republication is to correct the commodity restriction.

No. MC 115322 (Sub-No. 114TA), filed April 9, 1976. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, Fla. 32809. Applicant's representative: J .V. McCoy, P.O. Box 426, Tampa, Fla. 53601. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs and potato products,* in straight or mixed shipments (except in bulk), from the plantsite and/or storage facilities of McCain Foods, Inc., at Portland, Maine, to points in Florida, Geor-

gia, Alabama, Mississippi, Tennessee, Louisiana, Kentucky, North Carolina, South Carolina, Virginia, and West Virginia, for 180 days. Supporting shipper: McCain Foods, Inc., 5 Wade Road, Washburn, Maine 04786. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 116004 (Sub-No. 38TA), filed April 14, 1976. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler, Irving, Tex. 75060. Applicant's representative: Vernon Crenshaw (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, caps, enclosures for glass containers, and corrugated boxes*, knocked down, from the plantsite and storage facilities of Brockway Glass Company, Inc., at or near Muskogee, Okla., to Dallas and Fort Worth, Tex., and points in their commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Brockway Glass Company, Inc., P.O. Box 8, Muskogee, Okla. 74401. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Dallas, Tex. 75242.

No. MC 116145 (Sub-No. 8TA), filed April 16, 1976. Applicant: G. G. PARSONS TRUCKING CO., P.O. Box 1085, North Wilkesboro, N.C. 28659. Applicant's representative: Francis J. Ortman, 7101 Wisconsin Ave., Suite 605, Washington, D.C. 20014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, crated, from the plantsite and warehouse facilities of American Drew, Inc., North Wilkesboro, N.C., to points in Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, under a *continuing contract with* American Drew, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Drew, Inc., P.O. Drawer 489, North Wilkesboro, N.C. 28659. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Suite CC516, Charlotte, N.C. 28205.

No. MC 117119 (Sub-No. 578TA), filed April 13, 1976. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soy products* and by-products, not frozen (except in bulk, in vehicles equipped with mechanical refrigeration), from the plantsites and warehouse facilities of Central Soya Co., at Chicago and Gibson City, Ill.; Decatur and Indianapolis, Ind.; Belmond, Iowa; Bellevue, Ohio; and Chattanooga, Tenn., to points in California, Nevada, Oregon, and Washington, restricted to tariff originating at the above-named points, for 180 days. Supporting shipper: Central Soya Company, Inc., 1300 Fort Wayne National Bank Bldg., Fort Wayne, Ind. 46802. Send protests to: William H. Land, Jr., 3108 Federal Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 117878 (Sub-No. 10TA), filed March 31, 1976. Applicant: DWIGHT CHEEK, doing business as DWIGHT CHEEK TRUCKING, P.O. Box 1882, Amarillo, Tex. 79105. Applicant's representative: Dwight Cheek (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite and facilities of (1) Glover Packing Co., at or near Roswell, N. Mex., to points in Arizona, and California, and (2) from Glover Packing Company at or near Amarillo, Tex., to points in Arizona, California, and Las Vegas, Nev. Applicant intends to interline with other carriers, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Glover Packing Company, P.O. Box 40, Roswell, N. Mex. Glover Packing Company, P.O. Drawer 2888, Amarillo, Tex. 79105. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-3395, Herring Plaza, Amarillo, Tex. 79101.

No. MC 119443 (Sub-No. 35TA), filed April 14, 1976. Applicant: P. E. KRAMME, INC., Main St., Monroeville, N.J. 08343. Applicant's representative: Gerald A. Kramme (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chocolate products, chocolate liquor, and cocoa butter*, in bulk, in tank vehicles, from the facilities of M&M/Mars Inc., at Elizabethtown, Pa., to the facilities of M&M/Mars, a Division of Mars, Incorporated, at or near Waco, Tex., and from the facilities of M&M/Mars, a Division of Mars, Incorporated, at or near Waco, Tex., to the facilities of M&M/Mars, a Division of Mars, Incorporated, at or near Albany, Ga., and Chicago, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: M&M/Mars, a Division of Mars, Incorporated, High St., Hackettstown, N.J. 07840. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 East State St., Room 204, Trenton, N.J. 08608.

No. MC 123255 (Sub-No. 70TA), filed April 16, 1976. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Ave., Newark, Ohio 43055. Applicant's representative: C. F. Schenee, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from Mount Vernon, Ohio, to points in Kentucky, West Virginia, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chattanooga Glass Company, 400 West 45th St., Chattanooga, Tenn. 37410. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Bldg. & U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio 43215.

No. MC 125023 (Sub-No. 36TA), filed April 12, 1976. Applicant: SIGMA-4 EXPRESS, INC., 325 Beech Ave., P.O. Box 9117, Erie, Pa. 16504. Applicant's representative: Richard G. McCurdy (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from South Volney, N.Y., to points in Delaware, Washington, D.C., Maryland, New Jersey, New York, and Pennsylvania; *and returned empty malt beverage containers*, from points in Delaware, Washington, D.C., Maryland, New Jersey, New York, and Pennsylvania, to South Volney, N.Y., for 180 days. Supporting shipper: Miller Brewing Company, 4000 West State St., Milwaukee, Wis. 53208. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 126736 (Sub-No. 8TA), filed April 9, 1976. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st St., P.O. Box 1559, Jacksonville, Fla. 32201. Applicant's representative: L. H. Blow (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Para-diethylbenzene*, in bulk, in tank vehicles, from Brian, La., to Jacksonville, Fla., for subsequent export movemtnt, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: UOP Process Division, UOP Inc., 20 UOP Plaza, Des Plaines, Ill. 60016. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC133919 (Sub-No. 3 TA), filed April 15, 1976. Applicant: John Rossetti, 175 Lakeside Ave., Burlington, Vt. 05401. Applicant's representative: Bruce J. Robbins, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese products, and curd*, from Swanton, Alburg, Milton, Richmond, Cabot, and Hinesburg, Vt., to the facilities of Lucille Farm Products, Inc., at Carle Place, N.Y., under a continuing contract with Lucille Farm Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lucille Farm Products, Inc., 871 McLean Ave., Yonkers, N.Y. Send protests to: David A. Demers, Dis-

trict Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 548, 87 State St., Montpelier, Vt. 05602.

No. MC 138875 (Sub-No. 30TA), filed April 12, 1976. Applicant: SHOMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, Idaho 83705. Applicant's representative:: F. L. Sigloh (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in containers; *and fertilizer*, in bulk, bags, or tanks, from Nampa, Idaho, to Humbodlt, Pershing and Lander Counties, Nev., restricted to movements originating at the facilities of Union Seed Company, Nampa, Idaho, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Union Seed Company, 49th Ave., S., Nampa, Idaho. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 550 West Fort St., Box 07, Boise, Idaho 83724.

No. MC 139495 (Sub-No. 139TA), filed April 13, 1976. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, Kans. 67901. Applicants representative: Herbert Alan Dubin, 1819 H St. NW., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Toilet preparations* in vehicles equipped with mechanical refrigeration, from Elizabethtown, Tenn., to points in Texas, Kansas, Indiana, Michigan, Ohio, Pennsylvania, New Jersey and California, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Iodent Chemical Co., Suite 200, E-4111 Andover, Bloomfield, Mich. 48013. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 139662 (Sub-No. 2TA), filed April 16, 1976. Applicant: GARLAND D. TOWE, GARLAND W. PIKE, AND BENJAMIN E. SMITH, doing business as TOWE-PIKE GRAIN AND SUPPLY, Route 2, Hertford, N.C. 27944. Applicant's representative: Garland D. Towe (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bulk (except in tank, hopper, or dump vehicles), from the facilites of Swift Chemical at or near Suffolk, Va., to Elizabeth City and Conway, N.C., under a continuing contract with Swift Chemical Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Swift Chemical Company, Elizabeth City, N.C. 27909. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 140693 (Sub-No. 3TA), filed April 9, 1976. Applicant: BEER TRANSPORTATION COMPANY, 1120 Germantown Ave., Philadelphia, Pa. 19123. Applicant's representative: Leonard A. Jaskiewicz, 1730 M St., NW., Suite 501, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages (beer) and related advertising materials*, from South Volney, N.Y., to points in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and the District of Columbia; and (2) *Materials*, supplies, and equipment used in the manufacture, sale, and distribution of malt beverages, including returned empty malt *beverage containers*, from points in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and the District of Columbia, to South Volney, N.Y., for 180 days. Supporting shipper: Miller Brewing Company, 4000 West State St., Milwaukee, Wis. 53208. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, Room 3238, Philadelphia, Pa. 19106.

No. MC 141033 (Sub-No. 12TA), filed April 7, 1976. Applicant: CONTINENTAL CONTRACT CARRIER CORP., 15045 E. Salt Lake Ave., P.O. Box 1257, City of Industry, Calif. 91749. Applicant's representative: James I. Mendenhall (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Buffing, polishing, cleaning, scouring, washing, and bleaching compounds, cooking oil, and animal litter* (except commodities in bulk); and (2) *Non-refrigerated foodstuffs*, when moving in mixed shipments with commodities named in (1) above; (a) from the plantsites of facilities of The Clorox Company, located at Charlotte, N.C., to points in South Carolina; (b) from the plantsites or facilities of The Clorox Company, located at Chicago, Ill., to points in Indiana and the lower peninsula of Michigan; (c) from the plantsites or facilities of The Clorox Company, located at Houston, Tex., to points in that of Arkansas on and south of Interstate Highway 40, and points in Mississippi and Louisiana; (d) from the plantsites or facilities of The Clorox Company, located at Jersey City, N.J., to points in New York; (e) from the plantsites of facilities of The Clorox Company, located at Los Angeles, Calif., to points in Arizona; and (f) from the plantsites of facilities of The Clorox Company, located at Oakland, Calif., to points in Oregon and Washington, restricted in parts (1) and (2) above to shipments originating at the above-named described plantsites of facilities, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Clorox Company, 7901 Oakport St., P.O. Box 24305, Oakland, Calif. 94623. Send protests to: Mildred I. Price, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 141749 TA (Correction), filed February 2, 1976, published in the FEDERAL REGISTER issue of February 27, 1976, republished as corrected this issue. Applicant: SENTINEL TRUCKING CO., 407 NE. 44th St., Fort Lauderdale, Fla. 33334. Applicant's representative: Sol H. Proctor, 1107 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paint cans, aerosol spray cans, and can parts* and (2) (a) *Glass;* (b) *die cast hardware* and (c) *steel tubing;* (1) from Chicago, Ill., Tallapoosa, Ga., and Indianapolis, and Evansville, Ind., to Tampa, Fla.; (2) (a) from the facilities of PPG at Wichita Falls, Tex.; Crystal City, Mo., and Carlisle, Pa.; (b) from the facilities of Deco Products at Decorah, Iowa; (c) from the facilities of Allied Tube at Chicago, Ill., to Pompano Beach, Fla., under a continuing contract with Harris Paint Company and T. M. Products, for 180 days. Supporting shippers: Harris Paint Company, 1026 North 19th St., Tampa, Fla., and T. M. Products, 1201 NW. 6th St., Pompano Beach, Fla. 33060 Send protests to: Joseph B Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterry Bldg., Suite 101, 8410 NW. 53rd Terrace, Miami, Fla. 33166. The purpose of this republication is to correct the territorial description.

No. MC 141915 (Sub-No. 1TA), filed April 8, 1976. Applicant: CHARLES LOCK AND TIMOTHY LOCK, doing business as LOCK TRUCK LINE, Box 23, Carrollton, Mo. 64633. Applicant's representative: Tom B. Kretsinger, Suite 910 Brookfield Bldg., 101 West Eleventh St., Kansas City, Mo. 64105. 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, commodities requiring special equipment, and those injurious or contaminating to other lading), from Carrollton, Mo., piggybank ramp to Carrollton, Macon, Marshall, Moberly, Milan, Chillicothe, Trenton, and Richmond, Mo., restricted to the transportation of shipments having prior movement by rail, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: American Can Co., P.O. Box 702, Neenah; Wis. 54956. Lock Steel Building Co., East Wabash St., Carrollton, Mo: 64633. Revere Copper & Brass, Incorporated, 201 Mill St., Rome, N.Y. 13440. The Anaconda Company (Packaging Products), 4451 Robards Lane, Louisville, Ky. 40218. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 141937 TA, filed April 5, 1976. Applicant: RICHARD E. SPOONER, doing business as AA AUTOMOTIVE, 1408 Pittman Ave., Sparks, Nev. 89431. Applicant's representative: Richard E. Spooner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled or previously impounded and repossessed motor vehicles with not more than two axles*, and not exceeding one ton loaded capacity; *and wrecked or disabled trailers* designed to be drawn by automobile and not exceeding eight (8) feet in width, or thirty (30) feet in length in truckaway service by transporter vehicles specially adapted and equipped with power winch equipment, from points in Plumas County, Sierra County, Nevada County, El Dorado County, Alpine County, all points east of California State Route 49 in Placer County; Susanville, Calif., and intermediate points east and west on California State Route 36, and Alternate State Route 27, and South of California State Route 36, and Alternate State Route 27 in Lassen County; and Bishop, Calif., and intermediate points north on U.S. Highway 395 in Inyo and Mono Counties, Calif., on the one hand, and Reno, Nev., on the other, for 180 days. Supporting shippers: There are approximately 10 statements of support attached to the application, which may be examined 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: Robert G. Harrison, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 141943 (Sub-No. 1TA), filed April 13, 1976. Applicant: BOWMAN COMPANY, 4006 South Brook St., Louisville, Ky. 40210. Applicant's representative: A. Charles Tell, 100 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing cylinders, reproduction artwork, proofs and samples*, between Louisville, Ky., on the one hand, and, on the other, Elkhart, Ind.; Chicago, Morris, and Marseilles, Ill.; Battle Creek and Kalamazoo, Mich.; Cincinnati, Dayton, and Middletown, Ohio; St. Louis, Mo.; Downingtown, Oaks, and Paoli, Pa.; Lexington, S.C.; Richmond, Va.; and Westminster, Mass., restricted to service to and from the plantsite of Southern Gravure Service, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Thomas L. Shanesy, President, Southern Gravure Service, Inc., 2823 South Floyd St., Louisville, Ky. 40213. Send protests to: Elbert Brown, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 426 P.O. Bldg., Louisville, Ky. 40202.

No. MC 141946 (Sub-No. 1TA), filed April 13, 1976. Applicant: ACTION CENTER MOVING & STORAGE, INC., 617 West Central Blvd., Orlando, Fla. 32801. Applicant's representative: Sol H. Proctor, 1107 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household* goods. Restriction: The service authorized herein is restricted to the transportation of traffic having a prior or subsequent movement; in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization of unpacking, uncrating, and decontainerization of such traffic, between points in Citrus, Hernando, Lake, Orange, Seminole, and Sumter Counties, Fla., for 180 days. Supporting shippers: Cartwright International Van Lines, Inc., 11901 Cartwright Ave., Grandview, Mo. 64030. Vanpac Carriers, Inc., 2114 MacDonald Ave., Richmond, Calif. 94801. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 141952TA, filed April 7, 1976. Applicant: WALTER A. JUNGE, INC., 2112 S. 90th St., Tacoma, Wash., 98491. Applicant's representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine products*, from Modesto, San Jose, Lodi, Ceres, Ripon and Sonoma, Calif., to Bellevue and Seattle, Wash., for 180 days. Supporting shippers: K & L Distributors, Inc., 300 120th Ave. NE., Bellevue, Wash. 98005. G. Raden & Sons, 3310 Harbor Ave. SW., Seattle, Wash. 98126. Send protests to: L. D. Boone, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 858 Federal Bldg., Seattle, Wash. 98174.

No. MC 141968TA, filed April 13, 1976. Applicant: WINN EXPRESS COMPANY, INC., 217 Hunter St. SE., Atlanta, Ga. 30312. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 W. Peachtree St. NW., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by general merchandise stores, department stores, mail order houses and drug stores, between Atlanta, Ga., and points in the Commercial Zone thereof, on the one hand, and, on the other, points in Georgia, under a continuing contract with J. C. Penney Company, Inc., and its subsidiaries, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. C. Penney Company, Inc. and Subsidiaries, 1301 Avenue of the Americas, New York, N.Y. 10019. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Room 546, Atlanta, Ga. 30309.

PASSENGER APPLICATION

No. MC 141959TA, filed April 13, 1976. Applicant: TEENS' CAMPING TOUR OF THE WEST, INC., P.O. Box 116, Barium Springs, N.C. 28010. Applicant's representative: George W. Clapp, P.O. Box 836, Taylors, S.C. 29687. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Youth passengers*, ages 13 through 19 years, *and their baggage*, on educational camping trips, in vehicles with seating for 16 or less with or without accompanying trailer for baggage, camping equipment and supplies, in round trip, special operations, with such operations restricted to periods from June 1 through August 31 of each year and from December 26 of each year through January 8 of the next succeeding year, beginning and ending at Barium Springs, N.C., and extending to points in Alabama, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, for 180 days. Supporting shippers: There are approximately 86 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies which may examined at the field office named below. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Suite CC516, Charlotte, N.C. 28205.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-12165 Filed 4-26-76;8:45 am]

[Notice No. 120]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate of permit	Date of action
Overland Express, Inc., MC-133689 Sub-34	MC-133689 Sub-39	Apr. 1, 1976
AC-Berwick Transporters, Inc., MC-113041 Sub-11	MC-113041 Sub-12	Apr. 2, 1976
Valley Trucking Co., Inc., MC-118341 Sub-1	MC-118341 Sub-2	Do.
Russ Transport, Inc., MC-116459 Sub-54	MC-116459 Sub-55	Apr. 7, 1976
Altruk Freight Systems, Inc., MC-116544 Sub-147	MC-116544 Sub-148	Do.
W. Paul Henry, MC-125616 Sub-8	MC-125616 Sub-9	Do.
Diversified Products Trucking, MC-128021 Sub-17	MC-128021 Sub-18	Do.
Bernard A. Bailey, MC-135359 Sub-5	MC-135359 Sub-8	Do.
Bernard Bailey, MC-135359 Sub-6	MC-135359 Sub-8	Do.
Bernard Bailey, MC-135359 Sub-7	MC-135359 Sub-8	Do.
Ed's Towing & Repair, MC-138596 Sub-	MC-138596 Sub-1	Do.
AMR Co., MC-140233 Sub-1	MC-140233 Sub—	Do.
DBA Wholesale Produce, MC-140401	MC-140401 Sub-1	Do.
DBA Brewer Trucking, MC-140677 Sub-1	MC-140677 Sub-5	Do.
DBA Brewer Trucking, MC-140677 Sub-2	MC-140677 Sub-5	Do.
DBA Brewer Trucking, MC-140677 Sub-3	MC-140677 Sub-5	Do.
J. V. McNicholas Transfer, MC-14552 Sub-57	MC-14552 Sub-58	Apr. 8, 1976
Raemarc, Inc., MC-139360 Sub-1	MC-139360	Do.
Salem Transportation Co. Inc., MC-107583 Sub-57	MC-107583 Sub-58	Apr. 9, 1976
W. S. Hatch Co., MC-109689 Sub-281	MC-109689 Sub-282	Do.
Chemical Leaman Tank Lines Inc., MC-110525 Sub-1118	MC-110525 Sub-1122	Do.
Chemical Leaman Tank Lines Inc., MC-110525 Sub-1119	MC-110525 Sub-1122	Do.
Dahlsten Truck Line, Inc., MC-115669 Sub-142	MC-115669 Sub-143	Do.
Monkem Co., Inc., MC-119493 Sub-127	MC-119493 Sub-134	Do.
K & I Distributors, Inc., MC-139837 Sub-1	MC-139837 Sub-2	Do.
Toledo Frigid Lines, Inc., MC-140104 Sub-1	MC-140104 Sub-2	Do.
Diamond Transportation Systems, Inc., MC-123048 Sub-305	MC-123048 Sub-314	Apr. 12, 1976
Irgo Trucking Corp., MC-123048 Sub-5	MC-123085 Sub-6	Do.
Burkholder Bus Line, MC-140336	MC-140336 Sub-1	Do.
D. S. Jacobsen Trucking Co., MC-140592 Sub-1	MC-140592 Sub-2	Do.
Wilson Trucking Corp., MC-64600 Sub-45	MC-64600 Sub-46	Apr. 13, 1976
Stuart M. Smith, Inc., MC-66650 Sub-11	MC-66650 Sub-12	Do.
DBA Henry Edwards Trucking, MC-69492 Sub-42	MC-69492 Sub-43	Do.
Schultz Transit, Inc., MC-118202 Sub-21	MC-118202 Sub-26	Do.
Mallinger Truck Line, Inc., MC-100449 Sub-41	MC-100449 Sub-49	Do.
Steere Tank Lines, Inc., MC-107064 Sub-110	MC-107064 Sub-109	Apr. 14, 1976
DBA Marcello's Service, MC-123090 Sub-1	MC-123090 Sub-2	Do.
Katuin Bros. Inc., MC-126539 Sub-21	MC-126539 Sub-22	Do.
Breen Trucking, Inc., MC-135913 Sub-6	MC-135913 Sub-7	Do.
William F. Hoops, Inc., MC-140129 Sub-1	MC-140129 S	Do.
Givens Trucking Co., Inc., MC-140787	MC-140787 Sub-1	Do.
Dart Transit Co., MC-114457 Sub-219	MC-114457 Sub-199	Apr. 15, 1976
Transport Inc. of S. D., MC-124669 Sub-36	MC-124669 Sub-37	Do.
Overland Express, Inc., MC-133689 Sub-51	MC-133689 Sub-49	Do.
North Star Transport, Inc., MC-134145 Sub-58	MC-134145 Sub-55	Do.
North Star Transport, Inc., MC-134145 Sub-53	MC-134145 Sub-55	Do.
DBA Moon's Garage, MC-141065	MC-141065 Sub-1	Do.
Langer Transport Corp., MC-42261 Sub-116	MC-42261 Sub-117	Apr. 16, 1976
E. Roscoe Willey Inc., MC-44913 Sub-16	MC-44913 Sub-17	Do.
Langer Transport Corp., MC-42261 Sub-118	MC-42261 Sub-117	Do.
Pauls Trucking Corp., MC-59640 Sub-44	MC-59640 Sub-45	Do.
McVey Trucking, Inc., MC-95376 Sub-9	MC-95376 Sub-10	Do.
Purolator Courier Corp., MC-111729 Sub-493	MC-111729 Sub-496	Do.
Ray Wagner & Son Trucking, MC-139196 Sub-7	MC-139196 Sub-5	Do.
Service Motor Freight, Inc., MC-139645-2	MC-139645 Sub-3	Do.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-12154 Filed 4-26-76;8:45 am]

[Notice No. 121]

TEMPORARY AUTHORITY TERMINATION

The temporary authorities granted in the dockets listed below have expired as a result of final action either granting or denying the issuance of a Certificate or Permit in a corresponding application for permanent authority, on the date indicated below:

Temporary authority application	Final action or certificate of permit	Date of action
Schwerman Trucking Co., MC-124078 Sub-579TA	MC-124078 Sub-586	Apr. 19, 1976
Schwerman Trucking Co., MC-124078 Sub-582TA	MC-124078 Sub-586	Do.
Schwerman Trucking Co., MC-124078 Sub-595TA	MC-124078 Sub-606	Do.
Schwerman Trucking Co., MC-124078 Sub-604TA	MC-124078 Sub-606	Do.
Schwerman Trucking Co., MC-124078 Sub-605TA	MC-124078 Sub-606	Do.
Schwerman Trucking Co., MC-124078 Sub-608TA	MC-124078 Sub-606	Do.
Hi-Way Transport Ltd., MC-134376TA	MC-134376 Sub-1	Do.
Nationwide Auto Transporters, Inc., MC-135633 Sub-8TA	MC-135633 Sub-4	Do.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-12153 Filed 4-26-76;8:45 am]

federal register

TUESDAY, APRIL 27, 1976

PART II:

DEPARTMENT OF LABOR

Office of the Secretary

■

OMB CIRCULAR A-95 PROCEDURES

Proposed Implementation

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Parts 94, 95, 96, 97, 97a]

OMB CIRCULAR A-95 PROCEDURES

Proposal To Implement Requirements

The Department of Labor is proposing to amend Title 29 of the Code of Federal Regulations to implement the requirements of Office of Management and Budget (OMB) Circular A-95, revised on January 13, 1976 at 41 FR 2052. These proposed regulations are designed to coordinate and promote, through State and areawide clearinghouses, consistency and compatibility between Department of Labor programs and projects and State, areawide and local plans and programs.

The following proposed regulations represent a complete compilation of A-95 procedures for Employment and Training Administration (ETA) programs covered by A-95 except the Work Incentive Program for welfare recipients (WIN). Persons interested in retaining a complete compilation should keep this publication because these regulations will be incorporated into the regulations of each covered program. It should be noted that the few non-A-95 requirements, contained herein for clarity, are subject to later amendment.

In 29 CFR Part 94, containing the general provisions for programs under the Comprehensive Employment and Training Act of 1973 (CETA), as amended, the table of contents for 29 CFR Part 97a is proposed to be changed to add a Subpart H containing A-95 procedures for the Job Corps program.

In 29 CFR Part 95, containing the regulations for comprehensive employment and training services under Title I of CETA, §§ 95.11, 95.15, 95.18, 95.21, 95.53, and 95.54 are proposed to be amended to implement the requirements of Part I of Attachment A, OMB Circular A-95. The A-95 procedures for Part 95 set forth in this document have also been proposed as part of the regulations for Titles I and II of CETA, published in the FEDERAL REGISTER on April 9, 1976.

In 29 CFR Part 96, containing the regulations for programs under Title II of CETA, the A-95 procedures proposed for Part 95 are proposed to apply to Part 96, Subpart B, insofar as Part 96 makes reference to the procedures set forth in Part 95.

In 29 CFR Part 96, Subpart D, containing the regulations for CETA Title II programs for Indian tribes on Federal and State reservations, section 96.45 is proposed to be amended to implement the requirements of Part I(2) (c) of Attachment A, OMB Circular A-95.

In 29 CFR Part 97a, containing the regulations pertaining to the Job Corps program, A-95 procedures are proposed to be added. Following a preliminary analysis of the impact of Part I of Attachment A, OMB Circular A-95, on Job Corps programs, the Department has concluded that a procedural variation from A-95 procedures may be necessary due to statutory and regulatory limitations which seem to make standard review procedures inappropriate. Therefore, 29 CFR Part 97a is proposed to be amended by adding a new Subpart H.

Following an analysis of the impact of Part I of Attachment A, OMB Circular A-95 on the Migrant and Other Seasonally Employed Farmworkers Program, the Department of Labor and OMB found a procedural variation from A-95 procedures necessary due to statutory and regulatory limitations which make standard review procedures inappropriate. The A-95 procedures at 29 CFR 97.214 and 97.216 were, therefore, published as final regulations in the FEDERAL REGISTER on July 9, 1975 (40 FR 28980). These procedures are changed herein only as a means of clarifying current A-95 procedures. They are printed herein primarily in order to provide a single package of procedures for all Employment and Training Administration programs covered under OMB Circular A-95.

Interested persons may submit written comments to Assistant Secretary for Employment and Training, United States Department of Labor, 6th and D Streets NW., Washington, D.C. 20213. Attention: Pierce A. Quinlan, Administrator, Office of Comprehensive Employment Development until May 27, 1976.

AUTHORITY: Sec. 702(a), Pub. L. 93-203, 87 Stat. 839, Pub. L. 93-567, 88 Stat. 1845; OMB Circular A-95, 41 FR 2052.

In consideration of the foregoing, it is proposed to amend 29 CFR Subtitle A, as follows:

PART 94—GENERAL PROVISIONS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

* * * * *

§ 94.3 Consolidated table of contents for Parts 94–99.

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PART 97a—JOB CORPS PROGRAM UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

* * * * *

SUBPART H—A-95 PROCEDURES

Sec.
97.130 Notification of intent.
97.131 Content and description of notification of intent.
97.132 Review and comment.

* * * * *

PART 95—PROGRAMS UNDER TITLE I OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

* * * * *

§ 95.11 Preapplication for Federal Assistance; consortium agreements.

(a) (1) The Secretary of Labor, through a notice in the FEDERAL REGISTER, shall annually inform all potential prime sponsor applicants of their eligibility to receive funds under Title I. A prime sponsor applicant interested in receiving financial assistance shall submit, at least 30 days prior to the submission of its completed grant application to the clearinghouses for formal review, as specified in § 95.15(c), a preapplication to the RA, the Governor and the appropriate State and areawide A—95 clearinghouses (see Part I of Attachment A, OMB Circular A-95, as revised and printed in the FEDERAL REGISTER on January 13, 1976). The preapplication will consist of Standard Form 424 as prescribed by Federal Management Circular (FMC) 74-7 as revised and printed in the FEDERAL REGISTER on November 21, 1975, with an attachment giving the following information:

(i) Geographical area(s) to be served;

(ii) Population of area(s) to be served;

(iii) Certification that the prime sponsor applicant, except for CEP and consortia prime sponsor applicants, has the required general government authority as defined in § 94.4;

(iv) Name of any ineligible unit of general local government located within the prime sponsor applicant's jurisdiction that has informed the prime sponsor applicant that it will not be participating in the prime sponsor applicant's plan.

(v) Certification that the development of the prime sponsor applicant's plan will be in accordance with the requirements of the Act and regulations; and

(vi) The signature of the chief elected official(s) or chief executive officer(s), as appropriate, of each prime sponsor applicant. For a newly formed consortium, and for a consortium in which one or more members have joined or withdrawn, the signature of the chief elected official or chief executive officer of each consortium member is required. In the case of an established consortium with no membership changes, the preapplication may, with the consent of all consortium members, be signed by the consortium's chief executive officer.

(2) State and areawide clearinghouses may request information in addition to that furnished on the preapplication form. Such a request shall be made within a reasonable period of time in order to avoid delay in a prime sponsor applicant's preparation of its grant application.

(3) The A-95 clearinghouses shall, within 30 days of receiving the preapplication, inform the prime sponsor applicant of any actual or potential problems with the preapplication and notify the prime sponsor applicant if they wish to review the completed application. If the prime sponsor applicant receives no such notification, the prime sponsor applicant has fulfilled its obligation under A-95 and it may submit its application to the RA without submitting it to the A-95 clearinghouses as specified in § 95.15(d) of these regulations.

* * * * *

§ 95.15 Comment and publication procedures relating to submission of grant application.

(a) As provided in paragraphs (b) and (c) of this section, each prime sponsor shall provide an opportunity for comment on the application (secs. 105 (c) (2) and 108).

(b) (1) Each prime sponsor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) which will provide for a general circulation throughout the area to be served by the

prime sponsor's plan, a statement indicating the following information:

(i) The source of funds under which the grant is requested;

(ii) The amount of grant allotment;

(iii) The purpose of the grant, e.g., to provide employment and training opportunities; and

(iv) The location and hours when the complete grant application and a comparison of performance against prior year's plan through the most recent quarter can be reviewed and the address and phone number where questions and comments may be directed.

(2) The publication shall be made 30 days prior to the submission of the application to the RA. A copy of the newspaper article shall be transmitted to the RA.

(c) Each prime sponsor applicant shall provide a copy of its application for the purpose of commenting thereon, to the Governor 30 days prior to its submission to the RA. At the same time it shall provide a summary to appropriate units of general local government within its jurisdiction with a population of at least 25,000 persons, to appropriate Indian prime sponsors, and to labor organizations representing employees engaged in similar work in the same areas as that for which enrollees will receive subsidized employment or training.

(d) Each applicant that, in response to the submittal of its preapplication, has received notification from the appropriate State and sub-State clearinghouse(s) that it wishes to review the completed application (see § 95.11(a)(2)) should also provide a copy of its application to such clearinghouse(s) 30 days prior to its submission to the RA.

(e) Comments pursuant to paragraphs (b), (c), and (d) shall be made to the prime sponsor applicant and the RA within 30 days of publication. A prime sponsor applicant shall acknowledge any written comment made pursuant to this section. It shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor's determination. In addition, all substantive written comments and responses will be transmitted to the RA with the grant application, unless the comments which were made during the 30-day period are received after the application's submission, in which case they will be sent separately to the RA.

(f) Where no comments have been received from an A-95 clearinghouse, or where the clearinghouse has not requested to review the grant application, the prime sponsor shall send a statement along with its application indicating that the procedures in § 95.11(a) and § 95.15(c) above have been followed and that no comments or recommendations have been received or that the clearinghouse did not request to review the grant application.

* * * * *

§ 95.18 Application approval; grant agreement.

(a) An application for a grant shall be approved if it meets the requirements of the Act, the regulations promulgated under the Act, other applicable law, and if the RA determines that the prime sponsor has demonstrated maximum efforts to meet the goals of the prior year's plan.

(b) An application for a grant from a consortium, or pursuant to a State multijurisdictional agreement, shall be approved if, in addition to meeting the specifications in paragraph (a), an agreement among the parties has been submitted to and approved by the RA.

(c)(1) A prime sponsor applicant, the Governor, and the A-95 clearinghouse shall be notified by the RA within 7 days of action taken on the application. The standard multipurpose form, SF 424, as prescribed by FMC 74-7 and published in the FEDERAL REGISTER on November 21, 1975, will be used for this purpose. If any party commenting to the RA pursuant to the A-95 clearinghouse review process recommends disapproval of the grant in whole or in part and if the RA after review of the recommendation determines that the grant should be approved, the RA shall inform the party making the comment of the reasons for the RA's determination on the Standard Form 424, along with the notification of action taken.

(2) Where a clearinghouse has recommended against approval of an application because it conflicts with or duplicates another Federal or federally assisted project, the RA will consult with the agency assisting the referenced projects prior to approving the application.

(3) If an application is approved, the RA shall provide the prime sponsor with a grant agreement, consisting of the Grant Signature Sheet and the Assurances and Certification Form, and the Comprehensive Manpower Plan which is included by reference. The Comprehensive Manpower Plan shall be attached to the grant agreement.

(d) The grant agreement for the subsequent program year may be effectuated by a modification to the existing grant. In such cases all of the requirements in Subpart B of this Part 95 apply.

* * * * *

§ 95.21 Modifications.

(a) *General*

(1) A modification to the grant is required under any of the following conditions:

(i) change in term of the grant;

(ii) change in grant allotment;

(iii) change in the assurances and certifications;

(iv) substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of individuals to be served, planned placement terminations, individuals to be served within significant client groups, is to be increased or decreased by 15 percent or more.

(B) For grants of $100,000 or less, when the cumulative transfer of funds among program activities or cost categories exceeds $15,000.

(C) For grants of over $100,000, when the cumulative transfer of funds among program activities or cost categories exceeds $50,000 or 15 percent of the total grant budget whichever is greater.

(D) When the program design is altered significantly such as when there is a change in the allowance payment system (i.e., provisions for allowance waivers), development or elimination of a program activity, or when 10% or more of the public service employment positions are to be used for rehiring laid-off employees.

(v) at the initiation of the RA, after consultation with the prime sponsor, to insure compliance with the regulations and/or to insure responsiveness to changing economic conditions.

(2) Grant modifications will not be initiated solely to adjust planned performance to meet actual performance.

(b) *A-95 Clearance.*

(1) Modifications require clearance through the A-95 clearinghouses only under the following conditions:

(i) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the grant allotment for the current program year and/or;

(ii) The term of the grant is extended for a period of more than 3 calendar months and/or;

(iii) The RA directs that A-95 clearance is required for a particular modification.

(2)(i) When A-95 clearance is required, the prime sponsor, whenever possible, shall provide notification to the appropriate A-95 State and areawide clearinghouses of its intent to modify its grant 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SF 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the prime sponsor receives no notification from the A-95 clearinghouses that they wish to review the modification, the prime sponsor has fulfilled its obligation under A-95 and may submit its modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b)(2)(ii) of this section.

(ii) When a prime sponsor has not provided notification as specified in paragraph (b)(2)(i) of this section, the prime sponsor shall in all cases submit a copy of its modification to the clearinghouses for comment 30 days prior to its submission to the RA.

(iii) The procedures set forth in § 95.15(f) and § 95.18(c) (1) and (2) shall apply to modifications under paragraph (b) of this section.

(c) *Format.* Modifications will consist of the following:

(1) Revised form SF 424 (if A-95 clearance is required);

(2) Revised Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involv-

ing a change in the grant allotment must be received in the regional office within 30 days of the beginning of the current quarter in order to include changes to the current quarter goals.

(3) Revised Signature Sheet;

(4) Narrative description of the changes made and certification that the review and comment procedures in paragraph (d) have been complied with.

(5) A copy of the newspaper announcement required in paragraph (d).

(6) Revised portions of the program narrative description, if appropriate.

(7) Revised Occupational Summary, if appropriate.

(d) *Publication and Comment.*

(1) No later than the date of submission to the RA, a copy of the proposed modifications will be forwarded to the Governor and summaries of the modifications will be provided to appropriate units of general local government with a population of 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the prime sponsor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the prime sponsor's intent to request a modification, a brief summary of the proposed modification, and the location and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b)(2)(ii) and (d)(1) shall be made to the prime sponsor and the RA within 30 days of publication. All substantive written comments and responses will be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they will be sent separately to the RA.

(3) A prime sponsor shall acknowledge any written comment made pursuant to this section. It shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor's determination.

(e) *Notification of Action.*

(1) RA should take final action on approval or disapproval of any proposed modification within 30 days of receipt.

(2) A denial of a prime sponsor's request for a modification shall be subject to the appeal procedures set out in Part 98.

(f) *Incremental Funding.* When the grant allotment is obligated by the RA in increments, each subsequent obligation by the RA requires a new grant signature sheet to be signed by an authorized representative of the Department of Labor. Such a signature sheet does not require a revised Comprehensive Manpower Plan, and does not require publication, comments or A-95 clearance procedures to be followed.

(g) *Minor Modifications.* A prime sponsor may make any change in its Program Planning Summary, Budget Information Summary, or narrative description which is not set out in paragraph (a) of this section without prior approval, but must show any such change in the first Program Status Report, as appropriate, submitted to the Department after the change has been made. At the same time this report is submitted, an updated Program Planning Summary, Budget Information Summary, or narrative description, as appropriate, shall also be submitted to the RA. Only those lines and columns or portions of the narrative affected by the modification need be submitted. Comments and publication requirements do not apply to minor modifications.

* * * * *

§ 95.53 Application approval and disapproval; grant agreement.

(a) The RA shall approve any grant application which meets the following standards and requirements;

(1) It contains all the required forms, information, and certifications required by the regulations;

(2) It meets the preapplication, comment and publication procedures under Subpart B of this Part 95, except that in providing summaries of the grant application as specified in § 95.15(c), such summaries shall be provided to each prime sponsor in the State and to units of general local government within the Balance of State with a population of 25,000. The Governor shall also provide the summaries to appropriate Indian sponsors and to labor organizations as specified in § 95.15(c); and

(3) It meets the conditions for approval of grant applications under § 95.17 (a) and (b)(1), (4), (7), (8), (9), (10), (11), (12), (13), and § 95.18, Subpart B of this Part 95.

(b) A special grant agreement shall be signed when the grant application is approved by the RA. This agreement is composed of a Special Grant to Governors Signature Sheet and an Assurances and Certifications Form and the Special Grant Plan which is included by reference. The Special Grant Plan shall be attached to the grant agreement.

(c) An application for a special grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or any other applicable law. All other conditions set forth in § 95.19 shall apply to the disapproval of special grants.

(d) Upon approval, the Governor shall provide a summary of the Special Grant to each prime sponsor in the State.

§ 95.54 Modifications.

(a) *General.*

(1) A modification to a Governor's special grant is required under any of the following conditions:

(i) change in term of the grant;

(ii) change in grant allotment;

(iii) change in the assurances and certifications;

(iv) substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of individuals to be served or the planned placement terminations is to be increased or decreased by 15 percent or more.

(B) When the cumulative transfer of funds among program activities or cost categories exceeds $50,000 or 15 percent of the total grant budget whichever is greater.

(C) When the program design is altered significantly (see § 95.21(a)(1)(iv)(D)).

(2) Grant modifications will not be initiated solely to adjust planned performance to meet actual performance.

(b) *A-95 Clearance.*

(1) Modifications require clearance through the A-95 clearinghouse only under the following conditions:

(i) there is a cumulative increase or decrease in funds equal to or more than 15 percent of the grant allotment for the current program year and/or;

(ii) the term of the grant is extended for a period of more than 3 calendar months and/or;

(iii) the RA directs that A-95 clearance is required for a particular modification.

(2)(i) When A-95 clearance is required, the Governor, whenever possible, shall provide notification to the appropriate A-95 State and areawide clearinghouses of its intent to modify its grant 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SF 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the Governor receives no notification from the A-95 clearinghouses that they wish to review the modification, the Governor has fulfilled his obligation under A-95 and may submit the modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b)(2)(ii) of this section.

(ii) When the Governor has not provided notification as specified in paragraph (b)(2)(i) of this section, the Governor shall in all cases submit a copy of its modification to the clearinghouses for comment 30 days prior to its submission to the RA.

(iii) The procedures set forth in § 95.15(f) and § 95.18(c)(1) and (2) shall apply to modifications under paragraph (b) of this section.

(c) *Format.* Modifications will consist of the following:

(1) Revised Form SF 424 (if A-95 clearance is required);

(2) Revised Special Grant Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involving a change in the grant allotment must be received in the regional office within 30 days of the beginning of the current quarter in order to include changes to the current quarter goals.

(3) Revised Signature Sheet;

(4) Narrative description of the changes made and certification that the

review and comment procedures in paragraph (d) have been complied with.

(5) A copy of the newspaper announcement required in paragraph (d).

(6) Revised portions of the program narrative description, if appropriate.

(d) *Publication and Comment.*

(1) No later than the date of submission to the RA, the Governor shall provide a summary of the modification to each prime sponsor in the State and units of general local government within the Balance of State with a population of 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the Governor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the intent to request a modification, a brief summary of the proposed modification, and the location and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b) (2) (ii) and (d) (1) shall be made to the Governor and the RA within 30 days of publication. All substantive written comments and responses will be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they will be sent separately to the RA.

(3) The Governor shall acknowledge any written comment made pursuant to this section, and shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for such determination.

(e) *Notification of Action.*

(1) The RA should take final action on approval or disapproval of any proposed modification within 30 days of receipt.

(2) A denial of a Governor's request for a modification shall be subject to the appeal procedures set out in Part 98.

(f) The procedures for incremental funding and minor modifications are the same as those specified in § 95.21 of Subpart A.

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PART 96—PROGRAMS UNDER TITLE II OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

* * * * *

§ 96.45 Comment and publication procedures relating to submission of Indian grant applications.

(a) Each eligible Indian applicant which plans to apply for a grant shall, no later than the date of its submission of an application to the Director, Division of Indian and Native American Programs, provide an opportunity to comment on its application to the following officials in accordance with section 206 of the Act:

(1) The Governor;

(2) Appropriate officials of units of general local government; and

(3) Officials of labor organizations representing employees who are engaged in similar work in the same area.

(b) Comments by those individuals and officials listed in paragraph (a) shall be made to the eligible applicant and the Director within 30 days of the receipt of notice of the opportunity to comment.

(c) Eligible Indian applicants shall acknowledge any comments made pursuant to this section by providing the commenting party with appropriate information and notice regarding the actions or revisions the applicant intends to take or adopt, if any, due to the comment. All such comments and responses shall be transmitted to the Director, Division of Indian and Native American Programs.

(d) The Director, Division of Indian and Native American Programs, will notify the appropriate State and areawide clearinghouses of any applications from Federally recognized tribes, upon their receipt.

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PART 97—MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS PROGRAMS

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§ 97.214 Submission of Funding Request.

(a) An eligible applicant shall submit three copies of the Funding Request to the following address:

U.S. Department of Labor, Employment and Training Administration, Patrick Henry Building, Room 7122, 601 D Street NW., Washington, D.C. 20213, Attn: Chief, Migrant & Seasonal Farmworker Division.

(b) Two copies of the Funding Request shall also be submitted directly to the appropriate Regional Administrator for Employment and Training at the same time the three copies are submitted to the above address and labeled: Funding Request for CETA 303 Farmworker Programs.

(c) (1) Copies of the Funding Request shall also be submitted to the appropriate State and/or area clearinghouse(s), as well as to those eligible applicant(s) which request an opportunity for review and comment as provided in § 97.211(c) at the same time the Funding Request is submitted to the above address. Eligible applicants shall send a statement to the above address accompanying the Funding Request, indicating that the procedures in this paragraph have been followed.

(2) All comments from clearinghouses and other reviews shall be submitted to the address referenced in § 97.214(a) by October 8. However, no notification of selection of potential grantee(s) for a State or area will be made until all clearinghouses and other reviews have had at least 30 days from receipt of the Funding Request from that State or area to submit comments.

* * * * *

§ 97.216 Notification of selection.

(a) (1) Potential grantees selected as a result of the procedures set forth in § 97.215 shall be so notified by the Secretary. The notification shall invite each potential grantee to negotiate the final terms and conditions of the grant, shall establish the time and place of the negotiations, and shall indicate the State or area to be covered by the grant. Changes in the proposed program's target area and/or funding level are not appealable under the provisions of §§ 97.290–97.292.

(2) Clearinghouses submitting comments on the application shall be notified of the selection of the potential grantee within seven working days of selection. Where a clearinghouse has recommended against the selection of the potential grantee, the notification shall include an explanation as to the reasons why its substantive comments were not accepted.

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PART 97a—JOB CORPS PROGRAM UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

* * * * *

Subpart H—A–95 Procedures

§ 97a.130 Notification of intent.

(a) The national office shall notify State and area-wide planning and development clearinghouses of any intent to fund a Job Corps project or program if:

(1) an existing Civilian Conservation Center is to be relocated;

(2) a new Civilian Conservation Center is to be established; or

(3) a contract between a union and the Job Corps national office for the training of corpsmembers in specified trades is to be signed, except when this is a renewal under an existing contract.

(b) Regional offices shall notify State and areawide planning and development clearinghouses of any intent to fund a Job Corps project or program if:

(1) An existing contract center is to be relocated;

(2) A new contract center is to be established;

(3) A contract for the operation and management of a contract center is due to expire and another contract is to be let, except when the renewal of the contract is under the provisions of the existing contract; or

(4) A substantive modification is being made to an existing contract center's contract for the operation and management of the center. For purposes of this paragraph a substantive modification shall mean:

(i) the change of a center from one sex to coeducational,

(ii) increases or decreases of the number by 25% or more of a center's contracted capacity.

(iii) increases or decreases of a center's estimated cost for performance by 25% or more.

§ 97a.131 Content and description of notification of intent.

(a) The notification of intent shall contain a brief description of the project or program to be funded or modified including:

(1) the type of organization or organizations that will be eligible to submit proposals for Job Corps funds, or that will be receiving Job Corps funds;

(2) the geographic location of the project or program;

(3) the estimated cost (unless cost information must be kept confidential to insure the integrity of the competitive award process), the target population, and the services to be provided; and

(4) the estimated date of the funding or modification.

(b) When an existing center is to be relocated or a new center established, an environmental impact statement shall be included in the notification.

§ 97a.132 Review and comment.

(a) The notification of intent shall be sent to the appropriate clearinghouse(s) 30 days before the funding or modification as provided in § 97a.130 of this Subpart. Clearinghouses shall promptly submit any comments they may have to the regional office or national office, as appropriate. No Job Corps contract or substantive modification subject to these A–95 procedures shall be signed until clearinghouse comments have been received or until 30 days have elapsed from the date the notification of intent was sent, whichever is earlier.

(b) Clearinghouses shall be notified by Standard Form 424 of any major action taken on the projects or programs days of such actions. Major actions shall include awards, rejections, return for amendments, deferrals, or withdrawals. If a clearinghouse has recommended against approval of a Job Corps contract or substantive modification subject to these A–95 procedures or recommended approval only with specific or major changes, and if the recommendations are not accepted, the Standard Form 424 shall be accompanied by an explanation, in writing, of the reasons for the rejection of the recommendation.

(c) If a clearinghouse has recommended against approval of a project or program because it conflicts with or duplicates another Federal or federally assisted project, the regional or national office, as appropriate, shall consult with the Federal agency assisting the other project or program prior to approval.

* * * * *

(Catalog of Federal Domestic Assistance Nos. 17.232, Comprehensive Employment and Training Programs; 17.230, Farm Workers; 17.211, Job Corps)

Signed at Washington, D.C. this 20th day of April 1976.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.76–12004 Filed 4–26–76;8:45 am]

federal register

TUESDAY, APRIL 27, 1976

PART III:

DEPARTMENT OF THE INTERIOR

National Park Service

■

NATIONAL REGISTER OF HISTORIC PLACES

Procedures for Requesting Determinations of Eligibility

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 63]

NATIONAL REGISTER OF HISTORIC PLACES

Determinations of Eligibility for Inclusion

Chapter I of Title 36 of the Code of Federal Regulations is proposed to be amended by adding a new Part 63.

Under Executive Order 11593, Federal agencies are required to locate, inventory, and nominate to the Secretary of the Interior, "all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places." Recently, on August 29, 1975, 40 FR 39875, a notice of proposed rulemaking was published that detailed the process of nominating properties to the National Register. Comments have been received concerning that proposal and a notice of final rulemaking has now been issued, 41 FR 1590, to be effective April 1, 1976.

In the prefatory remarks to the final document, we discussed the fact that subsequent rulemakings were in process concerning other elements of responsibilities imposed by Executive Order 11593. At the present time, detailed administrative procedures for the further implementation of Executive Order 11593 are being developed to set forth, inter alia, criteria and procedures to be applied by Federal agencies in the review and location and inventory required by section 2(a). Those procedures are still in preparation and will be published shortly.

This notice concerns one collateral element in the process of locating, inventorying, and nominating sites, buildings, districts, and objects under Federal jurisdiction or control to the National Register of Historic Places. Section 2(b) of Executive Order 11593 specifies several steps to be taken during the interim period, prior to the completion of the required inventories. These inventories were to be completed no later than July 1, 1973; however, the majority of concerned Federal agencies have not as yet completed this responsibility.

Section 2(b) provides that Federal agencies shall exercise caution to assure that any federally owned properties that might qualify for nomination are not inadvertently transferred, sold, demolished, or substantially altered. Toward this end, Federal agencies are required to refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion in the National Register of Historic Places.

Section 2(b) requires the Secretary of the Interior to answer questions concerning the eligibility of properties for listing in the National Register of Historic Places. Section 3(f) requires the Secretary to advise Federal agencies in the evaluation and identification of historic properties. To implement these responsibilities, the National Park Service will provide professional advice concerning the eligibility of properties, both under Federal jurisdiction or control and in the environmental impact area of projects in which Federal agencies are involved, in the manner provided herein.

These procedures are consistent with the procedures of the Advisory Council on Historic Preservation found in 36 CFR 800, which also concern, inter alia, section 1(3) of Executive Order 11593 and the National Environmental Policy Act of 1969 (NEPA).

Under NEPA, agencies have a responsibility to identify cultural resources within a project's potential environmental impact area. In this regard, section 101(b)(4) of this law provides that it is the continuing responsibility of the Federal Government to use all practical means to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may "preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice." As a part of this responsibility and consistent with the procedures of the Advisory Council on Historic Preservation discussed below, these proposed procedures allow the National Park Service to be responsive to agencies wishing to obtain determinations of eligibility as part of the NEPA process.

The procedures provided by this proposed rulemaking are also consistent with the identification requirement guidelines that have been developed by the Advisory Council on Historic Preservation, 36 CFR Part 800, for compliance with section 1(3) of Executive Order 11593.

In our judgment, it is appropriate for agencies to meet their responsibilities under section 1(3) of Executive Order 11593 and under NEPA by adhering to the Advisory Council's procedures and to request determinations of eligibility for all properties within the area of an undertaking's potential environmental impact that appear to meet the criteria of the National Register or if it is questionable whether the criteria are met.

The procedures proposed herein for public review and comment are directed to Federal agencies and explain the process through which a request for a determination of eligibility is made.

The determination of eligibility process is designed to be a flexible and efficient means of providing professional evaluations of cultural resources to Federal agencies as part of their planning process. Agencies seek determinations of eligibility prior to making decisions which might affect significant cultural resources. Under the present 36 CFR Part 60, determinations of eligibility do not constitute listing in the National Register.

This process does not include any form of notice to property owners or others. Identifying elements of the cultural environment is not a Federal action that requires such notice; it should be a routine part of the agency's consideration of cultural resources as part of the total environment. Properties determined to be eligible will be published regularly in the FEDERAL REGISTER.

These instructions for requesting determinations of eligibility have been informally disseminated and used by Federal agencies for some time. This proposed rulemaking represents a response to the obvious need for a clear and readily available statement of the determination of eligibility procedures and the level of documentation necessary for the Secretary of the Interior to determine the eligibility of properties for inclusion in the National Register as part of the Federal planning process. They are provided in a proposed rulemaking format so they may be incorporated in the Code of Federal Regulations for maximum availability.

This rulemaking is developed under the general authority of the National Register of Historic Places program as it appears at section 2(k) of the Historic Sites Act of 1935, 16 U.S.C. 462(k) (1970 ed.), and section 101(a)(1) of the National Historic Preservation Act of 1966, U.S.C. 470(a)(1) (1970 ed.) and sections 3(b) and 3(f) of Executive Order 11593.

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Director, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington, D.C. 20240, on or before May 27, 1976.

In consideration of the foregoing it is proposed that Chapter I of Title 36 of the Code of Federal Regulations be amended by adding a new Part 63, reading as follows:

PART 63—PROCEDURES FOR REQUESTING DETERMINATIONS OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER

Sec.

63.1 Purpose.
63.2 Determination of eligibility process.
63.3 Special procedures to be applied when the agency and the State Historic Preservation Officer agree a property is eligible.
63.4 Publication of properties determined eligible in the Federal Register.
Appendix A—Guidelines for level of documentation to accompany requests for determination of eligibility for inclusion in the National Register.
Appendix B—Sample form letter for statement of the opinion of the State Historic Preservation Officer concerning the eligibility of a property for inclusion in the National Register.

§ 63.1 Purpose and authorities.

These procedures, which have been developed to assist Federal agencies in identifying and evaluating cultural resources in a timely fashion as part of the planning process, define how to request determinations of eligibility under section 2(b) of Executive Order 11593 and the procedures of the Advisory Council on Historic Preservation (36 CFR 800) for the implementation of sections 1(3)

and 2(b) of Executive Order 11593 and the National Historic Preservation Act of 1966. Federal agencies request determinations of eligibility in considering cultural resources on lands under their jurisdiction or control or within the environmental impact areas of proposed projects.

§ 63.2 Determination of eligibility process.

(a) The Department of the Interior will respond in a timely fashion to an adequately documented request for a determination of eligibility when it is submitted in accordance with the following procedures. The Department recommends that agencies consult the State Historic Preservation Officer as the first step in identifying cultural resources. The State Historic Preservation Officer can identify properties listed in or nominated to the National Register or included in a State inventory. The State Historic Preservation Officer may also be able to advise the agency concerning the need for the agency to conduct a cultural resource survey of the proposed project area. Cultural resource surveys conducted by Federal agencies should obtain the level of documentation described in Appendix A.

(b) In accord with an agency's planning responsibilities under the National Historic Preservation Act of 1966, Executive Order 11593, and the National Environmental Policy Act of 1969, the agency should, in consultation with the State Historic Preservation Officer, apply the National Register criteria contained in 36 CFR Part 60.6 to all potentially significant historic and cultural properties identified by the agency. If the agency determines that a property appears to meet the criteria, or if it is questionable whether the criteria are met, the agency should request, in writing, an opinion regarding the property's eligibility for inclusion in the National Register. A question on whether a property meets the National Register criteria for evaluation may occur when there is a difference of opinion on eligibility either between the agency and the State Historic Preservation Officer or the agency and the State Historic Preservation Officer on the one hand and private groups or citizens on the other.

(c) The agency shall submit a letter of request for a determination of eligibility or a statement in accord with § 63.3 below, if applicable, with a description, statement of significance, photographs, and a map, directly to the Director, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington, D.C. 20240. If available, the opinion of the State Historic Preservation Officer on the eligibility of the property should also be forwarded with the request. The details concerning adequate documentation are set forth in Appendix A.

(d) The Director, Office of Archeology and Historic Preservation, will review the documentation submitted by the agency and will respond to the agency's request within a reasonable period of time. If the opinion of the State Historic Preservation Officer is not included in the documentation submitted by the agency, the Director, Office of Archeology and Historic Preservation, will write directly to the State Historic Preservation Officer for his opinion. If the Director does not receive a response from the State Historic Preservation Officer within 2 weeks of the State Historic Preservation Officer's receipt of the letter, the Director will proceed with the determination of eligibility and indicate to the agency that the State Historic Preservation Officer did not give an opinion. If documentation submitted with the request does not meet the standards set forth in Appendix A, the Director, Office of Archeology and Historic Preservation, will inform the agency of the additional information necessary to complete the professional review of the property.

§ 63.3 Special procedures to be applied when the agency and the State historic preservation officer agree a property is eligible.

If, during the consultation described Register, (b) a copy of the documenta- and the State Historic Preservation Officer agree that a property meets the criteria for listing in the National Register, the Federal agency may forward (a) a letter stating that the property is eligible for inclusion in the National Register, (b) a copy of the documentation on which this positive determination is based, meeting the required standards in Appendix A, and (c) a statement signed by the State Historic Preservation Officer that he agrees with the agency's determination, to the Director, Office of Archeology and Historic Preservation (see Appendix B). Unless the Director notes an objection within 14 days of receipt of this material, the property shall be deemed eligible for inclusion in the National Register as a determination by the Secretary of the Interior. The Director will not send notice directly to the agency but will publish the determination of the property's eligibility in the FEDERAL REGISTER. The basis for timely objections by the Director, Office of Archeology and Historic Preservation, may include, among other considerations, a determination that additional properties should be evaluated by the agency or a question regarding the application of the National Register criteria to the property.

§ 63.4 Publication of properties determined eligible in the Federal Register.

Except as provided in § 63.3, the Director, Office of Archeology and Historic Preservation, will notify the Federal agency of a determination on the eligibility of a property for inclusion in the National Register. Notice of determination that a property is eligible for inclusion in the National Register will also be published in the FEDERAL REGISTER on a regular basis and in a cumulative edition which will appear once a year, usually in February.

APPENDIX A

GUIDELINES FOR LEVEL OF DOCUMENTATION TO ACCOMPANY REQUEST FOR DETERMINATION OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER

(1) *Property Name.* (a) *Historic Name.* This name is generally preferred for a property and ordinarily represents one or more of the following:

(i) Original owner or builder,

(ii) Significant persons or events associated with the property,

(iii) Innovative or unusual characteristics of the property,

(iv) Accepted professional, scientific, technical, or traditional names.

(b) *Common Name.* This is the name by which the property is known locally.

(c) *Archeological Site Name.* Archeological sites are generally named for the project, a nearby geographic feature, an aspect of cultural significance, the owner of the property, etc. For a prehistoric archeological site with no specific name, use the numbering system commonly in use in that State.

(2) *Location.* Include the number and the name of the street or road on which the property is located. If the road has a number rather than a name, indicate whether it is a Federal, State, or county road. If a property does not have a specific address, give the names of the nearest roads. If a property is rural and in the vicinity of a town or city, this should be indicated. In the case of a historic district or similarly complicated property, inclusive street address numbers for all the properties within the district should be used.

(3) *Classification.* (a) *Categories.* Classify the property in the appropriate category:

(i) A "district is a geographically definable area, urban or rural, possessing a significant concentration, linkage or continuity of sites, buildings, structures, or objects which are united by past events or aesthetically by plan or physical development. A district may also be comprised of individual elements which are separated geographically but are linked by association or history.

(ii) A "site" is the location of a significant event, activity, building, structure, or archeological resource where the significance of the location and any archeological remains outweighs the significance of any existing structures.

(iii) A "building" is a structure created to shelter any form of human activity. This may refer to a house, barn, church, hotel, or similar structure. Buildings may refer to a historically related complex, such as a courthouse and jail or a house and barn.

(iv) A "structure" is a work made up of interdependent and interrelated parts in a definite pattern or organization. Constructed by man, it is often an engineering project large in scale.

(v) An "object" is a material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

(4) *Ownership.* Give the name of the owner of the property. Indicate multiple ownership for districts.

(5) *Request for Determination of Eligibility.* Give the name of the Federal agency requesting the determination, the name of the Regional Headquarters (if applicable), the address of the Regional Headquarters, and the State in which the headquarters is located.

(6) *Representation in Existing Surveys.* Identify existing local, State, or Federal cultural resource surveys that include or refer to the property in question. Federal surveys other than the National Register in-

clude, but are not limited to the Historic American Buildings Survey, the Historic American Engineering Record, and the National Survey of Historic Sites and Buildings (National Historic Landmarks Program). A number of Federal agencies are undertaking cultural resource surveys.

(7) *Description.* Description of the physical appearance and condition of a property is important in making an accurate assessment of its significance. To be useful, the description of the property should be concise, factual, detailed, and well organized.

(a) Individual buildings, structures, or objects should be described in detail using appropriate professional terminology. The description should note what changes, if any, have occurred. Unique details or unusual features should be pointed out and should be visible in the accompanying photographs. Marcus Whiffen's "American Architecture Since 1780: A Guide to the Styles" (The M.I.T. Press, Cambridge, 1969) provides a standard guide to American architectural styles and should be consulted when questions of terminology arise. If local terms or styles are used, they should be accompanied by a description or explanation. The description of a building should include the following information, where applicable:

(i) Kind of structure (dwelling, church, commercial, etc.).

(ii) Building placement (detached, row, etc.).

(iii) General characteristics: Overall shape or plan rectangle, ell, etc.). Number of stories. Number of vertical divisions or bays. Construction materials (brick, frame, masonry, etc.) and wall finish (kind of bond, coursing, shingle, etc.). Roof shape (gable, hip, shed, etc.).

(iv) Specific features: Location, number and appearance of: porches (verandas, stoops, attached sheds, etc.), windows, doors, chimneys, and dormers.

(v) Other decorative elements.

(vi) Significant interior features.

(vii) Number, type, and location of outbuildings, as well as dates, if known.

If a property has been moved, the following information should be given in the description wherever possible: (1) date of move; (2) original location and description; (3) explanation of the effect of the move on the historical integrity of the property.

Known alterations should be described and documented in the written description. It is particularly important to supply dates if available. A restoration is considered an alteration even if an attempt has been made to restore the property to its original form. In cases involving numerous alterations to buildings, it would be helpful to include a floor plan showing alterations with the submission. Information on industrial or engineering structures may be obtained by consulting the Historic American Engineering Record, National Park Service, Washington, D.C. 20240.

(b) The description of an archeological site should include the following information:

(i) Site type.

(ii) A statement of the kinds of cultural resources and their distribution.

(iii) A statement of the kinds of cultural values, historic values, or data categories known or thought potentially to be present. This essentially involves enumeration of what types of data might be recovered in an area, architectural features, faunal and floral remains, materials useful for chronological purposes, settlement patterns, technology, etc.

(iv) Statement of the relationship of the resource to its regional cultural setting based on the information values and categories previously enumerated.

(v) Summary of previous investigations (include dates and organizations).

(c) Architectural and historic district descriptions should include:

(i) General description of the natural and manmade elements of the district: structures, buildings, sites, objects, prominent geographical features, density of development.

(ii) General description of types, styles, or periods of architecture represented in district: scale, proportions, materials, color, decoration, workmanship, design quality.

(iii) General physical relationships of buildings to each other and environment: facade lines, street plans, parks, squares, open spaces, structural density, plantings, important natural features.

(iv) General description of the district during the period(s) when it achieved significance.

(v) Building types found in district: commercial, residential, etc.

(vi) General condition of buildings: restoration or rehabilitation activities, alterations.

(vii) Intrusions: include ratio and size of intrusions compared to the number of buildings within the district.

(viii) Qualities which make the district distinct from its surroundings.

(ix) A list of significant buildings within the district or inclusive street addresses.

(x) Approximate number of buildings in district or good indication of size of district.

(xi) Precise verbal boundary description: street, property lines, geographical features, etc., which separate the district from its surroundings.

(d) Archeological districts should include information on individual sites, listed above, plus the following:

(i) General description of the cultural and natural constituents and interrelationship of sites in the district.

(ii) General description of kinds of cultural resources, data categories, and cultural values represented in the district.

(iii) General physical condition of sites and extent to which intersite contexts remain intact.

(iv) List of sites within the district with their location.

(v) Statement of the extent to which the area within the district boundaries have been adequately surveyed.

(8) *Significance.* A statement of significance identifies qualities in the property that make it eligible for listing in the National Register. It should include a concise history of the property and should be directed to a whole property, rather than some functional segment. Thus it is inappropriate to discuss a mound and not an associated village, burial area, etc., or to submit a house and not the associated outbuildings, etc. Include the following information:

(a) Identify the period(s) with which the property's significance is associated. This may mean date of construction, major alteration, or association with an individual, event, or culture, etc.

(b) *Areas of Significance.* As many areas of significance as are appropriate may be identified, but each must be justified in this statement of significance. The following areas of significance, derived from National Park Service themes, are those for which a property may be listed in the National Register:

Archeology-Prehistoric: the scientific study of the life and culture of indigenous people before the advent of written records.

Archeology-Historic: the scientific study of life and culture in the New World after the advent of written records.

Agriculture: farming, livestock raising, and horticulture.

Architecture: the style and construction of buildings and structures.

Art: concerning creative works and their principles; fine arts and crafts. Do not include architecture, sculpture, music, or literature here; specific categories are established for these areas.

Commerce: production and exchange of goods and the social contracts thereby encouraged.

Communications: art or science of transmitting information.

Community Planning: the design of communities from predetermined principles.

Conservation: official maintenance or supervision of natural or manmade resources.

Economics: the science that deals with the production, distribution, and consumption of wealth.

Education: formal schooling or the methods and theories of teaching or learning.

Engineering: the applied science concerned with utilizing products and sources of power for supplying human needs in the form of structures, machines, etc.

Exploration/Settlement: the investigation of regions previously unknown; the establishment of a new colony or community.

Industry: enterprises producing goods and services.

Invention: something originated by experiment or ingenuity. (Properties connected with the inventors themselves would be classified here.)

Landscape Architecture: the art or practice of planning or changing land and water elements for the enhancement of the physical environment.

Literature: the production of writings, especially those of an imaginative nature.

Military: concerning the armed forces and individual soldiers.

Music: the art of combining vocal or instrumental sounds or tones.

Philosophy: a system of principles for the conduct of life; the theory or analysis of the principles underlying thought or knowledge and the nature of the universe.

Politics/Government: an established system of political administration by which a nation, State, district, etc., is governed and the processes which determine how it is to be conducted.

Religion: systems and expressions of belief in a suprahuman power that have made a contribution to the pattern of culture.

Science: a systematic study of nature.

Sculpture: the art of forming material into the three-dimensional representation.

Social/Humanitarian: concerning human beings living together in a group or the promotion of the welfare of humanity.

Theater: the dramatic arts and the places where they are enacted.

Transportation: concerning the work or business or means of conveying passengers or materials.

(c) In addition to information obtained from reference sources, the statement of significance should include one or more sentences summarizing the primary reason or reasons why the property may be eligible for inclusion in the National Register.

Additional facts should be included such as:

(i) Period of construction or use,

(ii) The architect or builder, if known,

(iii) Historically significant events,

(iv) Data concerning individuals significantly associated with the property, and

(v) Information which the property has yielded or may be likely to yield (especially for archeological sites).

The statement of significance should attempt to relate the property to a broad historical, architectural, archeological, or cultural context, either local, regional, State or national. Any quoted material which appears in this section or the description should be

footnoted. Quotations taken out of context should faithfully represent the meaning of the original source.

Supplemental information, such as newspaper articles, letters from professional historians, architects, architectural historians, or archeologists, etc., may also be submitted as appropriate.

(d) Federal agencies should attempt to answer the following questions when seeking to determine whether a property meets National Register criteria.

(i) *Building, structure, object.*

(a) If a building or structure is submitted for its architectural qualities, does it retain enough of its significant design, aspect, or feeling to be recognizable? If not, could the important elements of design or appearance be restored? (This does not mean that buildings which have additions or alterations are not eligible, as they may reflect later significant styles and design.)

b. If a building or structure is submitted for historical associations, does the existing building have an identifiable relationship to the history described? Does it retain sufficient integrity to convey the feeling of the historical period when it achieved significance? If a building or structure is significant because of its association with an individual, how long did that individual live there, or how long was he associated with the building, and during what period of his life?

c. Does the building, structure, or object have an unusually important association with its location?

(ii) *Site.*

a. Does the property retain integrity compatible with the subject being commemorated? (The present site of a treaty signing which took place in a deep woods in probably not eligible if the area is now a suburban development.)

b. If the site has been submitted in the area of archeological significance, has the site contributed or does it have a potential for contributing useful information regarding human paleo-ecology, culture history, or culture process? How does the site relate to other similar investigations? Summaries of evidence supporting these evaluations of significance should be provided.

c. Sites already completely excavated are eligible only if the site has interpretive value or if the information yielded made fundamental contributions to knowledge of American cultures such that the act of investigation constituted an historic event.

(iii) *District.*

Architectural and historic districts should include the following information, as appropriate:

a. Concise statement of why the district is significant.

b. Origins and historical developments of the district; inclusive dates, architects, builders, designers, planners; relate district to historical development of the area.

c. General analysis of architectural styles or periods. If possible relate the architecture in the district to the architectural resources of the area.

d. Significant people or events associated with the district as a whole or with individual elements within the district.

e. Preservation and/or restoration activities in the district (if considered to contribute to the significance for which the district is submitted).

f. Effect of intrusions on the integrity of the district.

g. Explanation of how district boundaries were chosen. Considerations may include presence of a natural barrier or dedge, such as a highway or new development, change in character of the area, or decline in concentration of significant properties to the point where the integrity of the district has been lost. (You may wish to refer to qualities discussed under 7(c) (viii).)

Archeological districts should include:

a. Discussion of information listed under site significance 8(d) (ii).

b. A concise statement explaining why the sites should be considered collectively as a district rather than individually.

c. A concise statement explaining the scientific and/or interpretive yield or potential of the district in terms of the cultural and natural contexts or interrelationships described in 7 (d) (i).

d. Explanation of how district boundaries were chosen. Considerations may include presence of a natural geographic barrier, such as a river or drainage divide; a project boundary if this delineates a group of cultural resources which conform to the definition of a district given above; manmade features such as a highway or other structure; or decline in settlement density.

(9) *Bibliography.* The bibliography should contain a list of sources from which information on the property was compiled. General reference works on architecture, archeology, etc., should not be included unless they specifically mention the property by name. Use standard bibliographical style, listing author, full title, date and location of publication, and publisher. For an article, list the magazine or journal from which it was taken, volume number and date. For unpublished manuscripts, indicate where copies are available. Interviews should also be listed here with the date of interview.

(10) *Geographical Data and Maps.* A map clearly locating the property within a city or broader context must accompany each request. A 7.5 or 15 minutes series United States Geological Survey map, State highway map, or other suitable map will be acceptable. Latitude and longitude coordinates or UTM (Universal Transverse Mercator) reference points are useful in identifying the geographical location of properties.

If the property is a district, a detailed sketch map should be included. The sketch map need not be precise in scale, but it should indicate:

a. All buildings, structures, or sites in the district.

b. Extent of district boundaries, carefully drawn.

c. Street and place names, including inclusive street numbers.

d. Highway numbers.

e. Architectural styles or periods, if appropriate.

f. Pivotal structures and important spaces (parks, squares, etc.).

g. Present type of district (mixed residential, commercial, public, etc.).

h. Intrusions or other elements not contributing to the significance of the district.

i. North arrow (magnetic or true), if not printed on map.

j. Scale (on sketch maps, or on printed maps when not indicated, scale may be approximate).

k. Land use in rural districts—woods, fields, swamps, etc.

Sketch maps should also be provided for large archeological sites, indicating significant cultural features and intrusions. Maps of archeological districts should clearly indicate the areas within the district boundaries which have actually been surveyed.

Acreage. The acreage of the property in question should also be given.

(11) *Photographs.* Along with written documentation and maps, photographs form the basis of the Secretary of the Interior's determination of a property's eligibility for inclusion in the National Register. For this reason, photographs submitted should give an honest visual representation of the property and should illustrate those qualities discussed in the description and statement of significance. Photographs should be contemporary with the request for a determination of eligibility and should be identified in detail, giving the name and location of the property, view or detail shown, and direction of photo. Historical photographs may also be useful but are not required.

The number of photographs required for a determination varies according to the complexity of the property:

(a) Individual buildings, structures, or objects. Include only as many photographs as are necessary for depicting the property clearly. One of the photographs should show the environment or context in which the property is located. Additions, alterations, intrusions, and dependences should appear in the photographs. If the significance for which the property is submitted includes interiors or particular details, representative views should be included.

(b) Archeological Sites. Photographs should document the condition of the property and, if relevant to the evaluation of significance, show artifacts that have been recovered and features present in the site. Drawings may be substituted for photographs of artifacts or other features where relevant and if it is not possible to take photographs. Site submissions must include at least one photograph, however, showing the physical environment and land configuration of a site.

(c) Districts. Districts should be represented visually in selected street, landscape, or aerial views. Include as many photographs as necessary to visually relate the essence of and the variety included in the district. Views of individual structures may not be necessary as streetscapes often reveal the architectural qualities of a district better than photographs of individual buildings. Pivotal structures, however, and elements which help define the quality of the district should be clearly shown. Streetscape views should include as many building types, styles, and uses as necessary to relate the variety of the district. Important topographical or spatial elements should be included, as well as representative types of intrusions, in their settings. It is useful to indicate on the sketch map the location and direction of view of photographs.

(12) *Individual(s) Compiling Documentation.* Names and qualifications of persons directly involved in compiling information on the property should be submitted as this information may be of assistance in the evaluation process.

APPENDIX B—SAMPLE FORM LETTER FOR:

STATEMENT OF THE OPINION OF THE STATE HISTORIC PRESERVATION OFFICER CONCERNING THE ELIGIBILITY OF A PROPERTY FOR INCLUSION IN THE NATIONAL REGISTER.

I understand that the _____ is requesting the opinion of the State Historic Preservation Officer concerning the eligibility of _____ for inclusion in the National
property(ies)
Register and that my opinion may be submitted to the Secretary of the Interior with a formal request for a determination of eligibility on this property. This statement confirms that I have been consulted as part of the determination of eligibility procedures.

____(1) In my opinion, the property is eligible for inclusion in the National Register.
____(2) In my opinion, the property is not eligible for inclusion in the National Register.
____(3) I have no opinion and prefer to defer to the opinion of the Secretary of the Interior.

Justification and comments:

Signed: _____
State Historic Preservation Officer

Dated: April 19, 1976.

Approved:

DOUGLAS P WHEELER,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc.76-11981 Filed 4-26-76;8:45 am]

federal register

TUESDAY, APRIL 27, 1976

PART IV:

ENVIRONMENTAL PROTECTION AGENCY

■

PROGRAM GRANTS

State and Local Assistance

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 518-3]

PART 35—STATE AND LOCAL ASSISTANCE

Program Grants

Section 106 of the Federal Water Pollution Control Act, as amended (Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1256 (1972)), authorizes the Administrator of the Environmental Protection Agency to make annual allotments from sums appropriated by Congress in each fiscal year on the basis of the extent of the pollution problem in the several States. The Act requires that the Administrator promulgate regulations governing such allotments.

Interim regulations, which provide minimum guidelines for Federal grant assitance to the State and interstate agencies to assist them in administering their water pollution control programs, were published in the FEDERAL REGISTER on June 29, 1973 (38 FR 17219). The interim regulations supplement the Environmental Protection Agency general grant regulations (40 CFR Part 30). Also, on August 28, 1974, notice was published in the FEDERAL REGISTER (39 FR 31500) that the Environmental Protection Agency was proposing regulations relating to water quality and pollutant source monitoring in State water pollution control programs.

Written comments on the interim State water pollution control program grant regulations and the proposed water quality and pollutant source monitoring regulations were invited and received from numerous interested parties. EPA has carefully considered all comments submitted, as well as comments made by EPA and State and interstate agency personnel on the basis of their experience under the interim regulations. Written comments received from interested parties are on file with the Environmental Protection Agency. Many of these comments have been adopted or substantially satisfied by editorial changes, deletions from, or additions to the regulations.

These regulations, as amended, describe the annual State program for the control and abatement of water pollution and for the allocation of Federal grant assistance to support these State programs. The requirements and procedures should be viewed as one part of an overall management system to be used by the States, interstate agencies, and EPA in carrying out the requirements of the Federal Water Pollution Control Act Amendments of 1972. The system begins with the establishment of the State continuing planning process described in Part 130 of this chapter. The process is to provide States with the basis for developing a "State Strategy" which contains an assessment of their pollution problems, a means for developing their control strategies, and for assessing results. The State strategy, which will be based upon Statewide water quality management plans where they are completed, and upon available information where the plans are not completed, together with other associated outputs, provides the basis for developing each State's annual program plan.

The annual program plan is a management device which the State uses to identify its expected accomplishments during the year, allocate its resources, and assess its progress toward those accomplishments. At the same time, the State program provides EPA the basis for providing Federal grants to supplement State funds.

Major changes and the majority of substantive comments centered around the issues discussed below:

(1) The Allocation Formula for Determining State and Interstate Allotments. Comments were received from several State water pollution control agencies regarding the allocation formula used to determine State and interstate allotments (see § 35.553). Suggestions were offered regarding potential changes to the allocation formula. For example, it was suggested that the formula take into consideration the volume of waste water processed by treatment plants. This factor was among the twenty-two variables considered when the formula was devised. However, it was judged to be less satisfactory in reflecting the "extent of the pollution problem" than the variables which are currently considered in the formula. Also it was pointed out that the formula does not factor in nonpoint sources of pollution. This factor remains unquantifiable on a national basis due to a lack of data, and for this reason, it has been decided that the present allocation formula remains the best surrogate measure of the extent of pollution which has been suggested to date. Consequently, this formula is retained as the means of allocating grant funds to the State and interstate agencies. Because of the expressed concerns, however, the Agency intends to consider other alternative allocation formulas over the next year. Criteria which will be considered as additional factors for the formula will be pollution from toxic and hazardous materials and non-point sources.

The State and interstate allotment ratios, to be applied against the total sums available nationally to determine individual State and interstate agency allotments, are based on the previous formula. The allotment ratios contained in the regulation are presented in a different format (i.e., State and interstate agency allotment ratios are separated into two distinct categories). For this reason the individual allotment ratios appear to differ, but they are in effect unchanged from the interim regulation.

The future role of interstate agencies in the national water pollution control program was the subject of a comprehensive study recently completed by EPA. As a result of that study the agency has determined that section 106 interstate agency program grant funds should be made available only for coordinating activities and activities which support the operational responsibilities of the State agencies. For this reason the future funding for interstate agencies will be specified in EPA's annual operating guidance.

(2) Incentive Grants. The practice of providing incentive grants to State agencies has been used for the past three years to focus State management attention and resources on those program elements which are essential to the national program in each fiscal year. The practice has had limited success since its initiation. At the outset, incentives served to gear up State resources to undertake NPDES activities, Federal construction grant activities and other EPA responsibilities. Now, however, most States have become involved in these programs and incentives appear to have outlived their usefulness.

Comment on this issue from the States was unanimous in favor of eliminating incentive grants. EPA agrees with this comment and has deleted the incentive grant concept from the regulation. This action is consistent with Agency policy to decentralize decision-making to the Regional Office and State level, wherever appropriate.

In the future, Regional Administrators are expected to adopt national guidance regarding program priorities to the particular circumstances and needs of each State. The Regional Administrator has the authority and responsibility under § 35.405 and § 35.565 to require State programs which contain an appropriate program emphasis, but the determination of this emphasis is to be made primarily as a result of a consultation process with the States.

(3) Timing of Public Participation and Program Submission to EPA. A number of State agencies objected to the time frame for public participation contained in the interim regulation. Rather than requiring the completion of public participation prior to an arbitrary date, it was suggested that the public participation requirement be made more flexible. This proposal was judged appropriate and public participation no longer has a time constraint built into the regulation. Instead, an agreement between the Regional Administrator and State agency reached prior to development of the State strategy and program will dictate adequate public participation.

Other changes from the interim regulation include the date changes for preparation and submission of State strategies and program plans to correspond to Agency changes in procedures as a result of the shift to the new Federal fiscal year (October through September) required pursuant to the Congressional Budget Act of 1974 (Pub. L. 93-344).

(4) Monitoring Requirements—Appendix A. Comments were expressly invited on Appendix A as to whether these provisions should be promulgated as regulations or guidelines. An overwhelming majority of comments indicated a preference for guidelines on the grounds that EPA should not attempt to define technical specifics of monitoring activities (such as monitoring survey design and operation) which may be dictated by local conditions. Other letters of com-

ment, while not addressing specifically the question of regulations vs. guidelines, expressed similar concerns regarding particular paragraphs of the proposed regulation. Therefore, the provisions containing regulation of monitoring specifics have been deleted from this regulation and the subjects addressed are only those common to all water monitoring programs. Rather than publishing the technical details of monitoring as regulations, EPA will issue guidance documents detailing recommended montoring practices.

This subpart is promulgated as a final regulation and will replace the interim regulation previously promulgated. However, because of the numerous changes which have been made throughout this subpart, public comment is again invited. Interested parties are encouraged to submit written comments, suggestions, views, or data concerning the final regulation promulgated hereby to: Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before October 1, 1976 will be considered with respect to the need for amendment of this subpart.

Effective date. The final water program grant regulations promulgated hereby shall become effective upon publication. It is necessary that these regulations take effect prior to a thirty day period following promulgation to insure their implementation without delay and to permit States to submit applications for program grants from funds available in accordance with the new procedures established pursuant to these regulations. These regulations shall govern actions, including grant amendment actions and other actions such as State and interstate agency program planning and evaluation and allocation of Federal funds, which are related to Environmental Protection Agency water program grants to be awarded after the effective date. Prior regulations (38 FR 17219) governing water program grants shall remain applicable to grants awarded prior to the effective date. Prior regulations (39 FR 7785) governing air program grants and 41 FR 2912 governing public water supply system supervision grants remain in effect.

Dated: April 16, 1976.

RUSSELL E. TRAIN,
Administrator.

40 CFR §§ 35.400 through 35.425 and §§ 35.551 through 35.570 are hereby revised and adopted as final regulations. 40 CFR §§ 35.500—35.550 and 35.600—35.630 remain in effect as previously published.

1. The relevant portions of the table of contents to 40 CFR Part 35 are revised as follows:

Subpart B—Program Grants

Sec.
35.400 Purpose.
35.400–1 Air pollution control agency grant awards.
35.400–2 Water pollution control program grant awards.
35.400–3 Public water system supervision program grant awards.
35.403 Authority.
35.404 Annual guidance.
35.405 Criteria for evaluation of program objectives.
35.410 Evaluation of agency performance.
35.415 Report of project expenditures.
35.420 Payment.
35.425 Federal and grantee program support.

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WATER POLLUTION CONTROL STATE AND INTERSTATE PROGRAM GRANTS

35.551 Scope and purpose.
35.552 Definitions.
35.553 State and interstate allotments.
35.554 Regional allowances.
35.555 Determination of grant amount by Regional Administrator.
35.556 Reduction of grant amount.
35.557 Grant amount limitation and duration.
35.558 Eligibility.
35.559 Limitations on award.
35.560 State strategy formulation and program development.
35.561 Major program elements and outputs.
35.562 State program submission.
35.563 State project priority list submission.
35.564 Public participation.
35.565 Program approval.
35.566 State project priority list approval.
35.567 Grant conditions.
35.568 Adherence to budget estimates.
35.569 Program changes.
35.570 Program evaluation and reporting.

APPENDIX A—WATER QUALITY AND POLLUTANT SOURCE MONITORING

2. Section 35.400 through 35.425 are revised as follows:

§ 35.400 Purpose.

This subpart establishes and codifies policy and procedures for air pollution, water pollution, and public water system supervision program assistance grants and supplements the EPA general grant regulations and procedures (Part 30 of this Chapter). These grants are intended to aid programs for air pollution control, water pollution control and public water system supervision at the State, interstate, or local level.

§ 35.400–1 Air pollution control agency grant awards.

Grants may be awarded to air pollution control agencies for the planning, development, establishment, improvement, and maintenance of programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in accordance with the applicable implementation plan.

§ 35.400–2 Water pollution control program grant awards.

Grants may be awarded to State and interstate water pollution control agencies to assist them in developing or administering programs for the prevention, reduction, and elimination of water pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

§ 35.400–3 Public water system supervision program grant awards.

Grants may be awarded to State agencies to assist them in developing or administering public water system supervision programs.

§ 35.403 Authority.

This subpart is issued under sections 105 and 301(b) of the Clean Air Act, as amended (42 U.S.C. 1857(c) and 1857(g)); sections 106 and 501 of the Federal Water Pollution Control Amendments of 1972 (33 U.S.C. 1256 and 1361); and sections 1443(a) and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–2).

§ 35.404 Annual guidance.

The Environmental Protection Agency will develop and disseminate annual guidance to be used by the grantee to structure air pollution, water pollution, and public water system supervision programs for the coming Federal fiscal year. The guidance will contain a statement of the national strategy including national objectives and national priorities for the year together with planning figures for Federal program grant assistance based on the EPA budget approved by the President. The annual guidance will be disseminated each year as soon as practicable during the month of February.

§ 35.405 Criteria for evaluation of program objectives.

(a) Programs set out in the application and submitted in accordance with these regulations shall be evaluated in writing by the Regional Administrator to determine:

(1) Consistency and compatibility of objectives and expected results with EPA national and regional priorities in implementing purposes and policies of the Clean Air Act, the Federal Water Pollution Control Act, or the Safe Drinking Water Act.

(2) Feasibility of achieving objectives and expected results in relation to existing problems, past performance, program authority, organization, resources and procedures.

(b) Approval of the program developed pursuant to § 35.526 (air) or § 35.565 (water pollution) or § 35.626 (public water system supervision) shall be based on the extent to which the applicant's program satisfies the above criteria.

§ 35.410 Evaluation of agency performance.

(a) A performance evaluation shall be conducted at least annually by the Regional Administrator and the grantee to provide a basis for measuring progress toward achievement of the approved objectives and outputs described in the program. The evaluation shall be consistent with the requirements of § 35.538 for air pollution control agencies, § 35.570 for water pollution control agencies and § 35.626(d) for public water system supervision agencies.

(b) The Regional Administrator shall prepare a written report of the annual evaluation. The grantee shall be allowed

15 working days from the date of receipt to concur with or comment on the findings.

§ 35.415 Report of project expenditures.

Within 90 days after the end of each budget period, the grantee must submit to the Regional Administrator an annual report of all expenditures (Federal and non-Federal) which accrued during the budget period. Beginning in the second quarter of any succeeding budget period, grant payments may be withheld pursuant to § 30.615–3 of this Chapter until this report is received.

§ 35.420 Payment.

Grant payments will be made in accordance with § 30.615 of this Chapter. Notwithstanding the provisions of § 30.345 of this Chapter, the first grant payment subsequent to grant award may include reimbursement of all allowable costs incurred from the beginning of the approved budget period, provided that monthly costs incurred from the beginning of the budget period to the date of grant award do not exceed the level of costs incurred in the last month of the prior budget period.

§ 35.425 Federal and grantee program support.

(a) For purposes of establishing the amount of resources which will be committed by the agency to particular budget categories or program elements under §§ 35.527 (air), 35.561(a) (water) and § 35.626–1 (public water system supervision), federal and grantee financial contribution shall be considered as combined sums, and shall not be separately identified for each budget category or program element. For purposes of this subpart, and pursuant to Section 30.700 (a) of this Chapter, all project expenditures by the grantee shall be deemed to include the Federal share.

(b) A grantee may not unilaterally reduce the non-Federal share of project costs. In the event of a significant proposed or actual reduction in the non-Federal contribution, the Regional Administrator must consider a reduction in the Federal share or an increase to the Federal percentage.

3. Sections 35.551 through 35.570 are revised as follows:

WATER POLLUTION CONTROL STATE AND INTERSTATE PROGRAM GRANTS

§ 35.551 Scope and purpose.

This subpart establishes regulations containing policies and procedures by which program grant funds may be provided to State and interstate agencies as authorized by Section 106 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92–500; 36 Stat. 816; 33 U.S.C. 1256). These regulations are intended to foster development of effective State programs which implement PL 92–500.

§ 35.552 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

(a) The term "allotment" means the sum reserved for each State or interstate agency from funds appropriated by Congress. The allotment is determined by formula based on the extent of the water pollution problem in the several States. It represents the maximum amount of money potentially available to the State or interstate agency for its program grant.

(b) The term "State program grant" means the amount of Federal assistance awarded to a State or interstate agency to assist in administering approved programs for the prevention, reduction and elimination of water pollution.

(c) The term "State program" means the annual submission, including revisions, which describe the State or interstate agencies' planned activities to control water pollution in conformance with § 35.562.

(d) The term "number of pollution sources" means a count of the sources of discharge associated with any:

(1) One of the twenty-seven Standard Industrial Classification (SIC) codes listed in section 306(b)(1)(A) of the Act (the number of establishments are reported in the 1967 edition of "Census of Manufacturers," U.S. Department of Commerce);

(2) Municipality (as reported in the EPA Municipal Waste Facilities Directory, dated April 6, 1972);

(3) Power plant (Nuclear, oil, coal or gas) (as reported in "STEAM ELECTRIC PLANT FACTORS," NATIONAL COAL ASSOCIATION, 1971 edition);

(4) Feedlot (of more than 1000 head capacity) (as reported in "CATTLE ON FEED," U.S. Department of Agriculture, January, 1972).

(e) The term "Act" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1256 and 1361).

(f) The term "State agency" means that agency designated by the Governor to apply for and receive the State's program grant and responsible for coordinating the water quality control program or primarily responsible for coordinating implementation of the State water quality laws.

(g) The term "interstate agency" means that agency defined in section 502(2) of the Act which is determined eligible for receipt of a grant under these regulations by the Administrator.

(h) The term "reasonable cost" means the allowable costs (See § 30.705 of this chapter) up to a level of the annual allocation as determined by the Administrator, of developing and administering a water pollution control program by a State or interstate agency consistent with the intent and purposes of the Act.

(i) The term "recurrent expenditures" means those expenditures necessary for normal operations of the entity in the daily conduct of operations which would not be classed as unusual or extraordinary and would be expected to recur on a periodic basis. Recurrent expenditures would not include items such as procurement of real property, extraordinary equipment purchases, nor one time management studies.

§ 35.553 State and interstate allotments.

(a) Funds appropriated for each fiscal year will be allocated to State and interstate agencies on the basis of the extent of the pollution problem. State allotment ratios are based on a count of pollution sources for each State compared to a count of pollution sources in the Nation. Interstate allotment ratios are based on the level of funding received in fiscal year 1973. The table below lists the allotment ratios for each State and interstate agency, which will be applied against the total sums available nationally to determine individual State and interstate agency allotments:

STATE ALLOTMENT RATIOS

Alabama	0.02732	New York	0.05053
Alaska	.00311	North Carolina	.03708
Arizona	.00836	North Dakota	.00444
Arkansas	.01517	Ohio	.03914
California	.06044	Oklahoma	.01136
Colorado	.00963	Oregon	.01601
Connecticut	.01572	Pennsylvania	.04593
Delaware	.00867	Rhode Island	.01071
District of Columbia	.00855	South Carolina	.02042
Florida	.02644	South Dakota	.00461
Georgia	.03198	Tennessee	.01855
Hawaii	.00727	Texas	.03791
Idaho	.00799	Utah	.00931
Illinois	.03837	Vermont	.00510
Indiana	.02150	Virginia	.02581
Iowa	.01492	Washington	.02197
Kansas	.01082	West Virginia	.01303
Kentucky	.01509	Wisconsin	.02903
Louisiana	.01730	Wyoming	.00336
Maine	.01131	Am. Samoa	.00160
Maryland	.01731	Virgin Islands	.00752
Massachusetts	.02441	Guam	.00760
Michigan	.03672	Puerto Rico	.01670
Minnesota	.01923	Trust Territory	.00346
Mississippi	.01527		
Missouri	.01809		
Montana	.00704		
Nebraska	.01180		
Nevada	.00359		
New Hampshire	.00697		
New Jersey	.02810		
New Mexico	.00593		

INTERSTATE ALLOTMENT RATIOS

ORSANCO	0.26231	INCOPOT	0.11141
DRBC	.17357	NEIWPCC	.17553
ISC	.21345	SRBC	.06373

(b) The amount of funds set aside for interstate commissions in a given fiscal year will be specified in EPA's annual Operating Guidance. The minimum level of funding for these commissions will be the level of fiscal year 1973 ($1,022,400) unless the annual § 106 appropriation is less than the fiscal year 1973 level ($40 million), in which case the total amount of funding for the commissions will be reduced by the proportional amount that the annual appropriation is reduced below $40 million.

§ 35.554 Regional allowances.

(a) Tentative Regional allocations or final Regional allowances will be the sum of the tentative or final State and interstate allotments within each EPA Region, calculated by applying the individual State and interstate agency allotment

ratios against the total sums available nationally.

(b) The Administrator will issue to each Regional Administrator, as a part of the EPA annual guidance, tentative Regional allocations and State and interstate agency allotments for the next fiscal year. These tentative allocations (planning targets) will be based on the amount of the appropriation requested by the President for the next fiscal year. The Regional Administrator shall notify each State and interstate agency of its tentative allotment for the next fiscal year as soon as practicable after receipt.

(c) As soon as practicable after funds are appropriated, the Administrator will issue to each Regional Administrator final Regional allowances for allotment from the funds appropriated for each fiscal year.

§ 35.555 Determination of grant amount by Regional Administrator.

(a) Each State and interstate agency shall receive a grant from its final allotment in an amount not to exceed the reasonable cost of carrying out its approved program.

(b) Should the Regional Administrator's evaluation of the State program submission reveal that the output commitment is not consistent with the level of funding requested and/or the national priorities contained in the EPA annual guidance, he shall negotiate with the agency to change the output commitment or to reduce the grant amount. However, should a State or interstate agency propose a different set of outputs than suggested in the EPA annual guidance due to unique regional or Statewide pollution problems, the Regional Administrator may approve the State program provided he determines the outputs can and should be produced and the proposed funding is appropriate.

(c) At the end of each program year, unobligated funds will be reissued as carryover funds to the same Region and will in effect remain with that Region for reallocation to State and interstate agencies within that Region as determined by the Regional Administrator.

§ 35.556 Reduction of grant amount.

(a) In the event a State or interstate agency fails to submit its final program on or before the dates specified in § 35.562(b), the grant amount may be reduced by one-twelfth of the agency's available allotment for each full month's delay.

(b) If the Regional Administrator's program evaluation reveals that the grantee will not achieve or has not achieved the outputs specified in the approved program, an effort should be made to resolve the situation through mutual agreement by amending the approved program. If mutual agreement is is not feasible the Regional Administrator may reduce the grant amount in proportion to the estimated program cost to produce such outputs pursuant to § 30.920 of this chapter.

(c) Funds recovered pursuant to § 35.556 (a) or (b) or § 35.559 will be available for reallocation to other State and interstate agencies within the Region by the Regional Administrator.

§ 35.557 Grant amount limitation and duration.

Following approval of the State program by the Regional Administrator, the budget period of the grant shall be the entire Federal fiscal year and Federal assistance shall not exceed the final allotment limits determined pursuant to § 35.554(c) plus sums made available pursuant to provisions of § 35.555(c), § 35.556(c) and § 35.559.

§ 35.558 Eligibility.

A grant may be awarded to a State or interstate water pollution control agency provided the agency has submitted a grant application pursuant to § 35.562(b) and such program satisfies the requirements of this Chapter and has been approved by the Regional Administrator.

§ 35.559 Limitations on award.

(a) No grant shall be made under these regulations to any State or interstate agency for any fiscal year unless the agency has certified that the expenditures of non-Federal funds by such State or interstate agency during each fiscal year for the recurrent program expenditures for carrying out its water pollution control program are not less than the expenditures by such State or interstate agency of non-Federal funds for recurrent program expenditures during the fiscal year ending June 30, 1971 or the last year of Federal support if such Federal support was initiated subsequent to the fiscal year ending June 30, 1971.

(b) No grant shall be made under these regulations to any State which has not provided or is not carrying out as part of its program:

(1) The establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition) the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under Section 305(b) of the Act. (Appendix A sets forth the minimum requirements for an acceptable monitoring strategy under the Act.)

(2) Authority comparable to that in Section 504 of the Act, "Emergency Powers," and adequate contingency plans to implement such authority.

§ 35.560 State strategy formulation and program development.

(a) The annual State strategy is an important and integral part of the State program. Each State shall prepare and update annually, pursuant to the approved State continuing planning process (See 40 CFR Part 130), a State strategy for preventing and controlling water pollution over a five year period and shall include the State strategy in the State program submission in accordance with § 35.562. The contents of the required State strategy are delineated in § 130.20 of this Chapter.

NOTE: The monitoring strategy described in Appendix A herein shall be part of and consistent with the State strategy.

(b) Each State shall develop, in consultation with the Regional Administrator, an annual program based on its strategy in accordance with § 35.562(a). Interstate agencies shall develop in consultation with the Regional Administrator, an annual program based on the strategies and programs of those States served by the interstate agencies. The objective of program development is to relate available resources—both Federal and non-Federal—to the outputs to be achieved.

§ 35.561 Major program elements and outputs.

(a) The major program elements to be included, as applicable, in each State program are:

(1) Municipal facilities construction.
(2) Point source permits.
(3) Non-point source management activities.
(4) Water quality management planning (to include water quality standards).
(5) Monitoring (to include ambient and effluent monitoring).
(6) Enforcement (to include compliance assurance activities).
(7) Training and facilities operation and maintenance.
(8) Public participation.
(9) Administration.

(b) The State program shall identify the specific outputs to be produced by each program element for the year. A listing of required outputs for each program element will be included in EPA's annual guidance pursuant to § 35.404.

§ 35.562 State program submission.

Each State and interstate agency shall submit to the Regional Administrator:

(a) An initial program by May 1 for each year consisting of:

(1) The State strategy, described in § 130.20 of this Chapter for the coming year.

(2) A description by program element of the work to be conducted, including the work, if any, to be funded under Section 208(f) of the Act (See § 35.220-2). The program description shall consist of:

(i) A summary of the current year's program;

(ii) A description of the work to be performed (including an identification of person-years to be expended), and its relationship to the State strategy;

(iii) The expected outputs to be achieved;

(iv) An identification of all general operating funds, both Federal and non-Federal, which the State anticipates receiving during the fiscal year for use by the State agency in achieving the expected outputs. Each major State revenue source (for example general State revenue funds, State fees, Federal grants

or contracts and other sources of funding) shall be identified.

(3) Changes in the State continuing planning process made pursuant to § 130.40 of this Chapter.

(4) Changes in the State priority system, described in § 35.915(a) of this Chapter, including the criteria used by the State in determining priority for construction grant projects pursuant to § 35.915(c)(1).

NOTE: The State priority system may be amended by a State, as necessary at any time, provided the Regional Administrator approves each revision.

(5) A preliminary State project priority list pursuant to § 35.563(a).

(b) A final program (grant application) by September 1 for each fiscal year consisting of the initial program (not including the final State project priority list to be submitted pursuant to § 35.563(b)) described in § 35.562(a), modified as appropriate to reflect the results of public participation, and comments of the Regional Administrator. In addition, pursuant to the requirements of § 30.305 of this Chapter, the final program shall incorporate comments received through the State office with clearinghouse responsibilities.

§ 35.563 State project priority list submission.

(a) Each State shall submit to the Regional Administrator a preliminary State project priority list described in § 35.915(c) by May 1 of each year as part of the initial program submission (See § 35.562(a)).

(b) Each State shall submit to the Regional Administrator a final State project priority list by July 15 for his approval which reflects the results of public participation and comments of the Regional Administrator.

NOTE: The State project priority list may be amended by a State, as necessary, at any time pursuant to § 35.915(f).

§ 35.564 Public participation.

The final State program submission described in § 35.562 shall be the subject of public participation pursuant to 40 CFR Part 105 and in accordance with any time schedules and procedures agreed upon by the Regional Administrator and the State or interstate agency prior to initiation of development of the State strategy and program.

§ 35.565 Program approval.

(a) The Regional Administrator shall review the initial program submission and provide written comments to the State within thirty calendar days of its receipt.

(b) The Regional Administrator shall approve, conditionally approve or disapprove a final State program submission within thirty calendar days of its receipt, notwithstanding the provisions of § 30.345 of this Chapter. Such program shall be approved only if the program is in compliance with the requirements set forth in the Act and this Chapter.

(c) The Regional Administrator may award a grant based on conditional approval of a State program which requires minor changes to qualify for approval. In the event conditional approval is granted, the Regional Administrator shall provide the State with an explicit statement regarding the deficiency found in the State program submission and include, as a part of the grant award, a statement of the conditions which must be met to secure final approval and the date by which such conditions shall be met. Noncompliance with such conditions may result in a reduction in the grant amount as reflected in the grant agreement.

(d) Approval of the State program submission shall be reflected by execution of the grant agreement.

§ 35.566 State project priority list approval.

(a) The Regional Administrator shall review the preliminary project priority list submission and provide written comments to the State within thirty calendar days of its receipt.

(b) The Regional Administrator shall approve or disapprove a final project priority list submission within thirty calendar days of its receipt. Such lists shall be approved only if it is in compliance with the requirements set forth in the Act and with § 35.915(c) of this Chapter.

NOTE: The State priority system described in § 35.915(a) and the project list described in § 35.915(c) may not be conditionally approved.

(c) The Regional Administrator shall approve or disapprove any amendment to the State priority system and project priority list within thirty calendar days of the date of receipt. If either is disapproved, the Regional Administrator shall detail to the State the specific reasons for disapproval.

§ 35.567 Grant conditions.

In addition to the requirements set forth in Part 30 of this Chapter, each grant for a State water pollution control program shall be subject to the following condition:

The Regional Administrator may unilaterally suspend or terminate this grant pursuant to 40 CFR Parts 30 and 35 where Federally assumed enforcement as defined in section 309(a)(2) of the Act is in effect.

§ 35.568 Adherence to budget estimates.

Grantee expenditures shall be consistent with the resource estimates contained in the approved State program. In the event that rebudgeting of funds among program elements becomes necessary, the provisions of § 30.610 of this Chapter shall be applied.

§ 35.569 Program changes.

The grantee shall conduct its program in a manner consistent with the approved State program. In the event that changes to the approved State program become necessary, such changes shall be made in accordance with § 30.900 of this Chapter.

§ 35.570 Program evaluation and reporting.

Program evaluation is primarily a State and interstate agency responsibility and should be conducted periodically throughout the program year. It is EPA policy to limit evaluation to that which is necessary for responsible management of the national effort to control water pollution. Therefore, joint Federal/State evaluations are decentralized to the Regional level. Each Regional Administrator shall review and evaluate State and interstate programs at least twice each year as follows:

(a) *Mid-year evaluation.* By May 1 of each year, the Regional Administrator shall conduct a joint on-site evaluation meeting with the appropriate State and interstate agency officials to review and evaluate the program accomplishments of the current budget period pursuant to § 35.410.

(b) *End-of-Year-Review.* The Regional Administrator should conduct an evaluation meeting with appropriate State and interstate agency officials to review the accomplishments of the program year and the accomplishments projected for the coming year. This review is essential to program approval pursuant to § 35.565.

APPENDIX A—WATER QUALITY AND POLLUTANT SOURCE MONITORING

A. PURPOSE

This Appendix sets forth the description of the minimum acceptable State monitoring strategy and program required by § 35.559(b)(1), pursuant to Section 106(e)(1) of the Act.

B. OBJECTIVES AND GENERAL REQUIREMENTS

The objectives of the State monitoring program required by the Act are provision of the data, information, or reports necessary to determine compliance with permit terms and conditions, to develop and maintain an understanding of the quality (and causes and effects of such quality) of the waters in the State for the purpose of supporting State water pollution control activities in relation to the achievement of National goals according to the Act, to report on such quality and its causes and effects, and to assess the effectiveness of the State's pollution control program. To this end each State shall establish and maintain the capacity and competence to carry out a broad range of monitoring activities both before and after implementing pollution controls, including measurement of pollutant sources, water quality (physical, chemical, and biological), the factors affecting water quality, and the specific effects of such quality upon beneficial uses of the State's waters. Conduct of such monitoring programs and activities shall be carried out according to normally accepted practices consistent with practices promulgated or otherwise issued by the Administrator in the form of regulations, guidelines, technical manuals and handbooks, or other guidance which from time to time may be published and revised or amended.

C. DEFINITIONS

As used in this Appendix, the following terms shall have the meaning set forth below:

(1) The definitions of the following terms contained in Section 502 of the Act shall be applicable to such terms as used herein unless the context requires otherwise: "State water pollution control agency," "State," "interstate agency," "pollutant," "biological monitoring," "discharge," and "pollution."

(2) The term "parameter" means a quantitative or characteristic element which de-

scribes physical, chemical, or biological conditions of water.

(3) The term "representative point" means:

(a) A location in surface waters or ground waters at which specific conditions or parameters may be measured in such a manner as to characterize or approximate the quality or condition of the water body; or

(b) A location in process or waste waters at which specific conditions or parameters are measured and will adequately reflect the actual condition of those waters or waste waters for which analysis was made.

(4) The term "NPDES" means the National Pollutant Discharge Elimination System which is the national permitting system authorized under Section 402 of the Act, including any State or interstate permit program approved by the Administrator pursuant to Section 402 of the Act.

(5) The term "compliance monitoring" means measuring and analyzing pollutant sources, review of reports and information obtained from dischargers, and all other activities conducted by the State to verify compliance with effluent limits and compliance schedules.

(6) The term "intensive survey means the frequent sampling or measurement of parameters at representative points for a relatively short period of time to determine water quality conditions, causes, effects, or cause and effect relationships of such conditions.

(7) The term "fixed station monitoring" means the repeated, long-term sampling or measurement of parameters at representative points for the purpose of determining water quality trends and characteristics.

(8) The term "State continuing planning process or planning process" means the continuing planning process required by Section 303(e) of the Act, as developed and approved pursuant to 40 CFR Part 130.

(9) The term "monitoring activity" includes but is not limted to, the following: the collection of samples, including preservation and transport, and the collection of information concerning the quality or condition of ambient waters, including ground waters, or aquatic biota; the collection of samples, including preservation and transport, and the collection of information concerning the physical, chemical, or biological character of waste discharges to ambient waters, including ground waters; the operation and maintenance of field and laboratory support facilities including approved quality assurance practices; the processing, analysis, interpretation, and reporting of resulting data and information; and the management of such activities in terms of staffing, funding, scheduling, and coordination with other agents, including other State, interstate, Federal, local, and private entities or agencies.

(10) The term "monitoring program" includes, but is not limited to the monitoring activities described in (9) above applied in support of the State's water pollution control program.

D. MONITORING STRATEGY

The State shall develop, maintain, and implement a Statewide monitoring strategy as part of, and consistent with, the overall State strategy for preventing and controlling water pollution (described in § 130.20 of this chapter). The monitoring strategy, or revisions thereof, shall conform with the requirements of this Appendix and shall be included as a part of the State strategy required pursuant to § 35.562(a)(1), and shall:

(1) Describe the rationale by which the data needs of the State's water pollution control program are identified and prioritized;

(2) Describe the present and projected monitoring activities being carried out by the State as well as those being carried out by other entities insofar as the State relies or intends to rely upon them to satisfy the monitoring needs of the State's water pollution control program; and

(3) Describe the plan to progress systematically toward development of the capacity and competencies necessary to satisfy fully the monitoring needs of the State's water pollution control program; set the priorities for satisfaction of such monitoring needs, and describe generally what will be done in each of the monitoring activities for the next fiscal year.

E. PROGRAM ACCOMPLISHMENT PLANNING AND REVIEW

The States shall develop and include as a part of its State program submission required pursuant to § 35.562(a):

(1) Estimates of expenditures in terms of percentage of the total water monitoring budget for each of the monitoring program activities of field sampling, laboratory analysis including quality assurance, data handling, interpretation and reporting, and program management.

(2) Estimates of expenditures in terms of percentages of the total water monitoring budget for each monitoring program component described in Paragraph G herein.

F. COORDINATION WITH OTHER ENTITIES

Insofar as monitoring activities by other agents, including other State, interstate, Federal, local, or private entities or agencies, meet the laboratory support and quality assurance requirements set forth in this Appendix, and where sampling frequency, parameter coverage, station locations, and data availability meet pollution control program requirements, such activities should be integrated into the State's water monitoring program and, when approved by the Regional Administrator, will aid in satisfying the monitoring needs of the State's water pollution control program.

G. COMPONENTS OF THE STATE'S WATER MONITORING PROGRAM

The water monitoring program of the State shall include, but is not limited to, the following components:

(1) Compliance monitoring in accordance with 40 CFR Part 124 Subpart G and 40 CFR Part 125.27 of this Chapter.

(2) Intensive surveys of surface waters.

(3) Fixed station monitoring at representative points in surface waters.

H. LABORATORY SUPPORT AND QUALITY ASSURANCE

The State water monitoring program shall produce valid data and information. The State shall ensure that the monitoring program is staffed, equipped, maintained, and operated in a manner to support the activities of the State or interstate pollution abatement program.

Quality assurance procedures shall be adopted as an integral part of the monitoring program and shall be described in the monitoring strategy required in Paragraph D of this Appendix.

Specific requirements for field and laboratory procedures are:

(1) For the NPDES program and where else appropriate, sample collection, preservation, transportation and laboratory analysis shall be in compliance with 40 CFR Part 136, promulgated pursuant to Section 304(g) of the Act.

(2) Unless otherwise specifically authorized by the Regional Administrator, physical, chemical, biological, and microbiological parameters not identified in 40 CFR Part 136 shall be analyzed in accordance with those generally accepted methods cited in the latest editions of the following references:

(a) *Standard Methods for the Examination of Water and Wastewater*, American Public Health Assn., American Water Well Assn., Water Pollution Control Federation, Published by APHA, 1940 Broadway, New York, New York, 1972.

(b) *Annual Book of Standards, Part 23, Water; Atmospheric Analysis*, Published by American Society for Testing and Materials, Philadelphia, Pa., 1973.

(c) *Methods for Chemical Analysis of Water and Wastes*, U.S. Environmental Protection Agency, Methods Development and Quality Assurance Research Laboratory, and National Environmental Research Laboratory, Cincinnati, Ohio, July, 1973.

(d) *Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents*, U.S. Environmental Protection Agency, Methods Development and Quality Assurance Research Laboratory, Cincinnati, Ohio, July, 1973.

(e) *Recommended Methods for Water Data Acquisition*, Office of Water Data Coordination, U.S. Department of Interior, Washington, D.C., December, 1972.

(f) *Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases*, U.S. Geological Survey, U.S. Department of the Interior, Eugene Brown, M. W. Skougstad, and M. J. Fishman, Washington, D.C. 1970, (U.S. Government Printing Office).

(g) *Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples*, U.S. Geological Survey, U.S. Department of the Interior, K. V. Slack, R. C. Averett, P. E. Greeson, and R. J. Lipcombs, Washington, D.C., 1973.

(h) *Methods for Organic Pesticides in Water and Wastewater*, U.S. Environmental Protection Agency, James J. Lichtenberg, National Environmental Research Center, Cincinnati, Ohio, 1971.

(i) *Methods for Analysis of Organic Substances in Water*, U.S. Geological Survey, U.S. Department of the Interior, Washington, D.C.

(3) If a State wishes to use an analytical method or procedure not cited in either 40 CFR Part 136 or the references listed in subparagraph (2) above, the State shall submit an application to the Regional Administrator for approval pursuant to § 136.5 of this Chapter. Such applications shall include a description of proposed alternative analytical method or procedure together with the reason(s) for seeking to use a method other than according to Subparagraph (1) or (2) above, and a description of the uses to which the data and information collected using such method will be put.

(4) All participating laboratories shall routinely utilize and document intralaboratory analytical quality control procedures, including a combination of techniques such as: spiked sample recovery, replicate sample analyses, and reference sample analyses in a manner required by the Regional Administrator. The operation of such intralaboratory analytical quality control activities shall be consistent with practices recommended in the latest edition of EPA's *Handbook for Analytical Quality Control in Water and Wastewater Laboratories*, or other practices as authorized by the Regional Administrator. The laboratories shall participate in and document interlaboratory testing programs, including sample splitting between State monitoring support laboratories and EPA laboratories as required by the Regional Administrator.

(5) The State shall make all field operations, monitoring support laboratories, laboratory data records, and records indicating laboratory techniques and quality control procedures used open to EPA review pursuant to the access provisions of 40 CFR Part 30.

I. DATA HANDLING, STORAGE, AND REPORTING

Data and information resulting from the State's water monitoring program shall be made available to EPA in a form, volume, and manner agreed upon by the State and Regional Administrator.

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TUESDAY, APRIL 27, 1976

PART V

ENVIRONMENTAL PROTECTION AGENCY

■

MINIMUM STANDARDS FOR PROCUREMENT

Grants for State and Designated Areawide Water Quality Management

ENVIRONMENTAL PROTECTION AGENCY

[FRL 529-1]

GRANTS FOR STATE AND DESIGNATED AREAWIDE WATER QUALITY MANAGEMENT

Minimum Standards for Procurement; Interim Guidance

The following program guidance memorandum, distributed to Environmental Protection Agency Regional Offices, shall serve as interim guidance for Section 208 grantees in their procurement pending promulgation of final EPA regulations regarding minimum standards for procurement and other subagreement provisions under EPA grants. Proposed regulations were published on May 9, 1975, at 40 FR 20296. It is anticipated that final regulations concerning the subject of the May 9, 1975, proposed regulations will be published in the near future.

Dated: April 2, 1976.

ANDREW W. BREIDENBACH,
Assistant Administrator for Water and Hazardous Materials.

ALVIN L. ALM,
Assistant Administrator for Planning and Management.

PROGRAM GUIDANCE MEMORANDUM (SAM-14)

PURPOSE

The purpose of this memorandum is to set forth interim guidance on EPA's policy and procedures concerning minimum standards for general procurement pending the final promulgation of 40 CFR Part 33, Subagreement Regulations, by the Agency.

BACKGROUND

The minimum standards for procurement contained in this memorandum have been prepared to assist Section 208 grantees in the procurement of services, supplies, and equipment necessary to complete approved work plans. References to the amendments to 40 CFR Part 35 (§§ 35.936, 35.937, 35.938, and 35.939), published in the FEDERAL REGISTER on December 17, 1975, are contained in this interim guidance and should be referred to for their appropriate use in general procurement. Where there are substantive differences between this guidance and 40 CFR Part 35, the provisions set forth in this interim guidance shall apply.

POLICY

This guidance shall be in effect until the promulgation of 40 CFR Part 33 regulations, and shall apply to all contracts solicited and executed under Section 208 grants as of this date. Copies should be provided to all Section 208 grantees for their immediate use.

INTERIM GUIDANCE MINIMUM STANDARDS FOR PROCUREMENT UNDER SECTION 208 GRANTS

I. PURPOSE

This interim guidance has been prepared to assist State and Areawide Planning agencies, funded under Section 208 grants, in their procurement, pending the promulgation of EPA's final rules setting minimum standards for procurement under grants (40 CFR Part 33, published in the FEDERAL REGISTER as proposed rules on May 9, 1975).

Section 208 grants are awarded and administered under 40 CFR Part 30. Subagreement regulations have been issued for EPA's construction grants program in Part 35. As an aid to 208 grantees wishing to supplement this interim guidance with more detailed information, it is recommended that the amendments to 40 CFR Part 35 (§§ 35.936, 35.937, 35.938, and 35.939), published in the FEDERAL REGISTER on December 17, 1975, be referred to for their appropriate use as guidance in general procurement. It should be noted that where there are substantive differences between this interim guidance and the subagreement regulations contained in Part 35, the provisions set forth in this interim guidance shall apply.

II. APPLICABILITY

This interim guidance applies to all contracts solicited and executed after the effective date of this interim guidance.

In some cases, a subagreement may have been executed under a Section 208 grant prior to the effective date of this interim guidance. Such contracts are not affected by the requirements of this interim guidance. In other cases where 208 grantees have received proposals (but have not yet executed contracts), the selection and negotiation provisions contained herein need not apply. However, contract provisions, such as required provisions applicable to all procurement, shall apply to all pending contracts and any amendments to existing contracts.

III. GENERAL EPA POLICIES AND PROCEDURES REGARDING PROCUREMENT

A. *Definition.* A subagreement is a written agreement between an EPA grantee and another party (other than a public agency) and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts and subcontracts for personal and professional services and purchase orders.

B. *General Subagreement Requirements.* Subagreements must comply with the following general requirements:

(1) Must be necessary for and directly related to the accomplishment of the project work (grantees are to avoid purchasing unnecessary or duplicative work);

(2) Must be in the form of a bilaterally executed written agreement (except for small purchases);

(3) Must be for monetary or in-kind consideration; and

(4) May not be in the nature of a grant or gift.

C. *Interagency Agreements and contracts with nonprofit organizations.* Interagency agreements among and between public agencies are not treated as subagreements. However, interagency agreements must contain binding requirements and responsibilities mutually established and executed by the public agencies involved and must include an itemized breakdown of costs in the statement of work. State and local practices associated with interagency agreements shall be used as the prevailing policy in determining if such work under a Section 208 grant shall be conducted under an agreement or contract with another public agency.

Contracts with non-profit organizations (such as universities) need not be subject to the solicitation and selection procedures applicable to all other procurement. They are, however, subject to the same cost/price analysis requirements and procedures contained in this interim guidance.

D. *Grantee Responsibility.* Section 208 grantees are responsible for the administration and successful accomplishment of the project and for the proper administration and settlement of contractual and administrative issues related to subagreements made under the grant.

E. *Grantee Procurement Systems.* Grantees are free to use their own procurement systems provided that procurements made under an EPA grant adhere to the interim minimum standards set forth in this guidance. In some cases, 208 grantees may choose to contract with other governmental units on the State and local levels for procurement services. Such services may, for example, permit another governmental unit to act as the procurement agent for the 208 grantee or may be in the form of advice and consultation with the grantee in establishing a sound procurement system. Procurement services obtained from other governmental units, however, must comply with the minimum standards set forth in this interim guidance.

Applicable requirements of State and local laws and ordinances apply to the extent that such requirements do not conflict with Federal laws and meet these interim minimum standards for procurement.

F. *Competition.* It is the policy of the Environmental Protection Agency to encourage free and open competition appropriate to the type of work to be performed.

G. *Type of Contract (Subagreement).* The requirements of §§ 35.937-1 and 35.938-3, governing the type of contract permitted under EPA grants, shall apply. The cost-plus-percentage-of-cost and the percentage-of-construction-cost types of contracts are prohibited. It is anticipated that the most appropriate type of subagreement in most instances for 208 will be a cost-reimbursement type of contract.

H. *Profit.* Only fair and reasonable profits may be earned by contractors in subagreements under a 208 planning grant. (EPA, in its own procurement, uses a set of profit evaluation guidelines—see 41 CFR 15-3.808-50—which grantees may utilize, as appropriate, if they desire a formal system of determining profit. Similar guidelines will shortly be included in the EPA Grants Administration Manual.)

I. *Small and Minority Business.* Section 208 grantees must show positive efforts to utilize small business and minority-owned business sources of supplies and services. Such effort should allow these sources the maximum feasible opportunity to obtain contracts or subcontracts for work to be performed under the grant.

J. *Small Purchases.* A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together. Reasonable competition shall be obtained.

Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda or oral price quotations and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of these documents and of written quotations received, or references to catalogs or printed price lists used, will suffice as the record supporting the price paid.

K. *Documentation.* Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for the lack of competition if competition appropriate to the type of project work to be performed is required but is not obtained; and

(3) Basis for the cost or price for an award (including EPA Form 5700–41, Cost or Price Summary Format for Subagreements under U.S. EPA Grants, where required.)

Procurement documentation required by § 30.805 (Records) of the EPA general grant regulations must be retained by the grantee or contractors of the grantee for the period of time so specified and is subject to all the requirements of that section. A copy of each subagreement must be furnished to the Project Officer upon request.

L. *Required Approvals.* The grantee must secure prior written approval of the Project Officer for the following procurement actions:

(1) All subagreements in excess of $100,000;

(2) Each amendment to a subagreement in excess of $100,000 (See M(1) below); and

(3) Cost/Price analysis of subagreements in excess of $100,000.

M. *Cost/Price Analysis.* EPA Form 5700–41, Cost or Price Summary Format for Subagreements under U.S. EPA Grants, will be required for all negotiated contracts awarded in excess of $10,000 under a Section 208 grant. The selected contractor shall be responsible for the preparation and submission of this form to the grantee. (See attached EPA Form 5700–41.)

It is the policy of EPA that the cost or price of all subagreements and amendments thereto made under Section 208 grants be considered as follows:

(1) *Subagreements Over $100,000.* A formal cost/price analysis will be required for each subagreement expected to exceed $100,000 under a 208 grant. A cost/price analysis shall also be performed in cases where an amendment to a subagreement will result in a contract price in excess of $100,000, or where the amendment itself is in excess of $100,000.

(2) *Subagreements $100,000 or Less.* A cost review will be required of the grantee for each subagreement under $100,000. As a minimum, proposed subagreement costs shall be presented to the grantee and shall be supported by a certification executed by the selected contractor that proposed costs reflect current, complete and accurate cost and pricing data applicable to the date of anticipated subagreement award.

(3) *Grantee Responsibility.* The 208 grantee is responsible for the conduct of all cost/price analysis of all subagreements, and amendments thereto, in excess of $100,000, and for the cost review of all subagreements, and amendments thereto, under $100,000. The grantee, at his own discretion, however, may cost analyze any contract awarded under a Section 208 grant. Guidelines discussed in the Cost Analysis Handbook for Section 208 Areawide Waste Treatment Management Planning, May 1975 are applicable to all grantees.

(4) *EPA Responsibility.* It is the responsibility of EPA to assure that an adequate cost/price analysis has been performed and, as such, may perform a pre-award cost analysis on any subagreement although the primary responsibility rests with the 208 grantee.

(5) *Federal Cost Principles.* Section 30.710 of the EPA general grant regulations and § 35.936–20 of the Construction Grants regulations contain cost principles which must be used for the determination of the allowability of costs under EPA grants.

(6) *Acceptable Accounting Systems.* Section 208 grantees and their contractors shall have accounting systems which account for costs in accordance with generally accepted accounting principles. Such systems shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs under a Section 208 grant. Allowable costs shall be determined in accordance with § 30.705 of the EPA general grant regulations.

N. *Fraud and Other Unlawful or Corrupt Practices.* All procurement made under Section 208 grants are covered by the provisions set forth in § 30.245 of the EPA general grant regulations.

O. *Disclosure of Information.* Section 208 grantees and their contractors should be aware that information provided to EPA is subject to disclosure to others unless otherwise noted exempt or considered confidential pursuant to § 30.235 of the EPA general grant regulations.

IV. PROCUREMENT BY NEGOTIATION

Authorization: Section 208 grantees may utilize procurement by negotiation (i.e., award of contracts by any method other than procurement by formal advertising) if it is deemed necessary to accomplish sound procurement and if any of the following conditions are applicable:

(1) Public exigency will not permit the delay incident for formally advertised procurement (e.g., an emergency procurement).

(2) The aggregate amount involved does not exceed $10,000.

(3) The material or service to be procured is available from only one person or entity. If the procurement is expected to aggregate more than $10,000, the grantee must document its file with a justification of the need for noncompetitive procurement, and provide such documentation to the Project Officer on request.

(4) The procurement is for personal or professional services (including architectural or engineering services) or for any services to be rendered by a university or other educational institution.

(5) No responsive, responsible bids at acceptable price levels have been received after formal advertising.

(6) The procurement is for materials or services where the prices are established by law.

(7) The procurement is for technical items or equipment requiring standardization and interchangeability of parts with existing equipment.

(8) The procurement is for experimental, developmental or research services.

Procurement by negotiation shall be conducted in accordance with the following procedures and requirements:

A. *Grantee Responsibility.* Section 208 grantees are responsible for the negotiation of their contracts.

B. *Type of Contract.* The requirements of § 35.937–1 (Type of Contract) in the Construction Grants regulations shall apply.

C. *Adequate Public Notice.* To meet adequate public requirements, 208 grantees have the option to either:

(1) publish the notice of request for proposal (as described in (D) below) in professional journals, newspapers, or publications of general circulation over a reasonable area similar to those provisions established in § 35.937–2(b); or

(2) employ the two-step process as prescribed in §§ 35.937–2 and 35.937–3, whereby a notice of request for qualifications is published similar to the first option. After the evaluation of qualifications of firms and/or individuals responding to the notice is completed, the request for proposal is sent to qualified candidates pursuant to § 35.937–4.

These provisions shall apply to negotiated procurements expected to exceed $10,000, except where rates or prices are fixed by law or regulation or where a single source has been justified.

D. *Requests for Proposals.* Requests for proposals must be in writing and must contain the information necessary

to enable a prospective offeror to prepare a proposal properly. The request for proposals must inform offerors of all evaluation factors and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized). The request for proposal must also clearly state the time and place for submission of proposals. Sources which request an opportunity to submit proposals, and which are not otherwise barred by law or regulations, shall be promptly furnished a copy of the request for proposal and shall be permitted to submit a proposal in response thereto.

Requests for qualifications or proposals must include the following statement, as well as the proposed terms of the subagreement:

Any contract awarded under this request for (qualifications/professional proposals) is expected to be funded in part by a grant from the United States Environmental Protection Agency. This procurement will be subject to regulations contained in 40 CFR Subchapter B. Neither the United States nor the United States Environmental Protection Agency is nor will be a party to this request for (qualifications/professional proposals) or any resulting contract.

S. *Evaluation Factors. Qualifications:* Section 208 grantees shall uniformly evaluate, by an objective process, the qualifications of firms or individual responding to the announcement. Criteria which should be considered in the evaluation of candidates for submission of proposals shall include, as a minimum:

(1) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association, or professional subcontract) in connection with the type of services required and the complexity of the project;

(2) Past record of performance on contracts with the grantee, other government agencies, or public bodies, and with private industry, including such factors as control of costs, quality of work, and ability to meet schedules;

(3) Capacity of the candidate to perform the work (including any specialized services) within the time limitations, taking into consideration the current and planned workload of the firm or individual;

(4) The familiarity of the candidate with types of problems applicable to the project; and

(5) Avoidance of personal and organizational conflicts of interest prohibited under State and local law and § 30.340–2 of the EPA general grant regulations.

Proposals: Section 208 grantees shall uniformly evaluate, by an objective process, all proposals submitted in response to a request for personal or professional services. The request for proposal must inform offerors of the evaluation criteria and the relative importance attached to each criterion (a numerical weighted formula need not be utilized). Evaluation criteria shall include:

(1) All criteria stated above regarding the qualifications of candidates; and

(2) The candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and methods.

F. *Negotiations.* Written or oral interviews should be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered. Each proposer with whom negotiations are conducted shall be given reasonable opportunity (with a common cutoff date) to support, clarify, correct, improve, or revise its proposal. Information shall not be conveyed to one or more proposers which would give them a competitive advantage.

The object of negotiation with any candidate shall be to reach agreement on the provisions of the proposed contract. The grantee and the candidate shall discuss, as a minimum:

(1) The scope and extent of work and other essential requirements;

(2) Identification of the personnel and facilities necessary to accomplish the required work within the required time, including, where needed, employment of additional personnel, subcontractors, joint ventures, etc.;

(3) Provisions of the required technical services in accordance with regulations and criteria established for the project; and

(4) A fair and reasonable price for the required work to be determined in accordance with the profit and cost/price analysis provisions set forth in this interim guidance.

G. *Award of Contract.* After the close of negotiations, the grantee shall award the contract to the proposer whose proposal offers the greatest advantage for the project—technical, economic, and other factors considered.

An unsuccessful offeror shall be notified at the earliest practicable time that its offer has not been selected for award. Upon written request of an unsuccessful offeror, the grantee shall disclose the reason(s) for rejection.

The grantee must develop and retain adequate records of the basis for selection for negotiation and award.

V. PROCUREMENT BY FORMAL ADVERTISING

Section 208 grantees may utilize procurement by formal advertising if it is deemed appropriate for the particular procurement. Formal advertising shall be conducted in accordance with the following procedures and requirements:

A. *Types of Contract.* Each formally advertised subagreement must be a fixed price (lump sum or unit price or a combination of the two) contract. The requirements of § 35.938–3 (Type of Contract) in the Construction Grants regulations shall apply.

B. *Adequate Public Notice and Solicitation of Bids.* The grantee will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation beyond the grantee's locality (Statewide, generally), inviting bids on the project work, and stating the method by which bidding documents may be obtained and/or examined.

C. *Adequate Time for Preparing Bids.* Adequate time, generally but not less than 30 days, must be allowed between the date when public notice is first published and the date by which bids must be submitted. Bidding documents must be available to prospective bidders from the date when such notice is first published.

D. *Adequate Bidding Documents.* A reasonable number of bidding documents (Invitations for Bids) shall be prepared by the grantees and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by the grantee and shall be available for inspection and copying by any party. Such bidding documents shall include:

(1) A complete statement of the work to be performed and the required completion schedule;

(2) The terms and conditions of the contract to be awarded;

(3) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(4) Responsibility requirements or criteria which will be employed in evaluating bids; and

(5) The following statement:

Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this Invitation for Bids or any resulting contract. This procurement will be subject to regulations contained in 40 CFR Subchapter B.

E. *Sealed Bids.* The 208 grantee will provide for bidding by sealed bids and for the safeguarding of bids received until public opening.

F. *Addenda to Bidding Documents.* If a grantee desires to amend any part of the bidding documents during the period when bids are being prepared, the addenda shall be communicated in writing to all firms or individuals in receipt of bidding documents in time to be considered prior to the bid opening time.

G. *Bid Notifications.* A firm or individual having submitted a bid shall be allowed to modify or withdraw the bid prior to the time of bid opening.

H. *Public Opening of Bids.* Section 208 grantees shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

I. *Award to the Low, Responsive, Responsible Bidder.* After bids are opened, they shall be evaluated by the grantee in accordance with the methods and criteria set forth in the bidding documents. The grantee may reserve the right to reject all bids. Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder.

If the award is intended to be made to a firm or individual which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed nonresponsible or not responsive.

State or local laws, ordinances, regulations or procedures which are designed or which operate to give local or in-State bidders preference over other bidders shall not be employed in evaluating bids.

VI. REQUIRED PROVISIONS APPLICABLE TO ALL PROCUREMENT

Each subagreement awarded under a Section 208 grant must adequately define the scope of project work to be performed by the contractor for the grantee and must include adequate provisions to define a sound and complete agreement. Such general provisions would include, as a minimum:

A. *Content of Subagreement.* Each subagreement must adequately define:

(1) The scope and extent of project work;

(2) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;

(3) Personnel and facilities necessary to accomplish the work within the required time;

(4) The extent of subcontracting and consultant agreements; and

(5) Payment provisions in accordance with this interim guidance.

If any of these elements cannot be defined adequately for later tasks at the time of contract execution, the subsequent tasks shall not be included in the contract at that time.

B. *Termination; Suspension.* Each subagreement in excess of $10,000 must contain adequate provisions for termination of all or any part of contract performance for default or for convenience by the grantee, or for suspension of all or any part of contract performance by agreement or by the grantee, including the manner by which the termination or suspension will be effected and the basis for settlement.

C. *Remedies.* Each subagreement in excess of $10,000 must contain adequate contractual provisions or conditions to allow for administrative, contractual, or legal remedies in instances where grantees or contractors violate or breach contract terms or conditions, and must provide for such damages, sanctions, and penalties as may be appropriate.

D. *Records Retention.* Each subagreement in excess of $10,000 must contain a provision requiring the contractor to maintain records of contract performance as defined in § 30.805 of the EPA general grant regulations, and make these records available for inspection, audit, and copying by the grantee, EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative, to the extent and for the same length of time as is set forth with respect to grantee records in § 30.805 of the EPA general grant regulations.

E. *Access.* Each subagreement in excess of $10,000 must contain a provision to ensure that the Project Officer and any authorized representative of EPA, the Comptroller General of the United States or the Department of Labor, shall at all reasonable times during the period of EPA grant support and until three years following final settlement have access to the facilities, premises, and records (as defined in § 30.805) of the contractor related to the project.

F. *Audit.* Each subagreement in excess of $10,000 must contain adequate contractual provisions or conditions to allow for an audit or audits of the contractor in accordance with generally accepted auditing principles and established procedures and guidelines of the reviewing or audit agency(ies) and 40 CFR 30.805 and 30.820. (See attached sample audit clause, Appendix C–1, Construction Grants Regulations.)

G. *Payments.* The provisions defined in § 35.937–10 concerning subagreement payments for architectural or engineering services apply to all procurement conducted under Section 208 grants.

H. *Price Reduction for Defective Cost or Pricing Data.* The provisions of the following clause are required by EPA only if the amount of the contract exceeds $100,000. The grantee may elect to utilize this clause if the contract amount is $100,000 or less.

If the Project Officer determines that any price, including profit negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the contractor, or any subcontractor, furnished incomplete or inaccurate cost or pricing data not current as certified, then such price or cost or profit shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction. Failure to agree on a reduction shall be subject to the "Remedies" clause of this contract.

I. *Other Applicable Federal Requirements.* Where construction activity may be undertaken, other Federal statutes and requirements, such as the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act and related statutes, the Copeland Act, or such other statutory provisions, Executive Orders or regulations as may be applicable to contractors under grants, shall apply to each subagreement in excess of $10,000.

COST OR PRICE SUMMARY FORMAT FOR SUBAGREEMENTS UNDER U.S. EPA GRANTS
(See accompanying instructions before completing this form)

Form Approved
OMB No. 153-R0144

PART I—GENERAL

1. GRANTEE

2. GRANT NUMBER

3. NAME OF CONTRACTOR OR SUBCONTRACTOR

4. DATE OF PROPOSAL

5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Street, City, State, ZIP code)

6. TYPE OF CONTRACT FOR WHICH PROPOSAL IS SUBMITTED

PART II—COST SUMMARY

7. DIRECT LABOR (Specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		$	$	
DIRECT LABOR TOTAL:				$

8. INDIRECT COSTS (Specify indirect cost pools)	RATE	× BASE =	ESTIMATED COST	
		$	$	
INDIRECT COSTS TOTAL:				$

9. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			$	
(2) PER DIEM			$	
TRAVEL SUBTOTAL:			$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)	QTY	COST	ESTIMATED COST	
		$	$	
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	
			$	
SUBCONTRACTS SUBTOTAL:			$	
d. OTHER (Specify categories)			ESTIMATED COST	
			$	
OTHER SUBTOTAL:			$	
e. OTHER DIRECT COSTS TOTAL:				$
10. TOTAL ESTIMATED COST				$
11. PROFIT				$
12. TOTAL PRICE				$

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PART III - PRICE SUMMARY

13. COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES *(Indicate basis for price comparison)*	MARKET PRICE(S)	PROPOSED PRICE
		$

PART IV - CERTIFICATIONS

14. CONTRACTOR

14a. HAS A FEDERAL AGENCY OR A FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL GRANT OR CONTRACT WITHIN THE PAST TWELVE MONTHS?

☐ YES ☐ NO *(If "Yes" give name address and telephone number of reviewing office)*

14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

14c.

This proposal is submitted for use in connection with and in response to *(1)*_____. This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of *(2)*_____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above cost and pricing data have been determined, as a result of audit, not to have been complete, current and accurate as of the date above.

(3)

DATE OF EXECUTION

SIGNATURE OF PROPOSER

TITLE OF PROPOSER

14. GRANTEE REVIEWER

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appear acceptable for subagreement award.

DATE OF EXECUTION

SIGNATURE OF REVIEWER

TITLE OF REVIEWER

16. EPA REVIEWER *(If applicable)*

DATE OF EXECUTION

SIGNATURE OF REVIEWER

TITLE OF REVIEWER

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INSTRUCTIONS

In completing this form, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portions of this form:

Part I is applicable to all subagreements.
Part II is applicable to all subagreements requiring a cost review pursuant to EPA grant regulations.
Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).
Part IV certifications will be executed as required by the regulations and by the instructions for each block.

PART I - GENERAL

Item 1 – Enter the name of the grantee as shown on the grant agreement.
Item 2 – Enter the grant identification number shown on the grant agreement (or assigned to the project, if no grant agreement has yet been executed).
Item 3 – Enter the name of the contractor or subcontractor with whom the subagreement is proposed to be executed.
Item 4 – Enter the date of the contractor's or subcontractor's proposal to the grantee.
Item 5 – Enter the full mailing address of the contractor or subcontractor
Item 6 – Give a brief description of the work to be performed under the proposed subagreement.

PART II - COST SUMMARY

This portion of the form is to be completed by the contractor (or his subcontractor) with whom a subagreement is proposed to be executed, unless that subagreement is a formally advertised, competitively bid, fixed price contract.

Nothing in the following discussions should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the firm's accounting or estimating system.

40 CFR 30.710 contains general cost principles applicable to subagreements under EPA grants. Pursuant to that section, all subagreements awarded to profit-making organizations are subject to the cost principles of 41 CFR 1-15.2. Architect-engineer and construction contracts are subject also to 41 CFR 1-15.4.

Item 7 - Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an attachment. Incurrence of unanticipated overtime costs requires the approval of the grantee at the time of incurrence. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefor, labor categories, rates and hours should be identified on an attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered under the contract. In case the full time of any employee is not to be devoted to work to be performed under the contract, only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that he is expected to be engaged directly in the performance of work under the contract and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the contract scope of services. Estimate man-hours for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any, should be used for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy.

Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the grantee or EPA upon request include:

a. The method of estimating proposed man-hours.

b. The computation technique used in arriving at proposed labor rates.

c. The specific documents, books, or other records used as factual source material to develop proposed man-hours and labor rates.

d. Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a - d through d above shall be included on an attached sheet.

Item 8 - Indirect Costs

Indirect costs may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs to the cost objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the mthod used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN THE CIRCUMSTANCES, will generally be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the contract period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings are overhead on direct labor and general and administrative expenses. The first grouping usually includes employment taxes, fringe benefits, holidays, vacation, idle time, bonuses, etc., applicable to direct labor. The second generally includes the remaining costs which because of their incurrence for common or joint objectives are not readily subject to treatment as direct costs. It is expected, however, that proposal groupings will correspond with the firm's normal method of accumulating indirect costs. (Under some accounting systems, the first grouping would be included instead under item 7.) No special categorization is required provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead costs, but in some circumstances other bases produce more equitable results. As in the case of overhead costs groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

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In the case of multi-branch firms, joint ventures or affiliates, it is expected that overhead costs applicable to the specific location(s) where work is to be performed will be proposed. Company-wide, joint venture, or affiliate rate averages may not be appropriate. The rates should be tailored to the work locations. The objective is to allocate overhead costs more precisely.

The rate proposed should be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter the indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the direct labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the grantee or EPA upon request include:

a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six months of the current fiscal period have elapsed, cost data for this period should be included as one of the three periods.

b. Company budgets, budgetary cost data, and overhead rate computations for future period(s).

Item 9 – Other Direct Costs

The following items are illustrative of costs normally included in this category of costs:

a. *Travel costs, including transportation, lodging, subsistence, and incidental expenses incurred by personnel of consultants while in a travel status in connection with the performance of services required by the contract. The cost principles generally require the use of less than first class air accommodations and also limit the cost of private aircraft.*

b. *Equipment, Materials, and Supplies*

(1) *Long distance telephone, telegraph, and cable expenses to be incurred in connection with the performance of services required in connection with the contract.*

(2) *Reproduction costs including blueprints, black and white prints, color prints, photographs, photostats, negatives and express charges.*

(3) *Commercial printing, binding, artwork and models.*

(4) *Special equipment.*

c. *Subcontracts.*

d. *Other Direct costs, items not included above.*

Enter in blocks 9a-d all other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of man-trips proposed and the estimated cost per man-trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each subcontract and consultant agreement must be identified separately in block 9c. For each subcontract in excess of $10,000, this EPA Form 5700-41 completed and certified by the subcontractor shall be appended.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the grantee or EPA upon request include:

a. basis for other direct costs proposed,

b. factual sources of costs, rates, etc., used in computing the proposed amount of each cost element.

Item 10 – Total Estimated Cost

Enter the total of all direct labor, indirect costs, and other direct costs from items 7, 8, and 9.

Item 11 – Profit

A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:

a. degree of risk,
b. nature of the work to be performed,
c. extent of firm's investment,
d. subcontracting of work, and
e. other criteria.

The Federal Procurement Regulations cost principles applicable to subagreements with profit-making organizations (41 CFR 1-15.2 and 1-15.4) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these cost principles include, but are not limited to, entertainment, interest on borrowed capital and bad debts. Because the Government considers "profit" to be the excess of price over allowable costs, such computation can involve a higher profit estimate than the firm's experienced profit as it customarily computes it. The contractor may separately disclose to the grantee its customary computations.

Enter the dollar amount of profit in block 11.

Item 12 – Total Price

Enter the total of item 10 and item 11.

PART III – PRICE SUMMARY

This portion of the form is for use by a grantee when price competition (i.e., price analysis) is utilized in subagreement review. It may also be used by a contractor when price competition is used as a basis for award of a subcontract.

Item 13 – Competitor's Catalog Listings, In House Estimates, Prior Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

PART IV – CERTIFICATIONS

Item 14 – Contractor – FOR USE BY CONTRACTOR OR SUBCONTRACTOR ONLY

a. Complete this block only if Part II has been completed.

b. Complete this block only if Part II has been completed.

Enter the specific cost principles with which the cost summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR 30.710. Cost principles applicable to subagreements with profit-making organizations are those at 41 CFR 1-15.2, and, for architect-engineer or construction contracts, 41 CFR 1-15.4.

c. (1) Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. ——).

(2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on complete, current and accurate data.

(3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to (not to exceed 30 days).

Item 15 – Grantee Reviewer – FOR USE BY GRANTEE ONLY

If required by applicable grant regulations, the grantee must submit the signed form for EPA review prior to execution of the subagreement.

Item 16 – EPA Reviewer – FOR USE BY EPA ONLY

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federal register

TUESDAY, APRIL 27, 1976

PART VI:

INTERNATIONAL TRADE COMMISSION

■

RULES OF PRACTICE AND PROCEDURE

Title 19—Customs Duties

CHAPTER II—UNITED STATES INTERNATIONAL TRADE COMMISSION

RULES OF PRACTICE AND PROCEDURE

Notice of Rulemaking

Notice is hereby given that the United States International Trade Commission is promulgating amendments and additions to its Rules of Practice and Procedure, 19 CFR Chapter II.

These rules are adopted under the authority of sections 333 and 335 of the Tariff Act of 1930, 19 U.S.C. 1333 and 1335, and the Administrative Procedure Act, 5 U.S.C. 551 et seq. The regulations implement section 337 of the Tariff Act of 1930, as amended (88 Stat. 2053; 19 U.S.C. 1337), and Public Law 710, July 2, 1940 (54 Stat. 724; 19 U.S.C. 1337a.).

These rules were the subject of a Notice of Proposed Rulemaking published in the FEDERAL REGISTER on September 2, 1975 (40 FR 40174). The Commission received comments on its proposed rules from various sources.

Comments were received suggesting that many of the time periods prescribed in Part 210 should be longer. In view of the urgency of concluding section 337 investigations within the statutory time limitations, the relatively short time periods provided in Part 210 are considered necessary. The presiding officer or the Commission may extend the applicable time periods of Part 210 when appropriate.

A comment suggesting that it is not necessary to require complaints to be under oath was received. The requirement that there be an oath is consistent with 19 U.S.C. 1337(b).

Comments were also received that standards should be published for the exercise of Commission discretion in such areas as granting or denying a motion for a temporary exclusion order or determining the amount of any bond to be applied. The exercise of Commission discretion in these areas will be on a case-by-case basis for the present, until such time as the Commission feels that its experience suggests that the publication of such standards is in the public interest.

Comments were also received on § 210.14, suggesting that the presiding officer recommend final agency action to the Commission, incorporating his findings and conclusions with respect to the subject matter of § 210.14. The adoption of such a procedure is left to Commission discretion by the section. The section also leaves to Commission discretion the method of developing information and advice relevant to the subject matter of this section, which often involves "legislative," as opposed to "adjudicative," facts. Since these facts often may not pertain to the conduct of the adversary parties, adversary proceedings to develop these facts may not be appropriate, and the restraints of such a proceeding might limit the Commission's ability to collect such information. To the extent that adjudicative facts may be involved, the Commission will consider motions for a hearing to develop such facts.

After considering the above comments and additional minor comments, the Commission adopts the following amendments and additions to its Rules of Practice and Procedure, to be effective May 27, 1976.

1. 19 CFR Chapter II is divided into three subchapters, as follows: Subchapter A—General, containing Part 201; Subchapter B—Nonadjudicative Investigations, beginning with Part 202; and Subchapter C—Adjudicative Investigations, to follow Part 208; and

2. Section 201.2 is revised to read as follows:

PART 201—RULES OF GENERAL APPLICATION

§ 201.2 Definitions.

As used in this chapter—

(a) "Commission" means the United States International Trade Commission;

(b) "Tariff Act" means the Tariff Act of 1930, as amended (19 U.S.C. 1202, et seq.);

(c) "Trade Expansion Act" means the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801, et seq.);

(d) "Antidumping Act" means the Antidumping Act, 1921, as amended (19 U.S.C. 160, et seq.);

(e) "Trade Act" means the Trade Act of 1974 (19 U.S.C. 2101, et seq.).

* * * * *

3. Section 201.5 is added to read as follows:

§ 201.5 Attendance fees and mileage.

(a) *Deponents and witnesses.* Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same fees and mileage as are paid witnesses in the courts of the United States: Provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear: Provided, that when it is the Commission, one or more Commissioners, or one of its employees at whose instance deponents or witnesses appear, such fees and mileage shall be paid by the Commission.

* * * * *

4. Section 201.8 is revised to read as follows:

§ 201.8 Filing of documents.

(a) *Where to file; date of filing.* Documents shall be filed at the office of the Secretary of the Commission in Washington, D.C. Such documents, if properly filed, will be deemed to be filed on the date on which they are actually received in the Commission.

(b) *Conformity with rules.* Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(c) *Specifications for documents.* Each document filed under this chapter shall be clear and legible.

(d) *Number of copies.* A signed original and nineteen (19) true copies of each document shall be filed unless otherwise indicated. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(e) *Identification of party filing document.* Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name, address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or agent of such party. (Also, any attorney or agent filing the document shall give his address and telephone number.) The signature of the person signing such a document constitutes a certification that he had read the document, that to the best of his knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

* * * * *

5. Section 201.14 is revised to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under Part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States.

(b) *Additional hearings, postponements, continuances and extensions of time.* Prior to its final determination in any investigation, the Commission may in its discretion for good cause shown grant additional hearings, postponements, or continuances of hearings, or extend the time for performing any act required by or pursuant to the rules contained in this chapter.

* * * * *

6. Section 201.16 is revised to read as follows:

§ 201.16 Service of process and other documents.

(a) *By the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a process or other document of the Commission shall be served by anyone duly authorized by the Commission and be effected—

(1) By mailing or delivering a copy of the document to the person to be served, to a member of the partnership to be served, to the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above before the Commission, by mailing or delivering a copy to such attorney; or

(2) By leaving a copy thereof at the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by leaving a copy at the office of such attorney.

(b) *By a party other than the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a document of a party shall be effected—

(1) By mailing or delivering copies of the document to the Secretary of the Commission (the number of copies being as provided for in § 201.8(d) of this part) and to each other party, or, if a party is represented by an attorney before the Commission, by mailing or delivering copies to such attorney; or

(2) By leaving copies thereof at the office of the Secretary of the Commission (the number of copies being as provided for in § 201.8(d) of this part) and at the principal office of each other party, or, if a party is represented by an attorney before the Commission, by leaving copies at the office of such attorney.

(c) *Proof of service; certificate.* (1) When service is by mail, it is complete upon mailing of the document.

(2) The verified certificate by the person serving a document, setting forth the manner of said service, shall be proof of service of the document.

(d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a document upon him and the document is served upon him by mail, three (3) days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) days shall be added to the prescribed period.

* * * * *

PART 203—INVESTIGATIONS OF ALLEGED UNFAIR PRACTICES IN IMPORT TRADE

7. The provisions contained in Part 203 of the Commission's Rules are deleted;

* * * * * *

8. A new Part 210 is added to read as follows:

SUBCHAPTER C—ADJUDICATIVE INVESTIGATIONS

PART 210—INVESTIGATIONS OF ALLEGED UNFAIR PRACTICES IN IMPORT TRADE

Sec.

210.1 Applicability of part.
210.2 General policy.

Subpart A—General Provisions

210.4 Definitions.
210.5 Written submissions.
210.6 Intervention.

Subpart B—Commencement of Proceedings

210.10 Commencement of proceedings.
210.11 Action of Commission upon receipt of complaint.
210.12 Institution of investigation.
210.13 Service of complaint.
210.14 Commission action, public interest factor, and bonding.
210.15 Period for concluding Commission investigation.

Subpart C—Pleadings and Motions

210.20 The complaint.
210.21 The response.
210.22 Amendments to pleadings and notice of investigation.
210.23 Supplemental submissions.
210.24 Motions.

Subpart D—Discovery and Compulsory Process

210.30 General provisions governing discovery.
210.31 Depositions.
210.32 Interrogatories.
210.33 Request for production of documents.
210.34 Request for admission.
210.35 Subpoenas.
210.36 Failure to make discovery; sanctions.

Subpart E—Prehearing Conferences and Hearings

210.40 Prehearing conferences.
210.41 General provisions for hearings.
210.42 Evidence.
210.43 Record.
210.44 In camera orders.

Subpart F—Determinations and Actions Taken

210.50 Summary determinations.
210.51 Termination of investigation.
210.52 Proposed findings and conclusions.
210.53 Recommended determination.
210.54 Filing of exceptions to the recommended determination and alternative findings of fact and conclusions of law.
210.55 Commission determination and action.
210.56 Petition for reconsideration.
210.57 Disposition of petition for reconsideration.

Subpart G—Appeals

210.60 Interlocutory appeals.
210.61 Appeals of final determination to the United States Court of Customs and Patent Appeals.

§ 210.1 Applicability of part.

The rules in this part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930, as amended (88 Stat. 2053; 19 U.S.C. 1337), and Public Law 710, July 2, 1940 (54 Stat. 724; 19 U.S.C. 1337a). For other applicable rules see Part 201 of subchapter A.

§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously. In the conduct of such proceedings, the presiding officer and counsel or other representative for each party shall make every effort at each stage of the proceedings to avoid delay.

Subpart A—General Provisions

§ 210.4 Definitions.

As used in this part—

(a) "Complainant" means a person who has filed a complaint with the Commission under this part;

(b) "Party" means each complainant and respondent in the investigation, the Commission investigative attorney, and each person designated as a party pursuant to § 210.6 of this part;

(c) "Commission investigative attorney" means, for purposes of a particular proceeding under section 337 of the Tariff Act, the attorney designated to engage in investigatory activities with respect to the proceeding, in his capacity as investigator in the proceeding;

(d) "Person" means an individual, partnership, corporation, association, or public or private organization;

(e) "Presiding officer" means the body or person presiding over the taking of evidence in an investigation under this part, and may include the Commission, one or more members of the Commission, or one or more hearing examiners appointed under section 3105 of title 5 of the United States Code;

(f) "Respondent" means any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act.

§ 210.5 Written submissions.

(a) *Caption; names of parties.* Every submission shall contain a caption setting forth the name of the Commission, the title of the action, the docket number assigned to the proceeding, if any, and, in the case of a complaint and response, the names of all the parties to the proceeding.

(b) *Concise and direct pleading; numbered paragraphs.* All averments contained in a submission shall be simple, concise, and direct and shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.

(c) *Number of copies.* Except as otherwise provided for in this part or by the Commission, the original and nineteen (19) true copies of each submission shall be filed with the Commission.

(d) *Service of submissions.* Except as otherwise provided for in this part or by the Commission, each submission filed by a party with the Commission shall be served as provided for in § 201.16 of this chapter.

§ 210.6 Intervention.

Any person desiring to intervene in an investigation under this part shall make written application in the form of a motion setting forth a sufficient basis there-

for. Such application shall have attached to it a certificate showing service thereof upon each party to the investigation in accordance with the provisions of § 201.16 of this chapter. A similar certificate shall be attached to the answer filed by any party with respect to the application showing service of such answer upon the applicant and all other parties. The presiding officer may by order permit the intervention of such person as a non-party intervenor to such extent and upon such terms as are provided by law or as otherwise may be deemed proper. Upon a showing of good cause, any interested person may be designated as a party and shall be individually served with each submission filed in the investigation.

Subpart B—Commencement of Proceedings

§ 210.10 Commencement of proceedings.

(a) *Upon receipt of complaint.* A proceeding is commenced by filing with the Commission the original and nineteen (19) true copies of a complaint, plus one copy for each person named in the complaint as violating section 337 of the Tariff Act. Complaints alleging violation of section 337 may be filed by any person.

(b) *Upon the initiative of the Commission.* The Commission may upon its initiative commence proceedings based upon any alleged violation of section 337 of the Tariff Act.

§ 210.11 Action of Commission upon receipt of complaint.

Upon receipt of a complaint filed pursuant to § 201.8 of this chapter and § 210.5, § 210.10, and § 210.20 of this part, the Commission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable rules of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefor, and give attention to other preliminary matters.

§ 210.12 Institution of investigation.

Within thirty (30) days after receipt of a complaint or, in exceptional circumstances, as soon after such period as possible, the Commission shall determine whether the complaint is properly filed and, if so, shall institute an investigation. The investigation shall be instituted by notice published in the FEDERAL REGISTER, which notice will define the scope of the investigation. If the Commission determines that a complaint is not properly filed, the complaint shall be dismissed and the Commission shall notify the complainant in writing of its action with the reasons therefor.

§ 210.13 Service of complaint.

Each respondent named in the complaint, and other respondents as later discovered, shall be served by the Commission with a copy of the complaint and notice instituting the investigation upon institution of the investigation or as soon as possible after such respondents are discovered. The Department of Health, Education, and Welfare, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission considers appropriate shall also be served with a copy of the complaint and notice instituting the investigation upon institution of the investigation.

§ 210.14 Commission action, public interest factor, and bonding.

(a) During the course of each proceeding under this part when an investigation has been instituted, the Commission shall—

(1) Consider what action (exclusion of articles from entry, exclusion of articles from entry except under bond, or cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with, and seek advice and information from, the Department of Health, Education, and Welfare, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate concerning the subject matter of the complaint and the effect its actions (exclusion of articles from entry, exclusion of articles from entry except under bond, or cease and desist order) under section 337 of the Tariff Act shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of bond pursuant to section 337(e) or section 337 (g) (3) of the Tariff Act, taking into consideration, among other things, the amount which would offset any competitive advantage resulting from the alleged unfair methods of competition and unfair acts enjoyed by persons benefiting from the importation of the articles in question; and

(4) Receive submissions from the parties, other interested persons, Government agencies and departments, and the public with respect to the subject matter of subsections (a) (1), (a) (2), and (a) (3) of this section, which submissions shall be served upon the parties and be available to the public in the Office of the Secretary. The Commission will consider motions for oral argument or, when necessary, for a hearing with respect to the subject matter of this section.

(b) Unless otherwise ordered by the Commission, the presiding officer shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of subsections (a) (1), (a) (2), (a) (3), and (a) (4) of this section.

§ 210.15 Period for concluding commission investigation.

Each investigation instituted under this part shall be concluded and a final order or rule issued no later than twelve (12) months after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation, except that the Commission may designate the investigation as a "more complicated" investigation and require that it be concluded no later than eighteen (18) months after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation. A "more complicated" investigation refers to an investigation which is of an involved nature owing to the subject matter, difficulty in obtaining information, or large number of parties involved. The Commission shall publish its reasons for designating the investigation as a "more complicated" investigation in the FEDERAL REGISTER. For purposes of the 12-month and 18-month periods prescribed by this section, there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

Subpart C—Pleadings and Motions

§ 210.20 The complaint.

(a) *Contents of complaint.* In addition to conforming with the requirements of § 201.8 of this chapter and § 210.5(a), § 210.5(b), and § 210.5(c) of this part, the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name address, and phone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint;

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales;

(4) State, when known, the name, address, and nature of the business of each person alleged to be violating section 337 of the Tariff Act;

(5) Include a statement as to whether or not the alleged unfair methods of competition and unfair acts, or the subject matter thereof, is or has been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6) Include a description of the domestic industry affected when an element of the complaint is the effect or tendency to destroy or substantially injure, or to prevent the establishment of, such an industry, and a description of the trade and commerce affected when an element of the complaint is the effect or tendency to restrain or monopolize such trade and commerce;

(7) Include a description of the complainant's business and his interests in the trade and commerce or domestic industry affected;

(8) Include data concerning the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information cov-

ering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other data pertinent to the subject matter of the complaint which would support the allegation that—

(A) The effect or tendency of the importations or sales in question is to destroy or substantially injure an efficiently and economically operated domestic industry in the United States; or

(B) The effect or tendency of the importation or sales in question is to prevent the establishment of an efficiently and economically operated domestic industry in the United States; or

(C) The effect or tendency of the importations or sales in question is to restrain or monopolize trade and commerce in the United States;

(9) Include, when a complaint is based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent—

(A) The identification of each U.S. letters patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(B) The identification of the ownership of each involved U.S. patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(C) The identification of each domestic licensee under each involved U.S. patent;

(D) When known, a list of each foreign patent and each foreign patent application (not already issued as a patent) corresponding to each involved U.S. patent, with an indication of the prosecution status of each such foreign patent application;

(E) When known, a list of each foreign licensee under each involved U.S. patent and under each corresponding foreign patent;

(F) A nontechnical description of the invention of each involved U.S. patent;

(G) A reference to the specific claims in each involved U.S. patent which allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act, or the process under which such article was produced;

(H) A showing of any domestic production of the involved article or of any domestic utilization of the involved process allegedly covered by the above specific claims of each involved U.S. patent, and a showing that each person named as violating section 337 of the Tariff Act is importanting and/or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. patent. The complainant is encouraged to make such showing by appropriate allegations, and, when practicable, by a chart which applies an exemplary claim of each involved U.S. patent to a representative involved domestic article or process and to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced; and

(I) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act, or of the process utilized in producing such article, and, when a chart is furnished under subsection (a) (9) (H) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Contain a request for relief sought.

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, when practical and possible the involved articles shall be submitted as exhibits—both the involved domestic article and that of each person named as violating section 337 of the Tariff Act.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent the following:

(1) Three (3) copies of a detailed status report on all litigation mentioned in subsection (a) (5) of this section, including summaries of all pleadings and motions entered in the litigation and any decisions rendered thereon or in the litigation;

(2) Three (3) copies of each license agreement arising out of each involved U.S. patent, except that, to the extent that a standard license agreement is used, three (3) copies of the standard license agreement and a list of the licensees operating under such agreement will suffice;

(3) One (1) certified copy of the Patent and Trademark Office file wrapper for each involved U.S. patent, plus two (2) additional copies thereof; and

(4) Three (3) copies of each patent and applicable pages of each technical reference mentioned in the file wrapper of each involved U.S. patent.

(d) *Amendment of complaint.* The complaint may be amended at any time prior to the institution of the investigation, and, after institution, may be amended for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation by a change in the scope of the investigation which results from such amendment.

§ 210.21 The response.

(a) *Time for response.* Respondents shall have twenty (20) days (unless otherwise ordered in the notice of investigation or by the presiding officer) from the date of service of the complaint and notice of investigation within which to respond, in writing, to the complaint and the notice of investigation.

(b) *Contents of the response.* In addition to conforming to the requirements of § 201.8 of this chapter and § 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent, with the name, address, and phone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or, if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. letters patent, the respondent is encouraged to make the following showing, when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondent is not covered by, or produced under a process covered by, the claims of each involved U.S. patent, a showing of such noncoverage for each involved claim in each U.S. patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart which applies the involved claims of each U.S. patent in question to a representative involved imported article of respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under subsection (b) (1) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, a showing of how the prior art renders each claim invalid or unenforceable, and a copy of such prior art.

(c) *Submission of article as exhibit.* At the time the response is filed, when practical and possible the involved imported article shall be submitted as an exhibit.

(d) *Default.* Failure of a respondent to file a response within the time provided for in subsection (a) of this section may be deemed to constitute a waiver of its right to appear and contest the allegations of the complaint and of the notice of investigation, and to authorize the presiding officer, without further notice to that respondent, to find the facts to be as alleged in the complaint and notice of

investigation and to enter a recommended determination (or a determination if the Commission is the presiding officer) containing such findings.

§ 210.22 Amendments to pleadings and notice of investigation.

(a) *By leave.* If and whenever disposition of the issues in an investigation on the merits will be facilitated, the presiding officer, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to an investigation, may allow appropriate amendments to pleadings: Provided, however, that a motion for amendment of a complaint after the institution of an investigation shall be made to the presiding officer, who shall certify such motion to the Commission with his recommendation; the Commission shall decide the motion according to the standards of §210.20(d) of this part. A motion for amendment of a notice of investigation shall be dealt with as provided for with respect to motions for amendment of a complaint.

(b) *Conformance to evidence.* When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly consented.

§ 210.23 Supplemental submissions.

The presiding officer may, upon reasonable notice and such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events which have taken place since the date of the submissions sought to be supplemented and which are relevant to any of the issues involved.

§ 210.24 Motions.

(a) *Presentation and disposition.* During the time an investigation is before a presiding officer, all motions therein shall be addressed to the presiding officer. When the presiding officer is the Commission, it shall rule upon all motions. When the presiding officer is not the Commission, any motion within his authority shall be ruled upon by him, and any motion upon which the presiding officer has no authority to rule shall be certified by him to the Commission with his recommendation, and the Commission shall then rule on the motion. All motions shall be filed with the Commission, and all motions addressed to the Commission shall be in writing. All motions in an investigation shall be served upon each party.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Answers.* Within ten (10) days after service of any written motion, or within such longer or shorter time as may be designated by the presiding officer or the Commission, a nonmoving party shall answer or he may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Commission.

(d) *Motions for extensions.* As a matter of discretion, the presiding officer or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions ex parte.

Subpart D—Discovery and Compulsory Process

§ 210.30 General provisions governing discovery.

(a) *Discovery methods.* The parties to an investigation may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; interrogatories; production of documents or things for inspection and other purposes; and requests for admissions.

(b) *Scope of discovery.* Unless otherwise ordered by the presiding officer, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the investigation. It is not ground for objection that the information sought will be inadmissible at hearings if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Limitations on discovery.* The presiding officer shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in § 210.41(e) of this part relating to hearings for the purpose of determining whether there is reason to believe there is, or whether there is, a violation of section 337 of the Tariff Act.

(d) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which may appear necessary and appropriate for the protection of the public interest or which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer;

(6) That a deposition, after being sealed, be opened only by order of the presiding officer;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

If the motion for a protective order is denied, in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to—

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty to seasonably amend a prior response if he obtains information upon the basis of which—

(A) He knows that the response was incorrect when made; or

(B) He knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

§ 210.31 Depositions.

(a) *When depositions may be taken.* After the date of publication in the FEDERAL REGISTER of the notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. Leave of the presiding officer must be obtained only if the complainant seeks to take a deposition prior to the expiration of twenty (20) days after the date of service of the complaint and notice instituting the investigation.

(b) *Persons before whom depositions may be taken.* Depositions may be taken before any officer having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation of not less than ten (10) days if the deposition is to be taken within the United States, and not less than fifteen (15) days if the deposition is to be taken elsewhere. The presiding officer may designate a shorter or longer time. The notice shall state the

time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that confidential business data need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing or the deponent is ill or cannot be found or refuses to sign) and certified by the officer before whom the deposition was taken. If the deposition is not subscribed by the deponent, the officer shall state on the record such fact and the reasons therefor. Thereafter, the officer shall forward one (1) copy to each party who was present or represented at the taking of the deposition.

(e) *Depositions of nonparty officers or employees of the Commission or of other Government agencies.* A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the presiding officer for leave to apply for a subpoena under § 210.35(c) of this part. Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by § 210.30(b) of this part and cannot be obtained without undue hardship by alternative means.

(f) *Filing of deposition.* The party taking the deposition shall file two (2) copies thereof with the Commission investigative attorney, and shall give prompt notice of such filing to all other parties.

(g) *Admissibility of depositions.* The fact that a deposition is taken and filed with the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testi-

the witness were then present and testifying.

(h) *Use of depositions.* A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness,

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds—

(A) That the witness is dead; or

(B) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

§ 210.32 Interrogatories.

(a) *Scope; use at hearing.* Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters which can be inquired into under § 210.30(b) of this part, and the answers may be used to the extent permitted by the rules of evidence.

(b) *Procedure.*

(1) The interrogatory may be served upon any party after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within ten (10) days after the service of the interrogatories. The presiding officer may allow a shorter or longer time. The party submitting the interrogatories may move for an order under § 210.36(a) of this part with respect to any objection to or other failure to answer an interrogatory.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or a later time.

(c) *Option to produce records.* When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

§ 210.33 Request for production of documents.

(a) *Scope.* Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.*

(1) The request may be served upon any party after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within ten (10) days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under § 210.36(a) of this part with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

§ 210.34 Request for admission.

(a) *Form, content, and service of request for admission.* Any party may serve on any other party a written request

for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth. The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation. The request may be served upon any other party at any time twenty (20) days after the date of service of the complaint and notice instituting the investigation, unless leave of the presiding officer is obtained to serve the request at an earlier date.

(b) *Answers and objections to requests for admissions.* The matter may be deemed admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the presiding officer may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to, or readily obtainable by, him is insufficient to enable him to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admission; withdrawal or amendment of admission.* Any matter admitted under this rule may be conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. The presiding officer may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the presiding officer that withdrawal or amendment will prejudice him in maintaining his position on the issues of the investigation. Any admission made by a party under this rule is for the purpose of the pending investigation only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

§ 210.35 Subpoenas.

(a) *Application for issuance of a subpoena.*

(1) *Subpoena ad testificandum.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the presiding officer.

(2) *Subpoena duces tecum.* An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, or at a hearing shall be made in writing to the presiding officer and shall specify the material to be produced as exactly as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty Commission records or personnel or for records or personnel of other Government agencies.* (1) *Procedure.* An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the appearance of an official or employee of the Commission (other than the Commission investigative attorney), or requiring the production of records or personnel of other Government agencies shall specify as exactly as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) *Ruling.* Such applications shall be ruled upon by the presiding officer. To the extent that the motion is granted, the presiding officer shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act shall be entertained by the presiding officer.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within ten (10) days after service thereof, or within such other time as the presiding officer may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of subpoenas pursuant to the provisions of this section may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the presiding officer.

§ 210.36 Failure to make discovery; sanctions.

(a) *Motion for order compelling discovery.* A party may apply to the presiding officer for an order compelling discovery, upon reasonable notice to other parties and all persons affected thereby.

(b) *Failure to comply with order compelling discovery.* If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the presiding officer, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite failure to comply, may take such action in regard thereto as is just, including, but not limited to, the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents or other material, in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown; and

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken, or that a determination in the investiga-

tion be rendered against the party, or both.

Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the recommended determination of the presiding officer when the presiding officer is not the Commission. It shall be the duty of the parties to seek, and that of the presiding officer to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If in the presiding officer's opinion such relief would not be sufficient, the presiding officer shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

Subpart E—Prehearing Conferences and Hearings

§ 210.40 Prehearing conferences.

(a) *When appropriate.* The presiding officer in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Scope of the hearing;

(3) Necessity or desirability of amendments to pleadings, subject, however, to the provisions of § 210.22 of this part;

(4) Stipulations and admissions of either fact or the content and authenticity of documents;

(5) Expedition in the discovery and presentation of evidence, including, but not limited to, restriction of the number of expert, economic, or technical witnesses; and

(6) Such other matters as may aid in the orderly and expeditious disposition of the investigation, including disclosure of the names of witnesses and the exchange of documents or other physical exhibits which will be introduced in evidence in the course of the hearing.

(b) *Subpoenas.* Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to the provisions of § 210.35(a)(2) of this part.

(c) *Reporting.* In the discretion of the presiding officer, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order.* The presiding officer shall enter in the record an order which recites the results of the conference. Such order shall include the presiding officer's rulings upon matters considered at the conference, together with appropriate direction to the parties. The presiding officer's order shall control the subsequent course of the hearing, unless modified to prevent manifest injustice.

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission—(1) An opportunity for a hearing shall be provided in each investigation under section 337 of the Tariff Act to take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act.

(2) An opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act.

(b) *Public hearings.* All hearings in investigations under this part shall be public unless otherwise ordered by the presiding officer.

(c) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the presiding officer.

(d) *Rights of parties.* Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Time limits for hearings.* Unless otherwise ordered by the Commission—

(1) The hearing provided for in subsection (a)(1) of this section shall be completed within seven (7) months after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation and within twelve (12) months after the date of such notice when the investigation is designated to be a "more complicated" investigation by notice published in the FEDERAL REGISTER.

(2) The hearing provided for in subsection (a)(2) of this section shall be completed within three (3) months after publication in the FEDERAL REGISTER of the notice instituting the investigation.

(f) *Presiding officer.* The presiding officer shall preside over each hearing.

§ 210.42 Evidence.

(a) *Burden of proof.* The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable.

(c) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice.* When any decision of the presiding officer rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections.* Objections to evidence shall be timely made and briefly state the grounds relied upon, but the hearing transcript shall not include argument or debate thereon except as permitted by the presiding officer. Rulings on all objections shall appear in the record.

(f) *Exceptions.* Formal exception to an adverse ruling is not required.

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what he expects to prove by the answer of the witness, or the presiding officer may, in his discretion, receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

§ 210.43 Record.

(a) *Reporting and transcription.* Hearings shall be reported and transcribed by the official reporter of the Commission under the supervision of the presiding officer, and the transcript shall be a part of the record.

(b) *Corrections.* Corrections of the transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the presiding officer or agreed to in a written stipulation signed by all counsel and parties not represented by counsel and approved by the presiding officer shall be included in the record, and such stipulations, except to the extent that they are capricious or without substance, shall be approved by the presiding officer. Corrections shall not be ordered by the presiding officer except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(c) *Certification of record.* The record shall be certified to the Commission by the presiding officer upon his filing of a recommended determination or at such earlier time as the Commission may order.

§ 210.44 In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to in camera orders are not made a part of the public record, but are kept confidential in an in camera record, and only counsel before the Commission, authorized Commission personnel, other Government personnel authorized by the Commission, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose in camera data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* The presiding officer shall have authority to order documents or oral testimony offered in evidence, whether admitted or rejected, to be placed in camera, but only when good cause is found on the record. The order shall

specify the date on which in camera treatment expires and shall include—

(1) A description of the documents and testimony;

(2) A full statement of the reasons for granting in camera treatment; and

(3) A full statement of the reasons for the date on which in camera treatment expires.

Any party desiring to disclose in camera documents or testimony to experts, consultants, prospective witnesses, or witnesses for the preparation and presentation of the case shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. In camera documents and the transcript of testimony subject to an in camera order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the investigation, the notation "in camera Record", and the date on which in camera treatment expires.

(c) *Part of confidential record.* In camera documents and testimony shall constitute a part of the confidential record of the Commission.

(d) *References to in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make an attempt in good faith to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "Business Confidential", which shall be placed in camera and become a part of the in camera record.

Subpart F—Determinations and Actions Taken

§ 210.50 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after twenty (20) days following the date of service of the complaint and notice instituting the investigation, and any other party or a respondent may so move at any time after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation. Any such motion by any party, however, must be filed at least thirty (30) days before the date fixed for any hearing herein provided.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may, within ten (10) days after service of the motion, file opposing affidavits. The presiding officer may, in his discretion, or shall, at the request of any party, set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if the pleadings and any depositions, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary determination is made and supported as provided in this rule, a party opposing the motion may not rest upon mere allegations or denials in his pleading; his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for hearing. If no such response is filed, a summary determination, if appropriate, shall be rendered.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present facts essential to justify his opposition, the presiding officer may refuse the application for summary determination or may order a continuance to permit affidavits to be obtained or depositions or other discovery to be had or make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this rule a summary determination is not rendered upon all the allegations or for all the relief asked and a hearing is necessary, the presiding officer shall make an order specifying the facts that appear without substantial controversy and directing further proceedings in the investigation. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute a determination of the Commission under § 210.55 of this part when the Commission is the presiding officer. An order of summary determination shall constitute a recommended determination of the presiding officer under § 210.53 of this part when the presiding officer is not the Commission.

§ 210.51 Termination of investigation.

(a) *Motions for termination.* Any party may move at any time for an order to determinate an investigation before the Commission, to terminate the investigation as to all issues in an investigation in regard to one or more, but not all, of the respondents, or to terminate the investigation as to any part of the issues in regard to any or all of the respondents. When a motion for termination is based upon licensing or other written agreements entered into between the parties, a copy of such licensing or other agreements shall be included with the motion.

(b) *Default.* Upon the occurrence of the condition of default, an investigation before the Commission may be terminated as to one or more of the parties in the investigation.

(c) *Effect of termination.* An order of termination shall constitute a determination of the Commission under § 210.55 of this part when the Commission is the presiding officer. An order of termination shall constitute a recommended determination of the presiding officer under § 210.53 of this part when the presiding officer is not the Commission.

§ 210.52 Proposed findings and conclusions.

At the time a motion for summary determination under § 210.50(a) of this part or a motion for termination under § 210.51(a) of this part is made, or when it is found that a party is in default under § 210.21(d) or § 210.51(b) of this part, or at the close of the reception of evidence in any hearing held pursuant to this part or with in a reasonable time thereafter fixed by the presiding officer, any party may file proposed findings of fact and conclusions of law, together with reasons therefor and, when appropriate, briefs in support thereof with the presiding officer for his consideration. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. The presiding officer shall rule, and the record shall show the presiding officer's ruling, on each proposed finding and conclusion.

§ 210.53 Recommended determination.

(a) *When filed.* When the presiding officer is not the Commission, the presiding officer shall certify the record to the Commission and file his recommended determination as to whether there is, or whether there is reason to believe there is, a violation of section 337 of the Tariff Act with the Commission. Such recommended determination shall be filed with the Commission within thirty (30) days from the date of filing of a motion for summary determination under § 210.50(a) of this part, a motion for termination under § 210.51(a) of this part, or a finding that a party is in default under § 210.21(d) or § 210.51(b) of this part, or within sixty (60) days after completion of the reception of evidence at a hearing held pursuant to § 210.41 (a)(1) of this part. Upon written request from the presiding officer, the Commission may, by order, allow a longer time. When a hearing has been held pursuant to § 210.41(a)(2) of this part, a recommended determination shall be made within thirty (30) days after the reception of evidence in such hearing. A copy of each recommended determination shall be served on all parties to the investigation.

(b) *Content.* The recommended determination shall include a statement of findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon

all the material issues of fact, law, or discretion presented on the record.

(c) *Recommended determination made by the presiding officer.* The recommended determination shall be made and filed by the presiding officer who presided over the hearings, except when he is unavailable to the Commission.

(d) *Reopening of proceedings by the presiding officer.* At any time prior to the filing of his recommended determination, the presiding officer may reopen the proceedings for the reception of additional evidence.

§ 210.54 Filing of exceptions to the recommended determination and alternative findings of fact and conclusions of law.

Except as otherwise authorized by the presiding officer, the parties shall be allowed ten (10) days from the date of service of the recommended determination to file exceptions to the recommended determination and alternative findings of fact and conclusions of law with the Commission. All exceptions and alternative findings of fact and conclusions of law shall be concisely supported by references to the record and the law relied upon.

§ 210.55 Commission determination and action.

(a) *Review of recommended determination.* Subject to the provisions of § 210.54 of this part, upon receipt of a recommended determination and the record under § 210.53 of this part, the Commission shall review the same and determine, as the case may be, whether there is a violation of section 337 of the Tariff Act or whether there is reason to believe there is such a violation, and, when appropriate, whether any action (exclusion of articles from entry, exclusion of articles from entry except under bond, or cease and desist order) should be ordered, the form in which such action should be ordered, and the amount of any bond required.

(b) *When the presiding officer is the Commission.* When the Commission has presided at the taking of evidence, it shall determine, as the case may be, whether there is a violation of section 337 of the Tariff Act or whether there is reason to believe there is such a violation, and, when appropriate, whether any action (exclusion of articles from entry, exclusion of articles from entry except under bond, or cease and desist order) should be ordered, the form in which such action should be ordered, and the amount of any bond required.

(c) *Service of Commission determination upon the parties.* A Commission determination shall be served upon each party to the investigation.

§ 210.56 Petition for reconsideration.

Within fourteen (14) days after completion of service of a Commission determination, any party may file a petition for reconsideration of such determination or any action ordered to be taken thereunder with the Commission, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five (5) days after service of the petition upon such party. The filing of a petition for reconsideration shall not stay the effective date of the determination or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

§ 210.57 Disposition of petition for reconsideration.

The Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the presiding officer to take additional evidence.

Subpart G—Appeals

§ 210.60 Interlocutory appeals.

Rulings by the presiding officer on motions may not be appealed to the Commission prior to the presiding officer's issuance of his recommended determination except in the following circumstances:

(a) *Appeals without leave of the presiding officer.* The Commission may, in its discretion, entertain interlocutory appeals when a ruling of the presiding officer—

(1) Requires the disclosure of the Commission records or requires the appearance of Government officials pursuant to § 210.35(c) of this part; or

(2) Grants or denies an application for intervention pursuant to the provisions of § 210.6 of this part. Appeals from such a ruling may be sought by filing an application for review, not to exceed fifteen (15) pages, with the Commission within five (5) days after notice of the presiding officer's ruling. Answer thereto may be filed within five (5) days after service of the application for review. The application for review should specify the person or party taking the appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the presiding officer pursuant to § 210.35(c) of this part or an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the presiding officer.* Except as hereinbefore provided in subsection (a) of this section, applications for review of a ruling by the presiding officer may be allowed only upon request made to the presiding officer and upon a determination by the presiding officer in writing, with justification in support thereof, (1) that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and (2) that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be an inadequate remedy. Applications for review in writing, not to exceed fifteen (15) pages, may be filed within five (5) days after notice of the presiding officer's determination. Answer thereto may be filed within five (5) days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs, unless otherwise ordered by the Commission.

(c) *Investigation not stayed.* Application for review and appeal hereunder shall not stay the investigation before the presiding officer unless the presiding officer or the Commission shall so order.

§ 210.61 Appeals of final determination to the United States Court of Customs and Patent Appeals.

Any person adversely affected by a final determination of the Commission under subsection (d) or (e) of section 337 of the Tariff Act may appeal such determination to the United States Court of Customs and Patent Appeals. Such court, pursuant to subsection (c) of section 337, has jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from the decisions of the United States Customs Court.

By of the Commission:

Issued: April 23, 1976.

[SEAL] KENNETH R. MASON,
Secretary.

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