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federal register

TUESDAY, AUGUST 16, 1977

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/ADAMHA			HEW/ADAMHA
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	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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 program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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(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

ICC—Freight tariffs; Railroads, water carriers, and pipeline companies; modification of tariff index requirements.
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List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

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

Agency for International Development

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Secretary (Bilingual) to the Assistant Administrator for Latin America is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3368(j)(3) is added as set out below:

§ 213.3368 Agency for International Development.

* * * * *

(j) *Office of the Assistant Administrator of the Bureau for Latin America.* * * *

(3) One Secretary (Bilingual) to the Assistant Administrator.

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

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

[FR Doc.77-23585 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Agriculture Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The titles of the following positions are changed: Private Secretary to the Deputy for Congressional Affairs to Private Secretary to the Deputy Director for Congressional Affairs; Private Secretary to the Deputy for Public Affairs to Private Secretary to the Deputy Director for Public Affairs; and Deputy for Congressional Affairs to Deputy Director for Congressional Affairs. Changes in the first two positions reflect the current titles of the superiors and the change in the remaining position more appropriately reflects the duties of the position.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3313(c) (11), (12), and (14) are amended as set out below:

§ 213.3313 Department of Agriculture.

* * * * *

(c) *Office of the Deputy Secretary.* * * *

(11) One Private Secretary to the Deputy Director for Congressional Affairs.

(12) One Private Secretary to the Deputy Director for Public Affairs. * * *

(14) One Deputy Director for Congressional Affairs.

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

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

[FR Doc.77-23578 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Agriculture Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The title of thirteen Confidential Assistants to the Deputy Under Secretary for Congressional and Public Affairs is changed to thirteen Confidential Assistants to the Director, Office of Congressional and Public Affairs. This change reflects the current title of the superior.

EFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3313(c)(6) is amended as set out below:

§ 213.3313 Department of Agriculture.

* * * * *

(c) *Office of the Deputy Secretary.* * * *

(6) Thirteen Confidential Assistants to the Director, Office of Congressional and Public Affairs.

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

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

[FR Doc.77-23579 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Agriculture Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Two positions of Confidential Assistant to the Administrator, Federal Grain Inspection Service, are excepted under Schedule C because they are confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3313(u)(2) is added as set out below:

§ 213.3313 Department of Agriculture.

* * * * *

(u) *Federal Grain Inspection Service.* * * *

(2) Two Confidential Assistants to the Administrator.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 195401-958 Comp., p. 218.)

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

[FR Doc.77-23580 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Agriculture Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Two positions of Confidential Assistant to the Administrator (Food Safety and Quality Service) are excepted under Schedule C because they are confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3313(v)(2) is added as set out below:

§ 213.3313 Department of Agriculture.

* * * * *

(v) *Food Safety and Quality Service.* * * *

(2) Two Confidential Assistants to the Administrator.

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

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

[FR Doc.77-23581 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Commerce Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Confidential Assistant to the Deputy Assistant Secretary for Field Operations is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3314(m)(21) is added as set out below:

§ 213.3314 Department of Commerce.

* * * * *

(m) *Office of the Assistant Secretary for Domestic and International Business.* * * *

(21) One Confidential Assistant to the Deputy Assistant Secretary (Field Operations).

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

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

[FR Doc.77-23582 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Federal Home Loan Bank Board

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The following positions are reestablished under Schedule C because they are confidential in nature: one position of Assistant to the Chairman and one position of Special Assistant to the Chairman.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3354(c) is amended and (g) is added as set out below:

§ 213.3354 Federal Home Loan Bank Board.

* * * * *

(c) One Assistant to the Chairman, and one Assistant to a Board Member.

* * * * *

(g) One Special Assistant to the Chairman.

* * * * *

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

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

[FR Doc.77-23584 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

General Services Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Confidential Assistant to the Director of Public Affairs is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 3337(a)(21) is added as set out below:

§ 213.3337 General Services Administration.

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

(21) One Confidential Assistant to the Director of Public Affairs.

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

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

[FR Doc.77-23583 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Six positions of Librarian, GS-7, in the National Library of Medicine are excepted under Schedule B because it is not practicable to competitively examine for them. Position incumbents will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed September 30, 1978.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3216(d) is added as set out below:

§ 213.3216 Department of Health, Education, and Welfare.

* * * * *

(d) *National Library of Medicine.*

(1) Six positions of Librarian, GS-7, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed September 30, 1978.

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

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

[FR Doc.77-23575 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Housing and Urban Development Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Privato Secretary to the Assistant Secretary for Policy Development and Research is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3384(i)(9) is added as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(i) *Office of the Assistant Secretary for Policy Development and Research.* * * *

(9) One Private Secretary to the Assistant Secretary.

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

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

[FR Doc.77-23586 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Interior Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The following positions are excepted under Schedule C because they are confidential in nature: Two positions of Special Assistants to the Assistant Secretary, Land and Water Resources, and one position of Confidential Assistant to the Assistant Secretary for Fish and Wildlife and Parks.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3312(a) (47) and (48) are added as set out below:

§ 213.3312 Department of the Interior.

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

(47) Two Special Assistants to the Assistant Secretary, Land and Water Resources.

(48) One Confidential Assistant to the Assistant Secretary for Fish and Wildlife and Parks.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

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

[FR Doc.77-23577 Filed 8-15-77;8:45 am]

PART 213—EXCEPTED SERVICE

Treasury Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Staff Assistant to the Assistant Secretary (Public Affairs) is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3305(a) (74) is added as set out below:

§ 213.3305 Department of the Treasury.

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

(74) One Staff Assistant to the Assistant Secretary (Public Affairs).

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

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

[FR Doc.77-23576 Filed 8-15-77;8:45 am]

Title 7—Agriculture

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

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Subpart—Hawaiian Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Hawaiian Fruits and Vegetables Rules and Regulations by deleting the requirement that bananas fumigated with ethylene dibromide, pursuant to 7 CFR 318.13-4b, be held for 24 hours at 65° F. or above before they are loaded for movement from the area where they were fumigated, or are chilled to cooler temperatures. The requirement was promulgated because it was thought to be necessary in order to prevent the peels of fumigated bananas from turning black. However, recent tests by the Agricultural Research Service of this Department establish that such procedures are not necessary for such purpose.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, MD 20782, (301-436-8247).

SUPPLEMENTARY INFORMATION:

§ 318.13-4b [Amended]

Accordingly, § 318.13-4b(e) (2) of the Hawaiian Fruits and Vegetables Rules and Regulations (7 CFR 318.13-4b(e) (2)) is hereby amended by deleting the last sentence thereof.

(Sec. 9, 37 Stat. 318, 7 U.S.C. 162; Sec. 8, 37 Stat. 318, as amended, 7 U.S.C. 161; 37 FR 28464, 28477, as amended, 38 FR 19141.)

This amendment relieves certain restrictions presently imposed, and it should be made effective promptly in order to be of maximum benefit to persons subject to the restrictions which are being relieved. Also, this amendment is based on research of the Agricultural Research Service of this Department, and it does not appear that additional information would be made available to the Department by public participation in rulemaking proceedings on this amendment.

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

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., this 5th day of August 1977.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc.77-23721 Filed 8-15-77;8:45 am]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. These amendments establish commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of the Plant Protection and Quarantine Programs performs overtime or holiday duty when such travel is performed solely on account of such overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, Md. 20782, 301-436-8247.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Plant Protection and Quarantine Programs, by 7 CFR 354.1 of the regulations concerning overtime services relating to imports and exports, the administrative instructions appearing at 7 CFR 354.2, as amended, March 18, 1977 (42 FR 15055), and May 17, 1977 (42 FR 25314), prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty are further amended by adding (in appropriate alphabetical sequence) or deleting the information as shown below:

The table in § 354.2 is amended as follows:

§ 354.2 [Amended]

1. Deleted the following entries:

Commuted traveltime allowances (in hours)

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
* * *	* *	*	*
Kentucky:			
Fort Campbell	Elizabethtown		2
Do	Lexington		4
* * *	* *	*	*
Mississippi:			
Greenville	Memphis, Tenn		5
Natchez	Baton Rouge, La		5
Vicksburg	do		6
* * *	* *	*	*
North Carolina:			
New River MCAS, Jacksonville.	Wilmington		2
* * *	* *	*	*
Tennessee:			
Undesignated ports.	Atlanta, Ga		5
* * *	* *	*	*

2. Add the following entries:

Commuted traveltime allowances (in hours)

Location covered	Served from	Metropolitan area: Within	Metropolitan area: Outside
* * * * *			
Kentucky:			
Louisville	Lexington		4
* * * * *			
Massachusetts:			
Undesignated ports	Boston		3
* * * * *			
Michigan:			
Muskegon	Grand Rapids.		2
* * * * *			
North Carolina:			
Elizabeth City		1	
New River MCAS, Jacksonville.	Wilmington		3
* * * * *			
Texas:			
Sabine Pass	Port Arthur		1
* * * * *			

(64 Stat. 561; (7 U.S.C. 2260).)

It is to the benefit of the public that this instruction be made effective at the earliest practicable date. Accordingly, it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to the foregoing amendment are unnecessary and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

NOTE.—The Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., this 10th day of August 1977.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc.77-23544 Filed 8-15-77;8:45 am]

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

[Apricot Reg. 17, Amdt. 1]

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Limitation of Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment to Apricot Regulation 17 specifies grade, maturity and size requirements for Washington apricots from August 16, 1977, through July 31, 1978. It is consistent with the grade, size and maturity composition of the estimated crop of Washington apricots, and is designed to promote orderly marketing conditions in the interest of producers and consumers.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3545.

SUPPLEMENTARY INFORMATION: *Findings.* (1) On July 14, 1977, notice of proposed rulemaking was published in the FEDERAL REGISTER (42 FR 36267), regarding a proposed amendment to Apricot Regulation 17 to be made effective pursuant to the marketing agreement and Order No. 922, as amended, (7 CFR Part 922), regulating the handling of apricots grown in designated counties in Washington. This notice allowed interested persons until July 27, 1977, to file written data, views, or arguments pertaining thereto. None were submitted. The proposed amendment to Apricot Regulation 17 was recommended by the Washington Apricot Marketing Committee established pursuant to the said amended marketing agreement and order. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

(2) The amendment herein specified is based upon an appraisal of the current and prospective crop and market conditions for Washington apricots. Fresh shipments for the 1977-78 season are expected to be 2,325 tons, with processing taking another 100 tons. These compare with estimated production in 1976 of 2,800 tons, fresh shipments of 2,400 tons and processing of 400 tons. The imposition of the specified grade, maturity and size requirements is necessary to prevent the handling of defective and small apricots, which do not provide consumer satisfaction, in order to promote orderly marketing in the interest of producers and consumers, consistent with the objectives of the act.

(3) Apricots of the Moorpark variety shipped in open containers are required to be generally well matured. Provision is made for apricots of the Blenheim, Blenrin and Tilton varieties to be of a smaller size when packed in unlidded containers. These three varieties are of somewhat smaller size than other varieties when mature. There is demand for fruit meeting these specifications in local markets. Due to the nearness to the source of supply shipment of more mature fruit and fruit of the specified varieties of smaller sizes in less expensive unlidded containers is feasible and the disposition of such fruit in such market tends to improve the overall return to growers. Individual shipments, not exceeding 500 pounds of apricots sold for home use and not for resale are exempt from regulation because such shipments will be prevented from entering regulated channels of trade by the requirement that each container therein be stamped with the words "not for resale" in letters at least one-half inch in height.

(4) It is hereby further found that good cause exists for not postponing the effective date of this amended regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which it is based became available and the time when it must become effective in order to effectuate the declared policy of the act is insufficient; and a reasonable time is permitted, under the circumstances, for preparation for such effective time. Shipments of Washington apricots are presently subject to the grade, size and maturity regulation, pursuant to the amended marketing agreement and order. The amended regulation herein specified, except for the new effective dates, is identical with that currently in effect. The recommendation and supporting information for regulation were promptly submitted to the Department after an open meeting of the Washington Apricot Marketing Committee on May 17, 1977; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting and thereafter with respect to the July 14, 1977, notice of proposed rulemaking, the provisions of this amended regulation are identical with the proposed regulation contained in the notice, and information concerning such provisions and effective time has been disseminated among handlers of such apricots; it is necessary in order to effectuate the declared policy of the act, to make this amended regulation effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of Washington apricots, and compliance with the amended regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

The provisions of § 922.317 (Apricot Regulation 17; 42 FR 30492) art hereby amended to read as follows:

§ 922.317 Apricot Regulation 17.

(a) During the period June 27, 1977, through July 31, 1978, no handler shall handle any container of apricots unless such apricots meet the following applicable requirements, or are handled in accordance with subparagraph (3) of this paragraph:

(1) *Minimum grade and maturity requirements.* Such apricots grade not less than Washington No. 1 and are at least reasonably uniform in color; *Provided,* That such apricots of the Moorpark variety in open containers shall be generally well matured; and

(2) *Minimum size requirements.* Such apricots measure not less than 1⅝ inches in diameter except that apricots of the Blenheim, Blenril, and Tilton varieties when packed in unlidded containers may measure not less than 1¼ inches; *Provided,* That not more than 10 percent, by count, of such apricots may fail to meet the applicable minimum diameter requirement:

(3) Notwithstanding any other provision of this section, any individual shipment of apricots which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 922.41 (Assessments), and of § 922.55 (Inspection and Certification):

(i) The shipment consists of apricots sold for home use and not for resale;

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of apricots; and

(iii) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

(b) Terms used in the amended marketing agreement and order shall when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; "diameter" and "Washington No. 1" shall have the same meaning as when used in the State of Washington Department of Agriculture Standards for Apricots, effective May 31, 1966; "reasonably uniform in color" means that the apricots in the individual container do not show sufficient variation in color to materially affect the general appearance of the apricots; and "generally well matured" means that with respect to not less than 90 percent, by count, of the apricots in any lot of containers, and not less than 85 percent, by count, of such apricots in any container in such lot, at least 40 percent of the surface area of the fruit is at least as yellow as Shade 3 on the U.S. Department of Agriculture Standard Ground Color Chart of Apples and Pears in the Western States.

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

Dated: August 11, 1977.

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

[FR Doc.77-23595 Filed 8-15-77;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

MISCELLANEOUS DELETIONS

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this document is to delete from the Code of Federal Regulations certain regulations which are obsolete and therefore no longer needed. Commodity Credit Corporation (CCC) needs vary as crop conditions and harvest totals vary from year to year, and administrative policies change.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Adrian Crawford, Box 2415, Washington, D.C. 20013, 202-447-2341.

SUPPLEMENTARY INFORMATION: It is the general policy of CCC to invite comments regarding the development of proposed rules; however, this action consists only of the deletion of outmoded regulations and no purpose would be served in inviting comments.

The following regulations contained in Title 7 CFR are deleted:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. Part 1421: Subpart—1970 and Subsequent Crops Dry Edible Bean Loan and Purchase Program, §§ 1421.120–1421.132.

Subpart—1974 Crop Dry Edible Bean Loan and Purchase Program, §§ 1421.140–1421.143.

Subpart—1970 and Subsequent Crops Flaxseed Loan and Purchase Program, §§ 1421.150–1421.159.

Subpart—1974 Crop Flaxseed Loan and Purchase Program, §§ 1421.175–1421.177.

Subpart—1975 Crop Tung Oil Warehouse Stored Loan Program, §§ 1421.450–1421.453.

Subpart—Farm Storage Reseal Loan Program, §§ 1421.530–1421.545.

Subpart—Farm Storage Reseal Loan Program (1972–73 Storage Period Supplement), §§ 1421.550–1421.556.

Subpart—Provisions of 1961 and Subsequent Crop Texas Flaxseed Purchase Programs, §§ 1421.626–1421.642.

Subpart—1974 Crop Texas Flaxseed Purchase Program, § 1421.643.

Subpart—1966–1970 Payment-in-Kind Regulations—Price Support and Diversion, §§ 1421.3773–1421.3790.

PART 1443—OILSEEDS

2. Part 1443: Subpart—1970 Crop Supplement to Cottonseed Purchase Program Regulations, §§ 1421.50–1421.51.

PART 1473—DISTRESS LOANS

3. Part 1473 is deleted.

PART 1479—CERTIFICATES OF INTEREST IN COMMODITY CREDIT CORPORATION PRICE-SUPPORT LOANS

4. Part 1479 is deleted.

Signed at Washington, D.C., on August 9, 1977.

RAY FITZGERALD,
Executive Vice President, Commodity Credit Corporation.

[FR Doc.77-23541 Filed 8-15-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 202—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Adoption of Proposed Miscellaneous Amendments to the Regulations Implementing the Freedom of Information Act

AGENCY: Federal Energy Administration (FEA).

ACTION: Final rule.

SUMMARY: Notice is hereby given that the Federal Energy Administration (FEA) adopts as proposed a number of miscellaneous amendments to the Agency's regulations implementing the Freedom of Information Act (5 U.S.C. 552). The purpose of these amendments is (1) to reflect the reassignment of the FEA Freedom of Information function from the Office of Communications and Public Affairs to the Office of Management (2) to modify the rule concerning the time of receipt of Freedom of Information requests and appeals (3) to reflect a revision necessitated by the amendments to the Freedom of Information Act enacted as Pub. L. 93-502 (88 Stat. 1561) and (4) to clarify the regulation governing the processing of administrative appeals from initial denials of Freedom of Information Act requests. FEA has previously published a notice of a proposal to this effect (42 FR 28147, June 2, 1977) and interested persons were invited to submit written views or arguments related to the proposal.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Deanna Williams (FEA Reading Room), 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9840; John Treanor (Information Access Office), 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9840; William D. Luck (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 6144, Washington, D.C. 20461, 202-566-9296.

SUPPLEMENTARY INFORMATION: One comment was received, from the Sun Company, objecting to the proposal that the FEA change the date when a properly addressed request or appeal made under the Freedom of Information Act is deemed to be received by FEA. The proposal would change the date of receipt in that circumstance from the date of receipt in the FEA mailroom to the date when the request is delivered to the appropriate FEA office (the Information Access Office, which initiates processing of the request, or the Office of Exceptions and Appeals, which processes requests for appeal).

The FEA has considered Sun's comment, but does not agree that the proposed provision is inconsistent with the spirit of the Freedom of Information Act. As was indicated in the proposal, the statutory time limits of that Act are sufficiently stringent that it is imperative that the office processing such requests be accorded in all cases the full time necessary to answer these inquiries. Given, on the one hand, the penalties prescribed by the Act for the arbitrary or capricious withholding of documents and, on the other hand, the concern that information not be released contrary to the provisions of 18 U.S.C. 1905, the Privacy Act of 1974 (5 U.S.C. 552a), and other applicable legal authority, it is important that the FEA be able to act in a carefully considered manner in all such cases.

Accordingly, FEA does not consider it necessary to modify or withdraw any of

the proposed amendments and they are therefore adopted as proposed.

(Freedom of Information Act, 5 U.S.C. 552, as amended; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended; Executive Order 11790, 39 FR 23185.)

Issued in Washington, D.C., August 8, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

§ 202.1 Purpose and scope.

This subpart contains the regulations of the Federal Energy Administration (FEA) implementing 5 U.S.C. 552 (1970) as amended by Pub. L. 93-502, 88 Stat. 1561. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all divisions within the FEA. Official records of the FEA made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this subpart. Officers and employees of the FEA may furnish to the public, informally and without compliance with procedures prescribed herein, information and records of types which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties to the public by other agencies. Persons seeking information or records of the FEA may find it useful to consult with FEA's Information Access Office before invoking the formal procedures set out below. To the extent permitted by other laws, the FEA will make available records which it is authorized to withhold under 5 U.S.C. 552 unless it determines that such disclosure is not in the public interest.

§ 202.2 Public reference facilities.

(a) The National Office, FEA and Regional Offices, FEA will maintain in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying.

* * * * *

§ 202.3 Requests for reasonably described records and copies.

(a) *Addressed to the Information Access Officer.* A request for a record of the FEA which is not customarily made available and which is not available in a public reference facility as described in § 202.2 shall be addressed to the Federal Energy Administration, Washington, D.C. 20461, and shall be clearly marked on the envelope "Attention: Information Access Officer." Except as provided in § 202.8(c), a request which is so addressed and marked will be considered to be received by the FEA for purposes of 5 U.S.C. 552(a)(6) upon delivery to the Information Access Office, Room 2107, New Post Office Building at 12th and Pennsylvania Avenue, NW., Washington, D.C. A request under 5 U.S.C. 552 which is not so addressed and marked also shall be considered to be received upon actual receipt by the Information Access Officer. Documents delivered after regular business hours are deemed received on the next regular business day. Regular business hours for the FEA National Office are 8:00 a.m. to 4:30 p.m.

* * * * *

§ 202.4 Time for response to request for records.

(a) An Information Access Officer, appointed by the Associate Administrator for Management, shall be responsible for processing written requests for records submitted pursuant to this part. Upon receiving such a request, the Information Access Officer shall ascertain which division or divisions of the FEA have primary responsibility for, custody of, or concern with the records requested and forward the request to such division or divisions, who shall promptly identify and review the records encompassed by the request. After reviewing the material, the division or divisions concerned shall forward to the Information Access Officer either the requested material, or a recommendation that the request be wholly or partially denied. Any recommendation that a request be denied shall set forth the policy considerations supporting such denial and shall be forwarded, with the information sought or a representative sample thereof, to the Information Access Officer, who shall provide such recommendation and materials to the General Counsel for his review and recommendation.

* * * * *

§ 202.6 Appeals to the Deputy Administrator from initial Denials.

(a) *Appeal to Deputy Administrator.* When the Information Access Officer has denied a request for records in whole in part, the requester may, within 30 days of its receipt, appeal the denial to the Deputy Administrator, FEA. The appeal shall be in writing and shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeals and any judicial determinations being relied upon to support the appeal. A copy of the order that is the subject of the appeal shall be submitted with the appeal. The appeal shall be addressed to the Deputy Administrator, Federal Energy Administration, Washington, D.C. 20461, and shall be clearly marked on the envelope "Appeal—Freedom of Information Act; Attention: Director, Office of Exceptions and Appeals." A request which is so addressed and marked will be considered to be received by the FEA for purposes of 5 U.S.C. 552(a)(6) upon delivery to the Office of Exceptions and Appeals, Room 8002, 2000 M Street NW., Washington, D.C. An appeal of the denial of a request which is not so addressed and marked also shall be considered to be received upon actual receipt by the Director, Office of Exceptions and Appeals. Documents delivered after regular business hours are deemed received on the next regular business day. Regular business hours for the FEA National Office are 8:00 a.m. to 4:30 p.m.

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[FR Doc.77-23304 Filed 8-15-77;8:45 am]

PART 460—GRANTS FOR OFFICES OF CONSUMER SERVICES

Amendment of Guidelines

AGENCY: Federal Energy Administration.

ACTION: Amendment of final rule.

SUMMARY: The Federal Energy Administration hereby amends its guidelines for a program of discretionary grants for the establishment or operation of States offices of consumer services to assist the representation of consumer interests in electric utility proceedings before utility regulatory commissions. This amendment extends the deadline by which a State must submit an application to FEA from August 26, 1977 to September 6, 1977. This extension is provided to allow a State more time to prepare and submit its application for a grant. Any State, the District of Columbia, any territory or possession of the United States and the Tennessee Valley Authority are eligible to apply for a grant under this program. Grants will be awarded on a competitive basis to a limited number of States.

DATES: The effective date is the date of issuance of this amended rule.

FOR FURTHER INFORMATION CONTACT:

Ms. Nancy Tate Gavin, Office of Conservation, Room 6451, Federal Energy Administration, Washington, D.C. 20461 (202-254-9755).

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended by revising Part 460 as set forth below, effective immediately.

Issued in Washington, D.C., August 10, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

§ 460.11 [Amended]

Subpart D, Chapter II of Title 10, Code of Federal Regulations, is amended by revising the first sentence of paragraph (a) of § 460.11 by deleting "August 26, 1977" and substituting "September 6, 1977."

(Title II (42 U.S.C. 6801) of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1125 et seq.; Federal Energy Administration Act of 1974, Pub. L. 93-275, 15 U.S.C. 761 et seq. as amended by Pub. L. 94-385, supra; E.O. 11790, 39 FR 23185.)

[FR Doc. 77-23535 Filed 8-15-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER B—GUIDES AND TRADE PRACTICE RULES

PART 27—BRICK AND STRUCTURAL CLAY TILE AND ALLIED PRODUCTS INDUSTRY

Rescission of Obsolete Part

AGENCY: Federal Trade Commission.

ACTION: Final rescission of certain trade practice rules.

SUMMARY: Action taken is rescission of trade practice rules for the brick and structural clay tile and allied products industry. The Commission is reviewing its trade practice rules and other industry guides to rescind those not considered useful in obtaining compliance with laws it administers. After carefully considering trade association comments for and against retention and reconsidering proceedings that produced these rules, the Commission concludes that retention is not in the public interest.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

Charles H. Slayman, Jr., Attorney, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. (Telephone: 202-724-1193).

SUPPLEMENTARY INFORMATION: The Commission invites interested persons to comment on proposed rescissions. In response to an invitation (41 FR 2398, January 16, 1976) to comment for the public record on proposed rescission of trade practice rules for the brick and structural clay tile and allied products industry, 16 CFR Part 27, the Commission received retention requests from the Brick Institute of America (BIA), formerly the Structural Clay Products Institute (SCPI), and several tile trade associations, and a rescission request from the National Concrete Masonry Association (NCMA). Members of BIA and NCMA make competing building materials.

BIA members make and sell bricks composed primarily of clay or shale or mixtures thereof fused together by high heat. NCMA members make and sell bricks composed of cement, crushed stone or gravel and sand usually hardened by steam. No one asks for retention of general application sections of Part 27 but BIA asks for retention of particularized §§ 27.0, 27.5 and 27.8 and NCMA asks for rescission of these sections which read:

§ 27.0 The industry and its products defined.

(a) Products of the Industry respecting which these rules are promulgated consist of any kind or type of building units or materials which are, or are represented directly or indirectly as being brick or structural tile.[1]

(b) Members of the indstry are persons, firms, corporations, and organizations engaged in the manufacture, sale, offering for sale, or distribution of any such products.

* * * * *

§ 27.5 Deception as to composition.

(a) It is an unfair trade practice to sell, offer for sale, or distribute any product of this industry under any designation or representation which has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the composition of said product.

(b) Under this section no products of the industry shall be designated as "brick," "tile," or "structural tile," unless:

(1) The composition thereof is primarily of clay or shale or mixtures thereof; and

(2) The ingredients thereof have been fused together as a result of the application of heat: *Provided, however*, That such designations may be used for products not meeting the requirements in this section when so qualified as to denote the basic composition thereof as to denote the basic composition thereof (as, for example, "concrete brick," "coral brick," "plaster brick," "sand-lime brick," "concrete structural tile," etc.), or when, in immediate conjunction with the designations, disclosure is made of the fact that the products are not ceramic products. (See also note to § 27.8.)

* * * * *

§ 27.8 Deceptive use of trade or corporate names, trade-marks, etc.

The use of any trade names, corporate name, trade-mark, or other trade designation, which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false or misleading in any other material respect, is an unfair trade practice.

NOTE.—Nothing in this section is to be construed as prohibiting:

(a) The use of the word "brick" as a part of the name of a corporation or business concern which manufactures or distributes brick of any type or composition, or

(b) The use of the word "tile" or the words "structural tile" as a part of the name of a corporation or business concern which manufactures or distributes structural tile of any type or composition: *Provided, however*, That descriptions or references to any nonceramic industry products contained in advertising, sales promotional literature or invoices of said corporations or concerns are in accord with the requirements of § 27.5.

NCMA members object to the brick definition in subsection (b) of § 27.5 and therefore object to being considered members of this "industry" as defined in § 27.0 and to the name restrictions in the Note to § 27.8.

In considering current trade association comments, the Commission has reconsidered the trade practice conference, public hearing and discussions that resulted in 16 CFR Part 27.

The Commission acted on an SCPI application and convened a trade practice conference October 27, 1954. Considered were proposals to replace general rules for the common brick, face brick and structural clay tile industries adopted in 1931, to extend coverage to "allied structural non-clay products" and to adopt particularized rules concerning use of terms brick, tile and structural tile. A public hearing was held July 14, 1955 on slightly revised proposals. On June 5, 1956 (at 21 FR 3830) the Commission promulgated trade practice rules, 16 CFR Part 27—Brick and Structural Clay Tile and Allied Products Industry.

As these rules were being developed, SCPI insisted its members wanted Subsection (b) of proposed Rule 5 (§ 27.5) and the Note to proposed Rule 8 (§ 27.8) adopted by the Commission or else they did not want any rules. From the beginning in 1954, NCMA members have opposed these particularized provisions. Thus Part 27 differs from other sets of trade practice rules where commercial interests agree on definitions of the industry and industry products.

SCPI quoted selected dictionary definitions and other sources to support its proposed definition rules. NCMA quoted selected dictionary definitions and other sources to support its views that brick and tile are class names and are not confined exclusively to heat-fused clay products. The Commission now concludes that §§ 27.5(b) and 27.8 Note lack a necessary factual foundation.

The Commission has no evidence that consumers or other purchasers have been or are being deceived by use of unqualified terms brick or structural tile in advertising or sales of building materials. Veneer types of tile used for floor or wall surfacing were specifically excluded from Part 27 by footnote to § 27.0. (Deception in advertising and sale of veneer tile had resulted in several cease and desist orders and in an administrative interpretation, 16 CFR 14.2, published November 12, 1950 at 15 FR 7357.)

The Commission concludes that retention of Part 27 is not in the public interest.

PART 27—[REVOKED]

Accordingly the Commission hereby announces its final rescission of trade practice rules published in the following Part of Title 16 of the Code of Federal Regulations:

PART 27—BRICK AND STRUCTURAL CLAY TILE AND ALLIED PRODUCTS INDUSTRY

The Commission notes that rescission of trade practice rules and industry guides does not relieve anyone of duties to comply with Commission administered laws. Therefore rescission is not an invitation to engage in unfair or deceptive or anticompetitive acts or practices in violation of law.

(Secs. 5, 6, 18(a)(1)(A), amended FTC Act, 38 Stat. 719, 721, 88 Stat. 2193 (15 U.S.C. 45, 6, 57a); CFR 1.5, 1.6, 17.1.)

By the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-23521 Filed 8-15-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM76-10; Order No. 556-A]

REGULATIONS UNDER NATURAL GAS ACT

FPC Form No. 108; Order Granting in Part and Denying in Part Rehearing and Reconsideration

AGENCY: Federal Power Commission.

ACTION: Order on rehearing.

SUMMARY: On November 22, 1976, the Commission issued Order No. 556 (41 FR 52441, published November 30, 1976) implementing the Form No. 108 program which sets forth certain reporting requirements for producers that maintain a rate schedule with the FPC. Petitions for rehearing of that order were filed, and the Commission convened a technical conference to discuss the new filing requirements. As a result, the instant or-

[1] As here used, the term "structural tile" does not include the veneer types of tile used for floor or wall surfacing.

der deletes from the Commission's Regulations the requirement to file Form No. 301-A statement of sales and revenues of independent producers which was superseded by schedule 501; amends certain other producer reporting requirements, and changes certain instructions, schedules, and reporting requirements of Form No. 108. The purpose of the revised Form No. 108 program is to provide the Commission with current information on the amount of gas flowing in interstate commerce, give a detailed breakdown of the important provisions of all rate schedules, serve as a data base for estimating the revenue impact of nationwide and/or area ratemaking proposals, and permit the determination of the potential effects of periodic price escalations and indefinite price provisions.

EFFECTIVE DATE: August 5, 1977.

FOR FURTHER INFORMATION CONTACT:

Marvin Hirsh, Bureau of Natural Gas, 202-275-4557.

SUPPLEMENTARY INFORMATION: On November 22, 1976 the Commission issued Order No. 556 implementing the Form No. 108 program. The purposes of this reporting requirement are set forth at length in that order,[1] but briefly, producers that maintain a rate schedule with this Commission were required as of January 1, 1977 to:

(1) File abstracts on required schedules of all initial service rate schedules and supplemental filings at the same time as the filings themselves are made,

(2) Substitute new, abbreviated forms for existing annual reporting requirements,[2] and

(3) Coordinate rate change filings with information presently on file with the Commission.

Petitions for rehearing or reconsideration were filed by Amoco Production Co. (Amoco), Atlantic Richfield Co. (Atlantic Richfield), Cities Service Oil Co. (Cities Service), Exxon Corp. (Exxon), General American Oil Co. of Texas (General American), Gulf Oil Corp. (Gulf), Kerr-McGee Corp. (Kerr-McGee), Marathon Oil Co. (Marathon), Shell Oil Co. (Shell), Superior Oil Co. (Superior), Tenneco Oil Co. (Tenneco), and Texaco Inc. (Texaco). Rehearing for purposes of further consideration was granted February 14, 1977. Many of these parties, and others, requested that the Commission convene a technical conference to discuss the new filing requirements. By order dated March 11, 1977, (1) a technical conference was convened on March 25, 1977, (2) requested stays for filing schedules of Form 108 other than schedules 501 and 505 were denied and (3) the date for Commission transmission of updated rate schedule analyses on Form 108 schedules to respondents for verification was postponed until June 30, 1977.[3]

I. TECHNICAL CONFERENCE

The technical conference involved an on-the-record discussion between the parties participating[4] and staff representatives. The areas of most concern to the attendees were (1) the attestation form (which has been revised), (2) the requirement to report volumes and revenues at the 14.73 psia pressure base required by OMB Circular No. A-46, (3) schedule format and color (now revised), (4) errors and omissions in instructions and related "Register of Data Standards" (now revised), (5) multiple analysis requirements, and (6) "et al." party reporting. The instructions relating to these last two items have been revised to simplify and clarify reporting requirements.

A. ATTESTATION

The attestation form included in Order No. 556 provides that only a company officer may attest to the contents of a filing and the accuracy thereof. This has caused great inconvenience to many respondents because many filings are prepared in regional offices where company officers may be unavailable. Even if available, many company officers are reluctant to attest, under oath, to the contents of documents with which they are unfamiliar.

Accordingly, this form has been reworded to provide that it may be signed, under oath, by a responsible officer, employee, representative or agent of the filing company.

Section 1.16(b) of the Commission's Rules of Practice and Procedure requires that filings are to be verified under oath. However, since the 1960's, producer rate change filings have been accepted by staff if signed by a responsible respondent employee, without requiring the signature to be under oath. In order to ease the transfer from the present system to Form No. 108 and to facilitate the submission and processing of rate change filings, we will continue to allow rate change filings submitted on Schedule 507 of Form 108 to be acceptable if a responsible person's signature is on the schedule, thus eliminating the need for an attached attestation.

B. PRESSURE BASE

Several parties at the technical conference requested that the Commission change the pressure base from the 14.73 psia used on all government forms to 14.65 or 15.025 psia. These persons asserted that the FPC reports forms would be used for other non-Commission purposes, such as reports to state authorities or notifications to purchasers, that required the utilization of a pressure base other than 14.73 psia.

The standard gas pressure base for government-wide use when collecting or publishing information on natural gas is 14.73 psia at 60° Fahrenheit. However, it is feasible to insert on Schedule 507 dual data reporting fields to enable respondents to report rate data on a 14.73 psia pressure basis for Commission purposes and at any other pressure base required for their own internal purposes. The revised Schedule 507 includes these dual reporting fields.

C. SCHEDULE FORMAT AND COLOR

Form No. 108 schedules 502, 503 and 507 have been modified to reflect the knowledge gained both from use and suggestions from the technical conference. Improvements have been in the area of data field arrangement, use of colors, and general appearance. Data fields have been separated, arranged into columns and grouped as tables using single spacing where appropriate. Previous schedule design included a solid dark color with some light shaded areas in combination with white background for data fields. This combination created an impression of contrasting colors and, when reproduced, increased visual harshness. The new schedules do not use a solid dark color. The data fields are arranged on a white background. This design has reduced visual harshness and allows reproduction with clarity.

D. ERRORS AND OMISSIONS IN INSTRUCTIONS AND RELATED "REGISTER OF DATA STANDARDS"

In response to the concerns of numerous parties the instructions for filling out the various Form No. 108 schedules have been revised and clarified. The "Register of Data Standards" has been revised. The "Counties of the U.S." and the State alphabetic abbreviations are now in the Geographic Code book.

Additional abbreviations have been added to (1) the types of charges involved in natural gas transactions, (2) the types of calculations required to adjust prices for Btu content, (3) the basis of gas rate calculations and (4) the types of rate schedule changes.

The data fields requiring information as to the type of multiple analysis are now for staff use only. Accordingly, the related data abbreviations have been deleted from the Register of Data Standards.

E. MULTIPLE ANALYSIS

One of the main concerns of the respondents is the requirement for multiple analysis (more than one rate per rate schedule) on various schedules of Form No. 108. To the extent the form has not been subsequently modified, we adopt herein the explanation in support of multiple analysis offered by our staff representatives at the technical conference (Tr. 29-44). In addition, one of the principal problems of the parties was the necessity to give the reasons for multiple analysis and, upon reconsideration, this has been eliminated. Respondents are now required to indicate whether or not there is a multiple analysis and, if so, to identify each such analysis.

F. ET AL. PARTIES

As with multiple analysis, the et al. party requirement was fully explained at

[1] Order No. 556, mimeo pp. 1-3.

[2] By order issued February 14, 1977, the initial filing of Schedules 501 and 505 of Form 108, relating to annual reports on volumes sold and revenues received by producers maintaining rate schedules, was delayed until July 1, 1977.

[3] This date was postponed until further notice by order of June 30, 1977.

[4] See Appendix A.

the technical conference (Tr. 44-50). In response to the questions raised on this point the "General Information" section of the detailed instructions to Schedule 505 has been expanded to clarify what information is required of the reporting producer with respect to reporting annual volumes and revenues of other working interest owners covered under his rate schedule.

In addition to the items of concern just discussed, certain other questions were raised at the technical conference that require Commission response.

G. QUARTERLY RATE INCREASE FILINGS

Cabot Corp. has requested guidance as to whether producers may file for the next four quarterly escalations in the $1.42 base national rate prescribed in Opinion No. 770-A at this time or whether they should file for such periodic escalations as they become due. Similar questions have been informally raised by other producers.

Opinion No. 770-A gave producers the option to originally make a single filing which included several periodic escalations due through July 1, 1977. No further filing instructions were given except for the requirement that future periodic escalations be subject to the thirty (30) day notice requirement.

The computer design requirements of the Form No. 108 data system eliminate any benefits that a producer might receive by being able to make a single filing covering more than one periodic rate escalation. Schedule 507 requires a separate analysis for each proposed rate change, thus resulting in the same amount of filings whether filed separately or all at one time.

There appears little reason to encourage producers to prepare a year's worth of future filings at one time when there is a strong possibility that intervening events may change these rates before they become effective. For example, any future tax changes,[5] changes in rate levels or in the scope of producer regulation either by Congressional or Commission action, would require producers to submit amended filings.

Accordingly, the Commission advises the producers that a separate filing is required for each periodic escalation due on or after October 1, 1977, subject to the thirty (30) day notice requirements but not more than 90 days prior to the proposed effective date, as presently prescribed by the Commission's Regulations.

Several producers have filed for periodic escalations due October 1, 1977, and thereafter. Such premature filings are of no force and effect and should be withdrawn, with timely periodic filings to be made in the future as prescribed by the Regulations.

[5] In this regard, New Mexico has recently changed its tax rate, effective July 1, 1977. This will require producers to amend their previously submitted rate filings. Oklahoma has increased its tax rate effective January 1, 1978.

H. NOTICE OF INTENT TO FILE AND WEEKEND FILINGS

Kerr-McGee suggested that producers be allowed to file a "notice of intent to file" with respect to Schedules 502, 503, 504 and 507. The filing date of such notice would then be considered to be the filing date of the actual schedule, provided that the complete filing is received by the Commission within fifteen days of receipt of the "notice of intent to file".

Similarly, Kerr-McGee also suggested that the Commission set up a procedure where filings can be accepted and date-stamped over the weekend. Although this suggestion may have some merit, implementation does not appear to be administratively feasible. Accordingly, the Commission believes that respondents should allow sufficient time for preparation and mailing of their filings so that they are timely received by the Commission.

The Commission does not believe that Kerr-McGee's proposal to file a "notice of intent" is either practical or permissible under the Natural Gas Act. Section 4 of the Act requires that an actual notice of change in rate be filed with appropriate notice given to interested parties. Both the purchaser and Commission must have sufficient time to analyze a producer's rate filing for content and accuracy. To the extent that the actual rate filing is delayed, pipeline purchasers would have less time to prepare tracking filings. Even if this suggestion were permissible, there is still little reason to implement the request, since it would increase the filings being handled by all parties. Kerr-McGee's purpose could be accomplished by requesting waiver of the statutory notice requirement for sufficient reason.

I. SUBMITTAL DATE FOR ANNUAL REPORTS ON SCHEDULES 501 AND 505

Amoco suggested that the due dates of the annual reports of volumes sold and revenues received, reported on Schedules 501 and 505, be permanently set back from March 31st to July 1st.

As a result of assertions by Exxon, Shell, Atlantic-Richfield and Tenneco that the March 31st date for submitting the initial reports of volumes and revenues on Schedules 501 and 505 could not be met, the Commission extended the filing date of the initial submittals to July 1, 1977, by order issued February 14, 1977. However, until we have had at least one year of actual experience with the number of respondents unable to comply with the March 31st filing date, it does not appear necessary that such date should be permanently moved back to July 1.[6]

Once producers know that Schedules 501 and 505 will have to be filed by March 31st of each year, they will be able to schedule their workload accordingly. It is not expected that the problems the producers are experiencing this year in completing their initial reports on Schedules 501 and 505 will be repeated.

[6] Extensions of the filing date for this report are granted, where appropriate, to producers on an individual basis when requested.

J. STANDARDIZATION OF RATE DATA FIELDS

Atlantic Richfield requested guidance as to whether or not data fields being completed for rate change data could be expressed to two decimal places rather than to the indicated four decimal places. Atlantic Richfield has historically reflected its rate components to two decimal places.

Any rate figures "rounded off" to two decimal places will result in different total rates, which will be difficult to reconcile in the data base. Accordingly, such data fields should be standardized to report rates to four decimal places.

K. ESTABLISHMENT OF INDUSTRY—COMMISSION TECHNICAL COMMITTEE

Phillips proposes that a technical committee be formed to work out existing problems and make certain that the actual data submitted by the producers will work in the data bank.

The Commission is of the opinion that such a technical committee would not be appropriate until such time as (1) the analyses of new contracts and the updated analyses of the older contracts is completed, and (2) the data has been verified by the producers and entered into the data bank. If problems are encountered at that point, a technical committee could be beneficial and formation of such a committee would be appropriate.

II. OTHER MODIFICATIONS AND CHANGES

A. ELIMINATION OF REQUIREMENT TO SUBMIT SCHEDULE 504 NEW RATE SCHEDULE FILINGS TO GATHER BILLING STATEMENT DATA; USE OF SCHEDULE 507 FOR THIS PURPOSE; ELIMINATION OF REQUIREMENT TO SUBMIT BILLING STATEMENT

Under the current instructions for use of Schedule 504, data fields 16 through 21 are used to gather data found on the billing statement in initial service applications. Most of the other data fields on Schedule 504 are intended to be used for the in-house generation of a historical record of rate changes occurring in the rate schedule.

Inasmuch as the data in data fields 16 through 21 of Schedule 504 could also be gathered on data fields 22 through 30 of Schedule 507, Schedule 507 will be used to provide billing statement data in addition to its use as a vehicle for rate change filings. This will eliminate the need for respondents to submit Schedule 504 with current filings.[7]

[7] Schedule 504 would continue to be used by staff to print-out rate history data. It is also planned to send Schedule 504 to respondents, on a one-time basis, in connection with the verification and entry of pre-1977 rate schedule data into the data bank.

The revised Schedule 507 contains all the data currently provided on the sample billing statement submitted with each initial rate schedule filing. Accordingly, § 154.92(a) of the Regulations, which provides for the sample billing statement, is amended to provide that Schedule 507 of Form No. 108 be submitted in lieu thereof. The amended language would read as follows:

To each rate schedule there shall be attached a Schedule 507 of Commission Form No. 108 showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

B. REQUIREMENT TO FILE SCHEDULES 502, 503 AND 507 WITH CERTIFICATE APPLICATION

Order No. 556, prescribing Form No. 108, amended Section 157.24(a) of the Regulations by deleting the requirement that producer certificate applications contain, in the form specified in Section 250.5 of the Regulations, a summary of the contract for which the certificate was requested. (*See* Ordering Paragraph (B) (c)).

However, the order inadvertently omitted the requirement that the contract summary would continue to be filed with the certificate application on applicable Form No. 108 Schedules. In this connection, in response to a question by Cabot Corporation's representative at the Technical Conference, staff stated that the applicable schedules should be filed with the certificate application.

In order to correct this inadvertent omission, the first sentence of § 157.24(a) of the Regulations should be amended to read as follows:

(a) Every application for a certificate of public convenience and necessity filed pursuant to § 157.23 shall contain, as the contract summary, Commission Form No. 108 Schedules 502, 503 and the applicable portions of Schedule 507 used for billing statement purposes.

C. USE OF COMMISSION PREPRINTED SCHEDULES 501 AND 505 BY RESPONDENTS AFTER INITIAL REPORTING YEAR

Schedules 501 and 505 of Form No. 108 replace Commission Form Nos. 301-A and 301-B on which producers have submitted annual reports of jurisdictional gas volumes sold and related revenues received. In the past, staff has preprinted the following information, among other things, on Form No. 301-B in order to expedite completion by the producer:

1. Date of Contract.
2. Rate Schedule Number.
3. Location of sale (State, County or Field).
4. Name of Purchaser.

Inasmuch as Schedule 505, which replaces Form 301-B, requires the producer to report each vintage of gas sold under a rate schedule on a separate Schedule 505, continuation of the preprinting practice for all Schedule 505 reports, after the initial report, should be continued. Preprinting would facilitate both the completion of the annual report by the producer and the review process required of our staff. However, final decision on preprinting these documents is deferred until after the initial filing of Schedule 505 has been completed and the data bank updated.

D. DELETION OF FORM 301-A FROM SECTION 3.170(a) (16)

Order No. 556 deleted in its entirety the provision of Section 3.170(a) (17) that provided Form 301-B as an approved form of the Commission. Since the Form No. 108 program also eliminates Form 301-A, § 3.170(a) (16) should also be deleted.

E. NEW DATA FIELD ADDED TO SCHEDULE 503 TO ELIMINATE NEED FOR UNNECESSARY FILING OF SCHUDULE 502

The Form No. 108 instructions require that a Schedule 502 be submitted with every supplemental rate schedule filing except rate change filings. Therefore, Schedule 502 must be submitted with every supplemental filing affecting contract pricing provisions and gas quality which are abstracted on Schedule 503.

In order to eliminate this unnecessary filing of Schedule 502 in instances where only Schedule 503 should be required, a data field identifying the type of filing being submitted will be included in Schedule 503. This will simplify filing requirements by eliminating the need for filing two schedules when only one is actually needed.

F. SUBMISSION TITLE PAGE

Included in the present instructions for completing Form No. 108 filings is a schedule submission title page. This page provides, among other things, boxes to be checked off to indicate the type of filing being made. However, such page fails to provide for all the various types of filings requiring the filing of Form No. 108 Schedules, specifically certificate applications for new service.

Accordingly, the information on the title page has been expanded by additional check boxes to cover all types of producer filings. Further, the title of the page has been changed from "Federal Power Commission Regulatory Information System Schedule Submission Title Page Form 108 Rate Schedule Analysis on a Continuing Basis", to "Federal Power Commission Regulatory Information System Form 108 Schedule Submission Title Page" and a place provided for the identification of the certificate docket and rate schedule number.

In this connection, the certificate docket identification is needed inasmuch as the revision to § 157.24(a) of the Regulations adopted elsewhere in this order provides that Form No. 108 schedules be included as part of the certificate application to replace the contract summary which is no longer required.

G. SMALL PRODUCERS MAINTAINING RATE SCHEDULES ON FILE

Small producers make certain sales under filed rate schedules in addition to the sales covered by their small producer certificates. As long as the rate schedule sales are not covered by a small producer certificate, the producers involved are required to make all Form No. 108 filings applicable thereto.

In the annual reports to be submitted by small producers on Form 314-B for 1974, 1975 and 1976, respondents are given the option of reporting individual sales under filed rate schedules either on Form 314-B or Form No. 108, Schedule 505. This option will be dropped for subsequent years, since to allow such an option to continue once the Form No. 108 system becomes completely computerized could lead to complications with respect to variations in submitting annual reports.

H. CHANGE IN § 154.94(b) FILING REQUIREMENTS

Paragraph (b) of § 154.94 requires, among other things, that rate change filings be submitted in triplicate. Such filings will now be made on Schedule 507 of Form No. 108, and inasmuch as an original and three copies of Form No. 108, Schedule 507 are required to be submitted for a rate change filing, the filing requirements of Paragraph (b) will be changed to an original and three copies.

Therefore, Paragraph (b) of § 154.94 will be amended to read as follows:

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to § 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7, 1954 on file with the Commission, or required to be filed with the Commission pursuant to § 154.92 shall be filed with the Commission by an original and three copies not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective.

III. LEGAL ISSUES

A. PROPRIETARY DATA

Superior contends that Order No. 556 is deficient in that it does not provide for confidentiality of proprietary data, nor is the data submitted afforded the protection of the Freedom of Information Act, 5 U.S.C. § 552. Superior offers, however, no exposition on these points, in particular what data the company asserts to be privileged. This type of broad-brush pleading does not provide the Commission with any basis whatsoever to consider the merits of Superior's position. In addition, since Form No. 108 serves essentially to consolidate information that is now submitted to the Commission under various guises, all of which is public, Superior's claim of privilege and confidentiality for unspecified data has no basis in fact. Accordingly, the company's allegation of lack of confidentiality is rejected.

B. DUPLICATION

Several parties assert that various aspects of the new form are burdensome and should be deleted. The only substantive questions on this point relate to multiple analysis, et al. party reporting, and information assertedly already on file with the Commission. The first two

matters have been discussed and disposed of previously in this order.

As to the last matter, the respondents argue that the Commission is not authorized under the GAO approval noted at mimeo p. 8 of Order No. 556 to require the submission on Form No. 108 of information presently on file with the Commission. This problem was discussed at the March 25, 1977, technical conference and the response that was elicited from a staff representative (Tr. 42) at that time is adopted herein. Therefore, in filling out Form No. 108, except for information necessary for identification purposes, such as company name and address, actual data that has been previously submitted to the Commission need not be filed again on a new Form No. 108 compliance effort.

C. PRODUCER VERIFICATION OF DATA

Order No. 556 provides that the Commission will transmit to holders of rate schedules now on file a completed Form No. 108 for those rate schedules for each individual producer to review and verify. Texaco states that this requirement is unreasonable, burdensome, and outside the scope of the GAO approval. The purposes of Form No. 108 were set forth in Order No. 556, including the need to have all the filed material loaded into the data processing equipment. Furthermore, if this data is not verified by the producers, producers may subsequently contend that future adverse Commission decisions affecting them were based on such unverified data. Also, producer interpretation of certain contractual clauses may differ with our staff's interpretation. If unverified, such possible difference in interpretation could give rise to erroneous conclusions. Additionally, contrary to Texaco's assertion, the GAO clearance letter of October 6, 1976, clearly states that "[the] FPC may also provide completed forms to the respondents for verification of the data." Accordingly, Texaco's application for rehearing on this point is denied.

D. ORDER NO. 539-B DATA

As originally proposed in the Notice of Proposed Rulemaking issued December 17, 1975, Form No. 108 contained a Schedule 506 designed to elicit data necessary to enforce the Commission's Policy Statement set out in Order Nos. 539 and 539-A. Because the focus of that proceeding was altered in Order No. 539-B, Schedule 506 was deleted from Form No. 108 as enacted. In its place the Commission required respondents to provide certain historical sales volumes, plus a projection of deliveries under the rate schedule for the succeeding year. Order No. 556 contained a full and complete explanation of the reason for the change in filing requirements, the concomitant reduction in reporting burden, and the purpose to which the Commission will put the filed data.[8]

Nevertheless, several parties have sought rehearing on this issue, asserting that the inclusion of this filing requirement is a violation of the notice provisions of the Administrative Procedure Act and that the Commission has no right to collect the Order No. 539-B type data because the underlying order is presently pending court review. Neither of the contentions are correct and the applications for rehearing that raised this point are thus denied.

The Commission promulgated Order No. 556 pursuant to its rulemaking authority under Section 16[9] of the Natural Gas Act, which empowers the Commission to prescribe "such rules and regulations as it may find necessary or appropriate to carry out the provisions of this act." With respect to such rulemaking, Section 4 of the Administrative Procedure Act (APA)[10] applies and requires notice of the proposed rulemaking, including reference to the legal authority under which the rule is proposed and the substance of the proposed rule or a description of the subjects and issues involved. That section further requires the agency to provide interested parties the opportunity to submit written comments and, after consideration of the relevant matter presented, the agency must incorporate a concise general statement of the basis of the rule adopted. The Commission has followed each of these procedures in the Docket No. RM76-10 proceeding.

Petitioners assert that the Commission's notice failed to comply with the requirements of Section 4 of the APA insofar as it did not apprise respondents of the specific data requirements incorporated in Form No. 108 to meet the Commission's needs under Order No. 539-B. This demand for specificity is without merit and goes beyond Section 4 of the APA, which requires that the notice include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." Certainly the Commission's notice in the present case complied with this standard. Respondents were informed that the Commission intended to include in Form No. 108 the information needed to enforce Order No. 539 and its delivery obligation standard, and that the comments submitted should address any and all issues related thereto.

Finally, it should be noted that the Commission is not required under the APA to give prior notice as to the exact proposal ultimately adopted.[11] A fair statement of the substance of the issues is sufficient. As the Court stated in *Logansport Broadcasting Corporation* v. *United States*:[12]

> [S]urely every time the Commission decided to take account of some additional factor it was not required to start the proceeding all over again. If such were the rule the proceedings might never be terminated.[13] (Footnote omitted)

In the instant proceeding, notice was given of the nature of the Commission's effort and intentions, the issues posed in the rulemaking were explored in the comments, and the information request adopted is based on the record compiled. Accordingly, the Commission's actions in Docket No. RM76-10 were in compliance with the provisions of APA.

In any event, the Order No. 539-B related information was previously required to be submitted to the Commission. In Form No. 108 respondents were ordered to supply (a) the sales under the rate schedule for the previous year, (b) the same sales for the four years immediately prior to the last year, and (c) an annual projection of sales for the upcoming year. The first two items have been reported to the Commission on forms that were eliminated by the adoption of Form No. 108, and to the extent this information is now on file with the Commission, it need not be resubmitted on a new Form No. 108 filing.

As to the projected sales volume, this estimate of annual sales merely replaces the estimated monthly sales volumes previously reported on the contract summary (item 13 of Section 250.5) that has been incorporated into the new Form No. 108 system. Respondents have not demonstrated that the submittal of a yearly rather than a monthly estimate is unreasonable or burdensome.

The parties asserting this ground for rehearing also assert that requiring the filing of the Order No. 539-B data is premature because the order is presently subject to judicial review in *Shell Oil Company* v. *Federal Power Commission*, Nos. 76-3066 (5th Cir.). This argument is entirely specious. The Commission's final order that was appealed to the court is of full force and effect as of its issuance.[14] No party to this proceeding has sought a stay of the effectiveness of Order No. 539-B from this Commission or the court. Accordingly, respondents cannot be heard to complain about the Commission acting to implement its order. Therefore, the petitions for rehearing on this point are denied.

IV. IMPLEMENTATION OF FORM NO. 108 PROGRAM

A. REJECTION OF RATE CHANGE FILINGS ON SCHEDULE 507 NOT REFLECTING SPECIFIC VALUE OF BTU ADJUSTMENT

Our staff has advised us that some producers are presently reflecting by footnote reference that proposed increased rates are subject to Btu adjustment but without assigning a specific numerical value to such adjustment in the appropriate data fields. While this procedure was previously allowed in the

[8] Order No. 556, mimeo pp. 3-4.

[9] 15 U.S.C. 717o.

[10] 5 U.S.C. 553(b).

[11] See *California Citizens Band Association* v. *U.S.*, 375 F.2d 43 (9th Cir.), cert. denied, 389 U.S. 844 (1967); *Owensboro On the Air, Inc.* v. *United States*, 262 F.2d 702 (D.C. Cir.), cert. denied, 360 U.S. 911 (1958); *Buckeye Cablevision, Inc.* v. *F.C.C.*, 387 F.2d 220 (D.C. Cir. 1967); *Logansport Broadcasting Corp.* v. *United States* 210 F.2d 24 (D.C. Cir. 1954).

[12] 210 F.2d 24 (D.C. Cir. 1954).

[13] Id. at 28.

[14] *See Ecee, Inc.* v. *F.P.C.*, 526 F.2d 1270, 1274 (5th Cir. 1976).

submittal of the superseded notice of rate change form, Form 280, it is not permitted in Schedule 507, which is designed to capture the potential impact of quality adjustments for Commission information and decision. Accordingly, producers must assign and reflect numerical values for proposed Btu adjustments on Schedule 507. Since Btu content of gas varies, producers should calculate the value of the Btu adjustment based upon their estimate of the average Btu content of the gas subject to the contract. Future proposed rate increase filings on Schedule 507 which contain only a footnote reference to possible Btu adjustment are subject to rejection.

B. COMPLIANCE

The Form 108 program became effective on January 1, 1977, but compliance has been only approximately 63 percent. Although from both an equitable and regulatory standpoint it would be desirable that producers who ignored the Order No. 556 requirements that Form 108 schedules be used with all rate schedule filings after January 1, 1977, be made to submit such schedules, the Commission will refrain from so requiring because (a) the producers would be required to duplicate material already accepted, (b) the format of the Form No. 108 schedules has been modified and (c) the staff work required does not justify the need for these "make-up" filings. However, upon the issuance of this order, a full and complete filing of the appropriate schedules of Form No. 108 will be required. Failure to comply will result in an automatic rejection of rate schedule filings, but without prejudice to resubmittal, if the Form No. 108 schedules are not filed concurrently therewith.

C. AVAILABILITY OF FORM NO. 108 MATERIAL

This order will be transmitted to the same persons that received Order No. 556. However, since the material necessary to complete the form includes a large volume of paper, notably the revised schedules, and instructions plus appropriate code books, we will provide this package automatically only to those producers that file the annual schedules 501 and 505, which were due July 1, 1977. Any other person interested in obtaining this material may do so by making a request to the Commission addressed to:

Federal Power Commission, Data Base Control Group, Room 3104, 825 North Capitol Street NE., Washington, D.C. 20426.

A copy of FPC Form No. 1415, entitled Regulatory Information Requisition Sheet, is attached as Appendix B to this order to facilitate such requests.

The Commission orders: (A) The applications for rehearing, reconsideration, or modification of Order No. 556 are granted in part and denied in part, as discussed in the body of this order, and the changes or alterations to the instructions, schedules, or reporting requirements of Form No. 108 set forth above are hereby adopted by the Commission in this proceeding.

(B) The following sections of the Commission's Regulations (18 CFR Chapter I) are amended, modified, or deleted, as follows:

PART 3—ORGANIZATION; OPERATION INFORMATION AND REQUESTS

§ 3.170 [Amended]

(1) Section 3.170(a)(16) is deleted from the Commission's Regulations.

PART 154—RATE SCHEDULES AND TARIFFS

(2) The last sentence of § 154.92(a) of the Regulations is amended as follows:

§ 154.92 Filing of rate schedules by independent producer.

(a) * * * To each rate schedule there shall be attached a Schedule 507 of Commission Form No. 108 showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

* * * * *

(3) Paragraph (b) of § 154.94 is amended, as follows:

§ 154.94 Changes in rate schedules.

* * * * *

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to § 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7, 1954, on file with the Commission, or required to be filed with the Commission pursuant to § 154.92 shall be filed with the Commission by an original and three copies not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective.

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

(4) The first sentence of § 157.24(a) is amended to read as follows:

§ 157.24 Contents of application.

(a) Every application for a certificate of public convenience and necessity filed pursuant to § 157.23 shall contain, as the contract summary, Commission Form No. 108 Schedules 502, 503 and the applicable portions of Schedule 507. * * *

* * * * *

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

PARTIES REPRESENTED AT MARCH 25, 1977, FORM 108 TECHNICAL CONFERENCE

Producers and Pipelines

Amoco Production Co.
Aminoil USA, Inc.
Anadarko Production Co.
Atlantic Richfield Co.
Cabot Corp.
Champlin Petroleum Co.
Chevron USA Inc.
Coastal States Gas Producing Co.
Continental Oil Co.
Diamond Shamrock Corp.
El Paso Natural Gas Co.
Enserch Exploration, Inc.
Equitable Gas Co.
Exxon Company, USA.
General American Oil Co.
Getty Oil Co.
Gulf Oil Corp.
Helmerick & Payne, Inc.
Kentucky West Virginia Gas Co.
Kerr-McGee Corp.
Marathon Oil Co.
Mesa Petroleum Co.
Mitchell Energy Co.
Mobil Oil Corp.
NAPECO Inc.
Northwest Pipeline Corp.
Pan Eastern Exploration Co.
Panhandle Eastern Pipe Line Co.
Pennzoil.
Phillips Petroleum Co.
Placid Oil Co.
Shell Oil Co.
Southern Natural Gas Co.
Southland Royalty Co.
Standard Oil of California.
Sun Oil Co.
Tenneco Oil Co.
Terra Resources, Inc.
Texaco, Inc.
Texas Gas Exploration Co.
TransOcean Oil, Inc.
Union Oil of California.
Wewoka Exploration Co.

Law Firms, Consultants and Associations

Baker & Botts.
Chapman, Gadsby, Hannah & Duff.
Foster Associates, Inc.
Interstate Natural Gas Association.
Ross, Marsh & Foster.

Appendix B

Docket No RM76-10

FEDERAL POWER COMMISSION

REGULATORY INFORMATION SYSTEM

REQUISITION SHEET

RESPONDENT CODE: _____

RESPONDENT NAME AND ADDRESS:

_____

_____

_____

_____

_____

SCHEDULE NUMBER	SCHEDULE NAME	QUANTITY REQUEST

NOTE: REQUESTS MUST BE SUBMITTED IN SUFFICIENT TIME TO MEET FILING DATES. EXTENSIONS WILL NOT BE GRANTED DUE TO REQUESTING ADDITIONAL SCHEDULES.

Mail To: Federal Power Commission
Data Base Control Group, Room 3104
825 North Capitol Street, N.E.
Washington, D.C. 20426

[FR Doc.77-23525 Filed 8-15-77;8:45 am]

SUBCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

[Docket No. RM76-17]

PART 35—FILING OF RATE SCHEDULES

PART 154—RATE SCHEDULES AND TARIFFS

Uniform System of Accounts for Natural Gas Companies

AGENCY: Federal Power Commission.

ACTION: Order Denying Petition for Rehearing of Order No. 566.

SUMMARY: On July 5, 1977 the People and Public Utilities Commission of California (California) filed an application for rehearing of Order No. 566 issued on June 3, 1977 (42 FR 30150; June 13, 1977). Because California's petition for rehearing presented no factual or legal reason for the Commission to modify Order No. 566, the petition was denied. The previous Order No. 566 will remain in full effect.

EFFECTIVE DATE: August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles F. Reusch, Office of the General Counsel, 202-275-4328.

On July 5, 1977 the People of the State of California and the Public Utilities Commission of the State of California (California) filed an application for rehearing of Order No. 566 issued on June 3, 1977 in Docket No. RM76-17. In Order No. 566, 42 FR 30150, the Commission prescribed changes in accounting and rate treatment for research, development and demonstration expenditures. In its application for rehearing, California alleges the following:

(1) The Commission erred in expanding the definition of research and development, thereby apparently burdening natural gas consumers with all of the financial risks generated by projects intended to verify commercial feasibility, and in doing so has abused its discretion;

(2) The Commission failed to state clearly the extent to which it has expanded the definition of research and development; and

(3) The Commission left uncertain whether Order No. 566 may be applied retroactively.

California's allegation that the Commission abused its discretion in expanding the definition of R&D is without merit. The Commission explained in the Notice of Proposed Rulemaking the necessity for extending to commercial-scale demonstration projects the rate treat-

ment which is currently allowed for small scale research, development and demonstration facilities:

This Commission recognizes the need for a significantly expanded national energy research and development program as part of the solution to the Nation's problem of increasing inbalance between energy supply and demand (mimeo, page 2.)

We are encouraged by the increased emphasis R&D has been given by some elements of the electric power and natural gas industries as demonstrated by the support given to the Electric Power Research Institute by jurisdictional electric power companies and by a number of requests for advanced approval of individual R&D projects by jurisdictional gas companies. *However, we have not seen the level of concentrated and coordinated effort by the natural gas industry that the public interest requires to significantly advance the state of technology to relieve the severe curtailment of service now being experienced by interstate natural gas pipelines* (Mimeo, page 2, emphasis supplied.)

Many of the energy technologies under serious investigation in the nation's R&D are not only known to be technically feasible but are also in operation on a laboratory scale,, or on a working scale, as in a pilot plant. However, uncertainty with regard to the economics of commercial-scale operation is, in many cases, so great as to preclude normal methods of financing the construction of the first, or the first several commercial-scale facilities. *Therefore, because of the Nation's need for rapid development of new energy technology, the construction of commercial-scale demonstration facilities must be regarded as a vital part of the national R&D program.* (Mimeo, page 6, emphasis supplied.)

By expanding the definition of R&D to include full-scale demonstration projects, the Commission will achieve the permissible end of encouraging the development of new technology to insure a continuing supply of energy to meet jurisdictional customers' needs.

The Commission has not left ratepayers unprotected. It does not intend to allow RD&D treatment for projects which have been shown to be commercially feasible. If jurisdictional utilities or RD&D organizations request advance approval for a project or plan, it will receive close scrutiny. As the commission said in Order No. 566 (mimeo ed., pages 11 and 12):

* * * each proposed demonstration plant will be considered individually and the process will be reviewed in light of the Commission's definitions of RD&D to ensure that only the portion of any proposal representing true research and development are (sic) financed by gas consumers.

The action the Commission has taken is within its authority. The Commission's discretion is broad; Section 16 of the Natural Gas Act[1] and Section 309 of the Federal Power Act[2] state, in part:

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations at it may find necessary or appropriate to carry out the provisions of this a(A)ct * * *

We have discussed the reasons for including full-scale demonstration plants in the June 17 Notice and Order No. 566 and have stated a strong preference for arrangements where high-risk demonstration projects would be supported by a large number of ratepayers.

With respect to California's second allegation, the Commission did not fail to state clearly the extent to which it expanded the definition of R&D. It added two new sentences to Definition 28.B., as follows:

* * * This definition includes expenditures for the implementation or development of new and/or existing concepts until technically feasible and economically feasible operations are verified * * * The term includes preliminary investigations and detailed planning of specific projects for securing for customers non-conventional pipeline gas supplies that rely on technology that has not been verified previously to be feasible * * *

California questions how commercial feasibility is to be verified. Commercial feasibility refers to a determination that a technology proved in a pilot plant will be operable on a commercial scale as well. For our purpose, it does not refer to whether the cost of the final product will be low enough to make it competitive with other processes now, but it does refer to an evaluation that the cost of the final product will be reasonable at some future date. It is anticipated that the need for verification will require the construction of at least one demonstration plant. We discussed that problem in Order No. 566 at page 11 (mimeo ed.), where we said:

"We also wish to make clear that we will not tolerate a proliferation of simultaneous large scale demonstration plants in the name of RD&D to be funded by natural gas consumers if there is major duplication of new technology. These plants require enormous sums of capital and we must be cognizant of the impact of each proposal on the public as well as the cumulative impact on the public. We therefore urge the companies we regulate to proceed with caution in proposing the construction of large scale demonstration plants that will be funded by natural gas consumers of this country.

Finally, California points out that the Commission's statement in Order No. 566 (mimeo ed., page 5) that it was "clarifying" the previously existing definition of R&D might result in uncertainty about whether the Commission intended to give retroactive effect to its expansion of the definition to include full-scale demonstration projects. The Commission did not intend Order No. 566 to be applied so as to allow retroactive rate base treatment of amounts which would not be accorded such treatment under prior definitions of R&D. Rate base treatment and tracking of costs associated with commercial-scale demonstration projects are to be prospective from June 3, 1977, the date of issuance of Order No. 566.

The Commission finds: California's petition for rehearing received July 5, 1977 presents no factual or legal reasons for the Commission to modify Order No. 566.

The Commission orders: (A) California's petition for rehearing of Commission Order No. 566 issued June 3, 1977 in Docket No. RM76-17 prescribing changes in accounting and rate treatment for research, development and demonstration expenditures is hereby denied.

(B) The Secretary shall cause prompt publication of this Order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-23554 Filed 8-15-77;8:45 am]

[1] 52 Stat. 829, 15 U.S.C. 717n.
[2] 49 Stat. 858-859, 16 U.S.C. 825h.

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOM SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 77-201]

PART 133—TRADEMARKS, TRADE NAMES AND COPYRIGHTS

Recordation of Copyrights in Sound Recordings

AGENCY: United States Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule changes the procedure for applying to record with Customs a copyright in a sound recording. The procedure is being simplified because sound recordings are easily identifiable by title, author, performing artist, or other identifying names. This change is intended to facilitate Customs protection against the importation of unauthorized copies.

EFFECTIVE DATE: September 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard M. Belanger, Attorney, Regulations and Legal Publications Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8237.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 13, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 54188), which proposed to amend § 133.32 of the Customs Regulations (19 CFR 133.32), to require, in the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s) and any other identifying names. The notice further proposed to amend § 133.33(a)(2) of the Customs Regulations (19 CFR 133.33(a)(2)) to extend to sound recordings the same exception from the requirement that one thousand photographic or other

likenesses be submitted with an application for recordation of a copyright which now applies to books, magazines, periodicals, or similar copyrighted matter readily identifiable by title and author.

The proposal was made because sound recordings can be readily identified by title, author, performing artist, or other identifying names. While simplifying the procedures that the copyright owner must follow in recording a copyright, Customs will still be able to identify, seize, and forfeit imported articles determined to be unauthorized copies of recorded copyrighted works.

Interested parties were given until January 12, 1977, to submit data, views, or arguments with respect to the proposal. No comments were received in response to the notice. After review of the proposed amendments, they are being adopted as proposed.

DRAFTING INFORMATION

The principal author of this document was Richard M. Belanger, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, United States Customs Service. However, personnel from other offices of the Customs Service participated in developing the document, both on matters of substance and style.

AMENDMENTS TO THE REGULATIONS

Part 133 of the Customs Regulations (19 CFR Part 133) is amended as set forth below.

ROBERT E. CHASEN,
Commissioner of Customs.

Approved: August 8, 1977.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

Section 133.32 is amended by adding a new paragraph (f) to read as follows:

§ 133.32 Application to record copyright.

* * * * *

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or on its label or container.

The first two sentences of paragraph (a)(2) of § 133.33 are amended to read as follows:

§ 133.33 Documents and fee to accompany application.

(a) * * *

(2) One thousand photographic or other likenesses reproduced on paper approximately 8" x 10½" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author, or if it covers a sound recording. * * *

(R.S. 251, am amended, sec. 624 Stat. 759 (19 U.S.C. 66, 1624).)

[FR Doc.77-23565 Filed 8-15-77;8:45 am]

Title 21—Food and Drugs

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

[FRL 272-4; FAP 6H5111/T26A]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—ANIMAL FEED, DRUGS, AND RELATED PRODUCTS

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

O-Ethyl O-[4-(methylthio)phenyl] S-Propyl Phosphorodithioate; Correction

AGENCY: Office of Pesticide Programs, Environmental Protection Agency.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared at page 29857 in the FEDERAL REGISTER of Friday, June 10, 1977, (FR Doc. 77-16443).

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Ms. Libby Zink, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington DC 20460 (202-755-4851).

SUPPLEMENTARY INFORMATION: In FR Doc. 77-16443 appearing at page 29857 in the issue of Friday, June 10, 1977, in the second column §§ 193.212 (Amended) and 561.233 (Amended), the date now reading "May 16, 1978" should be corrected to read "June 3, 1978."

Dated: August 8, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-23497 Filed 8-15-77;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—PAYMENT PROCEDURES

PART 160—STATE FISCAL PROCEDURES AND REPORTS

Transfer of Federal-Aid Highway Funds; Amendment

AGENCY: Federal Highway Administration, DOT.

ACTION: Amendment to final rules.

SUMMARY: This document amends procedures of State requests for approval of fund transfers. The amendment will provide a more efficient method of handling these requests.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

J. A. McCaffrey, Office of Fiscal Services (202-426-0674); or T. B. Foote, Attorney, Office of the Chief Counsel (202-426-0786), Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This amendment to final rules was not issued in proposed form, and no comments were solicited, as the matters affected relate to grants, benefits, or contracts within the purview of 5 U.S.C. 553(a)(2), thus general notice of proposed rulemaking was not required.

In consideration of the foregoing, Title 23, Code of Federal Regulations, Chapter I, Subchapter B, Part 160, Subparts A and B are amended as follows:

* * * * *

§ 160.103 [Amended]

1. In paragraph (d) of § 160.103, the first sentence is amended to read as follows: "Transfers are to be approved by the Governor of the State as being in the public interest and submitted by the State highway department to the Division Administrator.";

2. In paragraph (d) of § 160.103, the last sentence is deleted;

* * * * *

§ 160.105 [Amended]

3. In Subpart A, delete from the table of sections the heading "§ 160.105 Submission of requests" and delete the corresponding section within the subpart;

* * * * *

§ 160.203 [Amended]

* * * * *

4. In paragraph (f) of § 160.203, the first sentence is amended to read as follows: "Transfers are to be approved by the Governor of the State as being in the public interest and submitted by the State highway department to the Division Administrator."; and

5. In paragraph (f) of § 160.203, the last sentence is deleted.

§ 160.205 [Amended]

* * * * *

6. In Subpart B, delete from the table of sections the heading "§ 160.205 Submission of requests" and delete the corresponding section within the subpart;

* * * * *

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

Issued on: August 3, 1977.

(23 U.S.C. 315; 49 CFR 1.48(b).)

WILLIAM M. COX,
Federal Highway Administrator.

[FR Doc.77-23552 Filed 8-15-77;8:45 am]

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 655—TRAFFIC OPERATIONS

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Amendments

AGENCY: Federal Highway Administration, DOT.

ACTION: Amendments to final rules.

SUMMARY: This document deletes the regulation concerning standards for traffic control devices at movable bridges and makes revisions to the regulations concerning the signs and pavement markings to be used for wrong-way traffic control.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert E. Conner, Chief, Traffic Control Systems Division, Office of Traffic Operations (202/426-0411); Mrs. Kathleen Markman, Office of the Chief Counsel (202/426-0790), Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday–Friday.

SUPPLEMENTARY INFORMATION: 23 CFR 655.603(c) in its entirety is being deleted. Similar provisions concerning standards for traffic control devices at movable bridges have been added to the Manual on Uniform Traffic Control Devices (MUTCD). In accordance with 23 CFR 625.3, the MUTCD is incorporated by reference into the Code of Federal Regulations. Provisions for standards for traffic control devices at movable bridges similar to those originally included in the regulation may now be found in sections 4E-13, 4E-14, 4E-15, 4E-16, and 4E-17 of the MUTCD. The Office of Traffic Operations has reviewed the revised MUTCD sections pertinent to movable bridges and finds that these standards are not significantly changed from those contained in 23 CFR 655.603(c).

Portions of the regulations on signs and pavement markings concerning wrong-way traffic control are being deleted from 23 CFR 655.607(g) and 655.608(f) since similar provisions have been included in the MUTCD under sections 2A-31 and 2E-44.

In consideration of the foregoing, Title 23 of the Code of Federal Regulations, Part 655, Subpart F is amended as follows:

§ 655.603 [Amended]

1. In § 655.603, paragraph (c) is hereby deleted.

2. In § 655.607, paragraph (g) is revised to read as follows:

§ 655.607 Signs.

* * * * *

(f) * * *

(g) *Wrong-way traffic control.* Federal-aid highway funds may be used to provide the improvements considered necessary by the Federal Highway Administration to alleviate the hazard of wrong-way movements. See § 655.608(f) of this part for pavement marking requirements.

* * * * *

3. In § 655.608 paragraph (f) is revised to read as follows:

§ 655.608 Pavement markings.

* * * * *

(e) * * *

(f) *Wrong-way traffic control.* Federal-aid highway funds may be used to provide the improvements which are considered necessary by the Federal Highway Administration to assist in alleviating wrong-way movements.

* * * * *

Issued on: August 5, 1977.

WILLIAM M. COX,
Federal Highway Administrator.

[FR Doc.77-23563 Filed 8-15-77;8:45 am]

Title 29—Labor

CHAPTER IV—OFFICE OF LABOR-MANAGEMENT STANDARDS ENFORCEMENT, DEPARTMENT OF LABOR

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

Subpart E—Candidacy for Office; Reasonable Qualifications

Correction

In FR Doc. 77-22076 appearing at page 39105 in the issue for Tuesday, August 2, 1977, in § 452.38, the paragraph designated (a) should have been designated (a-1). A paragraph (a) already existed prior to the August 2nd amendment at 42 FR 39105. The intent of that amendment was to leave the existing paragraph (a) in effect, to add a paragraph (a-1), and to revise paragraph (b).

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

706 Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on designation of certain state and local Federal Employment Practice Agencies so that they may handle employment discrimination charges within their jurisdiction, filed with the Commission.

DATES: Effective August 9, 1977.

FOR FURTHER INFORMATION CONTACT:

Paul K. Lindsay, Desk Officer (202) 634-6040, Equal Employment Opportunity Commission, State and Local Division, Office of Compliance Programs, 2401 E Street NW., Room 4050, Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Publication of this amendment to § 1601.12(m) effectuates the designation of the following Agencies as 706 Agencies:

Howard County (Maryland) Human Rights Commission,[1] *Orlando (Florida)* Human Relations Department, *Prince Georges County (Maryland)* Human Relations Commission, and *Hawaii* Department of Labor and Industrial Relations.[2]

Notices of the proposed designation of the foregoing agencies as 706 Agencies were published in the June 20, 1977 and June 29, 1977 issues of the FEDERAL REGISTER, 42 FR 31174 and 42 FR 33043, respectively, with notices that written comments must have been filed with the Commission on or before July 5, 1977 and July 14, 1977, respectively.

With the addition of the foregoing agencies, § 1601.12(m) is amended to read as follows:

§ 1601.12 Deferrals to State and local authorities.

* * * * *

(m) The designated 706 Agencies are:

Alaska Commission for Human Rights.
Alexandria Human Rights Office.
Allentown Human Relations Commission.
Arizona Civil Rights Division.
Baltimore Community Relations Commission.
Bloomington Human Rights Commission.
California Fair Employment Practices Commission
Charleston Human Rights Commission.
Colorado Civil Rights Commission.
Connecticut Commission on Human Rights and Opportunities.
Dade County Fair Housing and Employment Commission.
Delaware Department of Labor.
District of Columbia Office of Human Rights.
East Chicago Human Relations Commission.
Evansville (Indiana) Human Relations Commission.
Fairfax County Human Rights Commission.
Fort Wayne (Indiana) Metropolitan Human Relations Commission.
Gary Human Relations Commission.
Hawaii Department of Labor and Industrial Relations.
Howard County (Maryland) Human Rights Commission.
Idaho Commission on Human Rights.
Illinois Fair Employment Practices Commission.
Indiana Civil Rights Commission.
Iowa Commission on Civil Rights.
Kansas Commission on Civil Rights.
Kentucky Commission on Human Rights.
Madison (Wisconsin) Equal Opportunities Commission.
Maine Human Relations Commission.
Maryland Commission on Human Relations.
Massachusetts Commission Against Discrimination.
Michigan Civil Rights Commission.
Minneapolis Department of Civil Rights.

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[1] The Howard County (Maryland) Human Relations Commission has been granted designation for all charges except those filed against agencies of Howard County in which case it shall be deemed a "Notice Agency."

[2] The Hawaii Department of Labor and Industrial Relations has been granted 706 designation for all charges except those filed against units of the State and local government, in which case it shall be deemed a "Notice Agency."

Minnesota Department on Human Rights.
Missouri Commission on Human Rights.
Montana Commission for Human Rights.
Montgomery County Human Relations Commission.
Nebraska Equal Opportunity Commission.
Nevada Commission on Equal Rights of Citizens.
New Hampshire Commission for Human Rights.
New Jersey Division on Civil Rights, Department of Law and Public Safety.
New York City Commission on Human Rights.
New York State Division of Human Rights.
Ohio Civil Rights Commission.
Oklahoma Human Rights Commission.
Omaha Human Relations Department.
Oregon Bureau of Labor.
Orlando (Florida) Human Relations Department.
Pennsylvania Human Relations Commission.
Philadelphia Commission on Human Relations.
Pittsburgh Commission on Human Relations.
Prince Georges County (Maryland) Human Relations Commission.
Rhode Island Commission for Human Rights.
Rockville (Maryland) Human Rights Commission.
St. Paul Department of Human Rights.
Seattle Human Rights Commission.
Springfield (Ohio) Human Relations Department.
South Bend (Indiana) Human Rights Commission.
South Carolina Human Affairs Commission.
South Dakota Human Relations Commission.
Tacoma Human Rights Commission.
Utah Industrial Commission.
Vermont Attorney General's Office, Civil Rights Division.
Virgin Islands Department of Labor.
Washington State Human Rights Commission.
West Virginia Human Rights Commission.
Wheeling Human Rights Commission.
Wichita Commission on Civil Rights.
Wisconsin Equal Rights Division, Department of Industry, Labor and Human Relations.
Wyoming Fair Employment Practices Commission.

The designated Notice Agencies are:

Arkansas Governor's Committee on Human Relations.
Florida Commission on Human Relations.
Georgia Governor's Council on Human Relations.
Montana Department of Labor and Industry.
North Dakota Commission on Labor.
Ohio Director of Industrial Relations.

(Sec. 713(a), 78 Stat. 265 (42 U.S.C. Sec. 2000e-12(a)).)

This amendment is effective on August 9, 1977.

Signed at Washington, D.C. this 5th day of August 1977.

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

[FR Doc.77-23543 Filed 8-15-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 204—DANGER ZONE REGULATIONS

Chesapeake Bay; Army Proving Ground Reservation, Aberdeen, Md.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This rule clarifies the use of restricted waters and entry into the restricted land area of the United States Military Reservation at Aberdeen Proving Ground. The clarification is needed to provide public notice that entry onto the land area and certain water areas of Aberdeen Proving Ground is prohibited or regulated due to artillery testing using water and land areas as impact zones, the presence of highly classified activities adjacent to or in close proximity to the water area of the Proving Ground and the need to prevent entry onto the land area by the public due to the existence of large numbers of potentially dangerous explosive devices. The intended effect is to alert the public to the fact that entry onto land areas of the Proving Ground is prohibited at all times without permission of the Commanding Officer, Aberdeen Proving Ground, and to provide public notice that certain water areas of the Proving Ground are closed to the general public either due to testing, or potentially lethal devices.

EFFECTIVE DATE: August 16, 1977.

Captain Charlie P. Andrus, JAGC, Chief, Criminal Law Division, Office of the Staff Judge Advocate, Building 4701, Aberdeen Proving Ground, Md. 21005, (301-278-2856).

SUPPLEMENTARY INFORMATION: Several portions of the United States Military Reservation at Aberdeen Proving Ground have been used as impact zones for artillery testing since 1917. There is a large number of potentially lethal explosive devices in the water area of the Proving Ground as well as on the land area. In addition, highly classified research and development projects are conducted in close proximity to water areas. There are also storage facilities for toxic chemical agents as well as potentially dangerous explosive devices in the vicinity of the water area of the Proving Ground.

As currently drafted, 33 CFR 204.30 is not clear regarding the existing prohibition of entering the land areas of the Proving Ground or utilizing underwater land within the boundary of the reservation. Due to the urgent requirements, not only to protect the general public from possible injury, but also to accomplish high priority testing missions requiring the use of water and land areas of the Proving Ground as impact zones and further to protect highly classified national defense information, notice and public procedure on this proposed clarification are impracticable and contrary to the public interest. In consideration of the above described urgent need for clarification of existing regulations, 33 CFR 204.30 is amended by revising paragraphs (d) and (e) as follows:

§ 204.30 Chesapeake Bay; United States Army Proving Ground Reservation, Aberdeen, Maryland.

* * * * *

(d) *Entrance Into Restricted Waters By The Public.* Entry into the restricted areas will be governed by the following:

(1) The following water areas are closed to the public at all times:

(i) Spesutie Narrows—all waters north and east of a line between Bear Point and Black Point;

(ii) All creeks except Lauderick Creek;

(iii) The water adjacent to Carroll Island which lies between Brier Point and Lower Island Point also known as Hawthorne Cove;

(iv) The waters immediately off the mouth of Romney Creek;

(v) The waters adjacent to Abbey Point Recovery Field more accurately described as area number 16; depicted in Aberdeen Proving Ground Regulation 210-10, Appendix A.

(vi) The waters on the north side of the Bush River from Pond Point to Chelsea Chimney are closed for fishing purposes.

(2) The remainder of the restricted areas will normally be open for authorized use (including navigation and fishing) during the following hours:

(i) Monday through Thursday, 5 p.m. to 7:30 a.m.;

(ii) Weekends, 5 p.m. Friday to 7:30 a.m. Monday;

(iii) National (not State) holidays, 5 p.m. the day preceding the holiday to 7:30 a.m. the day following the holiday.

(3) When requirements of tests, as determined by the Commanding Officer, Aberdeen Proving Ground, or his designee, necessitate closing the restricted areas during the aforementioned times and days, the Commanding Officer, Aberdeen Proving Ground, will publish appropriate circulars or cause to be broadcast over local radio stations notices informing the public of the time and days which entrance to the restricted waters of Aberdeen Proving Ground by the general public will be prohibited.

(4) Authorized use as used in this section is defined as fishing from a vessel, navigation using a vessel to transverse a water area, or anchoring a vessel in a water area. Any person who touches any land, or docks or grounds a vessel, within the boundaries of Aberdeen Proving Ground, Maryland, is not using the area for an authorized use and is in violation of this regulation. Further, water skiing in the water area of Aberdeen Proving Ground is permitted as an authorized use

when the water area is open for use by the general public provided that no water skier touches any land either dry land (fast land) or subaqueous land and comes no closer than 200 meters from any shoreline. Further, if any person is in the water area of Aberdeen Proving Ground, Maryland, outside of any vessel (except for the purposes of water skiing as outlined above) including, but not limited to, swimming, scuba diving, or other purpose, that person is not using the water in an authorized manner and is in violation of this regulation.

(e) *Entry Onto Land And Limitation of Firing Over Land.* (1) Entry onto any land, either dry land (fast land) or subaqueous land, within the boundaries of the Aberdeen Proving Ground Reservation as defined in paragraph (a)(1) is prohibited at all times. Provided, the Commander, Aberdeen Proving Ground, is authorized to grant exceptions to this regulation either by written permission or by local regulation. Entry onto the land is punishable as in paragraph (c) of this section.

(2) There are no limitations on test firing by Federal testing facilities at Aberdeen Proving Ground over land belonging to Aberdeen Proving Ground.

* * * * *

NOTE.—The Department of the Army has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(40 Stat. 266; 33 U.S.C. 3)

Dated: July 28, 1977.

CHARLES R. FORD,
Acting Assistant Secretary of the Army, (Civil Works).

[FR Doc.77-23557 Filed 8-15-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 775-5]

PART 55—ENERGY-RELATED AUTHORITY

New Hampshire: Revocation of a Compliance Date Extension

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is hereby providing notice of the revocation of a compliance date extension (CDE) granted to Public Service Company of New Hampshire, Schiller Station Units 4 and 5, Portsmouth, New Hampshire ("Schiller Station"). Schiller Station would need 820 days to install air pollution controls necessary to burn coal in compliance with New Hampshire emission regulations. Because the Federal Energy Administration was unable to issue Schiller Station a notice of effectiveness over 820 days before the regulatory compliance date, the plant is no longer eligible for a CDE.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Wallace Woo, Air Branch, Environmental Protection Agency, Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203. (617-223-5609).

SUPPLEMENTARY INFORMATION: Section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended by the Energy Policy and Conservation Act, authorized the Administrator of the Federal Energy Administration (FEA) to issue orders to certain power plants and major fuel burning installations prohibiting such facilities from burning natural gas or petroleum products as their primary energy source. Section 3 of ESECA added a new Section 119 to the Clean Air Act which requires the Administrator of the EPA to extend the date by which a source must meet air pollution requirements by issuing a CDE to a source, which has been issued a FEA prohibition order, if certain eligibility criteria are satisfied.

One such eligibility criterion is the requirement of Section 119(c)(2)(C) of the Clean Air Act that facilities receiving a CDE must achieve the most stringent degree of emission reduction required as soon as practicable, but no later than December 31, 1978. In addition, Section 2 of ESECA and Section 119(d)(1)(B) of the Clean Air Act require the EPA Administrator to notify the FEA if a facility that has been issued an FEA prohibition order will be able to burn coal and comply with air pollution requirements without a CDE.

If compliance without CDE is not possible, the prohibition on oil and natural gas use in an FEA prohibition order may not become effective any earlier than either:

(a) The date EPA certifies to FEA as the earliest date that certain conditions and limitations on the EPA CDE can be met, or

(b) For facilities which are ineligible for a CDE, the earliest date on which the facility will be able to burn coal in compliance with all applicable air pollution requirements.

FEA plans to make its prohibition orders effective, after receipt of EPA's notifications or certifications, by service of Notices of Effectiveness which will set forth the dates after which burning of natural gas or petroleum products as a primary energy source will be prohibited.

On June 30, 1975, FEA issued prohibition orders Nos. OFU-050, 051 to Schiller Station. On March 9, 1976 (41 FR 10071) EPA proposed to issue a CDE under Section 119 of the Clean Air Act to this facility. The CDE was promulgated September 1, 1976 (41 FR 36810). Issuance of the CDE reflected EPA's finding that final compliance with the New Hampshire State Implementation Plan requirements for control of particulate matter and sulfur dioxide emissions while burning coal at these Units will take 820 days from the date of service by FEA of the Notices of Effectiveness of its prohibition orders. A schedule based on this time frame was set out as part of the CDE. Under the CDE the Schiller Station was allowed to emit particulate matter over the limit required under the applicable State Implementation Plan for particulate emissions from fossil fuel combustion. However, FEA cannot issue a Notice of Effectiveness 820 days before December 31, 1978. Consequently, the proposed EPA compliance schedule would extend past December 31, 1978, thereby making this facility ineligible for a CDE. Without a CDE the Schiller Station must continue to comply with all portions of the applicable State Implementation Plan.

Therefore, on March 11, 1977 (42 FR 13566) EPA proposed to revoke the CDE promulgated for Schiller Station and solicited public comment on this proposed action. During the comment period which ended on April 11, 1977, EPA received no comment on the proposed revocation.

EPA, therefore is revoking the CDE promulgated for Schiller Station. To discharge its responsibilities under Section 119(d)(1)(B) of the Clean Air Act, EPA will certify to FEA the earliest date at which this facility will be able to burn coal and comply with all applicable air pollution requirements and the prohibition contained in FEA's order will not become effective any earlier than the date so certified by EPA. The FEA prohibition orders issued to Schiller Station are not affected by this action except insofar as the projected date of effectiveness of the prohibition contained in the FEA orders may be adjusted to take account of the time needed for achieving compliance with applicable air pollution requirements.

This rulemaking is based upon the authority of Sections 110, 119 and 301 of the Clean Air Act, as amended.

Dated: August 5, 1977.

DOUGLAS M. COSTLE,
Administrator.

Part 55 of Chapter 1, Title 40 of the Code of Federal Regulations is amended by revoking § 55.1520 of Subpart EE as follows:

Subpart EE—New Hampshire

§ 55.1520 Compliance Date Extension.

[Revoked]

[FR Doc.77-23519 Filed 8-15-77;8:45 am]

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1015—STANDARDS OF CONDUCT FOR EMPLOYEES

Reports of Non-CSA Interests

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: This rule sets forth a new list of CSA employees at the level of GS-13 and above who must file reports of their outside financial interests with the CSA Personnel Division. CSA position titles have changed considerably since

1972 when this list was last revised; consequently, this rule is needed to eliminate obsolete positions and include new ones which should be covered.

EFFECTIVE DATE: September 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert Crittenden, Director, Personnel and Manpower Division, Office of Administration, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, 202-254-6170.

Accordingly, 45 Code of Federal Regulations, Section 1015.735-31(j)(2) is amended as set forth below:

§ 1015.735-31 Reports of non-OEO interests.

* * * * *

(j) * * *

(2) Occupants of the following positions if classified at GS-13 or above:

(i) In the Office of Operations: Associate Director; Chief, Special Programs Division; Chief, Program Operations Division, Chief Policy Development and Review Division; Chief, State and Local Government Division; Chief, Regional Operations Division.

(ii) In the Office of Administration: Associate Director; Contracting Officers.

(iii) In the Office of Economic Development: Associate Director; Deputy Associate Director; Chief, Program Operations Division; Chief, Planning, Design and Evaluation Division.

(iv) In the Office of the Controller: Controller; Deputy Controller; Chief, External Audit Division; Auditors.

(v) In the Office of General Counsel: General Counsel; Deputy General Counsel; Procurement Attorney.

(vi) In the Office of Human Rights: Associate Director.

(vii) In the Regional Offices: Regional Director, Deputy Regional Director; Chief, Administration Division: Administrative Contracting Officers: Chief, Operations Division; Regional Counsel.

AUTHORITY: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942); E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supp.; 5 CFR 735.104.

GRACIELA (GRACE) OLIVAREZ,
Director.

[FR Doc.77-23534 Filed 8-15-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20708; RM-2551; RM-2693]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Versailles, Ind., Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Corrected report and order.

SUMMARY: Action herein assigns a first Class A FM channel to Versailles, Indiana. Petitioner, James Robert Albritton, states that this action will provide Versailles with an opportunity to acquire its first local aural broadcast service.

EFFECTIVE DATE: September 12, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER (PROCEEDING TERMINATED)

Adopted: July 29, 1977.

Released: August 11, 1977.

In the Matter of Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations (Versailles, Indiana).

By the Chief, Broadcast Bureau:

1. The Commission has under consideration the "Notice of Proposed Rule Making" in the above-entitled proceeding, adopted February 4, 1976, 41 Fed. Reg. 7120, proposing the assignment of FM Channel 276A to Versailles, Ind. James Robert Albritton ("petitioner") originally proposed Channel 280A for Versailles, but in Docket No. 20121 "Second Report and Order,"[1] the Commission assigned Channel 280A to Batesville, Ind. However, a Commission staff study revealed that Channel 276A could be assigned to Versailles in conformance with the minimum mileage separation requirements, if the transmitter site were to be located approximately 10 kilometers (6 miles) north of Versailles. Supporting comments were filed by the petitioner in which he reaffirmed his intent to apply for the channel, if assigned, and to promptly build the station, if authorized.

2. On April 30, 1976, Mid America Radio, Inc. ("Mid America"), licensee of FM Station WXTZ, Indianapolis, Ind., filed a counterproposal (RM-2693) in which it proposed the assignment of Channel 237A to Versailles in lieu of Channel 276A. Mid America states that it does not take issue with the ostensible desirability of assigning a first Class A channel to Versailles, but because of the existence of certain special and unique circumstances, it believes the public interest would better be served by the substitution of Channel 237A for 276A. Mid America argues that substitution of Channel 237A for 276A would prevent irreparable injury from being caused to the public that WXTZ serves, without materially altering Mr. Albritton's basic proposal. Mid America further states that on April 7, 1972, WXTZ filed a "major change" application with a view toward changing, *inter alia*, its transmitter location (BPH-7867, granted May 22, 1972), and at that time it was thought that WXTZ's proposed 70 dBu contour would cover the entire city limits of Indianapolis. Mid America notes that, around that time, the Indianapolis city limits were expanded so as to be virtually coincident with those of Marion County, and that it was not until the Commission was considering the allocation to Batesville that WXTZ discovered that its 70 dBu contour did not fully cover the revised Indianapolis city limits. Mid America contends that, if the Versailles proposal were to be adopted, WXTZ would be substantially impaired in its ability to move closer to Indianapolis to permit it to serve its city of license in a manner contemplated by the Commission. It adds that the existing WXTZ transmitter location has created a situation of only a marginally sufficient signal existing over the center of the city of Indianapolis where there is an area of interference. Mid America asserts that computer analyses have been undertaken and no feasible solution short of moving the transmitter location has been found and, therefore, the only realistic option is to move its transmitter. It contends that large areas would be made unavailable to WXTZ if Channel 276A were to be assigned to Versailles, but that would not be true if the Commission were to allocate Channel 237A to Versailles. Mid America claims that efforts are already underway and have been underway for some time to secure a new transmitter location for WXTZ.

3. Mid America states that substitution of Channel 237A for Channel 276A would have no adverse effect on Mr. Albritton's proposal, and that the channel may be used in the center of Versailles with concomitant savings in terms of STL's, telephone lines, etc., which would be necessary were Mr. Albritton required to maintain separate transmitter/studio facilities. However, it acknowledges that the availability of Channel 237A to Versailles, Ind., is contingent upon a favorable resolution in a rule making to move Channel 237A from Falmouth, Ky., to Versailles, Ky., in Docket No. 20877.

4. Since the Commission, on May 9, 1977, adopted a "Report and Order" in Docket No. 20877 (42 FR 25505) which, among other things, retained the assignment of Chanel 237A at Falmouth, Ky., Mid America's counterproposal to assign Channel 237A to Versailles is no longer workable and must be denied. However, the counterproposal is also being treated as an objection to the proposed assignment of Channel 237A at Falmouth, Ky., the Commission believes that this objection is not well taken, as will be shown below.

5. Station WXTZ is located in the northern portion of the expanded city of Indianapolis and operates with 13 kW (11.2 dBk) and 850 feet a.a.t. from a tower which extends 312 meters (1,022 feet) above ground. It is noted that the 70 dBu contour encompasses most of the expanded city with the exception of small portions of the southern part of the city, about three percent of the city area.

6. The distance between Station WXTZ and the required Versailles transmitter site, about 10 kilometers (6 miles) north of that community, is approximately 116 kilometers (72.3 miles) which allows about 11.7 kilometers (7.3 miles) leeway in the southeasterly direction. This leaves about fifty percent of the city area in which WXTZ could move its transmitter

[1] 40 FR 19644.

site if it desires. Assuming that WXTZ were to operate with maximum facilities as it now operates, a site 8 kilometers (5 miles) in the southeasterly direction, or 8.5 kilometers (5.3 miles) in the southerly direction, would allow it to completely encompass the city limit with a 70 dBu signal. There is a leeway of about 16 kilometers (10 miles) in the southerly direction in which the transmitter site may be relocated.

7. Mid America has asserted that its station places only a marginally sufficient signal over the center of the city of Indianapolis where it encounters an area of interference. However, it does not indicate the signal level there or the type of interference it alleges it suffers. Without a proper showing, we are unable to conclude that a signal level of 80 dBu (10 mV/m) which is expected in the area would be only "marginally sufficient." There is also a question of whether a change in the transmitter site or an increase in the signal level would alleviate any such interference problem or would just move it to another area. The Commission believes that, although the assignment of Channel 276A to Versailles, Ind., would somewhat limit the flexibility in the choice of an alternate transmitter site for Station WXTZ, a provision for a first local aural broadcast station to a community without such a facility presents a more important public interest consideration. Such a conclusion is consistent with the stated objective of the Commission's allocation priorities. The channel is the only one available for assignment to this area.

8. The Canadian Government has given its concurrence to the proposed assignment of Channel 276A to Versailles, Ind.

9. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communication's Act of 1934, as amended, and § 0.281 of the Commission's Rules.

10. In view of the foregoing, IT IS ORDERED, That effective September 12, 1977, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, as regards Versailles, Indiana, is amended as follows:

City:	*Channel No.*
Versailles, Ind	276A

11. *It is further ordered.* That the counterproposal filed by Mid America Radio, Inc. (RM-2693) is denied.

12. *It is further ordered.* That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-23540 Filed 8-15-77;8:45 am]

[Docket No. 21006; FCC 77-541]

PART 76—CABLE TELEVISION SERVICES

Adding Frequency Channelling Requirements and Restrictions and To Require Monitoring for Signal Leakage From Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Restrictions are imposed upon cable television operations in certain frequency bands used for aeronautical radio purposes over the air. Potential interference to safety of life services together with growth of both aeronautical radio and cable television services create the need for restrictions. This action is intended to prevent the occurrence of cable television interference to aeronautical navigation and safety radio services.

EFFECTIVE DATE: January 1, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Robert S. Powers, Research Division, Cable Television Bureau, 202-632-9797.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 76 of the Commission's rules to add Frequency channelling requirements and restrictions and to require monitoring for signal leakage from cable television systems.

REPORT AND ORDER; (PROCEEDING TERMINATED IN PART AND CONTINUED IN PART)

Adopted: July 27, 1977.

Released: August 8, 1977.

By the Commission: Commissioner Washburn absent.

I. BACKGROUND AND SUMMARY OF ACTIONS

1. The Commission has before it the notice of proposed rule making in this proceeding, 41 FR 54512, FCC 76-1092, released December 8, 1976, and the filings in response to the notice. This proceeding was initiated by the Commission to address two questions: (1) How can it be assured that cable television systems operating on frequencies used by air navigation and aeronautical and marine emergency radio services do not cause harmful interference to those safety of life services, and (2) What frequency channelling plan or plans should be used by cable television systems for equipment compatibility, for prevention of interference to over-the-air services, and for other purposes?

2. At the outset we should note that our present concern over the issue of cable television interference to air navigation and aeronautical frequencies does not stem from a plethora of reported incidents involving the effect of cable radiation on aircraft. Indeed we know of only one such case in the last 25 years. That situation arose in Harrisburg, Pennsylvania and, in some quarters, has come to be referred to as the "Harrisburg incident". In Harrisburg an improperly radiating cable television signal caused unwanted noise in aircraft receivers when no desired signal was present. But even in that case we have no reports of actual degradation of desired signals.

3. The issue of potential interference to air navigation and aeronautical frequencies is not a new one. Reacting to the concerns expressed by the Office of Telecommunications Policy in 1971, the Commission in the *Cable Television Report and Order*[1] declined to adopt any special regulatory program, noting that the dangers seemed remote. In large measure the dangers are still remote. What has changed over the last six years, however, is the use of the affected frequencies both by cable systems and aeronautical navigation and communications systems. Cable systems in particular have begun making increasing use of mid-band frequencies for the delivery of both broadcast and non-broadcast services. We expect this trend to continue. At the same time we can expect many more strand miles of coaxial cable to be built. Thus, while not yet a significant problem we can reasonably foresee that totally uncontrolled cable use of aeronautical frequencies might cause difficulties. Where such difficulties involve safety of life we believe it is our responsibility to plan ahead. Just as we have encouraged cable development and attempted to foster its growth into a nationwide broadband communications system, so must we be concerned when the growth itself increases the possibility (however small) of harmful interference on frequencies where life is at stake. The program we are adopting may not be a complete answer to all the potential questions in this area but, in conjunction with a research program, it is amply sufficient for today.

4. In the notice the following proposals were made:

(a) To adopt a frequency channelling plan for the delivery of television signals to cable television subscribers. This frequency channelling plan may include the so-called midband and superband channels as well as the standard television broadcast channels. Alternatively the channelling plan may prohibit operation

[1] Cable Television Report and Order, 36 FCC 2d, 143 (1972).

in whole or in part on frequency bands used for navigation and safety purposes.

(b) To require the use of the proposed frequency channelling plan for all Class I and Class II cable television channels, and for some Class III and Class IV channels as well.

(c) To adopt standard designations for those channels not used in over-the-air service.

(d) To modify our requirements for monitoring cable television systems for possible signal leakage.

(e) To adopt rules specifying the conditions under which a cable television system which is found to be causing harmful interference to authorized radio services may be required to cease operation, and specifying the conditions under which operation may be resumed.

(f) To adopt restrictions on cable carriage of signals within certain air traffic control and safety services bands.

5. The Commission has now received comments and reply comments in this proceeding and has modified its proposed actions, taking into account analysis and suggestions made in those filings. We adopt today Rules designed to eliminate the possibility of interference to air navigation and aeronautical and marine emergency radio services, and close that portion of the Docket. We anticipate that a cooperative research program will be carried out to provide the basis for any further rule making which may be appropriate in this area. It may be that a research program, together with further field experience, will demonstrate that some of the restrictions we adopt today can be lifted or relaxed. Such modifications could relieve burdens imposed on operators of nominally non-radiating communications systems while at the same time protecting critical aeronautical frequencies from interference.

6. In a number of filings it was suggested that the question of a standard frequency channelling plan be addressed separately. Indeed, it does seem prudent to postpone the question of frequency channelling plans until more experience is gained in the operation of cable systems within frequency ranges used for certain aeronautical purposes in the over-the-air services. Therefore, we are not further addressing frequency channelling plans in this Report and Order, but are leaving this Docket open insofar as it concerns frequency channelling plans. Active consideration of frequency channelling will be resumed when the practical feasibility of widespread and extensive use of certain frequency bands by cable television systems is either firmly established or is refuted.

7. Formal comments and other documents were received from more than 25 parties concerned with the questions posed in the Notice. Concerns of the Executive Branch of the federal government for both air traffic safety and the maximum utilization of communications potential of broadband cable systems were offered by the Office of Telecommunications Policy and the Federal Aviation Administration. The cable television industry made its views known through comments of the National Cable Television Association, the Community Antenna Television Association, the New York State Cable Television Association, and through filings of multiple system operators, single cable television systems, and interested individuals. Spectradyne, Inc. filed comments relating to use of certain cable frequencies for pay television in hotels and motels. Manufacturers of cable television equipment—Jerrold Electronics Corporation and GTE Sylvania Incorporated—as well as the Consumer Electronics Group, Electronic Industries Association, participated. Aircraft owners and air carriers were represented by the Air Transport Association of America, Aircraft Owners and Pilots Association, Aeronautical Radio, Inc., and the National Air Transport Associations. The New York State Commission on Cable Television and the Office of Cable Television, State of New Jersey, also presented suggestions. Various concerns of television broadcasters were expressed by American Broadcasting Corporation, the Association of Maximum Service Telecasters, Inc., and the Council for UHF Broadcasting. Certain staff members of the Cable Television Information Center provided comments. Some of these comments were confined to specific implications of possible Rules; others provided analysis of the entire issue and suggested specific regulatory approaches.[2]

Summary of Actions Taken

8. Based on an evaluation of the comments received and our own analysis of interference potential, we have concluded that it is not necessary to impose a blanket prohibition against cable television system operation in the air navigation and safety service frequency bands. We do find, however, that there are special conditions under which it is possible for a cable television system to cause interference to certain critical aeronautical radio services. Therefore, we are adopting today restrictions which will either (1) prevent cable operations on frequencies which could interfere with aeronautical services in the vicinity of the cable system, or (2) assure that the cable television system operator has taken steps adequate to prevent signal leakage that could cause interference. Since aeronautical communication and navigation systems differ from each other in their susceptibility to interference, we treat them somewhat differently throughout this document. See Appendix B for frequency uses of interest. We are confident that the Rules adopted today amply meet the criteria proposed by the Office of Telecommunications Policy and the Federal Aviation Administration for cable television operation within the frequency bands of interest. As stated by the Office of Telecommunications Policy, those criteria are that cable television operations in the critical frequency bands be permitted only when "* * * adequate discipline, standards, enforcement and equipment have been provided to ensure that interference is not caused to safety of life services."[3]

9. Actions taken today may be summarized as follows:

Postpone consideration of frequency channelling plans until the feasibility of widespread (as compared to exceptional) operation of broadband cable systems on some standard set of frequencies used over-the-air by aeronautical radio services is established or refuted.

Require that certain relevant information be kept on file by the cable television operator and be filed with the Commission in case of any use of bands 108–136 and 225–400 MHz by cable television systems.

Require that any cable system using the bands 108–136 and 225–400 MHz provide for regular monitoring of the cable system for signal leakage.

Require that all carrier signals must be offset in frequency from aeronautical navigation and safety services operated within 111 km (60 nautical miles of any portion of the cable television system, unless a specific waiver is obtained from the Commission. Required frequency separation is 50 kHz in the bands 108–118 and 328.6–335.4 MHz and 100 kHz in the bands 118–136, 225–328.6, and 335.4–400 MHz.

Provide for increasing the 111 km radius of protection in cases where low altitude service is actually provided beyond that distance from the aeronautical radio facility.

Provide for reduction or waiver of the frequency separation requirements in individual cases.

Forbid transmission of certain carriers and other signal components within 100 kHz of 121.5 MHz and within 50 kHz of 156.8 and 243.0 MHz.

Require compliance with all of the above requirements by January 1, 1978.

These regulations will apply to all cable television systems making any use of the specified frequency bands, regardless of the size of the cable system and regardless of any other exemption from Rules of this Commission on the basis of system size.

10. In the following two sections of this Report and Order we shall review major points made by various participants in this proceeding and provide our evaluations. In the final section we summarize some of our own analysis and discuss the possibility of waivers to the rules we adopt today.

II. OVERALL PROGRAM RECOMMENDATIONS

11. Some of the parties filing comments in this proceeding proposed overall regulatory programs which in their views would settle the immediate issues involved in preventing interference to

[2] We note that two parties did not make timely filings of reply comments. Since these filings were received only a few days past the stated time for filings, and since we feel it important to take account of every possible analysis of the issues in this instance, we are granting late acceptance of these submissions.

[3] Letter, Director Thomas J. Houser to Chairman Richard E. Wiley, September 16, 1976, cited in the Notice in this proceeding.

aeronautical radio systems without undue disruption of cable television system operations. Other parties addressed only narrow aspects of the notice of proposed rulemaking, or had specific suggestions for certain actions they favored or opposed. In Section II of this Report and Order we summarize the major aspects of three of the proposals for overall regulatory programs. These three are the proposals of the Office of Telecommunications Policy, Executive Office of the President (OTP), the National Cable Television Association (NCTA), and the Federal Aviation Administration (FAA). For comparison, we note some relevant Canadian regulations. In Section III of this document we discuss one by one the major issues on which the various respondents offered views. Since we will consider frequency channelling plans at a later date, comments relating to frequency channelling plans will not be reviewed in this document.

12. By letter dated September 16, 1976, (Note 3, supra) the then Director of OTP, referring to the frequency bands 74.8–75.2, 108–136, and 225–400 MHz, requested "* * * that these frequency bands be excluded from use by cable systems until such time as adequate discipline, standards, enforcement and equipment have been provided to ensure that interference is not caused to safety of life services." In a second letter, dated April 4, 1977, submitted as comment in this proceeding OTP's Acting Director suggested a number of specific steps by which those criteria could be met and cable television systems could continue to operate in those frequency bands, at least under some circumstances. OTP suggested that an interim solution be imposed to assure that no interference occurs in the immediate future, that a cooperative research program be undertaken to explore propagation mechanisms for leakage signals, maintenance and enforcement procedures, and monitoring techniques, and that "permanent" rules be based on that research. The research would identify minimum conditions under which cable systems could make use of the critical bands. Then the relative feasibility of extensive use of the critical VHF bands could be compared with the feasibility of use of UHF frequencies or other transmission techniques.

13. The specific interim rules suggested by OTP, in addition to existing rules, were:

Require the cable operator to maintain a list of carrier frequencies used by his system, in the bands of interest.

Maintain a frequency separation of 50 kHz (nominal) within the service volume (as defined by FAA) of VOR and ILS systems in the bands 108–118 and 328.6–335.4 MHz.

Maintain a frequency separation of 100 kHz (nominal) within the service volume (as defined by FAA) of communications facilities in the bands 118–136 and 225–328.6 and 335.4–400 MHz.

Require that the above two requirements be met by September 1, 1977, and January 1, 1978, respectively.

Require that in no case should the field strength due to single or multiple leakage sources exceed 10 microvolts per meter "* * * in any useable aircraft environment."

Require that cable system operators must change carrier frequencies at their own expense in response to changing spectrum needs of the aeronautical safety services.

Forbid the use of carrier frequencies at 121.5±0.1 MHz, 156.8±0.05 MHz, and 234±0.05 MHz.

Require that cable systems maintain a tolerance of ±5 kHz in the bands 108–136 and 225–400 MHz.

OTP also suggested that the lists of carrier frequencies used by cable operators must be available in the FCC, appropriate FCC field offices, FAA, and OTP. This suggestion could be implemented by requiring that the cable operator supply the lists to this Commission, which would then make the further distributions.

The National Cable Television Association (NCTA)

14. The National Cable Television Association (NCTA) proposes a five-point program which they believe will ensure "* * * compatibility and protection to critical navigational and emergency frequencies without resorting to the drastic remedy of unnecessarily denying huge portions of bandwidth to certain users." This program was fully supported in all comments filed by cable interests in this proceeding. The NCTA program does not specifically address the problem of interference to aeronautical voice communications, other than on the emergency frequencies 121.5, 156.8 and 243.0 MHz. The text of the NCTA filing does note, however, that because of more widespread use and also closer spacing (in frequency) of frequency assignments in the communications bands than in the navigation bands there is no single set of frequency assignments for cable use which would avoid nationwide any conflict with aeronautical frequency assignments. NCTA suggests that the probability of interference by cable to aeronautical communications services is low, and that the danger represented by any such intereference would be minimal in any case. The NCTA five-point program is summarized here:

1. Each cable television system will maintain at its operating office a list of the carrier frequencies currently in use on the cable system.

2. Each cable system which operates carriers in the 108–118 MHz air navigation band will operate with a minimum carrier offset of 25 kHz on those specific frequencies used by air navigation facilities in their area.

3. Each cable television system which operates carriers in the frequency range of 118–174 MHz or 216–300 MHz shall offset appropriate carriers a minimum of 50 kHz from the emergency frequencies of 121.5, 156.8 and 243.0 MHz.

4. NCTA supports the desirability of leakage monitoring, but asserts that further research is necessary to establish what leakage levels are tolerable. NCTA does not feel that adequate standards governing the levels of leakage from cable television systems can be determined at this time. The levels needed to protect voice comunication to aircraft have not yet been established. NCTA supports a program of further research in this area.

5. The limited frequency channelling plan outlined in points 1–3 above is said to be adequate to reduce the probability of interference to an absolute minimum. Hence a comprehensive frequency channelling plan is unnecessary for the purpose of controlling interference and no such plan should be prematurely imposed or considered in this proceeding.

Federal Aviation Administration

15. By letter of May 2, 1977, to the Chairman of this Commission, the Federal Aviation Administration expressed its recommendations for preventing interference by cable television systems. The letter was received after the stated deadline for filing Reply Comments. However, because of FAA's clear interest in the resolution of these issues it is important that its views be examined and made part of the record in this proceeding. The FAA's proposed resolution of the issues is quoted here:

> Remove and ban all CATV operations in the 108–136 MHz and 225–400 MHz radio frequency *bands* until:
>
> Adequate regulations and leakage monitoring devices are developed.
>
> It is demonstrated that such rules and regulations are enforceable.
>
> Assurance is established that faulty CATV systems can be shut down immediately when identified.
>
> (Emphasis in original).

Canadian Regulations

16. For comparison with proposals of parties in this proceeding and with the rules we are adopting, we include here a brief resume of requirements imposed by the Canadian Department of Communications for operation in the band 108–136 MHz by Canadian cable systems. The Canadian regulations were mentioned by several parties filing in this proceeding, and are useful for comparison purposes. The Department of Communications forbids the use of the band 108–118 MHz by cable systems for any purpose. In the band 118–136 MHz (cable channels A, B, and C) a minimum frequency offset of 70 kHz from the frequency of communications facilities operated by the Canadian government "in the same general area" is required. "Frequent" measurements of cable signal frequencies are also required. In the event of future radio assignments that put a cable system in conflict with the frequency offset requirement, the cable operator is required to adjust his frequencies accordingly, at the cable operator's expense. There restrictions apply to narrow band pilot carriers as well as to any other type of signal.

III. DISCUSSION OF ISSUES

Evaluation of Danger

17. A number of respondents gave their views about the degree of danger repre-

sented by unrestricted cable television operations within the aeronautical navigation and safety bands. On one hand, Aeronautical Radio, Inc. (ARINC) and The Air Transport Association of America (ATA) assert that "As the Harrisburg incident dramatically demonstrated, cable television systems can render aeronautical communications unusable." NCTA, on the other hand, asserts that "* * * there is virtually no condition under which CATV leakage can disrupt the intelligibility of the communications. It can, however, under certain circumstances cause a temporary annoyance in areas where leakage would cause the squelch of an aircraft receiver to be tripped."

18. To the best of our knowledge, the ARINC/ATA assertion is somewhat exaggerated. We are well aware that in Harrisburg, cable signal leakage caused the opening of squelch circuits in several locations in the airspace when there were no transmissions intended for reception by aircraft.[4] However, we are unaware of any report which indicated that there was any degradation caused by the cable signal leakage to desired signals transmitted from a ground station to aircraft. We also note the unusual practice of using four separate and independent signal sources for the pilot carriers on the cable system, which existed at Harrisburg. This meant that once the squelch circuit was opened by the undesired leakage signal, the aircraft pilots heard annoying whistles which would not have occurred had there been only a single pilot carrier signal generator. We also note that signal leakage from the Harrisburg cable television system was far in excess of leakage which can be expected from modern cable systems maintained in a routine fashion using currently available leak detection technology. Thus it is fair to say that (1) the radiation which occurred in Harrisburg did demonstrate that cable signal leakage can cause "harmful interference", since distracting noises may be considered harmful to the function of aeronautical safety radio services, but (2) the probability of actual degradation of aeronautical communications from a reasonably well maintained cable system is still remote, as we anticipated in our 1972 Cable Television Report and Order,[5] and no such actual degradation has yet been identified in practice.

19. Our own analysis (See Appendix A of this document) suggests that there may be two mechanisms whereby a cable television system could degrade the quality of aeronautical communications services: (1) By gross neglect of signal leakage problems in the cable system, leading to a very large number of typical cable system leakage sources, or (2) by the occurrence of one or more complete breaks in the outer conductor of the cable itself. It is not at all clear that the first of these mechanisms could ever cause fields large enough to degrade communications at aircraft altitudes. But even if such degradation were possible, it would develop over a significant period of time (months or possibly years). Thus, relatively minor forms of interference such as opening squelch circuits would occur well before actual communication degradation developed, and under our Rules the offending cable system would be required to eliminate the interference or cease operations on the aeronautical frequency, immediately upon detection of any interference endangering the functioning of aeronautical safety services.

20. The second mechanism by which degradation could occur causes us more concern. Interference due to this second type of leakage has yet to be observed in practice. Its probability is very likely to be low, but is unknown. However, on the basis of measurements made by the U.S. Department of Commerce, Office of Telecommunications[6] and by the Canadian Department of Communications[7] we estimate that it would indeed be possible to cause degradation to aeronautical communications on the same frequency in the immediate neighborhood of such a major cable break. Therefore, pending further research and experience, we do not find it proper to permit operation of a cable system on the same frequency as a local aeronautical safety service unless the cable television system can demonstrate a reliable mechanism for detecting such complete breaks should they occur, and for immediately terminating cable transmissions on the affected frequency or frequencies.

21. Both Warren L. Braun, a cable television consultant and manufacturer of cable television test equipment, and NCTA have supplied some quantitative analysis of the potential for interference to communications services due to large numbers of cable television leakage sources. These quantitative models, together with measurements made by the Office of Telecommunications and the Canadian Department of Communications, are very helpful in estimating the degree of threat to radio systems under various assumptions and possible regulations. We note that the models and analyses presented by Braun and NCTA have not been challenged by other parties filing in these proceedings, except insofar as the NCTA analysis (in reply comments) builds upon and does differ in some respects from Braun's analysis.

22. Both models are based on calculation of fields produced at aircraft altitudes from numbers of leakage sources producing various magnitudes of radiation fields. Distribution, number, and magnitude of fields produced by leakage sources are assumed. The assumptions seem generally conservative. Braun concludes on the basis of his own field experience that it is realistic to construct cable television trunk and distribution plant (and presumably to maintain same) such that signal leakage is well within radiation limits currently prescribed by this Commission. He further asserts that it is feasible to upgrade most older trunk and distribution plant to the same standards. If so, then there would be no threat of interference from trunk and distribution systems except possibly in the case of accidents which could cause complete breaks in the cable.

23. The same field experience, however, leads Braun to conclude that it may not be possible to make similar statements about subscriber drop portions of the cable television plant. He then proceeds to construct a mathematical model of how multiple leaks in subscriber drops might combine to give interference fields at aircraft altitudes. Based on his assumptions, for which the reader is referred to Braun's filed comments, an aircraft receiver at 1000 meters (approximately 3,300 feet) above a 3.14 square kilometer area containing an assumed collection of 2,000 leakage sources of various magnitudes would experience an interference potential of at most 0.89 microvolts at its input terminals. This is to be compared to a signal potential of at least 2 to 5 or more microvolts required to open the squelch circuits on aircraft receivers.

24. The NCTA analysis provided in reply comments is based on analysis somewhat similar to that of Braun, but using different assumptions and parameters. In NCTA's model a subscriber drop connected to a well matched dipole antenna is estimated to produce a field of 5.8 microvolts per meter at 300 meters (1,000 feet) above the dipole. Such a leakage field from a subscriber drop is unlikely, but could happen in rare instances. To illustrate the effects of multiple leaks, NCTA calculates the combined effect of 1013 similar leaks spread over a model which approximately represents a 200 mile cable plant. The result is an estimate of about 27 microvolts per meter from the 1013 leakage fields combined. We have drawn upon NCTA's model to make some of our own estimates of combined radiation fields, as discussed in Section IV and Appendix A of this document.

25. Evaluation of the threat to the radionavigation services (Instrument Landing System (ILS) and VHF Omnirange (VOR)) is somewhat different. It

[4] In April, 1976 pilots reported extraneous noises on 118.25 MHz, a frequency used for an airport approach control service at Harrisburg. The interference was determined to be due to multiple major leakage sources in the Harrisburg cable television system, which was using the same frequency for separate pilot carriers signals in four separate sections of the cable system. The operator of the cable system (Sammons Communications, Inc.) cooperated fully with Commission and FAA staff to eliminate the interference as soon as it was determined to be originating from the cable system.

[5] Cable Television Report and Order, 36 FCC 2d, 143 (1972).

[6] Electromagnetic compatibility of simulated CATV signals and aircraft navigation receivers, OT Report 74-39 (Tom Harr, Jr., Eldon Haakinson, and Sueki Murahata, 1974); Radiating aerial coaxial cable measurements, OT Report 75-73 (Tom Harr, Jr. and John Juroshek, 1975); Flight tests measuring compatibility of simulated CATV and VOR signals, OT Report 75-75 (John R. Juroshek and T. Harr, Jr., 1975).

[7] A study of potential RF interference to aeronautical radio navigational aids, Canadian Department of Communications Technical Report BTRB-5 (L. Chwedchuk, R. Poirier, and L. Walker, 1974).

is very difficult for an interfering signal to interfere inadvertently with the navigation services. It is necessary for the interfering signal not only to achieve a certain field strength at the aircraft relative to that of the desired signal, but also for the interfering signal to be superposed with an accuracy of a few hertz on certain frequencies critical to the navigation service. The probability of a cable signal having exactly the right frequency and stability to interfere with ILS or VOR operations must be admitted to be banishingly small. However, the consequences of such interference, should it occur, are potentially so great that we feel compelled to forbid cable transmissions on frequencies which conceivably cause such interference to ILS or VOR systems operating in the neighborhood of the cable television system.

26. In trying further to place the threat to aeronautical radio services from cable television leakage in context, NCTA suggests that aeronautical radio services have always operated in an environment of less than perfect reliability. Both NCTA and the Community Antenna Television Association (CATA) quote figures of some 6,000 or more instances of interference to aeronautical radio from non-cable sources over the last twenty-five years, which have produced only the one (Harrisburg) reported instance of cable originated interference. We are unable to verify those figures, but our own records do show 608 complaints of aeronautical radio interference from July 1, 1974 through December of 1976.[8] Of those complaints the sources of which were identified (474 identified), the largest number (182) were due to co-channel interference from other aeronautical service transmitters. Other interference sources included intermodulation of products of high power broadcast signals, citizens band radio, and various electrical equipment.

27. Thus NCTA, CATA, and other respondents making similar arguments are correct in maintaining that cable television has historically been a relatively insignificant source of interference to aeronautical radio. But we would suggest that that historical performance, commendable as it is, may have been partly because at least until recently there have been very few instances of simultaneous use of the same frequency by cable systems and nearby aeronautical radio services. It has only been in the last few years that FAA has been making communications radio frequency assignments at 50 kHz (and even more recently at 25 kHz) intervals, thus placing aeronautical radio services on frequencies traditionally used as carrier frequencies for cable television signals. As far as we know, there has never been coincidence of a cable television carrier frequency with an air navigation frequency.

28. Clearly, the major reason for formulating the rules we adopt today is not to solve an existing problem of crisis proportions. Rather, we adopt these restrictions because we expect that the near future is likely to bring more cable television systems, more extensive use of midband frequencies as pay television and other new services become feasible and marketable, and at the same time more frequent use by FAA of 50 kHz and 25 kHz intervals for assignments in the communications services and perhaps 50 kHz intervals in the navigation services. We are firmly convinced that it is in the best interests of the cable industry itself as well as the public at large to begin serious preparations for these new conditions before large numbers of cable systems desiring to use midband frequencies are built without having the capability to fully protect aeronautical and marine navigation and safety services from harmful interference. We cannot say with certainty whether the ultimate answer will lie principally with superior leak detection techniques, with use of other frequency ranges such as the UHF bands, or with new transmission technologies such as optical waveguides. But we are certain that such interference can be prevented, and we find that long delays in implementing necessary preventative measures would not be in the interest of the public or the cable television industry.

29. With respect to MATV as well as cable television systems not nominally utilizing the critical frequency bands, the comments of Clifford B. Schrock point out a potential problem not addressed in our notice of proposed rule making. He suggests that, particularly in the case of MATV systems operating at higher power levels than are utilized in cable television systems, it is possible that signals may be picked up off the air, amplified and re-radiated. In this manner an aeronautical radio signal could very well interfere with itself through the medium of the MATV/CATV system. Indeed, if this mechanism is real, it is one of the few conceivable ways to cause harmful interference to ILS or VOR radio-navigation systems. U.S. and Canadian studies have shown that VOR and ILS systems are quite insensitive to interference at frequencies even slightly (a few hertz) removed from certain critical frequencies within the signal bandwidth. One of the few ways to obtain an interferring signal having the requisite stability on exactly the right frequency would be to receive the desired signal, amplify it, and re-radiate it without changing its frequency. Since cable television systems generally have to use filters and traps to obtain narrow band signals for processing and transmission on the cable, there seems little likelihood of such re-radiation from cable television systems. We will urge that any cooperative research program to investigate interference mechanism in these bands should address this problem in more detail. In the meantime, since we have not identified such interference in the past, we will rely on our standards and authority under Part 15 and other parts of our Rules to deal with such interference should it occur. Therefore the rules we adopt today will not be considered applicable to MATV and other television delivery systems that do not fall under our definition of cable television systems.

Frequency Offsets

30. Just as in the evaluation of the threat presented by cable television leakage signals, it is necessary to consider the case of navigation services (ILS and VOR) separately from the communications services. First let us examine the navigation case.

31. Based primarily on the studies by the Office of Telecommunications[9] and the Canadian Department of Communications,[10] NCTA suggests a minimum offset of 25 kHz between video carriers and the carrier frequencies of ILS and VOR services. Such a step would not be difficult, since NCTA's investigations uncovered no cable systems operating closer than 150 kHz (nominal) to a presently assigned ILS or VOR frequency in the vicinity of the cable system, and the usual cable video carrier frequencies are 50 kHz (nominal) removed from any frequency that would be assigned under present procedures of FAA. OTP, on the other hand, suggests a frequency offset of a nominal 50 kHz, with a frequency tolerance of ±5 kHz.

32. We agree that Canadian and U.S. measurements indicate that 25 kHz is a safe offset. But there apparently is some question at this time about possible interference from a signal offset precisely 19,920 Hz from the carrier frequency of a VOR service. We believe this question should be answered before cable systems are allowed to operate as close as 5.08 kHz to the frequency in question. Furthermore, there is no clear need at present for such small frequency offsets, since traditional cable frequency usage and FAA's present assignment practices for ILS/VOR services already provide 50 kHz offsets. Therefore, to provide an extra margin of safety we are specifying that the required minimum offset (except in case of waivers) will be 50 kHz, at least until the existence of (1) the need for smaller offsets and (2) research showing that such lesser offsets are safe even without the special precaution of a waiver process.

33. In the case of voice communications services, OTP suggests an offset of 100 kHz nominal, with a tolerance of ±5 kHz. NCTA expresses the view that the use of frequency offsets is not practical as a universal solution in the case of voice communications frequencies, because FAA assignments fall on frequencies used by cable systems and cannot be avoided by any universal choice of cable frequencies. As noted previously, NCTA also asserts that there is no circumstance under which "* * * serious degradation or obliteration of aircraft voice communications (could) occur." Finally, NCTA argues that a frequency separation of 50 kHz would be quite adequate in any case.

[8] A summary of these records is filed as part of the record in this proceeding.

[9] See footnote 6.

[10] See footnote 7.

34. We agree that there is no universal solution based on a particular choice of frequencies for all cable systems. We also would agree that the chance of degradation of communications signals is small, but as pointed out previously we do believe it could occur in a local area in the case of a complete separation of the outer conductor of a cable. Therefore, some offset is desirable. Examination of our own records and current aeronautical maps indicates, however, that there will be only a few cases where the OTP suggested offsets will lead to a conflict between cable and aeronautical use of the same frequencies. We believe that these situations can be handled adequately on an ad hoc basis, either by moving the cable frequency or through a waiver process undertaken after careful examination of the cable system's design and leakage performance. Waiver criteria are discussed in Section IV of this document.

35. NCTA supports the suggestion that 50 kHz offsets would be adequate by two arguments. First, NCTA notes that the Radio Technical Commission for Aeronautics (RCTA) standards for aeronautical communications receivers specify that the response of receivers should be down by 40 dB at ±10 kHz relative to the desired carrier. If such performance were indeed the case in practice, then probably an actual frequency separation of 10 kHz would be adequate. But NCTA further notes that Canadian Department of Communications measurements[11] indicate that actual receiver performance may not be that good. The particular receiver examined by the Canadian laboratory was, however, less sensitive by 30 dB at a frequency ±50 kHz from the desired carrier. Using that date NCTA concludes that it would require a massive leak of 3,000 microvolts per meter at 3 meters from the cable to open the receive squelch circuit at altitude of 100 feet, with a 50 kHz offset. This corresponds to a leak of approximately 30,000 microvolts per meter at 3 meters to open a squelch circuit at 1,000 feet altitude, which is the minimum altitude permitted by FAA over densely populated areas. We note that a more typical "major" leak in a cable is around 400 microvolts per meter at 3 meters. On the basis of power addition it would require about 5,625 such leaks all within 1,000 feet of the aircraft to open the squelch circuit of such a receiver, clearly an unlikely or impossible circumstance for a cable system.

36. Thus we conclude that NCTA is correct that 50 kHz actual separation is sufficient, insofar as the receiver characterized by the Canadian Department of Communications is typical of those in the air today. But we do not know that this is the case. Therefore, we are for the time being adopting the 100 kHz separation suggested by OTP, out of an abundance of caution, until research can fill the gaps in our knowledge. We take this opportunity to note, however, that there do exist standards for aeronautical communication receiver performance. We are concerned about the full and efficient use of the electromagnetic spectrum, and note that full use of cable television and other nominally nonradiating systems can reduce pressures on over-the-air spectrum usage. Therefore, we hope that aeronautical receiver performance will be improved as quickly as possible to meet the RTCA or other appropriate standards. This will not only permit FAA to prescribe lesser frequency separations for aeronautical services themselves, but will reduce the burdens which must be borne by unrelated services in order to protect the integrity of the aeronautical radio services.

[11] See footnote 7.

37. The OTP suggestions for frequency separation requirements were phrased in terms of nominal separations (50 and 100 kHz) with a frequency tolerance of ±5 kHz. NCTA questions the need for such a small tolerance limit. Since it will be rare (if ever) that a cable operator will have to worry about separation from frequencies both higher and lower than a system carrier frequency, we have chosen to state frequency separation requirements in terms of minimum separations, leaving to the cable operator the choice of whether to operate close to the frequency separation limit with a small tolerance or to operate with less stringent tolerances but at a frequency separation large enough to assure that the minimum separation will always be maintained. We are, however, imposing a maximum tolerance of ±25 kHz, corresponding to the tolerance now imposed on all Class I cable television signals in any band.

38. Finally, we note OTP's suggestion that the criterion for determining whether a cable system is subject to frequency separation requirements should be whether the system is within the "service volume" of the relevant aeronautical radio service, as that term is defined in certain Orders of the Federal Aviation Administration.[12] Although this would be a rational criterion, we find several practical problems with its adoption. First of all, these FAA orders are not readily available to cable operators. Also, the radii of various aeronautical radio services vary over a range of 10 to 150 nautical miles, depending on the type of service and other factors. Thus, it would be difficult for a cable operator to determine whether or not his system was subject to the frequency separation requirements. Such confusion and uncertainties would not add to air traffic safety. There is still another characteristic of the service volume definitions that makes service volume an awkward criterion. That is, the service volumes are generally cylinders of a given radius extending from ground level upward to some maximum altitude. These radii are quite large—up to 150 nautical miles—for services designed to be used at high altitudes. Since any interference from cable television systems would occur primarily at low altitudes such as 300 to 3,000 meters (1,000 to 10,000 feet), there seems no reason to protect the entire service volume for services designed for use at altitude of, say, 5,400 meters (18,000 feet) or more.

[12] The "service volume" for an aeronautical radio service is a volume in airspace, usually but not always cylindrical, within which it is expected that there will be a usable signal at all points within the limits of intended service. See FAA Order 6050.4A, Chapter 1, paragraph 2.

39. The radii of FAA service volumes for services designed to be used at low altitudes (up to 1500 meters, or 5,000 feet) range up to 30 nautical miles. Services designed for use up to 7500 meters (25,000 feet) have service volume radii ranging up to 60 nautical miles. We have therefore chosen a figure of 111 kilometers (60 nautical miles) as the criterion for judging whether or not a cable system is close enough to an aeronautical radio station to bring about the imposition of frequency separation requirements. In special cases where FAA service volumes are extended beyond 60 nautical miles for low and moderate altitude services, or in cases where FAA instructs pilots that services designed for high altitude use are in fact to be used at altitudes of less than 4500 meters (15,000 feet) at distances greater than 60 nautical miles, special arrangements may be made with affected cable systems. Such arrangements may be made quickly by formal Order of this Commission, if necessary. On the other hand, a cable system might have unnecessary restrictions imposed upon it by such a criterion (60 nautical miles). For example, the service volume of Instrument Landing System (ILS) services may extend only 10 nautical miles in certain directions. In such cases, which should be very few in number, specific waivers could be issued to the cable operator. In general, however, we believe our criterion of 60 nautical miles separation is both safe and administratively feasible for all users of the affected frequencies.

40. As several of the comments indicated, there are three communication frequencies that should be dealt with separately. They are the three emergency communications frequencies at 121.5, 156.8, and 243.0 MHz. All three of these frequencies carry emergency communications. As a result communications may originate from unusual locations and from very low powered portable units. In view of these special circumstances we feel it is appropriate to completely forbid transmission of certain carriers and other signal components at these frequencies, including appropriate offsets to provide guard bands of 100 kHz about the frequency 121.5 MHz and 50 kHz about the frequencies 156.8 and 243.0 MHz.

Power Limitations

41. Our notice of proposed rule making proposed that limiting the power of cable television signals in the navigation bands might prevent interference should signal leakage occur. Most parties commenting were in agreement that power limitation is not the proper technique for preventing interference. NCTA pointed out, for example, that lower maximum

power levels would require closer spacing of amplifiers. Thus the average power level (averaged over the entire length of cable plant) might not change very much, and multiple leakage sources might produce fields of about the same magnitude as with higher maximum powers. Clifford Schrock, GTE Sylvania Incorporated (GTE), and the New York State Commission on Cable Television did recommend power limitations. But two out of those three recommended limits as high as or higher than powers normally used now in the cable industry. We see three major reasons for our decision to rely on frequency separations and leakage monitoring rather than power limitations: (1) power reduction is not feasible without major rebuilding of most cable television system; (2) power limitations would be difficult if not impossible to effectively enforce, being subject to accidental maladjustments which could go undetected for some time; and above all, (3) power limitations would probably be ineffective in preventing interference if multiple leakage did occur at a critical frequency.

Monitoring

42. In our Notice we proposed the imposition of monitoring procedures to assure that signal leakage would be kept under control, particularly in bands outside the television and FM radio broadcast bands. OTP's proposed procedures do not include monitoring, since exclusion from critical frequency bands is adequate protection. However, we feel that monitoring is an important part of the rules we adopt today for two reasons: (1) We are imposing frequency offsets only out to 111 kilometers (60 nautical miles), corresponding to the service volumes of moderate altitude radio services, rather than out as far as the 150 nautical miles corresponding to certain high altitude services. Thus we believe that some form of monitoring program is appropriate to assure that leakage does not get so far out of control that interfering fields could extend up to the higher altitudes. (2) FAA frequency assignments are subject to change on short notice. To the extent that waivers or reduction of frequency offset requirements are needed and feasible, it would be in the best interests of both the cable system operator and the public served by the cable system to have a pre-existing set of monitoring procedures and a high system integrity. Then, in case of a sudden conflict (or an anticipated conflict) with an aeronautical radio service a decision one way or the other about a waiver could be made much more quickly.

43. NCTA fully supports the concepts of monitoring to keep leakage under control. However, NCTA believes that there is now insufficient knowledge to design an optimum monitoring program, and that a test program to develop such knowledge should be instituted. GTE Sylvania Incorporated assert that the monitoring requirements proposed in the notice would be burdensome to cable operators. We agree that it is not possible at this time to specify any monitoring program which is at the same time fully effective and not unduly burdensome for all cable systems. Therefore, we are imposing at this time only the requirement that all systems using any frequency or frequencies in the aeronautical radio bands must employ some type of routine monitoring system which will assure that all portions of the cable system will be effectively searched for leakage fields of magnitude 20 microvolts per meter at a distance of 3 meters from the cable at least once per year. We do not feel that this requirement will be burdensome for any system large enough to have use for those frequency bands, in view of the apparent effectiveness, low cost, and ease of use of contemporary leak detection technology. Note that we do not require that the search for leakage sources must actually take place 3 meters from the cable at all locations—it is only required that whatever leakage detection method is used, it must be capable of detecting leaks which produce fields of 20 microvolts per meter at the 3 meter distance. We do hope that a research program, together with field experience we hope to gather in the near future, will provide information which will either enable us to make our monitoring requirements more specific or will give guidance as to acceptable variations.

44. We note particularly comments on monitoring filed by the Office of Cable Television, Department of Public Utilities, State of New Jersey (OCT). OCT reports investigation of signal leakage detection methods introduced by two manufacturers of cable television test equipment, Mid State Communications, and Comsonics. OCT concludes that effective "constant" surveillance methods can be devised using either of the two systems. OCT further suggests that the details of the monitoring schemes to be followed should be approved separately for each cable television system, since different cable system configurations may require different approaches. It is further suggested that the cost of monitoring systems is small compared to the potential impact of banning operations completely on certain cable channels. Finally, OCT suggests that all cable television systems should be required to perform monitoring, not just those operating in the critical air navigation and communications bands.

45. There may be many effective monitoring schemes for individual cable television systems. This is good reason for adopting a flexible monitoring requirement as we are doing today. We do not feel, however, that there is sufficient reason to adopt the final OCT suggestion and require continuous monitoring in bands other than those used for air navigation and safety services. Our definition of harmful interference, which is consistent with that of the International Telecommunications Union, recognizes a difference between safety services and non-safety services in evaluating "harm." In the case of safety services, "harm" includes any endangering of the functioning of the radio system. In the non-safety services, serious degradation, obstruction or repeated interruption is a necessary condition for "harm." Therefore, although American Broadcasting Companies, Inc. and the Association of Maximum Service Telecasters, Inc. also would like to see additional protection of broadcast services from interference, we have no evidence at this time that a universal requirement for continuous monitoring is necessary to prevent widespread "harmful interference" to those services.

46. We do note that good system integrity brings to cable system operators benefits beyond prevention of interference to radionavigation and safety services. These benefits include higher system reliability and fewer service calls, and protection of cable signals themselves from interference due to ingress of manmade electrical noise, strong broadcast signals, and other sources of interference. Therefore, we expect that the practice of more or less continuous monitoring will increase. But we do not see the necessity for this agency to mandate such monitoring in all cases at this time.

47. We note here that our approach of relying on frequency separations and monitoring avoids the necessity of detailed examination by the regulatory agency of possible mechanisms for leakage and specific techniques for avoiding and repairing leakage. Thus, the suggestion of Schrock and certain staff members of the Cable Television Information Center (CTIC) that converters or traps be required at all subscriber drops, the suggestion of CTIC that grounding according to the National Electrical Code be required to eliminate at least one source of leakage, and the suggestion of New Jersey's OTC that cable system personnel should be licensed need not be addressed in detail. We have no doubt that traps and converters, and quite possibly grounding of subscriber drops as well, would reduce interference. Licensing may or may not improve the quality of cable television technical staffs. However, we feel that by adopting "performance" standards rather than "design" standards, we can properly leave to the cable television industry and the individual operators the development and application of techniques to meet our performance standards.

Enforcement

48. OTP, FAA, ARINC/ATA, and other respondents rightly point out that enforceability is an important factor in the choice of rules to prevent interference. ARINC/ATA point out the limitations of cease and desist orders as enforcement tools, due to the possibility of long delays in implementing cease and desist orders. ARINC/ATA also suggest that forfeiture authority is needed to enforce the relevant standards, and suggest that the rules we adopt should include explicit authority to require termination of operation of appropriate portions of cable television systems in case harmful interference should occur. NCTA and CATA, on the other hand, oppose the adoption of rules that would give FCC

field personnel explicit authority to shut off offending cable television operations and require that operations not be reinstituted without permission of the FCC personnel.

49. We agree that forfeiture authority would be helpful in enforcement of standards to prevent interference. However, in the case that interference to air navigation and safety services does actually occur, this Commission ultimately has the same authority to demand termination of the offending cable television system that it has in the case of other types of interference sources. And we further agree with ARINC/ATA and other respondents making similar comments that such authority should be explicit in our cable television rules and regulations. Therefore, such provisions are included in the Rules we adopt today.

50. We cannot agree with NCTA that such authority in the hands of our field personnel is likely to lead to significant delays in the reinstitution of service and perhaps even delay solution of the interference problem. In the first place, we are confident that conscientious implementation by cable operators of the rules we adopt today will prevent any interference to the aeronautical services. Secondly, on the basis of our experience at Harrisburg we would expect full and complete cooperation between our field personnel and cable operators toward rapid solution of the problem and reinstitution of service. The authority to "order" does not preclude complete cooperation of FCC personnel with a cable operator who is attempting in good faith to solve an interference problem and restore service. Therefore we are writing into the cable television rules authorities similar to those which our field personnel now have relative to certain other potential sources of interference, such as industrial heating equipment.

51. Schrock suggests grandfathering existing operations in these bands, with the proviso that grandfathered systems should later be cleared to continue such operation if appropriate safety criteria are met. Schrock would require immediate notification of FAA and FCC of existing uses in these bands, and would impose some form of monitoring to detect major signal leakage. We prefer not to use a grandfathering approach as such, feeling that prior use in no case entitles a system to operate in a manner which provides a threat to air traffic safety. However, we are allowing a transition period during which existing operations can be brought into conformance with the new rules. We are requiring notification of frequency uses, by means of timely filing of our annual Form 325. But we are assuming for ourselves the responsibility of informing FAA, OTP, our own field offices, and other affected agencies as appropriate about such operations. We go further than Schrock in that we require monitoring capable of detecting electromagnetic radiation at the level of the Commissions standard (20 microvolts per meter at 3 meters from the cable, in the frequency range 54–216 MHz) rather than merely being able to detect "major" breaks.

52. OTP suggests that the "interim" restrictions be effective in September, 1977 in the navigation aid bands and January, 1978 in the voice communications bands. Since we know of no instance of conflict with navigation service frequency usage, and since the frequencies traditionally used for pilot carriers and for television signals in the navigation bands would not produce conflicts with frequencies currently assigned to radio navigation services, we see no compelling reason to set different effective dates for compliance in the two sets of frequency bands. We also note that the required information on frequency usage will be sent to us in the normal course of events, by means of Schedule 2 of FCC Form 325, during the fall of 1977. Therefore, we find it appropriate to allow existing systems until January 1, 1978, to notify the Commission of their use of these bands and to bring their operations in compliance with the new restrictions.

53. OTP also suggests that the Commission "* * * discourage additional use * * *" of the navigation bands by cable systems. In practice, the rules we adopt today may well discourage certain uses of the navigation bands. But our purpose is not to discourage use of the bands. To the extent it is not safe to use those bands, such use should simply be forbidden. To the extent such use is safe, there is no reason to discourage it. We adopt today rules which we believe to be quite amply conservative to prevent harmful interference. We would note, however, that any new uses of the bands in question are initiated at the risk of the cable operator. If future research should in any way identify areas where today's restrictions should be tightened rather than relaxed, cable operators would of course have to conform to appropriate new restrictions without any expectation of any grandfathering on the basis of past use. In this area, restrictions must be made strictly on the basis of safety, not on the basis of precedent.

Research Program

54. We note that both OTP and NCTA discussed the importance of a cooperative research program in this area. While recommending an interim solution, OTP stated that any permanent solution to this problem "will require more information about propagation mechanisms, enforcement and maintenance procedures, and monitoring techniques than is presently available." We agree with OTP about the need for more research in this area. It is our intent to begin, in cooperation with all interested parties, such a research program.

IV. APPLICATION OR WAIVER OF FREQUENCY SEPARATION REQUIREMENTS

55. We have agreed with OTP that the basic regulatory mechanism for preventing interference to aeronautical services should be frequency offsets from aeronautical services in the geographical vicinity of the cable television system, at least for the foreseeable future. However, on the basis of analysis of mechanisms by which interference might occur we find that it may be possible to grant waiver or reduction of the specified frequency offsets in individual cases. We do not propose a rigid set of conditions which, if met, will guarantee a cable system the right to use reduced offsets. If we were aware of a universally applicable set of such conditions we could simply write them into the Rules and there would be no need for a waiver process. In the paragraphs below we summarize the analysis that leads us to these conclusions and discuss the general nature of conditions under which some form of waiver might be appropriate. Our analysis is outlined in more detail in Appendix A.

Analysis of Interference Mechanisms

56. *In the navigation bands (108–118 and 328.6–335.4 MHz)*. Investigations by the U.S. Department of Commerce[12] and the Canadian Department of Communications[13] indicate that cable television systems are capable of generating fields high enough to interfere with navigation systems, provided a cable signal carrier frequency coincides precisely with certain critical frequencies and certain other conditions are met. It does not appear possible for a cable television system to interfere with air navigation instruments if the cable television carrier frequency is 20 kHz or more removed from the ILS or VOR navigation system carrier frequency.

57. Complete control over this type of interference is maintained by periodic measurement of cable television carrier frequencies to assure that adequate frequency separation is maintained. Therefore, an important factor in any consideration of waiver (reduction) of our stated 50kHz minimum frequency separation would be the procedures used by the cable operator to monitor his carrier frequency or frequencies and to assure adequate separation from critical aeronautical frequencies. It may be that a combination of thorough monitoring for large numbers of small leakage sources combined with automated detection of complete breaks in the outer sheath of the cable could make it safe to operate cable carrier signals at frequency separations less than 25 kHz. But because of current frequency assignment practice by both FAA and the cable television industry we anticipate no need for frequency separations less than 25 kHz minimum.

58. *In the voice communications bands (118–136, 225–328.6, and 335.4–400 MHz)*. Based on a model similar to those described by Braun and by NCTA in their filed comments in this proceeding, we

[12] See footnote 6.
[13] See footnote 7.

have estimated the number of leakage sources producing fields of various magnitudes which could combine to give interference fields of 10 microvolts per meter at an aircraft altitude of 300 meters (1,000 feet).[14] Details of this analysis are given in Appendix A. Results are summarized in Table 1.

59. Table 1 gives the number of leakage sources required to produce an interference field of 10 microvolts per meter at various altitudes, as a function of the field produced by each leakage source at a distance of 3 meters from the cable and the total length of cable distribution plant. Among the assumptions made (see Appendix A) are that the power density at the aircraft is the sum of the power densities due to individual leakage sources, and that the field strength at aircraft altitude is inversely proportional to distance from the leakage source at distances equal to or greater than 3 meters. This does not take into account shielding effects of building and other objects in low angle paths.

TABLE 1.—*Number of leakage sources required to produce an interference field of 10 microvolts per meter*

Height of aircraft in meters (feet)	Kilometers (miles) of cable plant	Leakage field at 3 meters from cable (microvolts per meter)	Total sources required to produce 10 microvolts per meter at aircraft	Leaks per kilometer (mile) required to produce 10 microvolts per meter at aircraft
300 (1,000)	320 (200)	20	108,000	337 (540)
150 (500)	320 (200)	400	82	.26 (.41)
300 (1,000)	320 (200)	400	228	.71 (1.14)
1,500 (5,000)	320 (200)	400	620	1.94 (3.10)
3,000 (10,000)	320 (200)	400	1,208	3.78 (6.04)
3,000 (10,000)	1,280 (800)	400	2,454	1.92 (3.07)
300 (1,000)	320 (200)	600	78	.24 (.39)
300 (1,000)	320 (200)	50,000	(1)	----------

[1] Less than 1.

60. The important comparison is between the number and magnitudes of leaks shown in Table 1 and the number and magnitudes of leaks which can be expected from a reasonably well monitored and maintained cable television system. We have limited field measurements to draw on at this time, but a recent unannounced visit of our field personnel to a new cable television system which had been checked for leakage during and immediately after its construction found a total of nine leakage sources in approximately 100 kilometers (60 miles) of cable distribution plant, corresponding to about 0.09 leaks per kilometer (0.15 leaks per mile), or about 30 leaks in a 320 kilometer (200 mile) plant. The largest field found in that cable system was 350 microvolts per meter at 3 meters. This is consistent with measurements made in Canada which found that over 92% of leakage field located in 27 cable systems produced fields less than 400 microvolts per meter at 3 meters.[15] These cable systems, examined in 1973, were not using construction techniques and monitoring equipment available today. One would expect somewhat lower leakage levels from modern equipment and monitoring procedures.

61. From these comparisons we conclude that if it proves possible to maintain a cable television system with the integrity of the system we examined, or better, there will be no interference from "large" leakage fields of around 400 microvolts per meter or less, even if there is no frequency offset between the cable television carrier frequency and the aeronautical radio service.

62. There is, however, another class of leakage source which concerns us more, even where the cable television system is well constructed and well maintained. This type of leakage source, represented by the last line in Table 1, may occur in case of a complete break in the outer conductor of a coaxial cable. The field strength figure in the Table (50,000 microvolts per meter at 3 meters) is a high estimate, being based on the assumption of an antenna with a 3 dB gain being well matched to the cable. But the OT studies[16] indicate that such radiation could occur, at least in certain narrowly defined directions from complete breaks in the outer conductor. Even if this estimated field is not obtained in practice, it is clear that complete breaks in the outer conductor may pose a different order of interference threat. The probability of such leakage is very likely quite low, but is unknown. Therefore, we feel that any reduction or waiver of our frequency offset requirements must take into account the possibility of such large radiation fields from single leakage sources.

Applicability of Frequency Separation and Other Restrictions

63. The frequency offset approach to interference prevention, suggested by OTP and others and adopted here as our basic regulatory mechanism, is based on the premise that it is the carrier frequency or frequencies which provide the significant threat to aeronautical radio service. In the conventional cable television carriage of television signals this is true. Our own technical regulations for the carriage of Class I television signals require that the aural carrier be 13–17 dB lower in power than the visual carrier. The Office of Telecommunications found color subcarrier peak power density down 30 dB from the visual carrier, the strongest horizontal synchronizing pulse down 20 dB, and the strongest vertical synchronizing pulse peaks down 35 dB from the visual carrier.[17] But if we look toward the carriage of signals by suppressed carrier, single sideband, pulse code modulation, or other techniques which might be used for special services in the midband frequencies, then we must be more specific about what signal or signal component frequency is to be offset from the aeronautical radio service frequency of interest.

64. In order to include signals or signal components having peak power higher than the sideband levels of the typical television signal, we should specify that our frequency offset requirements are applicable to any signal or signal component having a peak power in excess of a level approximately 20 dB lower than the peak visual carrier level we have been assuming in our analyses in this proceeding. Since we have been assuming a peak power of about 50 dBmV (1.3×10^{-8} watts) for the visual carrier, we are specifying that our frequency offset and other requirements adopted today are applicable to signals or signal components having peak powers equal to or greater than 10^{-5} watts.

65. Our analysis and the comments of respondents in this proceeding lead us to conclude that: (1) frequency offsets should be our basic regulatory mechanism for interference prevention for the near future, but that (2) it seems feasible to maintain at least some cable television systems so that the effect of multiple leakage sources of the magnitudes commonly observed in cable systems will not interfere with either navigation or communications services, and that (3) there is a low but unknown probability of leaks of sufficient severity that a single leakage source could cause harmful interference to either navigation or communications services. Since we are convinced that it is possible under some conditions for cable television systems to operate with lesser offsets than those specified in the Rules we adopt today, and since we believe that the number of cable television systems which would request relaxation of those standards is small enough that we will be able to adequately monitor the leakage performance of those few systems, we are prepared to entertain requests for waiver or reduction of

[14] OTP suggests that in no case should cable leakage fields exceed 10 microvolts per meter "* * * in any usable aircraft environment." In our view 10 microvolts per meter at aircraft altitudes is a reasonable upper limit in the vicinity of aeronautical radio systems, being somewhat lower than the field required to open squelch circuits (about 20 microvolts per meter, depending on several factors).

[15] See footnote 7.

[16] See footnote 6.

[17] See footnote 6.

our frequency offset requirements.[18] In any case, we would not expect to grant such relief without consultation with OTP and/or the federal government agency operating the aeronautical radio service involved in the waiver request.

66. Before any relaxation or waiver is granted for cable systems within the service volume of an aeronautical radio service the cable television system operator will be required to show that signal leakage in the cable system is well under control. According to Table 1, it requires at least 228 leaks generating fields of about 400 microvolts per meter at 3 meters to reach 10 microvolts per meter at aircraft altitudes of 300 meters, for a cable system of about 320 strand kilometers (200 strand miles). This corresponds to about 71 leaks per hundred strand kilometers.[19] A cable system having such leakage sources, small in number compared to 71 per hundred strand kilometers and producing leakage fields of about 400 microvolts per meter at 3 meters or less, would have its leakage "under control", even though it might not meet the leakage standards of this Commission at every single point on the cable system. Leakage would be "under control" in the sense that the system would be far removed from the operating point at which any interference could be caused, and it would be unlikely in the extreme that any sudden event would increase the number of leaks enough to cause interference suddenly and without warning. It would appear, for example, that a system showing no more than about 10 or 15 leaks per hundred strand kilometers producing fields of order 400 microvolts per meter at three meters, or smaller, would be well under control.

67. We wish to emphasize here that these statements do not imply that we are condoning the continued existence of any leaks above our limit or 20 microvolts per meter at 3 meters. The operator is fully responsible for eliminating such leakage sources. We merely recognize that in the course of operation leaks larger than our standards permit can occur, and that the criterion for evaluating threat to aeronautical radio services is the total radiation field at the aircraft, whether from a collection of small leakage sources or from a single leak producing fields extremely large compared to our limits.

[18] Comparison of our 1975 data on cable system frequency use with current Sectional Aeronautical Charts identified only 22 cases where cable systems were operating visual or aural carrier within 100 kHz of aeronautical communications services within 50 miles of the cable system. We found no cases of exact frequency coincidence. Our 1975 data do not include information on pilot carrier frequencies. For this and other reasons the number of affected systems is probably not accurate today, but it does indicate that there are not a very large number of affected systems.

[19] At low altitudes of a few hundred meters or less, the number of leaks required may actually be considerably larger, because of shielding effects of buildings and other objects along low-angle paths.

68. In order to demonstrate that radiation from typical major leaks (400–600 microvolts per meter or less) is under control, we would expect that a cable operator applying for waiver of any kind would supply this Commission with a full report of examination of the system for leakage sources. The examination should have taken place over as short a time period as possible (days), to give a realistic "snapshot" of the system's leakage performance at a given time. We would further expect that in as many instances as possible a quantitative measure of the leakage fields produced would be provided. If quantitative measurement of all leakage sources is not feasible, consistent with making the search in as short a time as practical, then the quantitative measurements should be made on leaks selected by a predetermined random method to avoid any tendency to measure only the less significant leakage sources. A quantitative measurement of field strength should be made for every leakage source located in cables carrying signals with maximum peak power equal to or greater than 30 dBmV (1.3×10^{-5} watts). For statistical and research purposes as well as to aid in evaluating the application for waiver, the report should also include notations as to the nature of each leakage source; for example, whether the leak occurred in a trunk, feeder, or subscriber drop line, and some indication of probable cause of the leakage. Finally, the report should include a record of the repair or elimination of all leakage fields higher than 20 microvolts per meter located during the tests.

69. Any request for waiver should also include a statement of the reasons for requesting waiver rather than using another frequency. The criteria for granting a waiver, however, will be primarily based on safety considerations rather than the operator's stated need for a particular frequency or frequencies.

70. Other factors which would be considered in a waiver request could include, but need not be limited to, significant underground burial of cable plant and extensive or universal use of converters or traps at subscriber locations.

71. As a condition for any waived or reduced frequency offset which might be permitted within the service volume of an aeronautical radio service, the cable television system operator would be required to describe and implement a routine procedure for detection and elimination of leakage fields higher than the limits permitted by our regulations. We do not set at this time any rigid standards for such procedures, except that the methods and instrumentation used for leak detection should be capable of detecting leakage sources which produce electromagnetic fields at least as low as 20 microvolts per meter at a distance of 3 meters from the cable. For example, if measurements were made at a distance of 15 meters, instrument sensitivity would have to be about 4 microvolts per meter.

72. A further condition attached to any waiver we might grant within aeronautical radio service volumes would be the filing of regular reports to this Commission concerning regular measurements of cable system carrier frequencies and results of the system's leak detection and elimination program. These reports might be required monthly, for example, until the results indicated to the Commission that a less frequent reporting schedule would be satisfactory from the point of view of prevention of interference. These reports would serve a two-fold purpose. Not only would they provide some assurance that systems operating in conflict with our normal frequency offset requirements were not endangering aeronautical communications, but they would also provide invaluable statistical information as a partial basis for possible across the board modification of our frequency offset restrictions at a later time.

73. Because of the possibility of large leakage fields associated with complete breaks in the outer sheath of coaxial cables, and because traditional cable carrier frequencies and current FAA frequencies do not coincide, we do not anticipate waivers for operation of carrier signals at offsets less than 25 kHz (actual minimum) within the service volume of any aeronautical navigation service in the bands 108–118 and 328.6–335.4 MHz. Because of the possibility of sudden large leakage fields, any cable system operator requesting to operate a carrier signal with offset less than 35 kHz from an aeronautical communications service will be required to show how a complete break in the outer conductor of a coaxial cable carrying signals of maximum peak power greater than or equal to 10^{-5} watts will be quickly and reliably detected, and how all signals in the bands 108–136 and 225–400 MHz will be terminated immediately upon detection of such cable breaks.

V. CONCLUSIONS

74. Criteria for our actions in this proceeding, consistent with the criteria of OTP and FAA, have been: (1) prevention of harmful interference to aeronautical navigation and safety radio services, while at the same time (2) allowing maximum possible use of broadband cable systems. In view of the analysis performed by various parties, and in view of the current absence of a significant history of interference to aeronautical radio systems by cable communications systems, we feel that today's actions are entirely adequate to meet the first criterion. Even though we realize that today's actions go much further toward prevention of intereference before the fact than do our Rules for most other services such as broadcasting and industrial heating equipment, we feel that these restrictions are not an undue burden on the cable television industry or on individual cable system operators. We anticipate that research and field experience under these Rules may identify appropriate modifications of these Rules, but for the immediate future we are satisfied that both of our criteria are met.

75. Authority for adoption of the rules set forth in Appendix C is contained in 47 U.S.C. 151, 152, 302, 303, 307, 308, and 309. Accordingly, *it is ordered*, That 47

CFR Chapter I, Part 76 is amended as set forth below.

76. *It is further ordered,* That the proceedings in Docket 21006 are terminated insofar as the Docket concerns prevention of interference to aeronautical and marine navigation and safety radio services, and are continued insofar as the Docket concerns standard frequency channelling plans for cable television systems.

77. Effective date: This revision of Part 76 becomes effective January 1, 1978.

(Secs. 1, 2, (302), 303, 307, 308, 309; 48 Stat., as amended. 1064. 1064 (82 Stat. 290), 1082, 1083, 1084, 1085; 47 USC 151, 152, 302, 303, 307, 308, 309.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPENDIX A—COMBINATION OF CABLE TELEVISION LEAKAGE SOURCES

A.1 The purpose of this Appendix is to examine circumstances under which an improperly radiating cable television system might produce fields as high as 10 microvolts per meter at aircraft altitudes. An understanding of the mechanisms by which such fields might be produced can provide guidance as to how radiation can be kept under control so that interference will not occur even with co-channel operation of cable television and aeronautical radio systems.

A.2 If the signal radiation standards promulgated by this Commission are met at all points in the cable system, it seems clear that no interference to aeronautical radio services will occur. But it is not enough to say that if the rules are met there will be no interference; we must be confident that excursions beyond the limits of the rules will be detected and corrected before air traffic safety is compromised. To say that signal leakage is "under control" is to say that even in the case of failure to comply fully with the rules, either (1) degradation of system performance due to accumulation of small leaks is slow enough that the increasing leakage will be detected and eliminated before air safety is compromised, or (2) high level leakage which appears suddenly will be detected and eliminated quickly, before air safety is compromised.

A.3 If harmful interference could be caused by a small number of cable leaks which are not easily detected, then the threat of unexpected harmful interference would be significant. If, on the other hand (1) the number of leakage sources required to cause interference is large compared to the number existing in the normal condition of the cable television system as maintained by a leak detection and repair program, and (2) the rate of appearance of new and similar leakage sources is low, there will be no sudden and unexpected harmful interference from such leakage sources. The worst possible course of events would be that the maintenance program might not be properly performed, the number of leakage sources might grow, and eventually a "just noticeable" interference might occur. At that time procedures for immediate elimination of interference or suspension of cable system use of the interfering frequency would be initiated. At no point in this process would there be danger to the functioning of aeronautical communications systems, since the first sign of a problem would be "just noticeable" interference rather than a sudden onset of serious degradation of communications.[1]

A.4 We need, then, to determine the number of leakage sources which, distributed over a cable television system, could produce significant interference fields at normal aircraft altitudes. In order to be conservative, we should assume that each leakage source produces an electromagnetic field typical of the larger leaks that are known to occur in cable television systems.

A.5 For most of this analysis we assume that leakage sources produce fields of 400 microvolts per meter at 3 meters, but will also examine a few other cases. In a Canadian study[2] of 27 older cable systems in 15 cities, 92.4 percent of the leaks located produced fields between 6.2 and 400 microvolts per meter, and 7.6 percent between 400 and 1250 microvolts per meter at 3 meters distance from the cable. NCTA estimates, in Reply Comments in this proceeding, that the maximum field which could be produced from a subscriber drop cable is about 580 microvolts per meter at 3 meters, but points out that under this circumstance the subscriber would receive no service at all—all available energy would be radiated. Thus, such radiation would not only be rare, it would not be allowed to persist for long in any significant number of drops in a cable system. In an unannounced visit to one cable television system, our field personnel found that the maximum field radiated in the approximately 100 kilometers (60 miles) of plant they examined was 350 microvolts per meter. Thus we have taken 400 microvolts per meter as representative of "large" leaks which might commonly be found in a cable television system.

A.6 Let us estimate the number of 400 microvolt per meter leaks required to produce a field of 10 microvolts per meter at 300 meters (1000 feet) altitude, when the leakage sources are spread over an area of approximately 25 square miles, corresponding to about 320 kilometers of cable plant. We follow a modification of the model given by NCTA in the Engineering Statement attached to their Reply Comments in this proceeding. The NCTA model assumes a single leak directly below the aircraft plus 4n leaks in the nth ring of a set of concentric rings about the central leak. NCTA assumes 22 such concentric rings, each separated from the next inner ring by 667 feet (203 meters) and assumes 300 meter (1000 foot) altitude. We use the same ring spacing as NCTA, but leave the altitude of the aircraft, the number of rings, and the field strength produced by each leakage source as parameters, with the field strength at the aircraft fixed at 10 microvolts per meter. Then the dependent variable is the total number of leakage sources required to produce 10 microvolts per meter at the specified altitude.

A.7 The distance R from a leak in ring n to the aircraft at altitude A (in meters) is

$$R=[A^2+(203n)^2]^{1/2} \text{ meters.} \qquad (1)$$

Assume, with NCTA, that (1) the power density at the aircraft is the sum of the power densities of all the contributing leakage fields, and (2) the field strength due to each leakage source is inversely proportional to the distance from the source. (This assumption neglects the shielding which could occur due to buildings or other objects in low angle paths.) Further assume that the number of leaks in each ring is proportional to the circumference of the ring, and therefore to the ring number n. Then with $k\,n$ leaks per ring, the power density P_n at the aircraft due to leaks in ring n is

$$P_n=P_o k n \left(\frac{E_n}{E_o}\right)^2 \qquad (2)$$

where P_o and E_o are the power density and field strength produced at the aircraft by a single leak directly below the aircraft, and E_n is the field strength produced at the aircraft by a single leak in ring n.

A.8 With field strength inversely proportional to distance,

$$\frac{E_n}{E_o}=\frac{A}{[A^2+(203n)^2]^{1/2}}. \qquad (3)$$

Then

$$P_n=P_o k \frac{nA^2}{A^2+(203n)^2} \qquad (4)$$

and

$$\frac{P}{P_o}=1+k\sum_{n=1}^{m}\frac{nA^2}{A^2+(203n)^2} \qquad (5)$$

where P is the total power density due to the single leak below the aircraft plus the power densities contributed by the leaks in m concentric rings, there being kn leaks in the nth ring.

A.9 The total number of leaks in the entire set of rings is

$$N=1+\sum_{n=1}^{m} kn \qquad (6)$$

$$=1+k\frac{m(m+1)}{2}. \qquad (7)$$

To find the total number of leaks in the system required to produce a field of $10\mu V/m$ at the aircraft, we note that

$$\frac{P}{P_o}=\left(\frac{10\times10^{-6}}{E_o}\right)^2 \qquad (8)$$

where E_o is expressed in volts per meter. With fields inversely proportional to distance, we obtain the field E_o from the assumed field at 3 meters, ^3E, by

$$E_o={}^3E\left(\frac{3}{A}\right). \qquad (9)$$

Then from equations (5), (8), and (9),

$$\left[\frac{10^{-5}A}{3(^3E)}\right]^2=1+k\sum_{n=1}^{m}\frac{nA^2}{A^2+(203n)^2} \qquad (10)$$

and we need only to evaluate the summation, solve for k, and use equation (7) to find N. The values of N for various assumed values of ^3E, m, and A are given in Table 1 of the body of this Report and Order.

A.10 According to the Reply Comments by NCTA in this Docket, a choice of $m=22$ and $k=4$ represents roughly the distribution of amplifiers in a 320 strand kilometer (200 strand mile) cable TV system covering about 64 square kilometers (25 square miles). It is this statement that is the basis for the strand kilometer figures in Table 1. A model with 44 rings ($m=44$) is used to represent the 1,280 strand kilometer system.

A.11 To estimate the effect of the most extreme possible cable system leaks, let us estimate the field produced at a 3 meter distance by a well matched antenna with a 3

[1] "Danger to the functioning" defines harmful interference, in the case of safety services.

[2] A study of potential RF interference to aeronautical radio navigational aids, Canadian Department of Communications Technical Report BTRB-5 (L. Chwedchuk, R. Poirier, and L. Walker, 1974).

dB gain relative to isotrophic in all directions above the horizon.[3] Assume the antenna is conected at a point in the cable where the peak power is 50 dBmV, a typical maximuin peak power in a cable TV system. Since the postdetection bandwidth of aircraft receivers is too low to permit the receiver to respond to television signal synchronizing pulses, the power level of interest is the average, not the peak power, of the television signal. We take this to be about 6 dB below peak power.

A.12 Then the equivalent isotrophic radiated power is

$$\text{EIRP}=50\,\text{dBmV}+3\,\text{dB}-6\,\text{dB} \quad (11)$$

$$=47\,\text{dBmV} \quad (12)$$

$$=0.7\times10^{-3}W \quad (13)$$

On a sphere of radius 3 meters the power density becomes

$$^{3}P=\frac{\text{EIRP}}{4\pi r^2} \quad (14)$$

$$=\frac{0.7\times10^{-3}}{4\pi(3)^2} \quad (15)$$

$$=6.2\times10^{-6}\ W/m^2 \quad (16)$$

and the field strength at 3 meters would be[4]

$$^{3}E=(120\pi\times6.2\times10^{-6})^{1/2} \quad (17)$$

$$=4.8\times10^{-2}\ V/m$$

or approximately 50,000 microvolts per meter. This estimate is the basis for the 50,000 microvolts per meter parameter in the last line of Table 1.

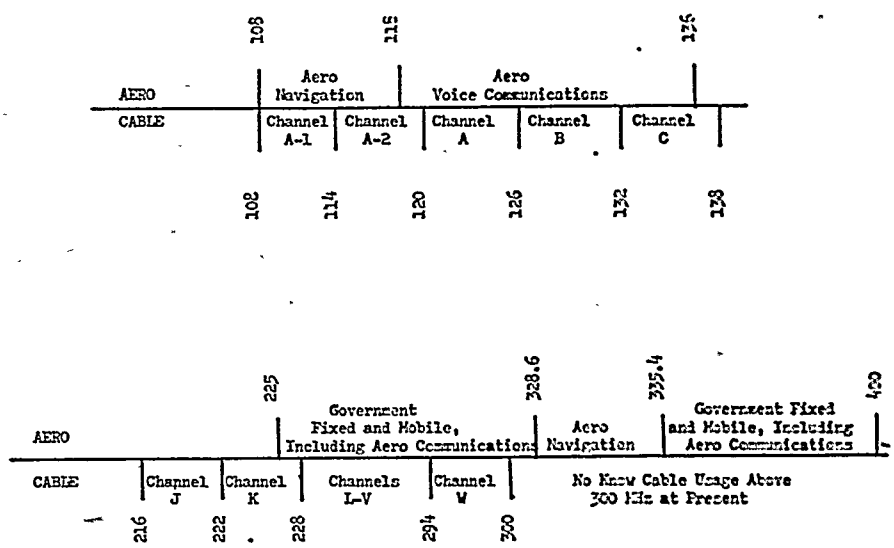
APPENDIX B—FREQUENCY USAGE

Figure B-1 shows frequency allocations adhered to by aeronautical radio services, and traditional (not mandatory) frequency usage by cable television systems. Visual carriers in cable television channels are 1.25 MHz above channel edges, and aural carrier are 5.75 MHz above channel edges.

FIGURE B-1

AERONAUTICAL RADIO AND CABLE TV FREQUENCY USAGE

The numbers are band edge frequencies, in megahertz.



47 CFR Chapter I, Part 76 is amended as follows:

1. A new § 76.610 is added as follows:

§ 76.610 Operation in the frequency bands 108–136 and 225–400 MHz.

All cable television systems transmitting carriers or other signal components cable of delivering peak power equal to or greater than 10^{-5} watts at any point in the cable system in the frequency bands 108–136 and 225–400 MHz for any purpose are subject to the following requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in these bands, noting the type of information carried by the signal (television, aural, or pilot carrier and system control, etc.). The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

(b) The operator of the cable system shall notify the Commission at least 60 days before initiating use of any new frequency or frequencies in these bands. Notification shall include carrier and subcarrier frequencies, types of modulation, and maximum peak power occurring at any location in the cable distribution system.

(c) The operator of the cable system shall maintain at its local office a current listing of all signals carried in these bands, noting carrier and subcarrier frequencies, types of modulation, and maximum peak power which occurs at any location within the cable distribution system.

(d) The operator of the system shall provide for regular monitoring of the cable system for signal leakage covering all portions of the cable system at least once each calendar year. Monitoring equipment and procedures shall be adequate to detect leakage source which produce field strengths in these bands of 20 microvolts per meter at a distance of 3 meters. The operator shall maintain a log showing the date and location of each leakage source identified, the date on which the leakage was eliminated, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years, and shall be made available to authorized representatives of the Commission on request.

(e) All carrier signals or signal components capable of delivering peak power equal to or greater than 10^{-5} watts must be operated at frequencies offset from aeronautical radio services operated by Commission licensees or by the United States Government or its agencies within 111 km (60 nautical miles) of any portion of the cable system, as given in paragraph (f) of this Section. (The limit of 111 km may be increased by the Commission in cases of "extended service volumes" as defined by the Federal Aviation Administration or other federal government agency for low altitude radio navigation or communication services.) If an operator of a cable system is notified by the Commission that a change in operation of an aeronautical radio service will place the cable system in conflict with any of the offset criteria, the cable system operator is responsible for eliminating such conflict within 30 days of notification.

(f) A minimum frequency offset between the nominal carrier frequency of an aeronautical radio service qualifying under paragraph (e) of this Section and the nominal frequency of any cable system carrier or signal component capable of delivering peak power equal to or greater than 10^{-5} watts shall be maintained or exceeded at all times. The minimum frequency offsets are as follows:

Frequencies:	*Minimum frequency offsets*
108–118 MHz 328.6–335.4 MHz	(50 + |T|) kHz.
118–136 MHz 225–328.6 MHz 335.4–400 MHz	(100 + |T|) kHz.

In this table, |T| is the absolute value of the frequency tolerance of the cable television signal. The actual frequency tolerance will depend on the equipment and operating procedures of the cable system, but in no case shall the frequency tolerance T exceed ±25 kHz in the bands 108–136 and 225–400 MHz.

2. A new § 76.611 is added as follows:

§ 76.611 Operation near certain aeronautical and marine emergency radio frequencies.

The transmission of carriers or other signal components capable of delivering peak power equal to or greater than 10^{-5}

[3] This is impossible in practice, but we make this assumption for the sake of a conservative estimate.

[4] Equation (17) assumes plane waves, which may not be valid at 3 meters. However, by our assumption of isotrophic radiation (above the horizon) and the conservation of energy, the results obtained at aircraft altitudes will be valid.

watts at any point in a cable television system is prohibited within 100 kHz of the frequency 121.5 MHz, and is prohibited within 50 kHz of the two frequencies 156.8 MHz and 243.0 MHz.

3. Section 76.613 is revised to read as follows:

§ 76.613 Interference from a cable television system.

(a) Harmful interference is any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

(b) The operator of a cable television system that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending cable television system or appropriate elements thereof shall immediately be suspended upon notification by the Engineer in Charge (EIC) of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the EIC. When authorized by the EIC, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) The cable television system operator may be required by the EIC to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

[FR Doc.77-23455 Filed 8-15-77;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.

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 742 3184]

ZAYRE CORP.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent order, among other things, would require a Framingham, Mass. operator of a discount department store chain to cease failing to have, in each store covered by advertisements, all advertised items available for sale at or below advertised price, in reasonably sufficient quantities to meet anticipated demand; to conspicuously post advertisements and prescribed notices at store entrances and checkout counters; maintain business records for a three-year period; and institute a surveillance program to ensure that its stores' business practices conform to the terms of the order.

DATE: Comments must be received on or before October 13, 1977.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

William M. Gibson, Director, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, Mass. 02114, 617-223-6621.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the FTC Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the matter of *Zayre Corp.*, a corporation.

File No. 742 3184.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Zayre Corp., a corporation, and it now appearing that said corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Zayre Corp., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Zayre Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with a principal office located at 770 Cochituate Road, Framingham, Massachusetts.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. Of this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within thirty (30) days after the sixty day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

It is ordered, That: respondent Zayre Corp., its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing in any advertisement, by any means, that any product is available for sale to the public at its Zayre department stores at any price unless:

1. Each advertised item is readily available for sale to the public in the selling area of each store covered by the advertisement at or below the advertised price; and

2. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously market with a price which is at or below the advertised price; provided, however,

(a) An item shall be deemed readily available for sale to the public, although not in the selling area of each store covered by the advertisement, if a clear and conspicuous notice is posted in the area where the item is regularly displayed stating that the item is in stock or, in the case of an item which is customarily delivered, in the warehouse customarily servicing said store, and may be obtained upon request, and said item is furnished on request;

(b) An item shall not be deemed unavailable if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records as will show that: (i) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand but were "sold out", or the advertised items were advertised with a limit on the available quantity thereof in each store and said items were delivered to the stores in the advertised quantities but were "sold out", or (ii) the advertised items were ordered but not delivered due to circumstances beyond respondent's reasonable control, and that, upon knowledge of such nondelivery, respondent acted immediately to contact the media to revise the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item and, if revision of the advertisement was not reasonably possible, respondent immediately offered to customers on inquiry a "rain check" for each unavailable item which entitled the holder to purchase the item in the

near future at or below the advertised price. Respondent may immediately offer to a disappointed customer another item or items of equal or better value at a reduced price which is at or below the advertised price, which the customer may elect to accept in lieu of a "rain check."

Respondent shall be deemed to have shown, although not limited to such a showing, that it delivered an item to a store in quantities sufficient to meet "reasonably anticipated demand", for the purposes of this order, in a particular advertisement period if it maintains records showing that it had available that item in its stores during that advertisement period in quantities equal to or greater than the quantities of that item sold by its stores during the last preceding comparable advertisement period.

The phrase, "quantities of that item sold by its stores during the * * * advertisement period," means the sum of the number of units in the closing inventory of the stores after closing hours on the night before the first day of the advertisement period, plus the number of units delivered to the stores druing the advertisement period, plus the number of "rain checks" issued for that item during the advertisement period, and minus the number of units in the closing inventory of the stores after closing hours on the last day of the advertisement period.

The phrase, "last preceding comparable advertisement period" means, for a particular item, the last preceding advertisement period (during which the item was advertised) that is most comparable to the particular advertisement period, considering the time of the year, the week of the month, weather conditions, the nature of the item, the amount of the price reduction, the location of the advertisement for the item with reference to the advertisement as a whole, the type size of the advertisement for the item, the availability of a coupon, the location of the product within the stores, and any other relevant factors affecting a customer's buying habits.

If respondent or any of its employees, agents or representatives are not advised of an alleged instance of unavailability through any source including the Federal Trade Commission within three months of its occurrence, it shall be presumed that the records called for by this proviso were in the possession of respondent showing (i) or (ii), unless clear and convincing evidence establishes the contrary.

(c) If any advertisement includes two or more stores, a product shall not be deemed unavailable or mispriced if such advertisement contains a specific exemption with respect to said product and identifies each store in which the product is not available.

(d) If any advertised item is placed for sale in a large stack, pyramid or other special display containing a great number of such items, all of the items need not be individually marked at or below the advertised price, if the items not marked individually at or below the advertised price are so situated that it would be difficult or impossible for a customer to select an unmarked item.

(e) An advertised item which is usually and customarily individually marked with a price, need not be marked with the advertised price but may remain marked at its regular price if both (i) a conspicuous sign at the site of the display of such item clearly discloses that the item is, "as advertised" or "on sale" or words of similar import as appropriate, clearly discloses the advertised price, and clearly states that the cashiers know the sale price; and (ii) the cashiers do in fact have a written list containing such sale price, have been instructed to charge the sale price for said item, and do in fact charge the customer the sale price.

It is further ordered, That: for a period of two (2) years from the date this order becomes final, during the effective period of each advertisement which represents that any product is available at respondent's department stores, respondent shall post conspicuously (a) at or near each doorway affording entrance to the public a copy of the advertisement and, (b) at or near each door affording entrance to the public and at or near the place where customers pay for merchandise, a notice stating that:

"It is our policy to have all items advertised readily available for sale at or below the advertised price. If any advertised item that you wish to purchase is unavailable, except where quantity limitations are indicated in the advertisement, we will offer you a raincheck which will enable you to purchase the item, or an item of comparable or better value, at or below the advertised price in the near future. We may immediately offer you a similar product of equal or better value which you may purchase at or below the advertised price, but you may choose a raincheck if you wish.

If you have any questions, please speak to the store manager or customer service manager."

It is further ordered, That: for a period of two (2) years from the date this order becomes final respondent shall cause the following statement to be clearly and conspicuously set forth in each written advertisement which represents that items are available for sale at a stated price at any of its department stores.

"It is our policy to have each of these advertised items readily available for sale at or below the advertised price in each Zayre store, except as specifically noted in this ad."

It is further ordered, That:

(1) Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organizations down to the level of and including assistant store managers who, directly or indirectly, have any supervisory responsibilities as to individual department stores of respondent, or who are engaged in any aspect of preparation, creation, or placing of advertising, and that respondent shall secure a signed statement acknowledging receipt of said order from each such person;

(2) Respondent shall institute and maintain a program of continuing surveillance adequate to reveal whether the business practices of each of its department stores conform to this order, and shall confer with any duly authorized representative of the Commission pertaining to such program when requested to do so by a duly authorized representative of the Commission;

(3) Respondent shall, for a period of three (3) years subsequent to the date of this order:

(a) Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order;

(b) Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

(c) Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives;

(4) Respondent shall, all other provisions of this order notwithstanding, on or before each of the first three (3) anniversary dates on which this order becomes final file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order in preceding the year.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent, which may affect compliance obligations arising out of this order.

ZAYRE CORP.

[File No. 742 3148]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Zayre Corp., a Delaware corporation with an office and principal place of business in Framingham, Massachusetts.

The Proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested parties and the public. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Zayre Corp. is engaged in the operation of discount department stores in 26 states. Its newspaper advertisements and supplements regularly list and depict clothing, hard goods and other general merchandise and state the price at which such items will be offered for sale during a specific period of time.

The complaint accompanying the proposed order alleges that Zayre Corp. failed to have had, in every instance, each of the advertised items listed in its advertisements readily available for sale to customers and readily and conspicuously available for sale at prices which were at or below the advertised prices during the effective period of the advertisements.

The consent order requires Zayre Corp. to make advertised items readily available for sale to the public, to mark each advertised item with a price which is at or below the advertised price and to sell advertised items at the advertised price. Exceptions make provision for unanticipated demand, circumstances beyond Zayre Corp.'s reasonable control, and limitations clearly set forth in the advertisements.

The order also requires Zayre Corp. to post in its stores copies of advertisements, notices of Zayre Corp.'s policy on availability of advertised items, and the availability of "rain checks" for items not available. Other provisions of the order are designed to ensure Zayre Corp.'s compliance with it.

The public's attention is directed to the Commission's statement which accompanied its acceptance of consent agreements from The Kroger Co., Fisher Foods, Inc., Food Fair Stores, Inc. and Shop-Rite Foods, Inc. which were announced on May 9, 1977, wherein the Commission pointed out that, although the orders differed in some respects from one another, it believed that they all provided methods for achieving increased availability and accurate pricing of sale items and for bringing different chains into substantial compliance with the Trade Regulation Rule concerning Retail Food Store Advertising and Marketing Practices.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-23526 Filed 8-11-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 182, 184, 186]

[Docket No. 77N-0132]

CALCIUM OXIDE AND CALCIUM HYDROXIDE

Proposed Affirmation of GRAS Status as Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would affirm that calcium oxide and calcium hydroxide are generally recognized as safe (GRAS) as direct human food ingredients. In addition, this proposal would affirm the GRAS status of calcium hydroxide as an indirect human food ingredient.

DATE: Comments by October 17, 1977.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of direct and indirect human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposed regulations, published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20040), initiating this review. Pursuant to this review, the safety of calcium oxide and calcium hydroxide has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35, formerly 21 CFR 121.40 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), the Commissioner proposes to affirm the GRAS status of these ingredients.

Calcium oxide and calcium hydroxide are closely related chemical substances in that calcium oxide (lime) reacts with water at ambient temperatures to form the slightly water-soluble calcium hydroxide (slaked lime). Calcium hydroxide readily absorbs carbon dioxide to form the water-insoluble calcium carbonate (limestone). When calcium hydroxide or calcium carbonate is heated, it loses water and/or carbon dioxide to reform calcium oxide.

Calcium oxide and calcium hydroxide are used in food for pH control. Calcium oxide is also used in food as a texturizing, firming, and anticaking agent.

Calcium oxide is listed in § 182.5210 (21 CFR 182.5210, formerly 21 CFR 121.101 (d)(5) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) as GRAS for use as a nutrient and/or dietary supplement and in § 182.1210 (formerly 21 CFR 121.101 (d)(8) prior to recodification) as a multiple purpose GRAS food substance, pursuant to regulations published in the FEDERAL REGISTER of November 20, 1959 (24 FR 9368). Calcium hydroxide is listed in § 182.1205 (formerly § 121.101(d)(8) prior to recodification) as a multiple purpose, GRAS food additive, pursuant to regulations published in the FEDERAL REGISTER of November 20, 1959 (24 FR 9368). Calcium hydroxide is referred to in § 182.90 (formerly 21 CFR 121.101(h) prior to recodification), pursuant to regulations published in the FEDERAL REGISTER of June 17, 1961 (26 FR 5421), as a GRAS substance migrating to food from paper and paperboard products used in food packaging. In addition, calcium hydroxide is regulated in § 176.-210 (formerly 21 CFR 121.2519(d)(2) prior to recodification), pursuant to regulations published in the FEDERAL REGISTER of August 30, 1961 (26 FR 8100), as a substance permitted for use in the formulation of defoaming agents used in the manufacture of paper and paperboard used for packaging, transporting, or holding food.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which calcium oxide and calcium hydroxide were used and the levels of usage. Information from surveys of consumer consumption was obtained and combined with the manufacturing information to obtain an estimate of consumer exposure to these ingredients. The total amounts of calcium oxide and calcium hydroxide used in food in 1970 were reported to be 17,181,000 and 1,454,000 pounds, respectively.

Calcium oxide and calcium hydroxide have been the subjects of a search of the scientific literature from 1920 to the present. The parameters used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection and (13) processing. A total of 108 abstracts on calcium oxide and calcium hydroxide was reviewed, and 10 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

The Select Committee has found no reports of experiments specifically designed to determine the toxicity, mutagenicity, teratogenicity, or carcinogenicity in relation to short-term feeding of calcium oxide. Similar reports are also unavailable on calcium hydroxide, with the exception of a report on acute toxicity in the rat. In the absence of specific studies, there is no reason to suspect calcium as supplied by these two compounds would be different with respect to absorption and metabolism than calcium from other inorganic calcium compounds used as nutrients.

Because the food uses of calcium hydroxide cannot result in the exposure of animals and man to the caustic action of saturated or unbuffered calcium hydroxide solutions, most reports of the exposure of biological systems to such solutions are not relevant to an evaluation of the health aspects of the use of calcium hydroxide in foods.

The oral LD_{50} in rats for calcium hydroxide has been reported as 7,340 mg per kg body weight (range: 4,830 to 11,140 mg per kg body weight). The calcium hydroxide was administered in water (100 mg per ml) which is greatly in excess of its solubility (1.85 mg per ml water at 0° C). Since calcium oxide forms calcium hydroxide in aqueous solution, its acute toxicity should be similarly low if the pH is controlled as it is when used in food.

Negative results were reported in one test for carcinogenicity of solid calcium hydroxide applied to hamster cheek pouches. Hamster cheek pouches were treated with 250 mg of calcium hydroxide per day for five days a week for two weeks; treatment was reduced to three times a week between the 2nd and 40th weeks of treatment. Six animals were treated for 81 weeks. All of the hamsters developed pouch lesions; three of the lesions progressed to distinct cellular atypia. Small foci of atypical cells in the squamous epithelium showed loss of cellular polarity and cells in the basal layer were hyperchromatic and fusiform. The authors "did not consider that these lesions were preinvasive cancer." The hamsters lived their normal lifespans without developing frank neoplasia.

The use of calcium oxide for the treatment of maize (lime-treated maize) causes some degradation of nicotinic acid, riboflavin, and thiamin, but the proportion of the total nicotinic acid in an available form is increased. This problem was studied in relation to the pellagragenic properties of maize. The nutritive deficiency of the treated maize manifested itself in rats in the form of growth rate depression. The rate depression, when compared to maize-fed controls receiving a vitamin B supplement, was reversed by the addition of riboflavin to the diet, or partially reversed by adding thiamin.

Calcium hydroxide is effective in reducing the growth-depressing activity of two percent tannic acid fed in a basal diet to day-old chicks if the calcium hydroxide (0.087 percent) is first mixed as a slurry with the tannic acid. The authors speculated that under the alkaline conditions tannic acid and naturally present phenolic compounds were oxidized to less toxic compounds.

All the available safety information on calcium oxide and calcium hydroxide has been carefuly evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

Calcium oxide and calcium hydroxide as used in foods contribute to the total biologically available dietary calcium. No evidence has been found that demonstrates these compounds have adverse nutritional implications in the overall dietary intake of cations. Thus, normal physiological mechanisms that control calcium metabolism allow man to utilize these sources of calcium.

It is the conclusion of the Select Committee that there is no evidence in the available information on calcium oxide and calcium hydroxide that demonstrates or suggests reasonable grounds to suspect a hazard to the public when they

are used as direct or indirect food ingredients at levels that are now current or that might reasonably be expected in the future. The Commissioner concurs with this conclusion based upon his own evaluation of all available information on calcium oxide and calcium hydroxide (including the results of mutagenic and teratogenic evaluations of calcium oxide, which were not available when the Select Committee formed its conclusions). Copies of the evaluations, as well as all other relevant data, are on file with the Hearing Clerk, Food and Drug Administration. The Commissioner therefore concludes that no change in the current GRAS status of calcium oxide and calcium hydroxide is justified.

Copies of the scientific literature review and the report of the Select Committee on calcium oxide and calcium hydroxide, as well as copies of the mutagenic and teratogenic evaluations of calcium oxide, are available for review at the office of the Hearing Clerk (HFC-20), Food and Drug Administration, and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, Va. 22151, as follows:

Title	Order No.	Price code	Price [1]
Calcium oxide and calcium hydroxide (scientific literature review)	PB-223-851/AS	A02	$3.50
Calcium oxide and calcium hydroxide (report of select committee)	PB-254-540/AS	A02	3.50
Calcium oxide (teratogenic evaluation)	PB-245-537/AS	A03	4.00
Calcium oxide (mutagenic evaluation)	PB-245-480/AS	A03	4.00

[1] Price subject to change.

This proposed action does not affect the present use of calcium oxide and calcium hydroxide for pet food or animal feed, and it does not affect the regulated use of calcium hydroxide as a defoaming agent, or as a component thereof, in the manufacture of paper and paperboard food packaging materials (21 CFR 176.210).

Calcium oxide is listed under § 182.5210 as a nutrient and/or dietary supplement and under § 182.1210 as a multiple purpose GRAS food substance. The Commissioner has determined that such a concurrent listing is duplicative and, therefore, is proposing that § 182.5210 be deleted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 182, 184, and 186 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.5210 [Revoked]

1. Part 182 is amended by revoking § 182.5210 "Calcium oxide."

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended by adding §§ 184.1205 and 184.1210 to read as follows:

§ 184.1205 Calcium hydroxide.

(a) Calcium hydroxide ($Ca(OH)_2$, CAS Register No. 001305-62-0) is commonly referred to as slaked lime or calcium hydrate. It is produced by the hydration of lime.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972).[1]

(c) The ingredient is used as a firming agent as defined in § 170.3(o) (10) of this chapter, flavor enhancer as defined in § 170.3(o) (11) of this chapter, flavoring agent and adjuvant as defined in § 170.3(o) (12) of this chapter, formulation aid as defined in § 170.3(o) (14) of this chapter, nutrient supplement as defined in § 170.3(o) (20) of this chapter, pH control agent as defined in §170.3 (o) (23) of this chapter, and processing aid as defined in § 170.3(o) (24) of this chapter.

(d) The ingredient is used in food at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of: 0.01 percent for alcoholic beverages as defined in § 170.3(n) (2) of this chapter, 1.0 percent for coffee and tea as defined in § 170.3(n) (7) of this chapter, 0.45 percent for dairy product analogs as defined in § 170.3(n) (10) of this chapter, 0.9 percent for grain products as pastas as defined in § 170.3(n) (23) of this chapter, 0.5 percent in milk products as defined in § 170.3(n) (31) of this chapter, 0.075 percent for plant protein products as defined in §170.3(n) (33) of this chapter, 0.9 percent for snack foods as defined in § 170.3(n) (37) of this chapter, 0.004 percent for soft candy as defined in § 170.3(n) (38) of this chapter, 0.2 percent for soups and soup mixes as defined in § 170.3(n) (40) of this chapter, and 0.001 percent or less for all other food categories.

§ 184.1210 Calcium oxide.

(a) Calcium oxide (CaO, CAS Register No. 001305-78-8) is commonly referred to as lime, quick lime, burnt lime, or calx. It is produced from calcium carbonate, limestone, or oyster shells by calcination at temperatures of 1700-2450° F.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972).[1]

(c) The ingredient is used as an anticaking and free-flow agent as defined in § 170.3(o) (1) of this chapter, firming agent as defined in § 170.3(o) (10) of this chapter, nutritive supplement as defined in § 170.3(o) (20) of this chapter, pH control agent as defined in §170.3(o) (23) of this chapter, and texturizer as defined in § 170.3(o) (32) of this chapter.

(d) The ingredient is used in foods at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of: 0.03 percent for nonalcoholic beverages and beverage bases as defined in § 170.3(n) (3) of this chapter, 0.06 percent for grain products and pastas as defined in § 170.3(n) (23) of this chapter, 0.075 percent for milk products as defined in § 170.3(n) (31) of this chapter, 0.03 percent for soft candy as defined in § 170.3(n) (38) of this chapter, and 0.01 percent or less for all other food categories.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. Part 186 is amended by adding § 186.1205 to read as follows:

§ 186.1205 Calcium hydroxide.

(a) Calcium hydroxide ($Ca(OH)_2$, CAS Reg. No. 001305-62-0) is commonly referred to as slaked lime or calcium hydrate. It is produced by the hydration of lime.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972).[1]

(c) The ingredient is used or intended for use as a constituent of paper and paperboard food-contact surfaces.

(d) The ingredient migrantes to the packaged or wrapped food at levels not to exceed good manufacturing practices.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of these ingredients in foods under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181, incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before October 17, 1977 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk

[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, D.C. 20037.

docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 8, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

NOTE.—Incorporation by reference provisions approved by the Director of the FEDERAL REGISTER on July 10, 1973. Incorporated material is on file at the FEDERAL REGISTER'S library.

[FR Doc.77-23421 Filed 8-15-77;8:45 am]

[21 CFR Part 312]

[Docket No. 77N-0190]

NEW DRUGS FOR INVESTIGATIONAL USE

Availability of Draft of Bioresearch Monitoring Data Collection Form

AGENCY: Food and Drug Administration.

ACTION: Proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering revising the investigational new drug regulations to require the submission of certain information on a new bioresearch monitoring data collection form that is amenable to a data processing storage and retrieval system. Before proposing amendments to the regulations, however, FDA is testing a draft of the data collection form with the cooperation of sponsors of investigational new drugs (IND's). The Commissioner of Food and Drugs concludes that since the draft data collection form is being made available to participants in the testing program, it should be made available to all interested persons.

DATES: Comments on the draft form may be submitted by October 17, 1977.

ADDRESS: Written comments on the draft form may be sent (preferably four copies) to the Hearing Clerk (HFC-20), Foor and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Terence A. Sweeney, Bureau of Drugs (HFD-622), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3695.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is considering proposing revisions to the investigational new drug regulations in § 312.1 (21 CFR 312.1) Conditions for exemption of new drugs for investigational use, to require that certain basic information currently required to be submitted to the agency on Form FR-1571, Notice of Claimed Investigational Exemption for a New Drug (IND), be submitted on a bioresearch monitoring data collection form that is amenable to a data processing storage and retrieval system. Before proposing amendments to the regulations to provide for the form, however FDA, with the cooperation of a small number of sponsors of INDs, intends to test a draft of the form. The draft form being tested requests some information not presently required by the regulations, and its adoption may necessitate substantitive changes in the IND regulations.

The Commissioner of Food and Drugs concludes that since the draft bioresearch monitoring data collection form is being made available to some members of the regulated industry, it should be made available to all interested persons. Accordingly, a copy of the draft form and a copy of the cover letter to participants in the test have been placed on display in the office of the Hearing Clerk at the address given above, and may be seen in that office between the hours of 9 a.m. and 4 p.m., Monday through Friday. Copies of the letter and the draft form are available upon request from the Hearing Clerk.

The participants in the test of the draft form are being asked to complete and submit the draft form for a current or recent IND and to comment on the following specific areas:

(1) The time required to complete the form, including research and abstracting of data; (2) The availability of the data requested; (3) The sufficiency and clarity of instructions; (4) The adequacy of space to report relevant information; (5) The data organization and relationships within the body of the form; (6) The duplication of information already submitted to FDA on another form; and (7) The overall design of the form.

Any other person who wishes to submit comments on the draft form in these or other areas should submit them (preferably four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) to the Hearing Clerk at the address given above, on or before October 17, 1977. Received comments that do not contain information exempted from public disclosure may be seen in that office at the times given above. Information submitted by test participants on current or recent IND's that is exempt from public disclosure will not be available to the public.

Because the draft form is still undergoing review within FDA, the draft copy on display does not represent the agency's final decision on this matter. All members of the public will be afforded a further opportunity to comment when a notice of proposed rule making on this matter is published in the FEDERAL REGISTER.

Dated: August 8, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-23508 Filed 8-15-77;8:45 am]

[21 CFR Part 808]

[Docket No. 76P-0344]

MEDICAL DEVICES

Public Hearing on Proposed Action on California Application for Exemption from Preemption of Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of time for comment.

SUMMARY: This document extends to August 31, 1977 the time for submission of comments on matters discussed at a hearing held on July 19, 1977 by the Food and Drug Administration (FDA). The hearing was on the agency's proposed action on California's application for exemption from preemption of the State's medical device requirements.

DATE: Written comments by August 31, 1977.

ADDRESS: Written comments (four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Daniel Woloshen, Bureau of Medical Devices (HFK-122), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: On July 19, 1977, a hearing before the Commissioner of Food and Drugs was held at FDA headquarters in Rockville, MD to receive comments and views from interested persons on the proposed action by FDA on the State of California's application for exemption from Federal preemption of the State's medical device requirements. The proposed regulation was published in the FEDERAL REGISTER of February 15, 1977 (42 FR 9186) and the notice of hearing was published on May 20, 1977 (42 FR 25919). The regular comment period for the proposed action ended on April 18, 1977, and the record of the hearing remained open until August 3, 1977 to permit submission of additional comments limited to matters discussed during the hearing.

Because of several written requests for an extension of the August 3 comment date and to allow all interested parties an opportunity to review and analyze the transcript of the proceedings, the Commissioner hereby grants an extension of the comment period until August 31, 1977. This extension is available only for the purpose of allowing comments pertaining to matters discussed at the hearing. A copy of the transcript of the hearing is available at the office of the Hearing Clerk.

Dated: August 15, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-23843 Filed 8-15-77;10:00 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21358; RM-2661]

FM BROADCAST STATION IN OGDEN, UTAH

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: FCC proposes to remove the reservation of Channel *9 at Ogden, Utah, for noncommercial educational use only. This action would bring a first commercial VHF television station to Ogden and results from a petition filed by Ashley L. Robison, d.b.a. KWIC Communications Company.

DATES: Comments must be received on or before September 19, 1977, and reply comments on or before October 11, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 4, 1977.

Released: August 10, 1977.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Ogden, Utah).

By Acting Chief, Broadcast Bureau:

1. The Commission has before it for consideration a petition for rule making filed by Ashley L. Robison, d.b.a. KWIC Communications Company ("Robison"). The petition seeks amendment of Section 73.606(b) of the Commission's Rules, the Television Table of Assignments, by removing the reservation of Channel *9 at Ogden, Utah, for noncommercial educational use only. Robison contemplates offering a commercial service on this channel. KUTV, Inc., KSL, Inc., licensees of Salt Lake City, Utah, VHF commercial television stations, and the National Translator Association opposed the proposal and Robison responded.

2. Ogden (pop. 69,478), seat of Weber County (pop. 126,278),[1] is located approximately 56 kilometers (35 miles) north of Salt Lake City, Utah.[2] Ogden is currently assigned Channels *9+, *18—, 24 and 30. All are vacant, and no applications are pending for any of these channels. Ogden is located within the predicted Grade A contours of all three commercial Salt Lake City stations. It is also located within the predicted Grade A contours of noncommercial educational Stations KUED at Salt Lake City, and KBYU-TV at Provo.

3. Petitioner notes that since 1960, Weber County has grown by 22 percent, although the population of Ogden has remained constant. Weber County is the home of Hill Air Force Base, the Defense Depot Ogden, Weber State College and the Western Service Center of the Internal Revenue Service. Ogden, Utah's second largest city, is a rail center, served by four railroads and fourteen trunk lines. Robison also asserts that Weber County is undergoing a significant residential and industrial expansion. It is said that between 1967 and 1974, the county's annual gross taxable sales rose from $228 million to $417 million, personal income rose from $291 million to $482 million and its nonagricultural payroll rose from $195 million to $297 million.

4. Petitioner contends that to develop viable commercial television service at Ogden, it is necessary to use a VHF channel, thus necessitating the return of Channel 9 to its original status as a commercial channel.[3] He bases his argument on the present and historical status of television in Utah. As to the current situation, the three operating commercial television stations in Salt Lake City are the only commercial stations in Utah. These facilties, as well as the previously mentioned educational stations, all operate in the VHF band. Presently all fifteen UHF television channels assigned to Utah are unoccupied,[4] including three at Ogden, and there are six unoccupied VHF channels in Utah, including Ogden's Channel *9.[5] In the not too distant past, however, Channel 9 at Ogden was utilized by the Board of Education of Ogden City which operated noncommercial educational Station KOET(TV) from 1964, until it went silent in 1973. Upon its failure to file an application for renewal of license, the station's authority terminated and its call sign was deleted by the Commission on January 31, 1975. Similiarly, noncommercial educational Station KWCS-TV, which formerly occupied Channel 18 at Ogden, and had been licensed to the Weber County School District, had its call sign deleted at that time. Channels 24 and 30 have never been occupied. Thus, petitioner contends that the failure of both Ogden noncommercial educational stations, the fact that the only stations in Salt Lake City and the remainder of Utah are VHF, and the fact that commercial operation of a non-network affiliated station (especially UHF) is generally financially unsuccessful when it faces strong competition from VHF network affiliated stations,[6] indicates that a commercial television operation on either available UHF channel at Ogden would not be an economically viable undertaking.

5. Petitioner notes that in 1970 the Commission rejected a proposal, filed by the Ogden Board and the Utah Television Corporation, to remove the reservation of Channel *9 in order to permit a dual commercial-educational use of the facility.[7] He argues, however, that the subsequent silencing of both educational television stations in Ogden indicates that educational broadcasting in Ogden is not feasible. To further support this thesis, Robison submits letters from various Utah educational and governmental leaders declining interest in using the channel and expressing interest in using Channel *9 for a commercial station. This led Robison to argue that Channel *9 is not likely to be operated as a noncommercial educational facility. Petitioner further asserts that its proposal would not be likely to have any adverse impact on UHF development at Ogden, for there is little likelihood that Channel 24 or Channel 30 will in the near future be used as commercial broadcast facilities. More significant, argues Robison, if UHF commercial development is to occur anywhere in the area, it is more likely in Salt Lake City, a substantially larger city.

6. KUTV, Inc. ("KUTV"), licensee of Station KUTV, Channel 2, Salt Lake City, opposes the instant petition, arguing that the proposal is a thinly disguised effort to reallocate Channel *9 from Ogden to Salt Lake City and convert it to commercial use in the latter community. In support of its contention, KUTV attaches a verified copy of the official minutes of proceedings of the Board of City Commissioners of Salt Lake City for January 15, 1976, reflecting that the first item on the Board's agenda for that day was a petition filed by Robison for leave to purchase from the Salt Lake City Corporation certain city-owned property on Ensign Peak, a site wholly within the city limits of Salt Lake City. The minutes indicate that Robison's purpose in acquiring the property was related to his application for a construction permit to build a television station to serve the cities and towns of the Wasatch Front.[8] KUTV asserts that

[1] All population figures are taken from the 1970 U.S. Census.

[2] A proposal to assign VHF Channel 13 to Salt Lake City is presently pending in the VHF Drop-In Proceeding, Docket No. 20418, 42 Fed. Reg. 16782 (March 30, 1977).

[3] The channel was once used commercially as Station KVOG-TV, but was not successful. In 1962, the license was assigned to the Board of Education of Ogden City, Utah, whose requests to change the call letters of the station to KOET, and to reserve Channel 9 for noncommercial educational use were granted.

[4] Five UHF commercial channels and ten UHF noncommercial educational channels are assigned to Utah.

[5] Eleven VHF channels are assigned to Utah, eight commercial channels and three noncommercial educational channels. Three commercial and two educational stations are in operation.

[6] Robison asserts that as Ogden is in the Grade A contours of all three Salt Lake City network affiliates, a network affiliation for a station at Ogden is precluded. He further submits that operation of a non-network affiliate in a city of approximately 70,000 is only practicable in the same band as the network competition.

[7] In the Matter of Ogden, Utah, 26 F.C.C. 2d 142 (1970).

[8] KUTV submits that the Wasatch Front is a geographical term used to describe the western slope of the Wasatch Mountains which run in a north-south direction from the city of Provo, approximately 64 kilometers (40 miles) south of Salt Lake City, to the Utah-Idaho border more than 80 kilometers (50 miles) north of Ogden.

Robison's stated intent to serve Wasatch Front and his choice of a site in Salt Lake City, as well as newspaper articles emphasizing that the proposed facility would serve Salt Lake City,[9] indicate that petitioner intends to provide primarily a service to Salt Lake City and only secondarily a service to Ogden.[10]

7. Opponent further submits that the adverse factors considered by the Commission in its 1970 decision rejecting its earlier proposal regarding Ogden still exist. For instance, the removal of the Channel 9 transmitter site from Ogden to a point near Salt Lake City, alleges KUTV, would have an adverse impact on the extensive network of VHF and UHF television broadcast translator stations[11] upon which the residents of most of the land area of Utah and a significant part of the adjacent states of Nevada, Idaho, Colorado and Wyoming must depend for free over-the-air television service.[12] Opponent also contends that the present educational needs and financial resources of Ogden and Weber County may change and thus the present proposal to end the Channel *9 reservation could be shortsighted.

8. In reply, Robison asserts that he intends to serve Ogden and that his studio would be located in Ogden. However, he asserts that it would be unrealistic to think that Salt Lake City and its audience would not be a factor in determining whether to compete with three nearby VHF network affiliates and initiate independent television service. Petitioner submits that any problem in this regard should be resolved in a licensing context and not as a rulemaking matter. As to the question of interference to translators, petitioner replies that the total number of translators possibly affected by the activation of Channel 9 is 20, not the 118 shown by KUTV or the 59 shown by the National Translator Association. Furthermore, because of terrain factors, Robison contends that some of these 20 translators may not be affected at all. He notes that, in any event, when a decision must be made as to whether a VHF translator station or a VHF television station will operate, the translator station must always accommodate the television station. Petitioner also comments that in reaffirming its 1970 decision, the Commission stated that denial had not been based upon the impact which the proposal was alleged to have on area translator operations—a factor originally mentioned—since only a relatively small number of translators would be affected to the point of needing available replacements and, in any event, translators are purely a secondary use of television facilities.[13]

9. We believe that petitioner's proposal should be considered. However, we have never before removed the reservation for a channel in the manner proposed here[14] and, thus, hesitate to do so unless the public interest considerations are of such consequence as to demand it. It appears that in some respects the facts have changed since 1970, but a number of serious questions remain, as is evident from the comments already filed in this proceeding. Several points must be answered before a determination can be made that removing the reservation on Channel *9 at Ogden would be in the public interest. Comments should be directed to our concerns of whether the use of Channel *9 commercially would prevent any possibility of Ogden's having a noncommercial educational station. Also, we need to consider what impact, if any, the proposal would have on UHF development in the Ogden and Salt Lake City areas; and how the proposal would affect existing translator services in Utah and surrounding states and whether any reimbursement should be provided to any of the translator stations affected by the proposal. We are also interested in obtaining comments on whether the proposal is designed to provide an Ogden or a Salt Lake City facility. If the latter is the case, we note the proposal to assign VHF Channel 13 to Salt Lake City, presently pending in the VHF Drop-In Proceeding. See n. 2, supra. If the former, it needs to be demonstrated that the presently assigned UHF channels could not be used to meet this need. We also invite other comments useful in considering this case of first impression.

[9] Attached to KUTV's opposition are copies of newspaper articles which appeared in the January 20 and March 12, 1976, editions of the Salt Lake Tribune.

[10] The National Translator Association, in its reply filing opposing the petition, noted that Robison's representatives have approached Station KSL-TV in Salt Lake City for the purpose of seeking permission to locate the proposed Channel 9 facility at Farnsworth Peak, the site of the KSL-TV antenna. This site is 29 kilometers (18 miles) southwest of Salt Lake City and over 64 kilometers (40 miles) southwest of Ogden, Utah.

[11] The allegation of interference to translators concerns two separate but related points. First, operation of a station on Channel 9 at a site near Salt Lake City would cause interference to the reception of signals from translator stations operating on Channels 8, 9 and 10. This interference would affect the signal received by the public, as well as the signal received by translators relying on transmissions from translators operating on Channels 8, 9 and 10. Second, and of great significance, is the fact that some of the translators would cause interference to the reception of a television station operating on Channel 9 at Ogden in contravention of Section 74.703(b) and thus would be required to change their channels of operation.

[12] KSL, Inc., licensee of Station KSL-TV, Salt Lake City, Utah, and the National Translator Association joined KUTV in opposing the petition on this basis.

[13] *In the Matter of Ogden, Utah*, 28 F.C.C. 2d 705 (1971).

[14] But see In the Matter of Fostering Expanded Use of UHF Television Channels, 2 F.C.C. 2d 527 (1966), in which the Commission, in designing a revised and expanded Television Table of Assignments made numerous changes, including adding and removing reservations from various channels. That case presented a very different factual situation as no net loss in educational reservations was involved.

§ 73.606 [Amended]

10. Accordingly, pursuant to Sections 4 (i), 5(d) (1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend the Television Table of Assignments (§ 73.606 (b) of the Commission's Rules) as follows with respect to the community listed below:

City	Channel No.	
	Present	Proposed
Ogden, Utah	*9+, *13-, 24, 30	9+, *13-, 24, 30

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a Channel will be assigned.

12. Interested parties may file comments on or before September 19, 1977, and reply comments on or before October 11, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
NEAL K. MCNAUGHTEN,
Acting Chief,
Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections (4) (i), 5(d) (1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b) (6) of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the set forth in this notice of proposed rule making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproopsals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before

the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing this comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW, Washington, D.C.

[FR Doc.77-23539 Filed 8-15-77;8:45 am]

[47 CFR Part 73]

[Docket No. 21355; RM-2834]

FM BROADCAST STATION IN CAPE CHARLES, VIRGINIA

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of J. Grayson Duer, FFC proposes to assign FM Channel 241 to Cape Charles, Va., as its first FM assignment. If channel is assigned, it would provide Cape Charles with its first local FM service.

DATES: Comments are to be filed on or before September 19, 1977, and reply comments on or before October 11, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 4, 1977.

Released: August 10, 1977.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Cape Charles, Va.).

1. *Petitioner, Proposal and Comments:*

(a) Petition for rulemaking[1], filed by J. Grayson Duer ("petitioner"), proposing the assignment of Class B Channel 241 to Cape Charles, Va., as a first FM assignment to that community.

(b) The channel could be assigned in conformity with the minimum distance separation requirements. There were no oppositions to the proposal.

2. *Community Data:*

(a) *Location:* Cape Charles is located on the eastern shore of Virginia about 18 kilometers (11 miles) north of the tip of the Delmarva Peninsula.

(b) *Population:* Cape Charles—1,689; Northampton County—14,442.[2]

(c) *Local Broadcast Service:* There is presently no local service in Cape Charles.

(d) *Economic Data:* Petitioner has furnished sufficient information regarding the social and economic factors which demonstrates Cape Charles' need for an FM channel assignment. It appears that agriculture plays an important role in the area's economy in addition to the seafood industry. Petitioner notes that the Chesapeake Bay and Atlantic Ocean provide the basis for the substantial recreational and tourist industry. It adds that new industry is moving into Cape Charles, such as Brown and Root, Inc., which has been given final authority to commence construction of a plant to fabricate large metal components and structures for outer continental shelf drilling rigs. Petitioner states that this means new jobs and a boost for the Cape Charles economy.

3. *Preclusion Studies:* Preclusion would occur on Channels 240A and 241. One community (Onancock, pop. 1,614) would be precluded as a result of the assignment of Channel 241. Onancock has no FM assignments and no AM station; however, petitioner states that two Class A channels are available for assignment.

4. *Coverage:* Petitioner's engineering study shows that a Class B station operating with 30 kW at 91 meters (300 feet) would provide second FM service as well as second nighttime aural service to 1,374 persons in an area of 62 square kilometers (24 square miles). A Class A assignment would not provide such service. No first FM or nighttime aural service would be provided by the proposed assignment.

5. *Comments:* Petitioner contends that the proposed channel is available for use in only a small area and no other Class B channels are available in that area. It adds that activation of the proposed facility would render service to areas which presently receive inadequate aural service, and only a Class B assignment would be viable because of the competition from two existing Class B stations on the Delmarva Peninsula.[3]

6. Even though Cape Charles is a small community which ordinarily would be assigned a Class A channel, the population distribution of the whole southern portion of the peninsula is such that there are few significant population centers to which Class B channels could be assigned. Other than Cape Charles and Onancock, the channel cannot be utilized at any other community. If Channel 241 were to be assigned to Cape Charles it would preclude its utilization at Onancock, a community of comparable size. However, thus far no expression of interest has been shown for a channel assignment to that community and there are other channels available for assignment to Onancock. In our view this proposal has sufficient merit to warrant exploration in a rule making proceeding. The proposed assignment could provide a first local aural service to Cape Charles and could also provide a second FM service and second nighttime aural service to 1,374 persons in an area of 62 square kilometers (24 square miles).

§73.202 [Amended]

7. In light of the foregoing, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, with regard to Cape Charles, Va., as follows:

City	Channel No.	
	Present	Proposed
Cape Charles, Va.		241

8. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein:

NOTE.—A showing of continuing interest by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before September 19, 1977, and reply comments on or before October 11, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
NEAL K. MCNAUGTHEN,
Acting Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the notice of proposed rulemaking to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given as long as they are

[1] Public Notice of the filing of the petition was given on February 22, 1977 (Report No. 1030).

[2] Population figures are taken from the 1970 U.S. Census.

[3] Station WESR-FM (Channel 277), Tasley, Virginia; Station WEXM-FM (Channel 298), Exmore, Va.

filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc.77-23542 Filed 8-15-77;8:45 am]

[47 CFR Part 73]

[Docket No. 21357; RM-2874]

FM BROADCAST STATION IN ANTIGO, WIS.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action herein proposes the substitution of a Class C channel for a Class A channel in Antigo, Wis., at the request of Antigo Broadcasting Co. Petitioner states that the service area on its present Class A channel is limited and, beyond its present primary service, lie areas which would be served by the proposed Class C facilities.

DATES: Comments must be received on or before September 19, 1977, and reply comments must be received on or before October 11, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

Adopted: August 4, 1977.

Released: August 10, 1977.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Antigo, Wis.).

1. *Petitioner, Proposal and Comments:*

(a) *Notice of proposed rulemaking* is hereby given concerning amendment of the FM Table of Assignments § 73.202 (b) of the Commission's Rules and Regulations) as concerns Antigo, Wis.

(b) A petition for rulemaking[1] was filed on behalf of Antigo Broadcasting Co., licensee of Stations WATK and WATK-FM, Antigo, Wis., proposing the substitution of Class C Channel 287 for Channel 285A, on which it operates, at Antigo, Wis. The petitioner has also submitted an engineering statement.

2. *Demographic Data:*

(a) *Location:* Antigo is located 256 kilometers (160 miles) northwest of Milwaukee, Wis.

(b) *Population:* Antigo—9,005; Langlade County—19,220.[2]

(c) *Local Broadcast Service:* Antigo is served by Stations WATK-FM (Channel 285A), and daytime-only AM Station WATK, both licensed to petitioner.

3. *Preclusion Studies:* The proposed assignment of Channel 287 to Antigo would cause preclusion on Channels 287 and 288A. Twenty-six communities with populations greater than 1,000 are located in the areas of preclusion. Fourteen of these communities have AM stations and FM stations or assignments. The remaining twelve[3] have neither AM nor FM stations or assignments. Petitioner should indicate whether there are any other channels available for assignment to the six communities with populations over 2,500 and which are underlined in footnote 3.

4. *Additional considerations:* Petitioner states that the service area on its present Class A channel (285A) is limited and, beyond its present primary service lie areas which would be served by petitioner's proposed Class C facilities. It points out that parts of this gain area have no FM service and some parts have one FM service. Petitioner notes that Antigo is the only city in Langlade County and has nearly half the county's population. It asserts that the city is the trading center for the area to the north and east where there is a scarcity of service. It adds that Antigo is also the commercial and media center for a wide area, and is relied on by residents of surrounding areas for information and entertainment.

5. *Roanoke Rapids Study:* Although the petitioner has submitted a map generally indicating the area which would receive the proposed service, a more precise showing is necessary. A Roanoke Rapids[4] showing of first and second FM service should be submitted based upon a Class C station's operating at Antigo with petitioner's proposed facilities (100 kW and 153 meters (500 feet) AAT), existing stations' operating with reasonable facilities or greater in the event the stations are already authorized greater facilities, and all unoccupied assignments in the area operating with reasonable facilities. In addition, the petitioner should submit a comparative coverage study showing the areas and the number of people which could receive such first and second FM service from a Class A station located at Antigo. The above showings should also include the extent of nighttime service provided by AM broadcast stations, indicating the extent of aural services available within the proposed service area. Anamosa-Iowa City, Iowa, 40 F.C.C. 2d 520 (1974).

6. Since Antigo is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 287 to Antigo requires coordination with the Canadian Government.

7. Regarding the proposed modification of petitioner's license to specify Channel 287, if it were assigned, our policy, as expressed in Cheyenne, Wyo., 62 F.C.C. 2d 63 (1976), is that the public interest is best served where other interested parties are afforded an opportunity to apply for such a Class C channel when assigned as a substitute for a Class A channel to a community. However, since no person has expressed an interest in the proposed assignment of Channel 287 to Antigo thus far, we are proposing to modify the license of Station WATK-FM to the Class C channel. Should an opposition to the proposed modification together with an expression of interest be submitted in comments, appropriate comparative consideration must be afforded any competing application for the channel, if assigned.

8. An Order to Show Cause to the petitioner will not be necessary since assent of the licensee of the station whose authorization is to be modified is clearly indicated by its request for rule making.

§ 73.202 [Amended]

9. In view of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, with regard to Antigo, Wis., as follows:

City	Channel No.	
	Present	Proposed
Antigo, Wis.	285A	287

10. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix.

11. Interested parties may file comments on or before September 19, 1977, and reply comments on or before October 11, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
NEAL K. MCNAUGHTEN,
Acting Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commis-

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[1] Public Notice of the filing of the petition was issued on April 18, 1977, Report No. 1039.

[2] Population figures are taken from the 1970 U.S. Census.

[3] Wisconsin: Phillips (pop. 1,511); Crandon (1,582). Michigan: Calumet (1,007); Baraga (1,116); Lake Linden (1,214); Crystal Falls (2,000); L'Anse (2,538); Wakefield (2,757); Bessemer (2,805); Laurium (2,868); Norway (3,033); Negaunee (5,248).

[4] Roanoke Rapids-Goldsboro, N.C., 9 F.C.C. 2d 672 (1967).

sion's Rules and Regulations, as set forth in the Notice of Proposed Rulemaking to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc.77-23538 Filed 8-15-77;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 143]

[DoD Directive 1354.1]

RELATIONSHIPS WITH ORGANIZATIONS WHICH SEEK TO REPRESENT MEMBERS OF THE ARMED FORCES IN NEGOTIATION OR COLLECTIVE BARGAINING

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish departmental policies and procedures with respect to organizations whose objective is to organize or represent members of the Armed Forces on active duty, inactive duty training, or members of Reserve components serving in their military capacities, for purposes of negotiating or bargaining about terms or conditions of military service. These policies and regulations are needed to provide uniform direction and guidance to officials in the Department of Defense and members of the Armed Forces, and to ensure consistent and even-handed treatment of members of the Armed Forces and individuals, groups, organizations, and associations seeking or purporting to represent members of the Armed Forces for the purpose of such negotiating or bargaining.

DATES: Written comments must be received on or before September 15, 1977.

ADDRESSES: Written comments should be sent to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Department of Defense, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT:

Captain Edward Boywid, United States Navy, 202-695-0625

SUPPLEMENTARY INFORMATION: The new rule prohibits commanders and supervisors of the Department of Defense, acting on behalf of the United States, from engaging in negotiation or collective bargaining with members of the Armed Forces or with individuals, groups, organizations, or associations purporting to represent members of the Armed Forces for the purpose of resolving bilaterally terms or conditions of military service. It also prohibits members of the Armed Forces from engaging in strikes, slowdowns, work stoppages, actions which obstruct or interfere with the performance of military assignments, and picketing for the purpose of causing any of the foregoing, when such actions are related to terms or conditions of military service. The rule proscribes efforts on military installations to recruit members of the Armed Forces into certain types of organizations and, in specific circumstances, prohibits membership by members of the Armed Forces in certain organizations. In addition to setting forth supplementary general prohibitions and enumerating activities specifically not prohibited, the rule vests responsibility for assuring compliance in the heads of the various departmental components.

Accordingly, it is proposed to publish 32 CFR Part 143 as follows:

PART 143—RELATIONSHIPS WITH ORGANIZATIONS WHICH SEEK TO REPRESENT MEMBERS OF THE ARMED FORCES IN NEGOTIATION OR COLLECTIVE BARGAINING

Sec.
143.1 Purpose.
143.2 Applicability and Scope.
143.3 Policy.
143.4 Prohibited Activity.
143.5 Permissible Activity.
143.6 Administrative Provisions.
143.7 Definitions.
143.8 Guidelines.

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 133, 3010, 5011, and 8010, and in accordance with 32 CRF 296.

§ 143.1 Purpose.

This Part establishes policies and procedures with respect to organizations whose objective is to organize or represent members of the Armed Forces for purposes of negotiating or bargaining about terms or conditions of military service. The Part does not modify or diminish the existing authority of commanders to control access to, or maintain good order and discipline on, military installations; nor does it modify or diminish the obligations of commanders and supervisors pursuant to Executive Order 11491 with respect to organizations representing Department of Defense civilian employees.

§ 143.2 Applicability and scope.

The provisions of this Part apply to:

(a) The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

(b) All military and civilian personnel of the Department of Defense.

(c) Individuals and groups entering, using, or seeking to enter or use military installations.

§ 143.3 Policy.

The mission of the Department of Defense is to safeguard the security of the United States. Discipline, obedience to lawful orders, and loyalty on the part of members of the Armed Forces are essential to the combat readiness required to accomplish this mission. The interposition of collective or concerted action by any organization in the command relationships established by law and regulation for the government of the Armed Forces would:

(a) Erode the discipline of the Armed Forces;

(b) Interfere with the power of the Congress to make rules for the government and regulation of the land, air and naval forces, and interfere with the appropriate delegation of power to the Department of Defense to provide for the national defense;

(c) Impair the authority of the President as Commander in Chief of the Armed Forces and that of officers appointed by him to command the Armed Forces; and

(d) Impair the reliability, operational readiness, and combat effectiveness of the Armed Forces so as to threaten the security of the United States.

§ 143.4 Prohibited activity.

(a) *Negotiation or Collective Bargaining.* No commander or supervisor may engage in negoiation or collective bargaining.

(b) *Strikes and Other Concerted Activity.* No member of the Armed Forces may:

(1) Engage in any strike, slowdown, work stoppage, or other collective job-related action related to terms or conditions of military service; or

(2) Picket for the purpose of causing or coercing other members of the Armed Forces to engage in any strike, slowdown, work stoppage, or other collective job-related action to terms or conditions of military service.

(c) *Recruitment Efforts on Military Installations.*

(1) No person may conduct or attempt to conduct a demonstration, meeting, march, speechmaking, protest, picketing, leafletting or other similar activity on any part of a military installation for the purposes of forming, recruiting members for or soliciting money or services for an organization (or organizations) that:

(i) Engages or is substantially likely to engage in any activity prohibited by this Part; or

(ii) Proposes or holds itself out as proposing to engage in negotiation or collective bargaining on behalf of members of the Armed Forces; or

(iii) Proposes or holds itself out as proposing to represent members of the Armed Forces to the military chain of command with respect to terms or conditions of military service when such representation would interfere with the military chain of command; or

(iv) Solicits or aids and abets a violation of this Part by a member of the Armed Forces.

(2) No person may engage in any activity on any part of a military installation, including but not limited to individual contacts or the posting for public display of any poster, handbill or other writing, if that activity or the material displayed constitutes or includes an invitation to collectively engage in an act prohibited by this Part.

(d) *Membership.* No member of the Armed Forces may become or remain an active member of any organization when:

(1) A determination has been made that the organization presents a clear danger to discipline, loyalty, or obedience to lawful orders because the organization or any person on behalf of the organization,

(i) Engages in any act prohibited by this Part; or

(ii) Violates or conspires to violate, or solicits or aids and abets a violation of articles 82, 85, 86, 87, 89, 90, 91, 92, 94, 108, 109, 115, 116, 117, or 128 of the Uniform Code of Military Justice or of 18 U.S.C. 1382; and

(2) Such member of the Armed Forces knows that the organization, or any person on behalf of the organization, engages in the conduct upon which the determination in § 143.4(d)(1) is based and such member of the Armed Forces intends to promote such conduct.

(e) *General Prohibitions.*

(1) No member of the Armed Forces may solicit the commission of or conspire with or aid and abet any person or organization in the commission of any act prohibited by this Part.

(2) No member of the Armed Forces may attempt to engage in any act prohibited by this Part.

§ 143.5 Permissible activity.

This Part does not prevent, among other things:

(a) Any member of the Armed Forces from presenting complaints or grievances over terms or conditions of military service through established military channels;

(b) Commanders or supervisors from giving due consideration to the views of any member of the Armed Forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees or organizations for the purpose of improving conditions or communications at the military installation involved.

(c) Any member of the Armed Forces from petitioning Congress or communicating with any member of Congress, individually or collectively.

(d) Any member of the Armed Forces from being represented by qualified counsel, whether or not retained by an organization on his or her behalf, in any judicial or administrative proceeding with respect to which there is a right to counsel of choice.

(e) Any member of the Armed Forces from joining or being a member of any organization which engages in representational activities with respect to terms or conditions of off-duty employment.

(f) Any civilian employed at a military installation from joining or being a member of an organization that engages in representational activities with respect to terms or conditions of employment.

§ 143.6 Administrative provisions.

(a) *Responsibility.* Responsibility for assuring compliance with this Part is vested in the Heads of the DOD Components. Guidelines for this purpose are contained in § 143.8.

(b) *Application.* The Heads of the DOD Components (in the case of the Military Departments, the Secretaries of the Military Departments in consultation with their respective Chiefs of Staff) will determine on a case-by-case basis, whether § 143.4(c)(2), §143.4(d) or both of this Part are to be invoked in particular circumstances and will make the specific determinations required.

(c) *Reports.* The Heads of the DOD Components will report directly and expeditiously to the Secretary of Defense significant actions to be taken pursuant to this Part. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) is the administrative point of contact in the Office of the Secretary of Defense for all matters relating to this Part.

§ 143.7 Definitions.

(a) *Aid and Abet.* To be present during the commission of any act prohibited by this Part and to assist, command, counsel, or otherwise encourage the commission of such act.

(b) *Collective Job-Related Action.* Any activity by two or more persons that is intended to and does obstruct or interfere with the performance of a military duty assignment.

(c) *Conspire.* To join or agree with one or more persons to commit any act prohibited by this Part.

(d) *DOD Components.* The Military Departments and the Defense agencies.

(e) *Member of the Armed Forces.* A person who is (1) serving on active duty or inactive duty training, or (2) a member of a Reserve component while serving in his or her military capacity, but not those members or former members who are receiving retired or retainer pay.

(f) *Military Installations.* For the purpose of this Part the term "military installation" includes installations, facilities, ships, aircraft and other property controlled by the Department of Defense.

(g) *Negotiation or Collective Bargaining.* A process whereby a commander or supervisor acting on behalf of the United States engages in discussions with a member or members of the Armed Forces (purporting to represent other such members), or with an individual, group, organization, or association purporting to represent such members, for the purpose of resolving bilaterally terms or conditions of military service.

(h) *Solicit.* To use words or any other means to request, urge, advise, counsel, tempt, or command another to commit any act prohibited by this Part.

(i) *Supervisor.* Any member of the Armed Forces or Department of Defense civilian employee responsible for directing subordinate members of the Armed Forces in the performance of their duties.

(j) *Terms or conditions of military service* means terms or conditions of military compensation or duty including but not limited to wages, rates of pay, duty hours, assignments, grievances, or disputes.

§ 143.8 Guidelines.

(a) The prohibitions in this Part will require that certain factual determinations be made by the Heads of the DOD Components (in the case of the Military Departments by the Secretaries of the Military Departments in consultation with their respective Chief of Staff) on the basis of particular facts that exist at particular installations. The guidelines for making these determinations are as follows:

(1) In making the determination that a person or an organization poses a clear danger to the discipline, loyalty or obedience of lawful orders because such person or organization engages in, solicits, or aids and abets any act prohibited in this Part (or in the statutory provisions identified in § 143.4(d)), the history and operations of the organization (including the constitution and bylaws, if any) or person in question may be evaluated along with evidence with respect to the conduct constituting a pro-

hibited act. In addition, there must be sufficient evidence to support a conclusion that the person or organization is substantially likely to engage in a prohibited act.

(i) In determining whether commission of a prohibited act by individual members can be imputed to the organization, examples of factors which should be considered include: the frequency of such act; the position in the organization of persons committing such act; whether the commission of such act was known by the leadership of the organization; whether the commission of such act was condemned or disavowed by the leadership of the organization.

(ii) Once it is determined by the Head of the DOD Component that an organization engages in any prohibited act, and is likely to do so in the future, the Head of the DOD Component may instruct affected installations to post conspicuously notices which clearly state that

(A) such organization poses a clear danger to discipline, loyalty, or obedience to lawful orders, and

(B) knowing, active membership in any such organization by a member of the Armed Forces with intent to promote such prohibited conduct is not permitted.

(2) In making the determination that a member of the Armed Forces is an "active" member of the organization in question, membership must be more than merely nominal or passive. Normally, a person can be considered an active member if he engages in certain kinds of conduct for the organization. This conduct includes solicitation or collection of dues, membership recruitment, distribution of literature, service as an officer of the organization, or frequent attendance at meetings or activities of the organization.

(3) In determining that a member of the Armed Forces knows about the prohibited conduct engaged in by the organization, such knowledge may be inferred if the clear notice specified above has been posted conspicuously.

(b) Any information about persons and organizations not affiliated with the Department of Defense needed to make the determinations required by this Part shall be gathered in accordance with the provisions of DOD Directive 5200.27.[1]

Dated: August 12, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

[1] Filed as part of original. Single copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 301.

[FR Doc.77-23802 Filed 8-15-77;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 AGRICULTURE

Federal Grain Inspection Service

WISCONSIN GRAIN INSPECTION AREA

Grain Standards

Notice is hereby given that the State of Wisconsin Department of Agriculture, which is designated under section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)) to operate as an official agency at Superior, Milwaukee, and Jefferson, Wisconsin, has changed its name to Wisconsin Department of Agriculture, Trade & Consumer Protection. The change in name does not involve a change in the inspection system of this agency.

Done in Washington, D.C., on August 10, 1977.

D. R. GALLIART,
Acting Administrator.

[FR Doc.77-23531 Filed 8-15-77;8:45 am]

Packers and Stockyards Administration

HOT SPRINGS COUNTY LIVESTOCK COMMISSION CO., INC., MALVERN, ARKANSAS, ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards with the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notices was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., name, and location of stockyard	*Date of posting*
ARKANSAS	
AR—157, Hot Springs County Livestock Commission Co., Inc., Malvern	July 11, 1977
MINNESOTA	
MN—170, Speldrich Feeder Pig Market, Belgrade	July 22, 1977
NEW MEXICO	
NM—118, South Valley Coliseum, Albuquerque	June 8, 1977
NORTH CAROLINA	
NC—148, Dedmon's Livestock Yards, Shelby	May 10, 1977
SOUTH CAROLINA	
SC—128, Rock Hill Auction Barn, Catawba	July 28, 1977

Done at Washington, D.C., this 10th day of August, 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch Livestock Marketing Division.

[FR Doc.77-23570 Filed 8-15-77;8:45 am]

NORTHWEST ALABAMA LIVESTOCK AUCTION, RUSSELLVILLE, ALABAMA, ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packagers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	*Date of posting*
AL-147, Northwest Alabama Livestock Auction, Russellville, Alabama.	Aug. 25, 1959.
IA-138, Diagonal Livestock Auction, Diagonal, Iowa.	May 16, 1959.
IA-252, Beemer Livestock Auction, Gravity, Iowa.	Feb. 12, 1976.
IA-164, Indianola Sales Company, Inc., Indianola, Iowa.	June 10, 1959.
IA-193, New Sharon Sales Co., Inc., New Sharon, Iowa.	May 19, 1959.
IA-243, Farmers Livestock Auction, Co., Inc., Oelwein, Iowa.	Jan. 9, 1973.
IA-198, Mahaska Sale Co., Oskaloosa, Iowa.	Aug. 20, 1964.
IA-200, Ossian Livestock Exchange, Ossian, Iowa.	June 6, 1959.
IA-202, Pella Sales Co., Pella, Iowa.	May 20, 1959.
MO-193, M.F.A. Livestock Association, Inc., Salisbury Concentration Point, Salisbury, Missouri.	Jan. 8, 1969.
NB-106, Ashland Sale Barn, Ashland, Nebraska.	Apr. 24, 1959.
NB-151, Nebraska Livestock Sales, Inc., Lincoln, Nebraska.	June 27, 1958.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective August 16, 1977.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C. this 9th day of August, 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77-23530 Filed 8-15-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 29160; Order 77-8-30 Amendment, Two to Order 76-12-159]

CLASS RATE VIII

Investigation of Local Service Class Subsidy Rate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of August, 1977.

On December 30, 1976, the Board adopted Order 76-12-159, which established Class Rate VIII as the fair and reasonable final subsidy rate for the local service carriers (Locals) on and after July 1, 1976.[1] Sections IV.C. and VII.B. of the Rate Formula set forth in Order 76-12-159 provide for the concurrent review of ineligible and eligible services, respectively, on a six-month moving basis for annual periods ending in March and September of each year.

The carriers have submitted the data required for the review of both ineligible and eligible services for the year ended March 31, 1977, in the form and detail specified in Sections IV.C.7. and VII.B.10. Such data have been reviewed in detail and adjustments have been made in accordance with established subsidy rate-making principles.

Adjusted operating results, adjusted investment, calculations of ineligible and charter profits to be shared and net formula provision changes are contained in the attached appendices.

Two of the Locals—Frontier and Ozark—achieved excess profits on their ineligible services. Frontier's offset increased by nearly twenty percent from the previous review period, while Ozark's decreased by nearly twenty-five percent.

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[1] In order 76-11-12, issued Nov. 4, 1976, the Board determined an adjusted subsidy level for each carrier, and proposed a formula for equitable distribution of the subsidy payments among the seven local service carriers in Class Rate VIII. Except as modified, Order 76-12-159 reaffirmed and made final all of the findings and conclusions set forth in Order 76-11-12.

Texas International, which had an offset during the previous review period, did not achieve one this review period. None of the Locals realized a charter profit offset.

Three carriers showed an improvement in their eligible need during the review period in relation to the base period. These carriers—Ozark, Piedmont, and Texas International—had improvements ranging from slightly more than one percent for Ozark to slightly less than sixty-seven percent for Texas International. Conversely, four carriers registered comparative deficiencies, ranging from just under three percent for Frontier to approximately thirteen percent for Southern. For this review period, Frontier was the median carrier in terms of the change in the net formula provision. Therefore, the net formula provision for each of the Locals will be increased by the percentage of Frontier's decline, 2.58 percent.

The level of the computed subsidy for this review period is $70.3 million, a reduction of $3.4 million from the rate established in the base period of Class Rate VIII, but an increase of $1.5 million over the rate established in the first review. The reduction from the base period rate results from larger ineligible excess profits and recent ad hoc adjustments offsetting the effect of the positive percentage change in the median carrier's net formula provision.

In arriving at the median change adjustment for this review, it was necessary to correct for recent suspensions of service at several subsidy eligible points. The median change provision in Class Rate VIII was designed as a mechanism to adjust the Local's subsidy rate to reflect changes in the general economic conditions under which they operate and not changes in eligible operating authority. The percentage change to be applied to each carrier's subsidy rate is determined by comparing review period results with base period results for each carrier. After ranking these results, the median change is applied to each carrier's subsidy rate. Since changes in the total industry subsidy rate are subject to changes in one carrier's operating results, special care must be taken to insure that the results being compared are not distorted by any suspensions or deletions of service at specific points.

The suspension or deletion of service at a point is reflected immediately in the carrier's subsidy payments through an ad hoc adjustment to its net formula provision. This adjustment reflects the entire amount of subsidy associated with service to the suspended point. Since the resulting adjusted net formula provision is used as the basis for the carrier's base periods results in determining its percentage change for median change purposes, the carrier's base period results are immediately adjusted to reflect the change in operating authority. However, employing the Board's established methodology, the full economic savings resulting from the suspension at a point is not reflected in the carrier's annual operating results until two years after the date of suspension. Under this methodology, as explained below, variable-cost savings are achieved during the year following the suspension while fixed-cost savings are not realized until the second year after the date of the suspension.

Thus, for four consecutive review periods, beginning with the review period during which the suspension took place, the carrier's year-ended operating results for subsidy eligible operations will not include the total annual economic savings associated with the suspended point. Since the carrier's base period results already fully reflect the suspension, any comparison of the review period need, without adjustment to recognize the unrealized savings associated with the suspended point, will produce a percentage change which reflects, in part, the change in operating authority. To correct this distortion, we have made economic savings adjustments to the eligible needs of those carriers whose subsidy eligible operating authority has changed.

The amount of each adjustment is based on Board findings during the specific suspension/deletion case with regard to the net economic savings to be realized by the carrier through the discontinuance of service at the point. This amount consists of savings to be realized immediately and savings which will be realized one year after the suspension of the point.[2] These two amounts are determined according to the methodology suggested by Hughes Airwest and Southern in their joint objection to Order 73-10-1, and adopted by the Board for use in making base period adjustments in Class Rates VII and VIII. The adjustment to eligible need resulting from these computations reflects the annual savings not yet realized. (Examples of both base period and review period computations are attached to this order.) For example, the adjustment for a point suspended at the end of the first quarter of a review period reflects one quarter of the immediately realized savings (three quarters of the immediate savings are already reflected in the review period operating results) and all of the long-term savings which will not be realized during the first year of the suspension. In this way the savings not reflected in reported results are included. (See attached Appendix D, Revised, for adjustments related to points already suspended or deleted.)

Based on the attached adjusted operating results and adjusted investment for the year ended March 31, 1977, we find that the fair and reasonable annual subsidy due and payable to the seven carriers in Class Rate VIII, on and after July 1, 1977, is $70.3 million. In addition, it is provided that the subsidy due and payable to each carrier on and after July 1, 1977, shall be computed on the basis of the daily subsidy rate set forth for each carrier in the amended Appendix K attached to this order.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 406 thereof, and the regulations promulgated in 14 CFR Part 302,

It is ordered, That:[3]

1. Effective on and after July 1, 1977, the attached Appendices A, B, C, E, K, and L supersede the corresponding appendices attached to Order 77-2-128, dated February 25, 1977;

2. Effective on and after July 1, 1977, the attached Appendix D supersedes the corresponding appendix attached to Order 76-11-12, dated November 4, 1976, and affirmed by Order 76-12-159, dated December 30, 1976;

3. The subsidy due and payable to each carrier on and after July 1, 1977,[4] shall be computed on the basis of the daily subsidy rate set forth for each carrier in the amended Appendix K attached to this order:

4. This order shall become effective on the seventh day after service, unless prior to that date exceptions, together with supporting reasons, have been filed with the Board by any party to this proceeding. If exceptions and supporting reasons are filed by any party within the prescribed time, the effective date of this order shall be stayed, only for the party or parties filing exceptions, pending further action by the Board; and

5. This order will be served upon all parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

All Members concurred.

PHYLLIS T. KAYLOR,
Secretary.

[2] The economic savings adjustment for those points suspended since the base period does not include a tax saving since the ad hoc change to the net formula provision involves only break-even need and return.

[3] This order is not intended to disturb the service mail rates established pursuant to other orders of the Board.

[4] The profit offset from ineligible and/or charter services and the change in the net formula provision as determined in this order are effective from July 1, 1977, through Dec. 31, 1977.

Examples of the computationof the economic savings adjustments for class rate VII (in dollars)

Point and service suspension date	Board findings as to total economic savings (subpart K)						Computation of immediate savings						
	Revenue	Direct operating costs	Indirect operating costs	Depreciation return, and tax [1]	Total expenses	Total economic savings	Revenue (1)×(11)	DOC (2)×[2]	IOC (3)×[3]	Total expenses (8)+(9)	Expense ratio (in percent) (10)÷(5)	Immediate savings (10)−(7)	Long-term savings (6)−(12)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Jonesboro, Ark., Feb. 13, 1976	95,354	216,631	61,396	95,455	373,482	278,128	56,221	190,419	29,789	220,208	58.96	163,987	114,141
Brownwood, Tex., Dec. 1, 1976	221,674	104,421	121,740	62,187	288,348	66,674	116,312	92,037	59,263	151,300	52.47	34,988	31,686

[1] No tax is included in computations for stations suspended during the actual life of class rate VIII.
[2] Local service industry average of immediately variable direct operating expenses: year ending Mar. 31, 1976—87.9 percent; year ending Mar. 31, 1977—88.14 percent.
[3] Local Service Industry average of immediately variable indirect operating expenses: year ending Mar. 31, 1976—48.52 percent; year ending Mar. 31, 1977—48.68 percent.

NOTE

Immediately variable direct and indirect operating expense ratios applicable to the economic savings adjustment of future suspensions will be computed for each review period. Individual carriers can estimate future adjustments by using the ratios for the year ended Mar. 31, 1977.

Jonesboro example: (base period suspension)

The base period adjustment was $143,320, which reflected the unrealized portion of immediate savings, based on the number of days during the year ended Mar. 31, 1976, the point was served. (319÷365)

The first review adjustment was $61,102, which reflected the unrealized portion of immediate savings for the year ended Sept. 30, 1976. (135÷365)

The second review adjustment is $99,443, which reflects the unrealized portion of long-term savings, and is based on the same pro-rate used in the base period adjustment.

The third review adjustment will be $42,217, which reflects the unrealized portion of long-term savings, and is based on the same pro-rate used in the first review adjustment.

Brownwood example: (review period suspension)

The second review adjustment is $55,075, which reflects the unrealized portion of the total economic savings, and consists of all long-term savings and a portion of the immediate savings pro-rated on the number of days served during the year ended Mar. 31, 1977. (244÷365)

The third review adjustment will be $37,533, which reflects the unrealized portion of the total economic savings, and consists of all long-term savings and a portion of the immediate savings pro-rated on the number of days served during the year ended Sept. 30, 1977. (61÷365)

The fourth review adjustment will be $21,182, which reflects the unrealized portion of long-term savings, and is based on the pro-rate used in the second review adjustment.

The fifth review adjustment will be $5,295, which reflects the unrealized portion of long-term savings, and is based on the pro-rate used in the third review adjustment.

APPENDIX A.—*Local service class subsidy rate computation of excess ineligible* profit, excess charter profit, and 6 mo subsidy rate effective July 1, 1977*

[Dollars in thousands]

	Frontier	Hughes Airwest	North Central	Ozark	Piedmont	Southern	Texas International	Industry total
System:								
Adjusted operating profit or (loss) [1]—app. B	13,145	(742)	1,477	3,787	1,009	(1,711)	436	17,401
Return—app. C	10,565	8,861	14,848	8,858	9,623	6,205	3,886	62,851
Taxes—Federal—app. C	8,000	3,863	8,296	4,971	4,201	3,392	----------	32,723
Taxes—State—app. C	307	367	237	398	124	36	26	1,495
System (need)	(5,727)	(13,833)	(21,904)	(10,440)	(12,944)	(11,344)	(3,476)	(79,668)
Ineligible *:								
Adjusted operating profit or (loss) [1]—app. B	25,937	7,733	10,972	12,393	7,857	1,927	2,415	69,235
Return—app. C	7,761	6,802	10,721	6,823	7,262	4,615	2,965	46,749
Taxes—Federal—app. C	5,877	2,965	5,990	3,748	3,308	2,577	----------	24,456
Taxes—State—app. C	226	282	171	300	96	27	22	1,126
Adjsuted operating profit[1] in excess of full return and taxes	12,073	(2,316)	(5,910)	1,722	(2,811)	(5,291)	(572)	(3,105)
Charter:								
Adjusted operating profit or (loss) [1]—app. B	(1)	(406)	(850)	(425)	(6)	391	5	(1,292)
Return—app. C	1	770	543	439	174	441	147	2,515
Taxes—Federal—app. C	2	342	302	248	81	246	----------	1,221
Taxes—State—app. C	----------	32	9	20	2	3	1	67
Adjusted operating profit[1] in excess of full return and taxes	(4)	(1,550)	(1,704)	(1,133)	(263)	(299)	(143)	(5,095)
Eligible:								
Adjusted operating profit or (loss) [1]—app. B	(12,791)	(8,069)	(8,645)	(8,181)	(8,842)	(4,030)	(1,964)	(50,542)
Return—app. C	2,803	1,289	3,584	1,796	2,192	1,149	774	13,587
Taxes—Federal—app. C	2,121	556	2,004	975	812	589	----------	7,037
Taxes—State—app. C	81	53	57	78	24	6	3	302
Adjusted eligible need	17,796	9,967	14,290	11,030	9,870	5,754	2,761	71,468
Base year adjusted net formula provision	15,714	8,894	11,288	9,843	10,373	4,748	8,130	68,990
Adjusted eligible need less Federal tax—year ending March 31, 1977 [2] [3]	16,119	9,387	12,379	9,702	8,948	5,362	2,708	64,600
Improvement/deficiency	(405)	(433)	(1,091)	141	1,425	(614)	5,427	4,390
Percent change in adjusted eligible need less Federal tax [2] [3]	(2.58)	(5.54)	(9.67)	1.43	13.74	(12.93)	66.75	6.36
Recognized improvement/deficiency based on median percent change [2]	(406)	(229)	(291)	(254)	(266)	(122)	(210)	(1,780)
Subsidy calculation:								
Base year adjusted net formula provision after Federal tax	17,745	9,509	13,026	10,695	11,236	5,204	7,765	75,180
Plus or minus recognized improvement/deficiency based on median percent change [2]	406	229	291	254	266	122	200	1,770
Less 50 percent of ineligible * profits	(6,037)	----------	----------	(561)	----------	----------	----------	(6,598)
Less 50 percent of charter profits	----------	----------	----------	----------	----------	----------	----------	----------
Computed 6-mo. subsidy rate [4]	12,114	9,738	13,317	10,088	11,504	5,326	7,965	70,052

[1] Reported operating profit or (loss) after subsidy ratemaking adjustments. For detailed adjustments, see app. B.
[2] Applies to 6-mo. reviews only.
[3] As compared to base year adjusted net formula provision after the elimination of ad hoc adjustments relating to suspensions or deletions effective on or before the last day of the applicable review period.
[4] The rate for Hughes Airwest is $9,977,000 while this carrier continues to serve Crescent City.
[5] (Adjusted eligible need—federal taxes) times net formula provision percent of subsidy need from app. J, p. 2 of 2.

* Consists of hub-to-hub operations and certificate ineligible operations.

APPENDIX B.—*Local service class subsidy rate—Year end Mar 31, 1977* [1]

[In thousands of dollars]

	Frontier	Hughes Airwest	North Central	Ozark	Piedmont	Southern	Texas International	Industry total
Computation of system operating profit (or loss)								
SYSTEM OPERATIONS								
Reported operating profit or (loss) [2]	9,386	(1,570)	1,844	3,361	(173)	(2,484)	(1,597)	8,767
Adjustments:								
Conformance with form 41 reports [3]	(159)						(2)	(161)
Mutual aid payments [4]	753	151	64	63	55		273	1,359
Excess salary expense [5]	602	192	264	110	214	309	279	1,970
Excess legal fees [6]	363	330	253	124	87	187	168	1,512
Developmental and preoperating amortization [7]	18					(1)		17
Nonoperating income offset [8]	1,279	655	464	378	425	239	498	3,938
Net strike revenues [9]	(682)	(32)		(6)			(197)	(917)
Other miscellaneous ratemaking adjustments [10]	189	216	205	162	163	127	138	1,200
Depreciation adjustment [11]	988	(747)	(1,617)	(713)	232	(94)	603	(1,348)
Commuter support payments [12]						6		6
Economic savings adjustment [13]	408	63		308	6		273	1,058
Adjusted operating profit or (loss)	13,145	(742)	1,477	3,787	1,009	(1,711)	436	17,401
Computation of eligible operating profit (or loss)								
ELIGIBLE OPERATIONS								
Reported operating profit or (loss) [2]	(14,236)	(8,381)	(8,731)	(8,587)	(7,159)	(4,248)	(3,210)	(54,552)
Adjustments:								
Conformance with form 41 reports [3]	(57)	5	43	(3)			(40)	(52)
Mutual aid payments [4]	240	33	20	15	16		78	402
Excess salary expense [5]	218	44	86	27	64	85	77	601
Excess legal fees [6]	132	76	82	31	26	51	46	444
Developmental and preoperating amortization [7]	12	20	8	12	7	10	2	80
Nonoperating income offset [8]	408	139	139	84	117	62	136	1,085
Net strike revenues [9]	(217)	(7)		(1)			(56)	(281)
Other miscellaneous ratemaking adjustments [10]	69	50	67	41	49	35	39	350
Depreciation adjustment [11]	232	(120)	(359)	(103)	32	(27)	671	321
Commuter support payments [12]						2		2
Economic savings adjustment [13]	408	63		308	6		273	1,058
Adjusted operating profit or (loss)	(12,791)	(8,069)	(8,645)	(8,181)	(6,842)	(4,030)	(1,984)	(50,542)
Computation of ineligible [14] operating profit (or loss)								
INELIGIBLE OPERATIONS *								
Reported operating profit or (loss) [2]	23,623	7,165	11,387	12,351	7,009	1,446	1,732	64,713
Adjustments:								
Conformance with form 41 reports [3]	(102)	(5)	(28)	7			(42)	(170)
Mutual aid payments [4]	513	118	44	48	39		195	957
Excess salary expense [5]	384	143	171	79	147	204	191	1,319
Excess legal fees [6]	231	246	164	89	60	124	115	1,029
Developmental and Pre-operating Amortization [7]	6	(1)	(13)	(12)	(7)	(34)	(3)	(64)
Nonoperating income offset [8]	871	500	313	231	302	161	342	2,770
Net strike revenues [9]	(465)	(25)		(5)			(141)	(636)
Other miscellaneous ratemaking adjustments [10]	120	161	132	115	112	84	94	818
Depreciation adjustment [11]	756	(569)	(1,198)	(560)	195	(61)	(68)	(1,505)
Commuter support payments [12]						4		4
Economic savings adjustment [13]								
Adjusted operating profit or (loss)	25,937	7,733	10,972	12,393	7,857	1,928	2,415	69,235
Computation of charter operating profit (or loss)								
CHARTER OPERATIONS								
Reported operating profit or (loss) [2]	(1)	(354)	(812)	(403)	(23)	318	(119)	(1,394)
Adjustments:								
Conformance with form 41 reports [3]			(15)	(4)			80	61
Mutual aid payments [4]								
Excess salary expense [5]		5	7	4	3	20	11	50
Excess legal fees [6]		8	7	4	1	12	7	39
Developmental and preoperating amortization [7]		(28)	5			23	1	1
Nonoperating income offset [8]		16	12	13	6	16	20	83

See footnotes at end of table.

APPENDIX B.—*Local service class subsidy rate—Year end Mar. 31, 1977* [1]—*Continued*

[In thousands of dollars]

Computation of charter operating profit (or loss)—Continued

	Frontier	Hughes Airwest	North Central	Ozark	Piedmont	Southern	Texas International	Industry total
Net strike revenues [9]								
Other miscellaneous ratemaking adjustments [10]		5	6	6	2	8	5	32
Depreciation adjustment [11]		(58)	(60)	(45)	5	(6)		(164)
Commuter support payments [12]								
Economic savings adjustment [13]								
Adjusted operating profit or (loss)	(1)	(406)	(650)	(425)	(6)	301	5	(1,292)

[1] Based on special reports to the Board reflecting the results of operations for the year ended Mar. 31, 1977.

[2] Each carrier submitted financial and traffic data allocated to eligible operations, ineligible operations, charter operations, and system operations.

[3] Adjustment has been made to the reported results to reconcile differences between that data and form 41 data. An adjustment has also been made to the reported data for each type of service after verification of the prescribed allocation procedures.

[4] 6 of the 7 local service carriers belong to the mutual aid pact. During the reporting period, $1,359,000 of mutual aid payments were made by this group to struck carriers. The amounts were allocated to ineligible and eligible services based on the ratio of each service's revenue (less other revenue) plus each service's expense compared to the total of system revenue (less other revenue) plus system expense, exclusive of charter.

[5] To eliminate officers' salaries in excess of $50,000 for the chief executive officer and $35,000 for all others on an annual basis. Amounts were based on data for the year ended Dec. 31, 1976. The allocation to eligible, ineligible, or charter services is based on the ratio that each carrier's eligible, ineligible, or charter operating cash costs (excluding general and administrative expenses) bear to the system operating cash costs (excluding general and administrative expenses).

[6] Legal expenses charged to account 6640, Legal Fees and Expenses, in excess of the $70,000 maximum limit, have been eliminated. The amounts were allocated to eligible, ineligible, or charter services based on the ratio as discussed in footnote 5 above.

[7] To reflect the difference between the recognized amortization of developmental and preoperating expenses in eligible, ineligible, and charter services and the amounts reported by the carriers in their special reports to the Board. Some of these expenses are directly assignable to the various types of service, while others, not directly assignable, are allocated on an applicable unit rate basis. Aircraft preoperating costs are allocated on the basis of revenue hours by aircraft type. Amortization of expenses related to reservation systems is allocated on the basis of passenger enplanements, excluding charter. All other allocable expenses are allocated on an appropriate operating statistic as closely related as possible to the type of expense involved.

[8] Unapplied cash discounts, interest income, dividend income, miscellaneous credits, and income from subsidiaries and nontransport ventures in excess of a 12.35 pct return plus applicable taxes have been offset against the break-even need for all carriers. The allocation to eligible, ineligible, or charter services was made on the basis as set forth in footnote 4 above, but including charter.

[9] This adjustment excludes the net reporting revenues underlying the computations for the "windfall" payments under the Mutual Aid Agreement which are determined to be atypical to the carriers' financial base for determining the prospective needs of the carriers. The allocation to eligible or ineligible services was made on the basis as set forth in footnote 4 above.

[10] These items include, but are not limited to, contributions, financing expenses, liquor, and entertainment. The total industry disallowance was allocated to each carrier based on the industry expense. The eligible, ineligible, or charter allocation is based on the ratio each carrier's eligible, ineligible, or charter operating expense bears to its system expense. The industry disallowances are based on the same level as in class rate VII. The same disallowances will be used pending an audit that is now in progress. As soon as the results of the present audit are available, the updated data will be used to compute the miscellaneous disallowances.

[11] This adjustment eliminates any differences between reported and regulatory depreciation expense for each aircraft type. The amount of depreciation expense reported which is above or below the regulatory amount for each aircraft type is allocated to each type of service in the same proportion as the aircraft types were utilized in each of the services (by revenue aircraft hour). The equity base is adjusted to reflect the change in operating expense.

[12] This adjustment eliminates payments to a replacement carrier serving Natchez, Miss. The allocation was made on the basis as set forth in footnote 4 above.

[13] The economic savings adjustment reflects the changes in the need in a specific service resulting from a suspension or deletion of a point by a carrier. See app. D (revised).

[14] Consists of hub-to-hub operations and certificate-ineligible operations.

APPENDIX C.—*Local service class subsidy rate—year ended Mar. 31, 1977*

[In thousands of dollars]

	Frontier	Hughes Airwest	North Central	Ozark	Piedmont	Southern	Texas International	Industry total
Computation of system investment, return and tax provision								
SYSTEM SERVICES								
Investment as allocated: [1]								
Adjusted average investment:								
Debt	30,170	27,470	66,497	47,473	60,960	31,600	28,094	292,184
Equity	55,360	43,546	52,431	24,792	20,249	13,580	5,409	215,367
Total [2]	85,530	71,016	118,928	72,265	81,109	45,180	33,503	507,531
Developmental and preoperating adjustment [3]	12	733	1,298	368	108	603	6	3,128
Adjusted average investment:								
Debt	30,174	27,754	67,222	47,714	60,941	32,022	28,099	293,926
Equity	55,368	43,995	53,004	24,919	20,276	13,761	5,410	216,733
Total	85,542	71,749	120,226	72,633	81,217	45,783	33,509	510,659
Return on adjusted investment:								
Return	10,565	8,861	14,848	8,858	9,628	5,533	3,886	62,179
Added risk return for leased aircraft adjustment [4]						672		672
Adjusted return	10,565	8,861	14,848	8,858	9,628	6,205	3,886	62,851
Tax provision:								
Federal taxes [5]	8,000	3,863	8,296	4,971	4,201	3,392		32,723
State taxes [6]	307	367	237	398	124	36	26	1,495
Total tax provision	8,307	4,230	8,533	5,369	4,325	3,428	26	34,218

See footnotes at end of table.

APPENDIX C.—*Local service class subsidy rate—year ended Mar. 31, 1977—Continued*

	Frontier	Hughes Airwest	North Central	Ozark	Piedmont	Southern	Texas International	Industry total
Computation of system investment, return and tax provision								
ELIGIBLE SERVICES								
Investment as allocated:[1]								
Adjusted average investment:								
Debt	8,006	4,035	16,027	10,111	15,748	6,672	6,973	67,572
Equity	14,689	6,397	12,637	5,280	5,239	2,868	1,342	48,452
Total[2]	22,695	10,432	28,664	15,391	20,987	9,540	8,315	116,024
Developmental and preoperating adjustment[3]	2	2	352	58	19	102		535
Adjusted average investment:								
Debt	8,007	4,036	16,224	10,149	15,762	6,744	6,973	67,895
Equity	14,690	6,398	12,792	5,300	5,244	2,898	1,342	48,664
Total	22,697	10,434	29,016	15,449	21,006	9,642	8,315	116,559
Return on adjusted investment:								
Differentiated return:								
Debt at 7.25 pct	580	292	1,176	736	1,143	489	506	4,922
Equity at 20 pct	2,938	1,280	2,559	1,060	1,049	580	269	9,734
Total	3,518	1,572	3,735	1,796	2,192	1,069	774	14,656
Percent return on adjusted investment	15.50	15.07	12.87	11.62	10.43	11.08	9.31	12.57
Allowable return—minimum of 9 pct and maximum of 12.35 pct	2,803	1,289	3,584	1,796	2,192	1,069	774	13,507
Added risk return for leased aircraft adjustment[4]						80		80
Adjusted return	2,803	1,289	3,584	1,796	2,192	1,149	774	13,587
Tax provision:								
Federal taxes[5]	2,121	556	2,004	975	812	569		7,037
State taxes[6]	81	53	57	78	24	6	3	302
Total tax provision	2,202	609	2,061	1,053	836	575	3	7,339
INELIGIBLE SERVICES[7]								
Investment as allocated:[1]								
Adjusted average investment:								
Debt	22,161	21,086	48,027	35,038	44,058	22,758	20,126	213,254
Equity	40,665	33,426	37,868	18,299	14,659	9,781	3,875	158,573
Total[2]	62,826	54,512	85,895	53,337	58,717	32,539	24,001	371,827
Developmental and preoperating adjustment[3]	10	564	915	292	87	493	6	2,367
Adjusted average investment:								
Debt	22,165	21,304	48,538	35,230	44,124	23,103	20,131	214,595
Equity	40,671	33,772	38,272	18,399	14,680	9,929	3,876	159,599
Total	62,836	55,076	86,810	53,629	58,804	33,032	24,007	374,194
Return on adjusted investment:								
Return at 12.35 pct	7,761	6,802	10,721	6,623	7,262	4,080	2,965	46,214
Added risk return for leased aircraft adjustment[4]						535		535
Adjusted return	7,761	6,802	10,721	6,623	7,262	4,615	2,965	46,749
Tax provision:								
Federal taxes[5]	5,877	2,965	5,990	3,748	3,308	2,577		24,465
State taxes[6]	226	282	171	300	98	27	22	1,126
Total tax provision	6,103	3,247	6,161	4,048	3,406	2,604	22	25,591
CHARTER SERVICES								
Investment as allocated:[1]								
Adjusted average investment:								
Debt	3	2,349	2,443	2,324	1,054	2,170	995	11,338
Equity	6	3,723	1,927	1,213	351	932	192	8,344
Total[2]	9	6,072	4,370	3,537	1,405	3,102	1,187	19,682
Developmental and preoperating adjustment[3]		167	30	18	2	7		224
Adjusted average investment:								
Debt	3	2,413	2,460	2,335	1,056	2,175	995	11,437
Equity	6	3,826	1,940	1,220	351	934	192	8,469
Total	9	6,239	4,440	3,555	1,407	3,109	1,187	19,906
Return on adjusted investment:								
Return at 12.35 pct	1	770	543	439	174	384	147	2,458
Added risk return for leased aircraft adjustment[4]						57		57
Adjusted return	1	770	543	439	174	441	147	2,515

See footnotes at end of table.

APPENDIX C.—*Local service class subsidy rate—year ended Mar. 31, 1977—Continued*

Computation of charter investment, return and tax provision								
Tax provision:								
Federal taxes [5]	2	342	302	248	81	245	----------	1,221
State taxes [6]		32	9	20	2	3	1	67
Total tax provision	2	374	311	268	83	249	1	1,288

[1] Adjusted system average (5-quarter weighted) investment (excluding developmental and preoperating investment) for each carrier is allocated to individual aircraft types on the ratio of each carrier's net flight equipment, adjusted for regulatory depreciation, and to eligible, ineligible, and charter operations based on the ratio that the revenue aircraft hours flown in eligible, ineligible, or charter services bear to the total system aircraft hours. The eligible, ineligible, and charter investment is then allocated to debt and equity on the same ratio as the system adjusted average investment.

[2] The adjustments to investment are as follows:

(a) Current portion of long-term debt. Increases debt portion of investment.
(b) Unamortized discount and expense on debt. Decreases debt portion of investment.
(c) Unamortized capital stock expense. Decreases equity portion of investment.
(d) Investments in subsidiary companies. Excluded from investment on a pro rata basis. (See (l) below.)
(e) Advances to nontransport divisions. Same as (d).
(f) Special funds—other. Same as (d).
(g) Nonoperating property and equipment—net. Same as (d).
(h) Developmental and preoperating cost. Same as (d).
(i) Property acquisition adjustment. Same as (d).
(j) Other intangibles. Same as (d).
(k) Depreciation adjustment. Any depreciation adjustment to operating expense will be applied as a direct adjustment to the equity portion of investment using a cumulative 5-quarter weighted average.
(l) All pro rata allocations are based on the percentage relationship that debt and equity bear to the total investment after the direct adjustments have been made.

[3] Developmental and preoperating investment is recognized on an actual basis, adjusted for subsidy purposes, apportioned to eligible, ineligible, and charter services, and allocated to debt and equity as in footnote 1 above.

[4] To reflect recognition of added risks for levels of leased equipment significantly in excess of the industry average; allocated to charter, ineligible and eligible services based on the percentage of revenue aircraft hours flown in each type of service for each of those aircraft types that are leased.

[5] Represents the amount of system Federal taxes applicable to eligible, ineligible, and charter services. To compute Federal taxes for each service: subtract interest expense from the computed return; multiply the subtotal by the Federal tax rate (.48); eliminate surtax which is allocable on same basis as Federal tax derived at .48 rate; and then divide by the complement of the Federal tax rate (.52) to arrive at the applicable Federal tax.

[6] Represents the amount of system State taxes submitted by the carrier. Allocation to eligible, ineligible, and charter services is made on the basis of the ratio of each service's Federal tax to system Federal tax.

[7] Consists of hub-to-hub operations and certificate-ineligible operations.

APPENDIX D.—*Local service class subsidy rate, economic savings adjustment relating to route suspensions, deletions, and transfers*

[In dollars]

Airline	Point	2d review	3d review	4th review	5th review
Frontier	Stillwater	(15,875)	(4,830)	----------	----------
	Cortez	70,052	10,148	----------	----------
	Paris	(72,142)	(46,600)	(24,524)	(10,047)
	Lamar	(74,377)	(32,782)	(6,860)	(2,523)
	Parsons	(235,476)	(143,989)	(72,050)	(26,427)
	Goodland, Garden City, and Hays	(80,656)	(54,992)	(30,907)	(14,024)
	Total	(408,477)	(273,045)	(134,361)	(53,021)
Huges Airwest	Kingman	(2,088)	----------	----------	----------
	Cresent City [1]	(61,051)	(81,327)	(81,327)	(81,327)
	Total	(63,139)	(81,327)	(82,327)	(81,327)
Ozark	Clinton	(46,782)	(5,623)	----------	----------
	Kirksville	(127,601)	(63,626)	----------	----------
	Owensboro	(62,667)	----------	----------	----------
	Galesburg and Sterling/Rock Falls	(71,021)	(115,485)	(52,744)	----------
	Total	(308,071)	(184,734)	(52,744)	----------
Piedmont	Goldsboro	(5,608)	----------	----------	----------
Texas International	Lufkin	(14,482)	----------	----------	----------
	Pipe Bluff	(6,008)	----------	----------	----------
	Jonesboro	(99,443)	(42,217)	----------	----------
	Temple	(98,274)	(65,534)	(35,223)	(5,242)
	Brownwood	(55,075)	(37,533)	(21,182)	(5,295)
	Total	(273,353)	(145,274)	(56,405)	(10,537)

[1] Assumes Airwest will continue to serve Cresent City.

APPENDIX E.—*Local service class subsidy rate hypothetical application of class rate VII—By carrier*[1] *for an annual period—based on year ended Mar. 31, 1976*

	Frontier	Hughes Airwest	North Central	Ozark	Piedmont	Southern	Texas International	Industry total
Number of stations [2]	90	35	58	34	40	32	34	313
Departures performed [3]	104,463	41,638	87,762	48,023	63,583	45,798	39,959	431,225
Revenue plane-miles flown (in thousands)[4]	12,653	6,434	8,335	5,362	7,880	4,716	5,218	50,598
Revenue passengers [5]	2,211,018	958,104	1,860,516	1,069,184	1,452,833	1,028,817	897,670	9,478,142
Revenue passenger-miles (in thousands)[5]	276,419	150,795	182,921	121,765	186,063	109,638	121,124	1,148,725
Computed subsidy:								
Expense provision:								
Stations	5,930	2,485	4,245	2,515	2,790	2,260	2,340	22,565
Departures	16,688	6,652	14,020	7,672	10,157	7,316	6,383	68,888
Revenue plane-miles	35,036	17,815	23,081	14,846	21,821	13,058	14,449	140,106
Total	57,654	26,952	14,346	25,033	34,768	22,634	23,172	231,559
Required revenues:								
Passengers	23,171	10,041	19,498	11,205	15,226	10,782	9,408	99,331
Revenue passenger-miles	15,010	8,188	9,933	6,612	10,103	5,953	6,577	62,376
Total	38,181	18,229	29,431	17,817	25,329	16,735	15,985	161,707
Gross formula provision	19,473	8,723	11,915	7,216	9,439	5,899	7,187	69,852
Need adjustment	−3,272	171	−627	2,627	934	−1,151	1,354	36
Net formula provision [6]	15,714	8,894	11,288	9,843	10,373	4,748	7,765	68,625
Median percentage change [7]	2.58	2.58	2.58	2.58	2.58	2.58	2.58	2.58
Adjusted net formula provision	16,120	9,123	11,579	10,097	10,641	4,870	7,965	70,395
Federal income taxes	2,031	615	1,738	852	863	456		6,555
Offset	(6,037)			(861)				(6,898)
Computed subsidy	12,114	9,738	13,317	10,088	11,504	5,326	7,965	70,052
Adjustment for prospective suspension [8]		239						239
Computed subsidy	12,114	9,977	13,317	10,088	11,504	5,326	7,965	70,291

[1] For subsidy-eligible nonhub operations per rate formula provisions.
[2] App. E, p. 6 of 6, order 76-11-12.
[3] App. E, p. 4 of 6, of Order 76-11-12.
[4] App. E, p. 5 of 6, of Order 76-11-12.
[5] App. E, p. 3 of 6, of Order 76-11-12.
[6] Base year net formula provision adjusted for ad hocs through June 30, 1977.
[7] App. A, p. 2 of 2, the median percentage change in adjusted eligible need less Federal tax.
[8] The adjustment for Hughes Airwest is for operations conducted at Crescent City, Calif. The formula makes no provision for these operations on the assumption that service at this point will be suspended shortly after the effective date of this subsidy rate. This upward adjustment is necessary to provide subsidy payments for operations at Crescent City, and will remain in effect until operations there have been suspended.

APPENDIX K.—*Local service class subsidy rate, daily rates by carrier*[1] *effective July 1, 1977, class rate VIII*

[Rate per day in dollars]

Carrier	Eligible operations: Base year Adjusted net formula provision, sec. II [2 4]	Eligible operations: Adjusted net formula provision, sec. II, VII [2 4 5]	Eligible operations: Federal taxes, sec. III [2]	Ineligible [2] profit offset, sec. IV [2 6]	Charter profit offset, sec. IV [2 6]	Total subsidy offset
Frontier	43,052.51	44,163.26	5,564.38	−16,539.73		−16,539.73
Hughes Airwest	[7] 24,367.12	[8] 24,995.79	1,684.93			
North Central	30,926.03	31,723.92	4,761.64			
Ozark	26,967.12	27,662.87	2,334.25	−2,358.90		−2,358.90
Piedmont	28,419.18	29,152.39	2,364.38			
Southern	13,008.22	13,343.83	1,249.32			
Texas International	21,274.33	21,832.21				

[1] Pursuant to secs. II, III, IV, and VII of the class rate formula.
[2] Consists of hub-to-hub operations and certificate-ineligible operations.
[3] The number of days shall be determined in accordance with the 3rd and 4th provisos of sec. II.D.2. of the class rate formula.
[4] The maximum cumulative subsidy payable under sec. II shall be the product of the applicable daily rate times the number of days in the period to date.
[5] This daily rate is the base year adjusted net formula provision in column 1 adjusted by the median percentage change computed pursuant to sec. VII.
[6] For ineligible services, the rates are effective from July 1, 1977, through Dec. 31, 1977.
[7] This amount shall be increased by $638.33/d until Hughes Airwest suspends service at Crescent City.
[8] This amount shall be increased by $654.80/d until Hughes Airwest suspends service at Crescent City.

APPENDIX L.—*Local service class subsidy rate determination of profit offset and Federal tax allowance under CR VIII, ineligible[1] and charter services*

[In thousands of dollars]

Carrier	Adjusted operating profit (loss)[1]	Return and State tax[2]	Interest expense[3]	Maximum Federal tax provision[4]	Excess earnings		Profit offset
					Before Federal tax	After Federal tax	
Ineligible[5] services							
Frontier	25,937	7,987	1,372	5,877(A)	17,950	12,073	6,037
Hughes Airwest	7,733	7,084	3,566	2,965(A)	649	(2,316)	
North Central	10,972	10,892	4,211	5,990(A)	80	(5,910)	
Ozark	12,393	6,923	2,541	3,748(A)	5,470	1,722	861
Piedmont	7,857	7,360	3,656	3,308(A)	497	(2,811)	
Southern	1,928	4,642	1,799	2,577(A)	(2,714)	(5,291)	
Texas International	2,415	2,987	1,687	1,155(B)	(572)	(572)	
Charter services							
Frontier	(1)	1		2(A)	(2)	(4)	
Hughes Airwest	(406)	802	397	342(A)	(1,208)	(1,550)	
North Central	(850)	552	213	302(A)	(1,402)	(1,704)	
Ozark	(425)	459	168	248(A)	(884)	(1,132)	
Piedmont	(6)	176	87	81(A)	(182)	(263)	
Southern	391	444	172	246(A)	(53)	(299)	
Texas International	5	148	84	58(B)	(143)	(143)	

[1] Reported operating profit or (loss) after subsidy ratemaking adjustments. For detailed adjustments, see app. B.
[2] App. C.
[3] As reported by carrier on form 41 reports for the year ended Mar. 31, 1977, and allocated to ineligible and charter operations.
[4] Indicates maximum Federal taxes to be provided for ineligible and charter services under the rate when a carrier has excess profits subject to offset after taxes. Amounts suffixed by (A) represent carriers in a current tax status, and (B) represent carriers with current tax loss carryforward credits.
[5] Consists of hub-to-hub operations and certificate ineligible operations.

[FR Doc.77-23492 Filed 8-15-77;8:45 am]

[Docket No. 30570]

SERVICE TO BRUNSWICK AND SAVANNAH CASE

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled matter is assigned to be held on September 27, 1977, at 9:00 a.m., Federal Courtroom, Federal Building, Wright Square, Savannah, Georgia 31401 before the undersigned.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report, served on May 10, 1977, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., August 9, 1977.

JANET D. SAXON,
Administrative Law Judge.

[FR Doc.77-23569 Filed 8-15-77;8:45 am]

CIVIL SERVICE COMMISSION

ARMY DEPARTMENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Army to fill by noncareer executive assignment in the excepted service the position of Principal Deputy Assistant Secretary of the Army (Research and Development), Office, Assistant Secretary of the Army (Research and Development), Office, Secretary of the Army.

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

[FR Doc.77-23589 Filed 8-15-77;8:45 am]

COMMERCE DEPARTMENT

Grant of Authority To Make A Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Director, Office of Special Projects, Economic Development Administration.

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

[FR Doc.77-23588 Filed 8-15-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the General Services Administration to fill by noncareer executive assignment in the excepted service the position of Director of Administration, Office of Administration.

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

[FR Doc.77-23587 Filed 8-15-77;8:45 am]

LABOR DEPARTMENT

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Director, National Commission for Manpower Policy.

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

[FR Doc.77-23592 Filed 8-15-77;8:45 am]

LABOR DEPARTMENT

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary, Office of the Secretary.

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

[FR Doc.77-23593 Filed 8-15-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

Title Change in Noncareer Executive Assignment

By notice of April 29, 1975, FR Doc. 75-11084 the Civil Service Commission authorized the Small Business Administration to make a change in title for the position of Assistant Administrator for Advocacy, Planning and Research authorized to be filled by noncareer executive assignment. This is notice that the title of this position is now being changed to Assistant Administrator for Planning, Research, and Data Management.

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

[FR Doc. 77-23591 Filed 8-15-77;8:45 am]

TRANSPORTATION DEPARTMENT

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), The Civil Service Commission authorizes the Department of Transportation to fill by non-career executive assignment in the excepted service the position of Special Assistant to the Secretary, Office of the Secretary.

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

[FR Doc.77-23590 Filed 8-15-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

EXPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975) notice is hereby given that a meeting of the Exporters' Textile Advisory Committee will be held at 10 a.m., on September 8, 1977 in Room 3817, Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

The Committee, which is comprised of 28 members involved in textile and apparel exporting, advises Department officials concerning ways of increasing U.S. exports of textile and apparel products.

The agenda for the meeting is as follows:

1. Review of Export Data.
2. Report on Conditions in the export market.
3. Recent Foreign Restrictions Affecting Textiles.
4. Other Business.

A limited number of seats will be available to the public on a first come basis. The public may file written statements with the Committee before or after the meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the DIBA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: August 10, 1977.

ROBERT E. SHEPHERD,
Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc. 77-23566 Filed 8-15-77; 8:45 am]

National Oceanic and Atmospheric Administration

ATLANTIC FOREIGN PELAGIC LONGLINE FISHERY

Preliminary Management Plan; Public Hearing Change

Notice is hereby given of a change in the meeting date as published in the FEDERAL REGISTER on August 5, 1977, (42 FR 39694) for a public meeting concerning a draft environmental impact statement for the proposed implementation of a preliminary management plan for the Atlantic Foreign Pelagic Longline Fishery entitled Atlantic Billfishes and Sharks.

The meeting scheduled for August 26, 1977, at the South Carolina Wildlife and Marine Resources Department, 217 Ft. Johnson Road, Charleston, S.C., 7:30 to 10 p.m. will now be held on August 29, 1977. The location and time remain unchanged.

Dated: August 10, 1977.

JOSEPH W. SLAVIN,
Acting Associate Director, National Marine Fisheries Service.

[FR Doc.77-23556 Filed 8-15-77;8:45 am]

SCIENTIFIC RESEARCH PERMIT

Receipt of Application

Notice is hereby given that the following Applicant has applied in due form for a permit to take marine mammals for scientific research as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

State of Maine, Department of Marine Resources, State House, Augusta, Maine 04333, requests to take an unspecified number of the following species of marine mammals, that may be taken incidentally in gill nets utilized to sample shortnose sturgeon: Atlantic bottlenosed dolphin (*Tursiops truncatus*); Atlantic white-sided dolphin (*Lagenorhynchus acutus*); harbor porpoise (*Phocoena phocoena*); harbor seal (*Phoca vitulina concolor*); gray seal (*Halichoerus grypus*).

The Applicant is currently authorized to take shortnose sturgeon, an endangered species of fish, under ESA Permit No. 17, in the Kennebec and Sheepscot estuaries. During the course of these studies some marine mammals may become accidentally ensnared.

Those marine mammals taken alive will be released immediately at the capture site; animals which die will be made available to the scientific community.

Documents submitted in connection with this application are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Mass. 01930.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is sending copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Interested parties may submit written data or views, or requests for a public hearing on this application to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: August 5, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-23551 Filed 8-15-77;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COTTON AND MANMADE FIBER TEXTILE PRODUCTS FROM REPUBLIC OF CHINA

Increasing Import Restraint Levels

AUGUST 12, 1977.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the levels of restraint applicable to cotton textile products in Categories 9/10 (sheeting, 18/19 (printcloth), 22/23 (twill and sateen), 43 and part of 62 (knit shirts and tops), 45/46/47 (men's and boys' shirts), 48 (raincoats), 49 (other coats), 50/51 (trousers, slacks and outer shorts), and 60 (nightwear and pajamas), and manmade fiber textile products in Categories 213 (specialty fabrics), 219 (shirts, including blouses), 221 (sweaters and cardigans), 222 (trousers, slacks and outer shorts), 224 (coats and suits), and 234/235 (shirts, not knit) during the agreement year which began on January 1, 1977. (A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 31, 1975 (40 FR 60220), December 30, 1976 (41 FR 56881), January 21, 1977 (42 FR 3888), and March 7, 1977 (42 FR 12898).

SUMMARY: Paragraphs 6 and 8 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 21, 1975, as amended, between the Governments of the United States and the Republic of China, provide for designated percentage increases for flexibility and for the carryover of shortfalls from the previous agreement year in certain categories.

The purpose of this notice is to advise that the levels of restraint established during the agreement year which began on January 1, 1977 for cotton textile products in Categories 9/10, 18/19, 22/23, 43/62 (pt.), 45/46/47, 48, 49, 50/51, and 60 and man-made fiber textile products in Categories 213, 219, 221, 222, 224, and 234/235 have been increased to account for flexibility, carryover, or both.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Clinton Stack, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230. (202-377-5423).

SUPPLEMENTARY INFORMATION: On December 27, 1976, a letter dated December 20, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (41 FR 56213), which established the levels of restraint applicable to certain specific categories of cotton and man-made fiber textile products, produced or manufactured in the Republic of China and exported to the United States during the twelve-month period beginning on January 1, 1977 and extending through December 31, 1977. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels of restraint established for Categories 9/10, 18/19, 22/23, 43/62 (pt), 45/46/47, 48, 49, 50/51, 60, 213, 219, 221, 222, 224 and 234/235 to the designated amounts.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

U.S. DEPARTMENT OF COMMERCE,
COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS,

Washington, D.C., August 12, 1977.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: On December 20, 1976, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton and man-made fiber-textile products in certain specified categories, produced or manufactured in the Republic of China and exported to the United States during the agreement year which began on January 1, 1977, in excess of designated levels of restraint. The Chairman further advised you that the levels of restrain are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraphs 6 and 8 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 21, 1975, as amended, between the Governments of the United States and the Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to amend, effective on August 16, 1977 the levels of restraint established in the directive of December 20, 1976 for cotton textile products in Categories 9/10, 18/19, 22/23, 43/62 (pt.), 45/46/47, 48, 49, 50/51 and 60 and man-made fiber textile products in Categories 213, 219, 221, 222, 224 and 234/235 as follows:

Category:	*Amended 12-mo. level of restraint*[1]
9/10	42,927,144 yd[2].
18/19	2,309,995 yd[2].
22/23	4,581,572 yd[2].
43/62 (pt.)[3]	991,153 yd[2] equivalent.
45/46/47	14,538,688 yd[2] equivalent (of which not more than 38,112 doz shall be in category 45)
48	27,010 doz.
49	46,624 doz.
50/51	741,205 doz (of which not more than 365,512 doz shall be in category 50 and not more than 587,212 doz shall be in category 51).
60	45,767 doz.
213	9,500,941 lb.
219	6,296,217 doz.
221	4,217,625 doz.
222	4,466,121 doz.
224	10,375,806 lb (of which not more than 241,586 lb shall be in T.S.U.S.A. Nos. 380.0420 and 380.8143 and not more than 724,758 lb shall be in T.S.U.S.A. Nos. 380.0402 and 380.8103).
234/235	82,676,847 yd[2] equivalent.

[1] The levels of restraint have not been adjusted to reflect any entries made after December 31, 1976.

[2] In Category 62, only T.S.U.S.A. Nos. 382.0002, 382.0605 and 382.0610.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton and man-made fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.77-23639 Filed 8-15-77;8:45 am]

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 21, 1975, as amended, between the Governments of the United States and the Republic of China which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems.

DEPARTMENT OF DEFENSE

Office of the Secretary

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Change of Address

Notice is hereby given that the new address of the Uniformed Services University of the Health Sciences is 4301 Jones Bridge Road, Bethesda, Md. 20014. All correspondence previously sent to 6017 Arlington Road, Bethesda, Md. should be sent to the above new address. New telephone numbers are as follows:

President's Office, 295-2101; Administrative Affairs, 295-2111; Personnel, 295-2180; Admissions Office, 295-2123.

Effective date: August 26, 1977.

F. M. REYNOLDS,
Director, Administrative Affairs, Uniformed Services University of the Health Sciences.

AUGUST 11, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

[FR Doc.77-23545 Filed 8-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 778-1]

CENTER FOR DISEASE CONTROL, ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part

172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10350-EUP-1. 3M Company, St. Paul, Minnesota 55101. This experimental use permit allows the use of 1,432.5 pounds of an insecticide which is a mixture of pyrethrins, piperonyl butoxide, N-octyl bicycloheptenedicarboximide, and petroleum distillate in food handling establishments, dairy and cattle barns, stables, and poultry houses to evaluate control of ants, flies, mosquitoes, fleas, ticks, and other insects. The program is authorized only in the States of California, Florida, Georgia, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Washington, and Wisconsin. The experimental use permit is effective from July 9, 1977, to July 9, 1978.

No. 36765-EUP-1. Center for Disease Control, Atlanta, Georgia 30333. This experimental use permit allows the use of 16.7 pounds of insecticide (5-benzyl-3-furyl) methyl-2,2 - dimethyl - 3 - (2-methylpropenyl) cyclopropanecarboxylate on non-crop land to evaluate control of mosquitoes. A total of 48 acres is involved: the program is authorized only in the State of Georgia. The experimental use permit is effective from June 17, 1977, to October 31, 1977.

No. 36765-EUP-2. Center for Disease Control, Atlanta, Georgia 30333. This experimental use permit allows the use of 5 gallons of the insecticide which is a mixture of pyrethrins and piperoynl butoxide on non-crop land to evaluate control of mosquitoes. A total of 48 acres is involved; the program is authorized only in the State of Georgia. The experimental use permit is effective from June 17, 1977, to October 31, 1977.

No. 275-EUP-18. Abbott Laboratories, North Chicago, Illinois 60064. This experimental use permit allows the use of 40.96 pounds of the insecticide *Bacillus thuringiensis* on corn, wheat, sorghum, and alfalfa to evaluate control of the European corn borer, southwestern corn borer, armyworm, cutworm, sorghum webworm, fall armyworm, corn earworm, and alfalfa caterpillar. A total of 1,280 acres is involved; the program is authorized only in the States of Colorado, Kansas, Nebraska, New México, North Dakota, Oklahoma, South Dakota, and Texas. The experimental use permit is effective from July 15, 1977, to September 30, 1978. Exemptions from the requirement of a tolerance for residues of the active ingredient in or on raw agricultural commodities have been established (40 CFR 180.1011).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567). Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 to 4:00 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: August 9, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-23605 Filed 8-15-77;8:45 am]

[OPP-66034; FRL 778-3]

PESTICIDE PROGRAMS

Voluntary Cancellation of Registrations of Pesticide Products Containing Monuron

On June 7, 1977, E. I. DuPont DeNemours & Co., Wilmington DE 19898, requested that the Environmental Protection Agency (EPA) cancel its registrations of Telvar Monuron Weed Killer, Telvar ML Monuron Weed Killer and Monuron Technical (EPA Registration Numbers 352-246, 352-274 and 352-328). Monuron is a broad-spectrum herbicide used for the nonselective control of grasses and herbaceous weeds on non-crop areas such as rights-of-way, industrial sites, and drainage ditch banks. The compound was formerly registered for control of weeds in several agricultural crops. However, since monuron tolerances were revoked in 1973, it can no longer be used for these purposes.

In an April 1977 letter to the EPA Office of General Counsel, DuPont indicated that in 1975; 70,000 pounds of Telvar Monuron Weed Killer and 11,000 pounds of Monuron Technical were sold. In 1976, 7,000 pounds of Monuron Weed Killer were sold and no Monuron Technical. There were no sales for Telvar ML Monuron Weed Killer in either 1975/1976. DuPont stated in a letter of June 7, 1977, to EPA it does not intend to pursue any further monuron business and has no inventory in stock at this time. Furthermore, in its opinion, there is very little, if any, of these monuron products in the hands of their customers. The registrant requested that the registration be cancelled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIRRA) Section 6(a)(1).

Cancellation of the registration for these products shall be effective on September 15, 1977, unless the registrant, or an interested person with the concurrence of the registrant, requests that the registration be continued in effect.

Further sale, distribution or use of these products after September 15, 1977, is prohibited. Sale, distribution or use of existing stocks of these products beyond the effective date of cancellation constitutes an unlawful act under Section 12 (a)(2)(K) and is punishable under Sections 13 and 14 of FIFRA.

Comments concerning this action may be submitted in triplicate to the FEDERAL REGISTER Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St. SW, Washington DC 20460. Any such submissions should bear a notation indicating both the subject and the OPP document control number "OPP-66034". Any comments or other documents filed regarding this notice of cancellation will be available for public inspection in the office of the FEDERAL REGISTER Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 9, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc.77-23603 Filed 8-15-77;8:45 am]

[OPP-50319; FRL 778-2]

UNION CARBIDE CORP., ET AL.

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 1016-EUP-35. Union Carbide Corporation, Washington, D.C. 20006. This experimental use permit allows the use of 560 pounds of the insecticide carbaryl on corn to evaluate control of the southwestern corn borer. A total of 65 acres is involved; the program is authorized only in the States of New Mexico, Oklahoma, and Texas. The experimental use permit is effective from July 1, 1977, to July 1, 1978. A permanent tolerance for residues of the active ingredient in or on corn has been established (40 CFR 180.169).

No. 20954-EUP-6. Zoecon Corporation, Palo Alto, California 94304. This experimental use permit allows the use of 2,800 pounds of the insecticide hexadecyl cyclopropanecarboxylate on apples, pears and citrus to evaluate control of various species of mites. A total of 1,648 acres is involved; the program is authorized only in the States of Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Main, Maryland, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from June 30, 1977, to June 30, 1978. Temporary tolerances for residues of the active ingredient in or on apples, pears and citrus fruits have been established.

No. 4581-EUP-24. Pennwalt Corporation, Tacoma, Washington 98401. This experimental use permit allows the use of 3,510 pounds of the insecticide methyl parathion on almonds, cabbage, conifers, cranberries, cucumbers, squash, melons, peanuts, peppers, potatoes, strawberries, sugar beets, turf and turnips to evaluate control of various insects. A total of 2,884 acres is involved; the program is authorized only in the States of California, Maine, Michigan, Minnesota, Nebraska, New York, North Dakota, Oregon, Texas, Virginia, Washington, and Wisconsin.

The experimental use permit is effective from July 8, 1977, to July 8, 1978. Permanent tolerances for residues of the active ingredient in or on almonds, cabbage, cranberries, cucumbers, squash, melons, peanuts, peppers, potatoes, strawberries, sugar beets and turnips have been established (40 CFR 180.121).

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., S.W., Washington, D.C. 20460. It is suggested that such interested persons call 202-755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: August 9, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-23604 Filed 8-15-77;8:45 am]

[FRL 777-3; PP6G1705/T106A]

PESTICIDE PROGRAMS

O-Ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate; Renewal of Temporary Tolerances; Correction

In FR Doc. 77-16444, appearing at page 29956 in the issue of June 10, 1977, in the first column, third paragraph, the date in the second line now reading "May 16, 1978" should be corrected to read "June 3, 1978".

Dated: August 4, 1977.

DOUGLAS D. COMPT,
Acting Director,
Registration Division.

[FR Doc.77-23503 Filed 8-15-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21356;
File No. 61302/03/04/05-IB-77**]

CERTIFIED SECURITY SERVICES, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: August 4, 1977.

Released: August 9, 1977.

In re applications of Certified Security Services, Inc., 2230 Michigan Avenue, Santa Monica, California 90404, for authorization to modify the facilities of stations WBM854, KZK628 and KW9328 and for a new station in the business radio service.

1. The Chief, Safety and Special Radio Services Bureau (the Bureau) has before him for consideration the above-captioned four applications filed July 15, 1977, by Certified Security Services, Inc. (Certified) which seek to modify the authorizations of its three stations in the Business Radio Service in the Los Angeles metropolitan area and to construct and operate a new mobile relay station. Also before the Bureau in connection with its consideration of the above-captioned applications are applications which were previously filed by Ronald A. Newlin (Newlin), Vice-President of Certified (File Nos. 22175/76/77-IB-76TV), and correspondence between the Bureau, Newlin, and his attorney concerning Newlin's now-dismissed applications. The Bureau also has before it Certified's applications for consent to assignment of authorizations for other Business Radio Service Stations from the former licensee of those facilities to Certified (Docket No. 21245; File Nos. 34096/97/98-IB-47TV). The applications which were the subject of Docket No. 21245 had been designated by the Bureau on issues to probe the character qualifications of Certified and Newlin to receive the authorizations in question, but the proceeding was terminated by the presiding Administrative Law Judge and the applications dismissed without prejudice at the Bureau's request when the Bureau discovered that the applicant had requested, several days before the date of designation, that the applications be dismissed without prejudice. (FCC 77M-1005, released June 2, 1977).

2. Newlin's applications, filed with the Commission July 13, 1976, in his individual capacity, represented that he was engaged in a commercial activity, i.e., providing electronic security and armed guard services for the general public. Newlin's applications were returned to him as incomplete on September 13, 1976, and resubmitted by him on October 1, 1976. In resubmitting his applications, Newlin stated that he had a need for 90 mobile units and reiterated that "I am a security contractor providing to the general public * * * alarm systems * * *"

3. Subsequently, allegations were made to the Commission by other applicants for Los Angeles area facilities in the Business Radio Service that Newlin was Vice-President of Certified, an existing licensee in the Business Radio Service in the Los Angeles area, and that Newlin's applications were in fact a subterfuge to obtain for Certified a second frequency in violation of § 91.8(c) of the Commission's Rules which precludes assignment of a second frequency absent a conclusive demonstration of essential need therefor. As a result of these allegations, the Bureau's staff reviewed the Business Radio Service license files and discovered that on January 28, 1976, six months prior to the filing of Newlin's individual applications, Certified applied for and was authorized facilities in the Business Radio Service for use in the Los Angeles metropolitan area; that Certified's applications were signed by Newlin as an officer of that corporation; and that the addresses furnished by Newlin in his individual applications were identical to Certified's station locations. These facts, as well as allegations that Newlin might be acting on behalf of still another Commission licensee, were presented to Newlin in a November 24, 1976, letter from the Bureau's staff which also directed him to respond thereto and to supply certain specific information. Newlin was admonished in the staff's letter of the possible consequences of false statements made in response to the letter or in his applications.

4. After reviewing Newlin's response to its letter as well as correspondence from Newlin's counsel, the Bureau dismissed Newlin's applications on February 23, 1977, because it found that Newlin failed to meet the eligibility requirements of the Business Radio Service. In doing so, the Bureau's staff advised Newlin that his admission, in a January 17, 1977, letter that he was not engaged in an individual proprietorship providing security services, but was acting on behalf of Certified of which he was Vice-President, vitiated his claim of eligibility to be an individual licensee in the Business Radio Service.

5. These facts led the Bureau to designate for hearing the applications described above for consent to assignment of license (Docket No. 21245) in order to determine the character qualifications of Certified and its Vice-President, Newlin, to receive the additional authorizations which it sought to acquire by way of assignment. Subsequent to the designation of those applications for hearing and prior to the termination of the proceeding when it was discovered that a timely request for dismissal as a matter of right had in fact been filed by the applicant, an employee of Certified visited the Commission, and, in a conference with members of the Bureau's staff, volunteered that Certified's radio facilities were serving fifty to sixty mobile units. The license which the Commission issued to Certified for its Station KW9328 limits it to serving nine (9) mobile units located in land vehicles. As a result of this voluntary disclosure by Certified the Bureau on June 23, 1977, wrote to Certified and advised it that service to more than the authorized nine mobile units constituted a violation of the Communications Act of 1934, as amended, and of the Commission's Rules. Certified was advised to terminate any unauthorized operation and to inform the Bureau of such termination. In addition, Certified was asked, among other things, to advise the Bureau as to the number of mobile units it had been serving immediately prior to the Bureau's June 1977 letter. Certified, in effect, has declined to furnish the information requested in the Bureau's June 23, 1977, letter. However, Certified filed a request for Special Temporary Authority to serve 50 additional mobile units on Station KW9328, i.e., to authorize for the first time the apparent unauthorized operation. That request was denied by the Bureau on July 19, 1977.

6. The foregoing facts raise a grave question as to the character qualifications of Certified and its Vice President, Newlin, to receive the authorizations which Certified here seeks. In executing his individual applications Newlin certified to the Commission that all statements made therein were true, complete and correct to the best of his knowledge and belief, and were made in good faith. The applications themselves (FCC Form 425) bear on their face the admonition that wilful false statements made thereon are punishable by fine and imprisonment. The Commission must depend on the integrity and representations of its licensees, and a breach of that trust or wilful false statements may be grounds for the revocation of licenses and character disqualification. See *FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946); *Charles P. B. Pinson, Inc.* v. *FCC*, 321 F. 2d 372 (D.C. Cir. 1963); *Pass Word, Inc.*, FCC 76-904, release October 13, 1976. The Bureau's review of the circumstances surrounding Newlin's individual applications and the applications which were the subject of the Docket No. 21245 designation order called into question the character qualifications of Certified and Newlin to receive additional authorizations. The

gravity of those matters has now been compounded by the recent disclosures that Certified has been for an indeterminate period violating the terms of its existing authorization from the Commission.

7. These facts vitiate, we think, Certified's assertion, in an exhibit to its above-captioned applications, that they should not be designated for hearing, in that the public interest would be served by a grant because the applicant has taken reasonable steps to assure that it will operate in compliance with the Commission's Rules. Certified's claim that Newlin has been disciplined; that prior actions of Certified and Newlin are not so severe; and that the entire matter of Newlin's applications arose from a misunderstanding rather than a wilful intent to deceive are inadequate to resolve the question of Certified's character qualifications without a hearing. Because the Bureau cannot make the requisite finding, pursuant to Section 309 (a) of the Act, that a grant of Certified's applications would serve the public interest, convenience and necessity, the applications must, in accordance with Section 309(e) of the Act, be designated for evidentiary hearing.

8. Accordingly, *it is ordered*, That in accordance with the provisions of Section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), the above-captioned applications of Certified Security Services, Inc., File Nos. 61302/03/04/05-IB-77**, are, pursuant to authority delegated in §§ 0.131(a) and 0.331 of the Commission's Rules, designated for hearing at a time and place to be specified at a later date, on the following issues:

(a) To determine if there were deliberate and material misrepresentations or a lack of candor by Ronald A. Newlin in his applications as an individual for facilities in the Business Radio Service (File Nos. 221575/76/77-IB-76TV), and if any such misrepresentations or lack of candor were on behalf or for the benefit of Certified Security Services, Inc.

(b) To determine if Certified Security Services, Inc. has wilfully violated the terms of its authorizations from the Commission for facilities in the Business Radio Service by operating more mobile units than authorized by such an authorization.

(c) To determine, in light of the evidence adduced pursuant to issues (a) and (b) hereinabove whether Certified Security Services, Inc. and its Vice President, Ronald A. Nowlin, possess the requisite character qualifications to receive a grant of the applications which are the subject of this proceeding.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-captioned applications will best serve the public interest, convenience and necessity.

9. *It is further ordered*, That Certified Security Services, Inc., Ronald A. Newlin and the Chief, Safety and Special Radio Services Bureau are made parties in this proceeding.

10. *It is further ordered*, That the burden of proceeding with the evidence and the burden of proof on the issues specified in paragraph 8 (a), (b), (c) and (d) hereinabove are, pursuant to Section 309(e) of the Act and Section 1.254 of the Commission's Rules, upon Certified Security Services, Inc.

11. *It is further ordered*, That each of the parties named in Paragraph 9 hereinabove, in order to avail themselves of the opportunity to be heard, shall within 20 days of the mailing of the notice of designation by the Secretary of the Commission, file with the Commission, in triplicate, a written notice of appearance that he will appear on the date to be fixed for hearing and present evidence on the issues specified in this Order, as prescribed in § 1.221 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION.
CHARLES A. HIGGINBOTHAM,
Chief, Safety, and Special Radio Services Bureau.

[FR Doc.77-23532 Filed 8-45-77;8:45 am]

[Docket No. 21307 etc.; File No. BPH-9035 etc.]

REDING BROADCASTING CO., ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues.

Adopted: July 28, 1977.

Released: August 5, 1977.

In re applications of Reding Broadcasting Co., Terrell Hills, Texas, Docket No. 21307, File No. BPH-9035, Requests: 106.3 MHz, #292; 2.9 kW; 300 feet.

The S.S.S. Broadcasting, Inc., Terrell Hills, Texas, Docket No. 21308, File No. BPH-9247, Requests: 106.3 MHz, #292; 3 kW; 300 feet.

The Wholly Owned Corporation, Terrell Hills, Texas, Docket No. 21309, File No. BPH-9637, Requests: 106.3 MHz, #292; 3 kW; 290 feet.

For construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications.

2. Section 73.210 of the Commission's Rules requires that the main studio of an FM broadcast station be located within the corporate boundaries of the principal community to be served unless an applicant makes an adequate showing that good cause exists for locating its main studio elsewhere. The S.S.S. Broadcasting, Inc. [S.S.S.] seeks to locate its proposed studio at the site of its commonly-owned station KAPE(AM) in San Antonio. S.S.S. argues that since the applicant proposes to serve the entire San Antonio metropolitan community, and as Terrell Hills is a small enclave within the city of San Antonio, location of the proposed studio at the readily accessible site of its AM studio in downtown San Antonio would better serve the public interest. In addition, it is stated that Reding Broadcasting Co. [Reding] has acquired the only remaining piece of commercial property for sale in Terrell Hills. In an earlier rulemaking proceeding we were unable to find that the programming needs and interests of Terrell Hills were distinguishable from those of San Antonio.[1] In these circumstances we conclude that the public interest would not be disserved by location of S.S.S.'s main studio in San Antonio, and that an adequate showing under Section 73.210(a) of the Rules has been made for locating the proposed main studio outside of the corporate limits of Terrell Hills.

3. Analysis of S.S.S.'s financial data reveals that $115,166 will be required to construct and operate the proposed station for a period of one year, without revenue, itemized as follows:

Downpayment on equipment	$6,160
Principal and interest payment on equipment	8,256
Building	2,000
Legal costs	25,000
Miscellaneous	18,000
Working capital (first year)	55,750
Total	$115,166

To meet this requirement, applicant relies upon a bank loan of $110,000. However, this sum is insufficient to meet its obligations and a financial issue will be specified.

4. Reding and The Wholly Owned Corporation [Wholly Owned] propose independent programming while S.S.S. proposes to duplicate some of the programming of its commonly owned station, KAPE(AM). Therefore evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted will be limited to evidence concerning the benefits to be derived from the proposed duplication which would offset its inherent inefficiency. *Jones T. Sudbury*, 8 FCC 2d 360, 10 RR 114 (1967).

5. Since S.S.S. proposes predominantly Black-oriented programming while Reding and Wholly Owned propose general market programming, the relative need for these different types of programming will be considered under the standard comparative issue. *Ward L. Jones*, FCC 67-82 (1967); *Policy Statement on Comparative Broadcast Hearing*, 1 FCC 2d 393, 397 (1965).

6. Except as indicated by the issue specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. *Accordingly, it is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the application of The S.S.S. Broadcasting, Inc.:

(a) The source and availability of funds above and beyond the $110,000 indicated; and,

(b) Whether, in light of the evidence adduced pursuant to (a), above, the applicant is financially qualified.

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[1] *FM Table of Assignments* (Docket 19524), 38 FCC 2d 528, 26 RR 2d 31 (1972).

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the applicant's pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance indicating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

9. *It is further ordered,* That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing, either individually or, if feasible and consistent with the Rules, jointly, within the time and manner prescribed in such Rule, and shall advise the Commission of publication of such notice as required by § 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-23533 Filed 8-15-77;8:45 am]

FEDERAL MARITIME COMMISSION

DELTA STEAMSHIP LINES INC. AND WESTWIND AFRICA LINE LTD.

Agreement Filed

Notice is hereby given that the following agreement, accompanied by a statement of justification, has been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the statement of justification at the Washington office of the Federal Maritime Commission, 1100 L Street NW. Room 10126; or may inspect the agreement and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 6, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler & Sparber, 120 Broadway, New York, N.Y. 10005.

Agreement No. 10307 would authorize Delta Steamship Lines, Inc. (Delta) and Westwind Africa Line, Ltd. (Westwind)—both of whom are members of the American West African Freight Conference—to enter into an agreement with Kaiser Aluminum & Chemical Corp. (Kaiser) and obligate the lines to carry all of Kaiser's proprietary cargo in the trade between Chalmette, La., and Tema, Ghana. Delta and Westwind will share equally in the carriage of aluminum ingots and general cargo moving between Kaiser's private berthing facilities at the aforesaid ports.

By Order of the Federal Maritime Commission.

Dated: August 10, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-23567 Filed 8-15-77;8:45 am]

MEDITERRANEAN/NORTH PACIFIC COAST FREIGHT CONFERENCE AND JOHNSON SCANSTAR RATE AGREEMENT

Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before September 6, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Agreement No. 10156-2, among the signatories to the Mediterranean/North Pacific Coast Freight Conference and Johnson Scanstar proposes to extend indefinitely the term of approval of the agreement.

By Order of the Federal Maritime Commission.

Dated: August 10, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-23568 Filed 8-15-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP76-159 (See 42 FR 40023, August 8, 1977.)]

COLUMBIA GAS TRANSMISSION CORP.

Commissioner's Statement

Attached is Commissioner Smith's statement to the order issued July 29, 1977, in the above matter (42 FR 40023; August 8, 1977).

KENNETH F. PLUMB,
Secretary.

COLUMBIA GAS TRANSMISSION CORP.

[Docket No. RP76-159]

Issued August 8, 1977.

SMITH, Commissioner, *dissenting*:

The majority order would continue to include in Columbia's rate base monies advanced to BP Oil despite the Commission's decision in Opinion No. 674 that the advances were to be removed if repayment had not begun within five years, which has not happened. The explanation for the continuation of consumer financing of this loan shows the decision to be eminently beneficial to Columbia, but it lacks the requisite rationale to support the imposition of this added burden on Columbia's ratepayers.[1] There is no such rationale.

The majority attempts to negate the effect of its action by conditioning their decision here on the outsome of the proceeding in Docket No. RP76-49 where Columbia, among others, has been directed to show cause why the Alaska proceeding commenced December 31, 1975, and there is no resolution in sight. In the meantime, however, the majority has decided, in effect, to continue a program that has already been terminated.

The worth of the Alaska advance payment program should be finally decided in Docket No. RP76-49 rather than determined piece-meal, with conditions, in individual cases. All participants, especially the consumers, are entitled to know now the responsibilities, obligations, and benefits accruing to each. The decision

[1] *See Pub. Serv. Comm. of N.Y. v. F.P.C.,* 511 F.2d 338, 346-51 (D.C. Cir. 1975); *Order On Remand From Court Opinion Terminating Investigation And Terminating Advance Payment Program With Conditions,* Docket No. R-411 and RM74-4 (December 31, 1975).

of the majority to act in an ad hoc manner is not in the public interest. I dissent.

DON S. SMITH,
Commissioner.

[FR Doc.77-23522 Filed 8-15-77;8:45 am]

[Projects 1759, 1980, 2072, 2073, 2074, 2131, 2357, 2394, 2431, 2471, 2486, 2523 and 2550]

WISCONSIN MICHIGAN POWER CO. AND WISCONSIN ELECTRIC POWER CO.

Application for Transfer of Licenses

AUGUST 8, 1977.

Public notice is hereby given that an application for transfer of licenses was filed under the Federal Power Act, 16 U.S.C. 791a-825r, by Wisconsin Michigan Power Co. (Transferor) and Wisconsin Electric Power Co. (Transferee) (Correspondence to: Robert H. Gorske, Esq. Wisconsin Electric Power Co., 231 West Michigan Street., Milwaukee, Wis. 53201; Norris Darrell, Jr., Esq., Sullivan & Cromwell, 48 Wall Street, New York, N.Y. 10005; George F. Bruder, Esq., Bruder & Gentile, 1201 Connecticut Ave. NW., Suite 708, Washington, D.C. 20036) for Project Nos. 1759, 1980, 2072, 2073, 2074, 2131, 2357, 2394, 2431, 2471, 2486, 2523, and 2550. The projects are located on the Michigamme, Menominee, Paint, Brule, Sturgeon, Pine, Oconto, and Waupaca Rivers in Iron, Dickinson, and Menominee Counties, Mich. and Florence, Marinette, Oconto, and Waupaca Counties, Wis.

Wisconsin Electric Power Co., which owns all the outstanding stock of Wisconsin Michigan Power Co., would continue operation of all projects operated by Wisconsin Michigan Power Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1977, file with the Federal Power Commission, 825 N. Capitol Street NE., 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 (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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-23523 Filed 8-15-77;8:45 am]

FEDERAL RESERVE SYSTEM

LINN COUNTY BANCSHARES, INC.

Formation of Bank Holding Company

Linn County Bancshares, Inc., Linneus, Missouri, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 per cent or more of the voting shares of Linn County State Bank, Linneus, Missouri. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 31, 1977.

Board of Governors of the Federal Reserve System, August 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-23537 Filed 8-15-77; 8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on August 11, 1977. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FPC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before September 6, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL POWER COMMISSION

The FPC requests an extension no change clearance of old Form 3P, Monthly Residential, Commercial and Industrial Electric Bill Data for United States Bureau of Labor Statistics. There is no change in the current format of the form and an extension of 15 months to December 1978 to allow for the Bureau of Labor Statistics to thoroughly test the new Consumer Price Index (CPI) is requested. The price indexes are the Government's official indicators of price movements in the National economy. This FPC request for an extension is for the old Form 3P which will be used to report separately but parallel with the new Form 3P for an additional 15-month period. The FPC estimates respondents to be approximately 84 utilities and reporting burden to average .8 hours monthly for each response for the old Form 3P.

NORMAN F. HEYL,
Regulatory Reports,
Review Officer.

[FR Doc.77-23555 Filed 8-15-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77F-0217]

B.F. GOODRICH CO.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces that B. F. Goodrich Co. has filed a petition proposing that the food additive regulations be amended to provide for the use of a certain antioxidant in food-contract articles.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3259) has been filed by B. F. Goodrich Co., 500 S. Main St., Akron, OH 44318, proposing that the food additive regulations be amended to provide for the use of 3,5-di-tert-butyl-4-hydroxy-hydrocinnamic acid triester with 1,3,5-tris (2-hydroxyethyl)-*s*-triazine 2,4,6 (1*H*, 3*H*, 5*H*)-trione as an antioxidant in food-packaging adhesives and certain polyolefin polymers intended for food-contact use.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md., 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1977.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc.77-23407 Filed 8-15-77;8:45 am]

MICROBIOLOGY DEVICE CLASSIFICATION PANEL; ADVISORY COMMITTEE

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced.

Committee name	Date, time, and place	Type of meeting and contact person
Microbiology Device Classification Panel.	Sept. 26 and 27, 9 a.m., room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing, Sept. 26, 9 a.m. to 10 a.m.; open committee discussion, Sept. 26, 10 a.m. to 5 p.m.; closed committee deliberations, Sept. 27, 9 a.m. to 4:30 p.m.; Thomas M. Tsakeris (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to agenda items to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make a formal presentation should notify the executive secretary by September 12, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required for their presentation.

Open committee discussion. The panel will review all of their classification recommendations to date. The panel will also begin discussion of the priorities for development of standards for those products recommended for Class II.

Closed committee deliberations. The Bureau of Medical Devices is presently reviewing three transitional new drug applications (N50-494, N770001, and N770002). The reviews of these applications are ready to be presented to the panel for their consideration. The panel will be asked to review and comment on the Bureau's approach to the evaluation of these applications. This portion of the meeting will therefore be closed to protect trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: August 8, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-23406 Filed 8-15-77;8:45 am]

[Docket No. 76F-0219]

MONSANTO CO.

Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (FAP 6B3167) proposing safe use of cupric acetate and potassium bromide with nylon 66 in the production of spunbonded fabric intended for filtration of food.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 Withdrawal of petition without prejudice of the procedural food additive regulations (21 CFR 171.7, formerly § 121.52, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), Monsanto Co., 800 N. Lindberg Blvd., St. Louis, MO 63166, has withdrawn its petition (FAP 6B3167), notice of which was published in the FEDERAL REGISTER of July 8, 1976 (41 FR 27995), proposing that § 178.2010 be amended to provide for the safe use of cupric acetate and potassium bromide with nylon 66 in the production of spun-bonded fabric intended for filtration of food.

Dated August 4, 1977.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc.77-23405 Filed 8-15-77;8:45 am]

Office of Education

FOLLOW THROUGH PROGRAM

Closing Date for Receipt of Applications (By Invitation Only) for Additional FY 1977 Funds

Notice is hereby given that, under the authority contained in Title V, Parts B and C of the Economic Opportunity Act, as amended by Section 8(a) Pub. L. 93-644, applications are being accepted for additional Fiscal Year 1977 funds for the purpose of conducting expanded demonstration activities. The regulatory authority for grants of these additional funds and the funding criteria which govern these grants are found in § 158.-15a of the Follow Through final regulations, as amended, published in the FEDERAL REGISTER of Wednesday, June 29, 1977 (42 FR 33149). Applications are by invitation only. Applicants will be invited by letter of invitation from the Commissioner or his authorized representative. The letter of invitation is expected to be mailed by August 31, 1977.

It is anticipated that approximately twelve grants will be awarded from these additional funds. Invitations are being extended to applicants who applied for non-competing continuations for operating Follow Through projects in accordance with the Notice of Closing date which was published in the FEDERAL REGISTER on Thursday, December 30, 1976 (41 FR 56859) and whose applications were judged to be satisfactory according to the funding criteria stated in § 158.-15 (a) through (k), (m), and (n) of the Follow Through final regulations (45 CFR Part 158) and were judged to be outstanding according to the criteria stated in § 158.15 (l) and (o) of the Follow Through final regulations (45 CFR Part 158).

In order to be assured of consideration for funding with these additional Follow Through funds, invited applications should be received in the U.S. Office of Education Application Control Center on or before September 12, 1977. Funds supporting these grants may be awarded for a period not to exceed eighteen months.

A. APPLICATIONS SENT BY MAIL

An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, Washington, D.C. 20202, Attention: 13.-433D. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than September 12, 1977 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. HAND DELIVERED APPLICATIONS

An application to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th & D Streets, S.W., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal holidays.

C. PROGRAM INFORMATION AND FORMS

Information may be obtained from the Division of Follow Through, Bureau of Elementary and Secondary Education, 400 Maryland Avenue, S.W. (Regional Office Building Three, Room 3624), Washington, D.C. 20202.

D. APPLICABLE REGULATIONS

The regulations applicable to this program include the Office of Education General Provisions Regulations (45 CFR Part 100a) and the Follow Through Regulations (45 CFR Part 158) as amended by 45 CFR Section 158a, published in the FEDERAL REGISTER, June 29, 1977 (42 FR 33149).

(Title V, Parts B and C of the Economic Opportunity Act, as amended by Pub. L. 93-644, Section 8(a), 42 U.S.C. 2929 et seq.)

(Catalog of Federal Domestic Assistance Number 13.433; Follow Through Program.)

Dated: August 5, 1977.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc.77-23570 Filed 8-15-77;8:45 am]

GUIDANCE AND COUNSELING

Closing Date for Receipt of Applications for Fiscal Year 1977

Notice is hereby given that under the authority contained in Section 342(b) of Part D of Title III of the Education Amendments of 1976, Pub. L. 94-482 (20 U.S.C. 2532(b)), grant applications from States are being accepted for programs, projects and leadership activities to expand and strengthen guidance and counseling services in elementary and secondary schools.

In order to be assured of consideration, applications must be received by the U.S. Office of Education on or before September 16, 1977.

Applications sent by mail should be addressed as follows:

Mr. Allen King, Division of State Educational Assistance, U.S. Office of Education, ROB-3, Room 3010, 7th and D Streets SW., Washington, D.C. 20202, 202-245-2502.

An application to be hand delivered must be taken to Mr. Allen King at the above mail address.

Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m., Washington, D.C. time except Saturdays, Sundays, or Federal holidays.

Applicants may obtain instructions and application forms from:

Dr. Donald D. Twiford, Division of Education Replication, U.S. Office of Education, ROB-3, Room 3608, 7th and D Streets SW., Washington, D.C. 20202, 202-245-2243.

The application must be submitted by that State agency which is vested with the direct and primary responsibility for State supervision of programs of guidance and counseling at the elementary and secondary school levels, as provided in proposed 45 CFR 191.17(b) and 191.18 (a).

Under Section 342(b) of Pub. L. 94-482, available funds are allotted to (1) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance; (2) the Secretary of the Interior and the Secretary of Defense in the amounts necessary for activities for children and teachers in Department of the Interior schools for Indian children and for children and teachers in the overseas dependent schools of the Department of Defense, respectively; and (3) each State according to the ratio of children aged five to seventeen in the State to the number of such children in all the States.

The amount of funds which east State or other recepient may receive under these statutory provisions follows. Applicants should prepare their applications in the light of these allotments.

Allotment of funds under Pub. L. 94-482, Title III, Part D, Guidance and Counseling: fiscal year 1977

	State amounts[1]
Total appropriation	$3,000,000
United States and outlying areas	2,900,000
50 States, District of Columbia, and Puerto Rico	2,892,446
Alabama	49,745
Alaska	5,759
Arizona	35,547
Arkansas	28,006
California	272,777
Colorado	34,274
Connecticut	41,275
Delaware	7,961
Florida	98,699
Georgia	68,321
Hawaii	11,744
Idaho	11,462
Illinois	150,250
Indiana	73,008
Iowa	39,016
Kansas	29,248
Kentucky	45,623
Louisana	56,125
Maine	14,455
Maryland	57,085
Massachusetts	76,452
Michigan	129,189
Minnesota	55,447
Mississippi	34,274
Missouri	61,941
Montana	10,502
Nebraska	20,609
Nevada	8,131
New Hampshire	11,067
New Jersey	97,569
New Mexico	17,334
New York	231,784
North Carolina	72,217
North Dakota	8,978
Ohio	145,677
Oklahoma	34,386
Oregon	29,305
Pennsylvania	151,888
Rhode Island	12,027
South Carolina	39,525
South Dakota	9,429
Tennessee	54,600
Texas	167,246
Utah	17,730
Vermont	6,550
Virginia	66,401
Washington	47,373
West Virginia	23,037
Wisconsin	64,595
Wyoming	5,138
District of Columbia	8,300
Puerto Rico	48,365
American Samoa	[2] 575
Canal Zone	----------
Guam	[2] 1,521
Virgin Islands	[2] 972
Trust Territory	[2] 1,841
BIA	[2] 2,645

[1] Distribution of $3,000,000 with $100,000 reserved for OE administrative activities.

[2] The act provides that funds are distributed to these jurisdictions according to their needs for the funds. As indicated in regulations (Sec. 191.19) for this act, the Commissioner generally bases the determination of need on school-age population. The amounts shown were calculated on that basis. However, an additional amount may be awarded by the Commissioner to Guam, American Samoa, the Virgin Islands, the Trust Territories of the Pacific, and the Department of the Interior (BIA) depending on the needs documented in the application. Although there is no firm limit, it is expected that the amount awarded to any one of these jurisdictions will not exceed $5,000.

The regulations applicable to the Guidance and Counseling program are:

1. The Office of Education's General Provisions Regulations which were published on November 6, 1973, as amended (45 CFR Parts 100, 100a, and appendices), subject to the following: Subpart B of Part 100a shall not apply to applications under this program, except for §§ 100a.28, 100a.29, and 100a.30 which shall apply to this program.

2. The regulation for Guidance and Counseling which was published in proposed form May 20, 1977 (42 FR 25881).

(20 U.S.C. 2532).

Dated: August 10, 1977.

JOHN ELLIS
Acting U.S. Commissioner of Education.

(Catalog of Federal Domestic Assistance No. 13.577, Guidance and Counseling Program).

[FR Doc.77-23549 Filed 8-15-77;8:45 am]

PINPOINT DISASTER ASSISTANCE

Closing Date for Receipt of Applications

Under the authority contained in section 7(a)(1)(B) of Pub. L. 81-874 (assistance for current school expenditures in cases of certain disasters; 20 U.S.C. 241-1(a)(1)(B)) and section 16(a)(1)(B), of Pub. L. 81-815 (school construction assistance in cases of certain disasters; 20 U.S.C. 646(a)(1)(B)), notice is hereby given that the U.S. Commissioner of Education has established an amended closing date for the receipt of applications for pinpoint disaster assistance under section 7(a)(1)(B) of Pub. L. 81-874 and section 16(a)(1)(B) of Pub. L. 81-815. Furthermore, notice is hereby given that all applications related to pinpoint disasters which occurred on or after January 2, 1968 will be considered.

In the preamble to final regulation for disaster assistance under section 7, Pub. L. 81-874, and section 16, Pub. L. 81-815, published in the FEDERAL REGISTER on November 17, 1976 (41 FR 50776), the Office of Education stated that it would only consider pinpoint disaster applications related to disasters which occurred on or after July 1, 1975. The Office of Education has revised its policy and will now consider applications related to pinpoint disasters which occurred on or after January 2, 1968, the effective date of the "pinpoint" disaster provisions in section 7(a)(1)(B), Pub. L. 81-874 and section 16(a)(1)(B), Pub. L. 81-815. The Office of Education feels that the use of January 2, 1968 as the initial funding eligibility date for pinpoint disaster assistance fulfills better the intent of the authorizing legislation. Where applications are based on expenditures previously made, applicants will have to demonstrate that they were, in fact, eligible for assistance at the time the disaster occurred, and that the expenditures for which they seek reimbursement are those that are authorized for assistance under section 7, Pub. L. 81-874, and section 16, Pub. L. 81-815, and applicable regulations.

The closing date for filing an application for pinpoint disaster assistance under section 7 of Pub. L. 81-874 for a disaster which has occurred between January 2, 1968 and the publication date of this notice (August 16, 1977) is November 14, 1977.

The closing date for filing a preapplication for pinpoint disaster assistance under section 16 of Pub. L. 81-815 for a disaster which has occurred between January 2, 1968 and the application date of this notice (August 16, 1977) is November 14, 1977.

In the case of a disaster occurring after the publication date of this notice, program regulations at 45 CFR 112.8 and 113.9, which were published in the FEDERAL REGISTER on November 17, 1976, at 41 FR 50776 will determine the appropriate closing date for filing an application.

A. APPLICATIONS SENT BY MAIL

An application sent by mail must be filed through the appropriate State educational agency and sent to the U.S. Office of Education, Division of School Assistance in Federally Affected Areas, Areas, Room 2017A, 400 Maryland Avenue SW., Washington, D.C. 20202. An application sent by mail will be considered to be received on time if:

(1) The application was sent by registered or certified mail not later than the closing date as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of the mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. HAND DELIVERED APPLICATIONS

An application to be hand delivered must be taken to the U.S. Office of Education, Room 2107A, 400 Maryland Avenue SW., Washington, D.C. 20202. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time except Saturdays, Sundays or Federal Holidays. Applications will not be accepted after 4:00 p.m. on the closing date.

C. PROGRAM INFORMATION AND FORMS

Information and application forms may be obtained from the appropriate State educational agency which serves the applicant local education agency or the U.S. Office of Education, Division of Schools Assistance in Federally Affected Areas, Room 2107A, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

D. APPLICABLE REGULATIONS

The regulations applicable to this program include the Office of Education General Regulations (45 CFR Parts 100

and 100a) published in the FEDERAL REGISTER on November 6, 1973 (38 FR 30654) and Parts 112 and 113 of 45 CFR published in the FEDERAL REGISTER on November 17, 1976 (41 FR 50776).

(Catalog of Federal Domestic Assistance Nos. 13.477, School Assistance in Federally Affected Areas—Construction, and 13.478, School Assistance in Federally Affected Areas—Maintenance and Operation.)

Dated: August 11, 1977.

JOHN ELLIS,
Acting U.S. Commissioner of Education.

[FR Doc.77-23547 Filed 8-15-77;8:45 am]

Public Health Service

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM (Alcohol, Drug Abuse, and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (39 FR 1654, January 11, 1974, as amended by 40 FR 36166-67, August 19, 1975, and 41 FR 50074, November 12, 1976) is amended to: (1) Change the functional statement for the Division of Special Mental Health Research, Mental Health Intramural Research Program, National Institute of Mental Health, to more accurately reflect the scope of its research; (2) correct the title and change the functional statement for the Division of Mental Health Services Programs, National Institute of Mental Health, to better reflect the scope of its responsibility in providing technical assistance and consultation in connection with Federally administered health care programs, and (3) change item 2 in the order of succession of officials to act as Administrator during the absence or disability of the Administrator.

Section HM-B, Organization and Functions, is amended as follows: (1) Under the Division of Special Mental Health Research (HMMB3), amend item (1) to read as follows: (1) plans and conducts a program of intramural research on special mental health problems, such as clinical and preclinical psychopharmacology and neuropharmacology.

(2) Correct the title of the Division of Mental Health Services Program (HMM4) to read: Division of Mental Health Service Programs (HMM4) and amend item (4) to read as follows: (4) coordinates Institute activities and consults with other Federal and State agencies on mental health aspects of medical care provided under social security legislation and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) program.

Section HM-C, Order of Succession, is amended to change item (2) to read: Assistant Administrator for Extramural Programs.

Dated: August 9, 1977.

JOHN D. YOUNG,
Assistant Secretary for Management and Budget.

[FR Doc.77-23558 Filed 8-15-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-77-788]

ACTING SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, neither the Secretary of Housing and Urban Development nor the Under Secretary is available to exercise the powers and perform the duties of the Secretary, appointees to the positions listed below are authorized to act as Secretary and exercise all the powers, functions and duties assigned to or vested in the Secretary. However, no official shall act as Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability or vacancy in office.

1. General Counsel.
2. Assistant Secretary for Community Planning and Development.
3. Assistant Secretary for Housing—Federal Housing Commissioner.
4. Assistant Secretary for Policy Development and Research.
5. Assistant Secretary for Legislation and Intergovernmental Relations.
6. Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.
7. Assistant Secretary for Fair Housing and Equal Opportunity.
8. Assistant Secretary for Administration.
9. General Manager, New Community Development Corporation.

This designation supersedes the designation effective April 1, 1977 (42 FR 19174, April 12, 1977).

AUTHORITY: (Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 11490, 34 FR 17567).

Effective Date: This order is effective July 11, 1977.

Issued at Washington, D.C. on August 4, 1977.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development.

[FR Doc.77-23550 Filed 8-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 3242]

CALIFORNIA

Application

AUGUST 8, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 185), the SOHIO Transportation Corporation of Cleveland, Ohio, has filed an amendment to its right-of-way application CA 3242 to construct a 42" pipeline and related facilities for the purpose of transporting crude oil across the following described public lands:

SAN BERNARDINO MERIDIAN

T. 2 S., R. 8 W.,
Lots 25, 26, 30, 31, and 32 of Lot 37 of Santa Ana Del Chino Grant 477.
T. 1 S., R. 11 W.,
Lot 40 of Potrero De Felipi Lugo Grant 446;
Lot 39 of La Puente Grant 460.
T. 2 S., R. 11 W.,
Sec. 5, Lots 2, 3, and 4;
Within Lot 41 of La Merced Grant 443;
Lot 38 of La Puenta Grant 460;
Lot 48 of Paso De Bartola (Pico) Grant 464.
T. 2 S., R. 12 W.,
Within Lot 41 of Paso De Bartolo Pico Grant 464.
T. 5 S., R. 7 E.,
Sec. 1, SW¼NW¼NW¼, S½SW¼, and S½S½SW¼SE¼;
Sec. 2, NE¼SE¼ and NE¼NW¼SE¼;
Sec. 12, N½NW¼NE¼ and N½NE¼NW¼.
T. 5 S., R. 15 E.,
Sec. 25, W½SW¼NW¼.

The proposed pipeline will transport crude oil from Long Beach, California, to Midland, Texas.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the undersigned at E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc.77-23559 Filed 8-15-77;8:45 am]

[Colorado 23653]

COLORADO

Proposed Withdrawal and Reservation of Lands; Correction

AUGUST 5, 1977.

The Notice of Proposed Withdrawal and Reservation of Lands under serial number Colorado 23653 dated July 11, 1977, appearing in the July 20, 1977, issue of the FEDERAL REGISTER at pages 37256-37257, is hereby corrected to delete from the fourth paragraph the date

"July 5, 1977" and substitute therefor "August 18, 1977."

In connection therewith, the 30-day period provided for the filing of comments concerning this proposed withdrawal is extended to September 10, 1977.

THOMAS N. HARDIN,
Chief, Branch of Adjudication.

[FR Doc.77-23553 Filed 8-15-77;8:45 am]

[M 10201 (ND)]

NORTH DAKOTA

Termination of Proposed Withdrawal and Reservation of Lands

AUGUST 5, 1977.

Notice of an application filed by the Forest Service, United States Department of Agriculture, M 10201(ND), for withdrawal and reservation of public lands was published as FEDERAL REGISTER Document No. 68-10724, on page 12584 of the issue for September 5, 1968. The Forest Service has canceled its application involving the lands described in the FEDERAL REGISTER publication referred to above. Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b)(1), such lands will be at 10 a.m. on September 19, 1977, relieved of the segregative effect of the above-mentioned application.

EDGAR D. STARK,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-23560 Filed 8-15-77;8:45 am]

UTAH STATE OFFICE

Redelegation of Authority by State Director

Pursuant to the authority contained in section 1.1 of BLM Order No. 701 dated July 23, 1964, as amended, authority is hereby redelegated to the Chief, Branch of Records and Data Management, Division of Management Services, to take action under section 2.6(k) as to mining claim instruments filed for record with BLM under 43 CFR 3833, as follows:

(1) Accept and record instruments meeting recording requirements;

(2) Notify owners to take curative actions to complete defective filings;

(3) Reject instruments and void claims not filed within the prescribed time periods; and

(4) Reject filings and void claims located on lands not available for mineral location on dates of location.

This delegation is effective on August 16, 1977.

PAUL L. HOWARD,
State Director.

AUGUST 8, 1977.

[FR Doc.77-23561 Filed 8-15-77;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 August 5, 1977. 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 August 26, 1977.

RONALD M. GREENBERG,
Acting Keeper of the National Register.

ALABAMA

Hale County

Greensboro, *Erwin, John, House,* 705 Erwin Dr.

CALIFORNIA

Sacramento County

Sacramento, *Hubbard-Upson House,* 1010 F St.

COLORADO

Custer County

Westcliffe, *Hope Lutheran Church,* 310 S. 3rd.

Larimer County

Fort Collins, *Fort Collins Post Office,* 201 S. College.

IDAHO

Ada County

Grandview vicinity, *Guffey Butte-Black Butte Archeological District,* NW of Grandview (also in Canyon, Elmore, and Owyhee Counties).

Bear Lake County

Montpelier, *Bagley, John A., House,* 155 N. 5th, St.

Kootenai County

Rathdrum, *St. Stanislaus Kostka Mission,* McCartney and 3rd Sts.

Latah County

Moscow, *Ridenbaugh Hall,* University of Idaho campus.

Payette County

Payette, *Whitney, Grant, House,* 1016 7th Ave. N.

Washington County

Weiser, *Drake, Col. C. F., House,* 516 E. Main St.

MAINE

Androscoggin County

Auburn, *Day, Holman, House,* 2 Goff St., Lewiston, *Savings Bank Block,* 215 Lisbon St.

Cumberland County

Portland, *Fifth Maine Regiment Community Center,* Seashore Ave., Peaks Island.
Yarmouth, *Mitchell House,* 40 Main St.

Knox County

Rockland, *Rockland Railroad Station,* Union St.
Rockland, *Security Trust Building,* Elm and Main Sts.

Lincoln County

Dresden vicinity, *St. John's Anglican Church and Parsonage Site,* S of Dresden.

Penobscot County

Newburgh vicinity, *Knowlton, Jabez, Store,* W of Newburgh on ME 9.

Washington County

Machias, *Porter Memorial Library,* Court St.

MARYLAND

Baltimore County

Towson, *Villa Anneslie,* 529 Dunkirk Rd.

Carroll County

Union Bridge vicinity, *Hard Lodging,* 1 mi. E of Union Bridge on Ladiesburg Rd.

Howard County

Guilford vicinity, *Christ Church,* 6800 Oakland Mills Rd.

St. Marys County

Great Mills vicinity, *Cecil's Mill Historic District,* N of Great Mills on Indian Bridge Rd.

Talbot County

St. Michaels, *Chesapeake Bay Maritime Museum,* Mill St.

Washington County

Hagerstown vicinity, *Antietam Hall,* 525 Indian Lane.
Hagerstown vicinity, *Paradise Manor,* 2550 Paradise Dr.

MISSISSIPPI

Amite County

Rosetta vicinity, *Sturdivant Fishweir,* E of Rosetta.

NEW MEXICO

Colfax County

Raton vicinity, *St. John's Methodist Episcopal Church,* 17 mi. E of Raton on NM 72.

TENNESSEE

Loudon County

Lenoir City vicinity, *Bussell Island Site,* S of Lenoir City.

Sumner County

Westmoreland, *Westmoreland Tunnel,* off TN 52.

[FR Doc.77-23328 Filed 8-15-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[TA-20129]

CITIZENS BAND (CB) TRANSCEIVERS

Investigation and Hearing

Investigation instituted. Following receipt of a petition filed by the E. F. Johnson Company, the United States International Trade Commission, on August 10, 1977, instituted an investigation under section 201(b) of the Trade Act of 1974 to determine whether Citizen Band (CB) transceivers provided for in item 685.25 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Public hearing ordered. A public hearing in connection with this investgation will be held beginning at 10 a.m., E.D.T., Tuesday, November 1, 1977, in the Hearing Room, United States International

Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in Washington, D.C., not later than noon, Thursday, October 27, 1977.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, United States International Trade Commission, and at the New York City office of the Commission located at 6 World Trade Center.

By order of the Commission.

Issued: August 11, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-23601 Filed 8-15-77;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

FARMWORKER ECONOMIC STIMULUS PROGRAMS

Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Correction.

SUMMARY: This notice is a correction of the notice announcing the availability of "Solicitation for Grant Applications" (SGA), for the Farmworker Economic Stimulus Programs.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul A. Mayrand, Chief, Division of Farmworker Programs, Room 7122, 601 D Street NW., Washington, D.C. 20213.

SUPPLEMENTARY INFORMATION: In FR Doc. 22165, appearing at page 39155, Vol. 42, No. 148—Tuesday, August 2, 1977, the sentence which reads: "Proposals in response to the SGA must be received by the Department at the above address by September 8, 1977, or within 30 days of the date SGAs become available, whichever is sooner" should be corrected to read "Proposals in response to the SGA must be received by the Department at the above address by September 8, 1977, or within 30 days of the date SGAs become available, whichever is later."

Signed in Washington, D.C., this 3d day of August 1977.

PAUL A. MAYRAND,
Chief, Division of Farmworker Programs.

[FR Doc.77-23574 Filed 8-15-77;8:45 am]

MASSACHUSETTS

Extended Benefits and Federal Supplemental Benefits; Correction

A notice was published in the FEDERAL REGISTER on August 5, 1977, 42 FR 39727, announcing the ending of the Extended Benefit Period and the Federal Supplemental Benefit Period in Massachusetts effective on August 6, 1977. On the basis of corrected information furnished by the Massachusetts Division of Employment Security, the benefit periods end in that State on August 13, 1977, instead of August 6, 1977.

Signed at Washington, D.C., on August 8, 1977.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc.77-23573 Filed 8-15-77;8:45 am]

Office of Federal Contract Compliance Programs

INGERSOLL MILLING MANUFACTURING CO.

Debarment

Notice hereby is given that for violating Executive Order 11246, as amended, Ingersoll Milling Manufacturing Co. is declared ineligible for further contracts and subcontracts with the United States Government.

The debarment also applies to the following Ingersoll divisions and subsidiaries:

Ingersoll Manufacturing Consultants, Inc., Rockford, Ill.;
Ingersoll Manufacturing Consultants, International, S. A., Belgium;
Ingersoll Maschinen und Werkzuege GmbH, West Germany; and,
Waldrich Siegen Werkzeigmashinen GmbH, West Germany,

A copy of my Decision and Order is enclosed for publication in the FEDERAL REGISTER.

Dated: August 1, 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

UNITED STATES DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

In the Matter of Ingersoll Milling Machine Co. and Defense Supply Agency.

Case No. OFCC-4000-1.

DECISION AND ORDER

After a hearing in the above-captioned matter, Administrative Law Judge Salvatore J. Arrigo found that Ingersoll Milling Machine Co. has violated its contractual obligations pursuant to 41 CFR Part 60-2 of the Secretary of Labor's regulations implementing Executive Order 11246, as amended, and recommended debarment of the Company. Subsequently, the Assistant Secretary of Defense for Manpower and Reserve Affairs forwarded a proposed debarment order to the Director of the Office of Federal Contract Compliance Programs.

In accordance with the powers granted to the Director, Office of Federal Contract Compliance Programs by Title 41, Code of Federal Regulations, Section 60-1.27 of the Secretary of Labor's regulations issued pursuant to Executive Order 11246, as amended, I hereby approve the debarment of the Ingersoll Milling Machine Co., and any and all purchasers, successors, assignees, and/or transferees, from the award of any contract or subcontract funded in whole or in part with Federal funds, and from extensions or other modifications of any such existing contracts or subcontracts.

The debarment also includes the following Ingersoll divisions and subsidiaries:

1. Ingersoll Manufacturing Consultants, Inc., Rockford, Ill.;
2. Ingersoll Manufacturing Consultants, International S. A., Belgium;
3. Ingersoll Maschinen and Werkzuege GmbH, West Germany; and,
4. Waldrich Siegen Werkzeigmaschinen GmbH, West Germany.

The debarment will continue in effect until such time as Ingersoll has satisfied the Director, Office of Federal Contract Compliance Programs, that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause of Executive Order 11246, as amended.

This debarment shall be effective as of this date.

Attached hereto and made a part hereof is the Recommended Decision and Order of Administrative Law Judge, Salvatore J. Arrigo.

Signed at Washington, D.C., this 1st day of August, 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

U.S. DEPARTMENT OF LABOR, OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of Ingersoll Milling Machine Co. and Defense Supply Agency.

Case No. OFCC-4000-1.

George M. Moehlenhof, Esq., McDermott, Will and Emery, 111 West Monroe Street, Chicago, Ill. 60603, for Ingersoll Milling Machine Co.

George H. McEwen, Counsel, Angelo R. Alioto, Assistant Counsel, Defense Contract Administration Services Region, Chicago, O'Hare International Airport, P.O. Box 66475, Chicago, Ill. 60666. Edmund A. Miareckie, Assistant Counsel, Defense Supply Agency, Cameron Station, Alexandria, Va. 22314, for the Defense Supply Agency.

Before: Salvatore J. Arrigo, Administrative Law Judge.

RECOMMENDED DECISION AND ORDER

STATEMENT OF THE CASE

This is a proceeding instituted under the provisions of Executive Order 11246, as amended, (hereinafter called the Order) and the implementing rules; regulations and relevant orders of the Secretary of Labor (41 CFR Chapter 60). In accordance with 41 CFR 60-1.26(b) the Defense Supply Agency (DSA) notified Ingersoll Milling Machine Co. (hereinafter referred to as Ingersoll) that it was in apparent violation with the requirements of the Order, the equal opportunity provisions of its contract, and the applicable rules and regulations, for a failure to develop an acceptable written Affirmative Action Program for the period 30 January 1974 to 29 January 1975. This notice was timely published in the FEDERAL REGISTER. Ingersoll denied these allegations and requested a hearing.

Pursuant to 41 CFR-1.26(b), the undersigned was designated to conduct the hearing. In accordance with a Notice of Hearing, issued by the undersigned and dated October 7, 1975, a hearing was held before the undersigned on October 20 and 21 and November 3, 1975 in Chicago, Ill. Said hearing was conducted pursuant to the appropriate regulations of 41 CFR 60-1.26(b) and DSA Regulation 5500-7 (32 CFR 1281).[1] Evidence was received as to whether Ingersoll was in compliance with the Order and the appro-

[1] A prehearing conference was held before the undersigned on May 29, 1975 in Chicago, Ill.

priate regulations. All parties were represented by counsel and afforded full opportunity to be heard, adduce evidence, and examine and cross-examine witnesses. Additionally, all parties were afforded the opportunity to present oral argument at the hearing and to file briefs, findings of fact, conclusions of law and a proposed order. The date for mailing such briefs, findings of fact, conclusions of law and proposed order was set at December 19, 1975.

Both parties filed briefs and DSA filed proposed findings etc. all of which have been duly considered by the undersigned.

Upon my observation of all witnesses and their demeanor and the entire record, I recommend the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Ingersoll was awarded a U.S. Government contract, i.e., N00600-74-C-0540, which required it to comply with Executive Order 11246 and the Affirmative Action Program provisions of 41 CFR 60-2.

2. Ingersoll is a manufacturer of machine tools with facilities located in Rockford, Ill.

3. The provisions of 41 CFR Parts 60-1, 33 FR 7804, as amended January 21, 1974, 39 FR 2365 and 41 CFR part 60-2, 36 FR 23152, as amended January 31, 1973, 38 FR 2970, were the regulations in effect on the date of award of Contract N00600-74-C-0540.

4. An initial on-site review of Ingersoll's Rockford, Ill., facility Affirmative Action Program was conducted on December 17, 18, and 19, 1973 by members of the Office of Contracts Compliance, Defense Contracts Administration Services Region, Chicago (OCC, DCASR, Chicago). During said review, members of OCC, DCASR, Chicago were given an unsigned document prepared by Ingersoll and entitled "Affirmative Action Compliance Program 10-1-73 to 9-30-74" (hereinafter referred to as the December 1973 Affirmative Action Program).

5. The December 1973 Affirmative Action Program was the only written program submitted to the Government.

6. The December 1973 Affirmative Action Program improperly combines for analysis various job classes of dissimilar content, wage rates and opportunity under various EEO-1 categories.

7. The utilization analysis contained in the December 1973 Affirmative Action Program contains an analysis of EEO-1 categories rather than an analysis of major job classifications (a job classification herein meaning one or a group of jobs having similar content, wage rate and opportunity). This document fails to contain or reflect separate analysis for minorities and females for each major job classification with consideration of the appropriate availability factors listed in 41 CFR 60-2.11(a) (1) and (2). Additionally, said instrument fails to contain or reflect adequate consideration of the required availability factors contained in 41 CFR 60-2.11(a)(1) (iv), (v), and (vi) and 2) (iii), (iv), and (vi).

8. The December 1973 Affirmative Action Program does not establish any goals in the Officials and Managers, Professional, Technical and Sales Workers categories or any job classification thereunder. While acknowledging female underutilization and indicating anticipated expansion, this document fails to set any female goals in the Craftsmen category or any job classification thereunder. The failure to establish goals in the foregoing areas is not supported by any detailed analysis or explanation. Minority goals in the Office and Clerical, Craftsmen and Operatives categories and female goals in the Operative category are establish by EEO-1 category rather than by the required job classifications. Additionally, this document fails to contain or reflect any consideration of anticipated turnover in establishing goals. Finally, those few goals established in the December 1973 Affirmative Action Program are not based on a proper utilization analysis.

9. The December 1973 Affirmative Action Program does not contain or address the required provisions of 41 CFR 60.2.13(d), Identification of Problem Areas, and 41 CFR 60-2.13(h), Compliance of Personnel policies and practices with the Sex Discrimination Guidelines (41 CFR 60-20).

10. The December 1973 Affirmative Action Program does not contain a current reaffirmation of Ingersoll's policy statement. Additionally, the policy statement contained in such program does not adequately address the implementing provisions of 41 CFR 60-2.20.

11. The foregoing document fails to provide an adequate procedure for the dissemination of policy (41 CFR 60-2.13(b) and 60-2.21). It also fails to assign sufficient line responsibility for the effective implementation of the contractor's Affirmative Action Program (41 CFR 60-2.13(c) and 41 CFR 60-2.22(b)). Additionally, such document does not contain adequate action oriented programs designed to eliminate problems and attain goals and objectives (41 CFR 60-2.13(f) and 41 CFR 60-2.24). Finally, the document does not contain or reflect the design of a proper audit and reporting system to measure the effectiveness of the entire program.

12. The December 1973 Affirmative Action Program bears no signature indicating Ingersoll's adoption of that document as its Affirmative Action Program.

13. The Defense Supply Agency, Defense Contract Administration Services Region, Chicago is responsible for monitoring Ingersoll's compliance with Executive Order 11246, as amended, and the implementing rules and regulations promulgated thereunder.

14. The Defense Supply Agency advised Ingersoll verbally and in writing that the December 1973 Affirmative Action Program did not meet the requirements of 41 CFR 60-2 and explained the reasons therefor. Additionally, the Defense Supply Agency rendered detailed technical assistance and provided Ingersoll ample opportunity to comply with the equal opportunity provisions of its contract.

15. Under the equal opportunity provisions of Contract N00600-74-C-0540 Ingersoll was required to develop a written Affirmative Action Program on or before 30 May 1974 (said date being 120 days after the effective date of such contract). Due to an inability to establish any existing Government contract other than N00600-74-C-0540, enforcement action, with respect to the deficiencies discovered in December 1973, were suspended and Ingersoll was rescheduled for a review in June 1974.

16. Commencing June 1974 the company's chief Executive Officer and Chairman of the Board, Mr. Edson Gaylord, assumed all responsibility and complete control with respect to Ingersoll's Affirmative Action Program. All contracts and communications by officials of DSA during June and July 1974 were made exclusively with Mr. Gaylord.

17. During June and July 1974 Mr. Edson Gaylord informed officials of DSA that the December 1973 Affirmative Action Program did not represent the company's Affirmative Action Program and that the company was unwilling to comply with the requirements of 41 CFR 60-2. Additionally, Mr. Gaylord refused to permit access to personnel and payroll records in connection with the June 11, 1974 compliance review.

18. Since the December 1973 Affirmative Action Program was not subsequently adopted by the company the record establishes that Ingersoll did not have any written Affirmative Action Program for the period of Contract N00600-74-C-0540.

19. Ingersoll failed and refused to permit access to pertinent personnel and payroll records during a June 11, 1974 on-site review.

20. The Defense Supply Agency accepted Ingersoll's Affirmative Action Programs for the years 1971, 1972 and 1973.

21. On June 21, 1974, DSA, Defense Contract Administration Services Region, Chicago, issued a "Show Cause" letter to Ingersoll Milling Machine Co. Said letter advised the company that Ingersoll was in noncompliance for a failure to develop an acceptable written Affirmative Action Program for the period January 30, 1974 to January 29, 1975 and for a failure to permit access to personnel and payroll records.

22. On January 30, 1975, the Director, Defense Supply Agency notified Ingersoll of the proposed cancellation or termination of any existing Government contracts and subcontracts and proposed debarment of Ingersoll from future contracts and subcontracts with the U.S. Government. This letter stated in part that Ingersoll was in violation of Executive Order 11246 and the implementing regulations for a failure to have an acceptable Affirmative Action Program for the period 30 January 1974 to 29 January 1975, a refusal to provide relevant personnel records and refusal of technical assistance.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter is proper under the provisions of Executive Order 11246, as amended, and the implementing rules and regulations of the Secretary of Labor.

2. Under the provisions of Part II, Section 201 of Executive Order 11246, as amended, the Secretary of Labor is directed and empowered to adopt "such rules and regulations and issue orders as he deems necessary and appropriate to achieve the purpose * * * of Parts II and III of the Order." Pursuant to such direction and authority the Secretary of Labor has adopted the Affirmative Action Program requirements contained in 41 CFR 60-1.40(a) and 41 CFR Part 60-2.

3. Under delegation of authority by the Office of Federal Contracts Compliance, the Defense Supply Agency has been charged with the responsibility of insuring that Federal contractors and subcontractors comply with the equal opportunity provisions of Government contracts and subcontracts and the implementing rules and regulations of the Secretary of Labor.

4. In accordance with the equal opportunity provisions of Contract N00600-74-C-0540, Ingersoll was required to develop and adopt on or before 30 May 1974 a written Affirmative Action Program which met the requirements of the provisions of 41 CFR 60-2 in effect as the date of award of such contract. Ingersoll failed to so adopt any written Affirmative Action Program during the period of performance of such contract. In reaching this conclusion the following circumstances were considered:

a. The December 1973 Affirmative Action Program contains no signature indicating its adoption.

b. This document was rejected by Ingersoll's Chief Executive Officer as the company's Affirmative Action Program.

c. No other document purporting to be the company's written Affirmative Action Program was submitted to the Government.

5. In any event, even if the December 1973 Affirmative Action Program was considered as the Program for the period of performance of the contract set forth herein, that Affirmative Action Program does not comply

with the requirements of 41 CFR 60-1.40 and 41 CFR 60-2 in the following respect: [2]

a. It does not meet the requirement of 41 CFR 60-1.40 which provides that an Affirmative Action Program must be signed by an executive official of the company.

b. It does not contain or reflect a required analysis by major job classifications (i.e., one or a group of jobs having similar content, wage rate and opportunity). It fails to provide a required separate analysis for minorities and females by job classifications with considerations of the availability factors contained in 41 CFR 60-2.11(a) (1) and (2). Additionally, it fails to contain or reflect any consideration of the availability factors of 41 CFR 60-2.11(a) (1) (iv), (v), and (vi) and (2) (iii), (v), and (vi).

c. It fails to establish goals in areas of acknowledged underutilization and anticipated expansion. Such failure to so establish goals is not supported by a detailed analysis or explanation as required by 41 CFR 60-2.-12(j). With respect to the few goals set in the Affirmative Action Program they are not established by job classification or based on a proper identification of deficiencies (i.e., a utilization analysis meeting the provisions of 41 CFR 60-2.11(a)). Additionally, the Affirmative Action Program does not contain or reflect any consideration of projected turnover in establishing goals. In view of the foregoing the December 1973 Affirmative Action Program does not meet the provisions of 41 CFR 60-2.12 and 60-2.13(e).

d. It fails to contain any provisions which address the required terms of 41 CFR 60-2.13(d). Identification of Problem Areas (deficiencies) by Organizational units and Job Classifications and 41 CFR 60-2.13(h), Compliance of Policies and Practices with the Sex Discrimination Guidelines.

e. It does not adequately address the provisions of 41 CFR 60-2.20. As such, this document does not meet the requirements of 41 CFR 60-2.13(a).

f. Subpart C of 41 CFR 60-2 provides various methods of implementing the required ingredients of 41 CFR 60-2.13. In essence, it sets forth methods of insuring the effective operation of an Affirmative Action Program. Therefore, while not necessarily expressed in mandatory terms, such methods may not be ignored, absent the substitution of reasonable alternative methods designed to effectively accomplish the same objectives. The document herein however fails to reflect the applicable implementing regulations of Subpart C of 41 CFR 60-2 or present reasonable alternatives in addressing the provisions of 41 CFR 60-2.13 (b), (c), (f), (g), and (i).

6. Since they are a primary source in determining contractor equal opportunity practices, personnel and payroll records are both relevant and necessary to the conduct of an equal opportunity compliance. Failure to permit access to such records violates the provisions of 41 CFR 60-1.43. Ingersoll is in non-compliance for a failure to provide access to such records during the June 11, 1974 compliance review.

7. Ingersoll was given substantial technical assistance and ample opportunity to comply. Ingersoll rejected such assistance and failed to comply.

ORDER

Ingersoll Milling Machine Co. having been found in non-compliance with Executive Order 11246, and its implementing rules and regulations, it is recommended that the following Order be entered:

Ordered, Pursuant to Section 209 of Executive Order 11246, as amended, and 41 CFR 60-1.26(b), that, with respect to Ingersoll Milling Machine Co., any and all existing United States Government contracts and subcontracts are hereby cancelled and terminated and further, that Ingersoll Milling Machine Co. is hereby declared ineligible for further contracts and subcontracts with the United States Government.

Dated at Washington, D.C., January 6, 1976.

SALVATORE J. ARRIGO,
Administrative Law Judge.

[FR Doc.77-23600 Filed 8-15-77;8:45 am]

[2] Approval of an Affirmative Action Program at a prior point of time does not thereafter bind DSA to accept that Program with regard to future contracts. Thus, the prior approval might well have been erroneous or the Program may not have received the in-depth review it warranted.

Occupational Safety and Health Administration

COLORADO STATE STANDARDS

Approval

I. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the 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 September 12, 1973, notice was published in the FEDERAL REGISTER (38 FR 25172) of the approval of the Colorado plan and the adoption of Subpart M to Part 1952 containing the decision.

The Colorado plan provides for the adoption of Federal standards as State standards after public hearings. Section 1953.23(a)(2) of 29 CFR provides that whenever a Federal standard is promulgated or revised, the State must adopt or promulgate a standard or standard change which will make the State standard at least as effective as the Federal standard or change within six months of the Federal promulgation or change. In response to Federal standard changes, the State has submitted by letter dated March 1, 1977, from Gregory M. Rogers, Director, Colorado Occupational Safety and Health, to Curtis A. Foster, Regional Administrator, and incorporated as part of the plan, State standards comparable to the Telecommunications standard of 29 CFR 1910.268 which was published in the FEDERAL REGISTER (40 FR 13436) on March 26, 1975. These standards, which are contained in Colorado Occupational Safety and Health Rules and Regulations for General Industry, were promulgated after hearings held on July 10, 1975, and by resolutions adopted by the Colorado Occupational Safety and Health Standards Board on January 15, 1976, and became effective July 31, 1976, prusuant to section 8-11-104, Colorado Revised Statues, 1973.

II. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards. In addition, the State standards are more specific in one area and certain electrical utilities are not exempt from the requirements of the standards as they are under § 1910.268(a)(2)(ii) of the Federal standards. The Colorado Telecommunications standards apply to installations under the exclusive control of electric utilities used for the purpose of communications or metering, or for generation, control, transformation, transmission, and distribution of electric energy, which are located in buildings used exclusively by the electric utilities for such purpose, or located outdoors on property owned or leased by the electric utilities or on public highways, streets, roads, etc., or outdoors by established rights on private property. The standards are hereby approved.

III. *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, Occupational Safety and Health Administration, Room 15010, Federal Building, 1961 Stout Street, Denver, Colorado 80294; Director, Colorado Occupational Safety and Health, 1313 Sherman Street, Room 414, Denver, Colorado 80203; and the Technical Data Center, Room S-6212, 200 Constitution Avenue NW., Washington, D.C. 20210.

IV. *Public participation.* Under 29 CFR 19532(c), 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 Colorado State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation and notice would be unnecessary.

The decision is effective August 16, 1977.

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

Signed at Denver, Colorado, this 10th day of June 1977.

CURTIS A. FOSTER,
Regional Administrator.

[FR Doc.77-23594 Filed 8-15-77;8:45 am]

KENTUCKY STANDARDS

Approval; Correction

In FR Doc. 77-18866, appearing at page 33814 on Friday, July 1, 1977, the following sentences were inadvertently included and are hereby deleted:

1. The final sentence of the fourth paragraph of Background, which reads "Section 1910.137 was amended by adding specifications for rubber protective equipment for electrical workers."

2. Paragraph 2(c).

Signed at Atlanta, Georgia, this 8th day of August 1977.

DONALD E. MACKENZIE,
Regional Administrator.

[FR Doc.77-23596 Filed 8-15-77;8:45 am]

OREGON STATE STANDARDS

Intent to Reject

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 Administrators 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 December 28, 1972, notice was published in the FEDERAL REGISTER (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision. The notice of Approval of Revised Developmental Schedule was further published on April 1, 1974, in the FEDERAL REGISTER (38 FR 11881).

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. 29 CFR 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

By letter dated August 2, 1976 from M. Keith Wilson, Chairman, Oregon Workmen's Compensation Board to James W. Lake, Regional Administrator, Occupational Safety and Health Administration, the State submitted a standard in response to Federal standard changes, comparable to 29 CFR 1928.51 Roll-Over Protective Structures (ROPS) for tractors Used in Agricultural Operations. Having reviewed the State submission in comparison with the Federal standard, it appears that the State standard is not at least as effective as the comparable Federal standard. Accordingly, under 29 CFR 1953.23(d)(2) rejection of the standard is currently at issue.

2. *Issues.* The State has adopted an exemption from the roll-over protective structure requirements for track-type agricultural tractors, which does not appear in the corresponding OSHA standard 29 CFR 1928.51 (b)(1) and (b)(5).

The Oregon standard states:

GENERAL REQUIREMENTS

33-29-1 Agricultural tractors manufactured after October 25, 1976, shall meet the following requirements:

(a) Roll-over protective structure. A roll-over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee;

(b) Except as provided in Rule 33-29-6, ROPS used on wheel type tractors shall meet the test and performance requirements of Rules 33-29-20 through 33-29-54, and ROPS used on track-type tractors shall meet the test and performance requirements of Rules 34-21-8 through 34-21-21.

33-29-6 Exempted uses. Rules 33-29-1 and 33-29-3 do not apply to the following uses:

(a) "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein;

(b) "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein;

(c) Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers and fruit harvesters);

(d) Track-type agricultural tractors whose overall width (as measured between the outside edges of the tracks) is at least three times the height of their rated center of gravity, and whose rated maximum speed in either forward or reverse is not greater than 7 mph, when used only for tillage or harvesting operations and while their use is incidental thereto, and which:

(1) Does not involve operating on slopes in excess of 40 degrees from horizontal, and

(2) Does not involve operating on piled crop products or residue, as for example, silage in stacks of pits, and,

(3) Does not involve operating in close proximity to irrigation ditches, or other excavations more than two feet deep which contain slopes more than 40 degrees from the vertical.

The Federal standard states:

§ 1928.51

* * * * *

(b) *General requirements.* Agricultural tractors manufactured after October 25, 1976, shall meet the following requirements:

(1) *Roll-over protective structure.* A roll-over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee. Except as provided in paragraph (b)(5) of this section. ROPS used on wheel type tractors shall meet the test and performance requirements of § 1928.52 or § 1928.53 of this part or § 1926.1002 of Part 1926, and ROPS used on track type tractors shall meet the test and performance requirements of § 1926.1001 of Part 1926.

* * * * *

(5) Exempted uses. Paragraphs (b)(1) and (b)(2) of this section do not apply to the following uses:

(i) "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein.

(ii) "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein.

(iii) Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers and fruit harvesters).

One of the issues raised at the public hearings that were held during the promulgation process leading to adoption of the OSHA standard was the exemption of track-type tractors. Evidence presented at that time demonstrated that track-type tractors used in agriculture are, indeed, subject to roll-over. (A more thorough discussion of this issue is found in 40 FR 18256 dated April 25, 1975.) Therefore, an exemption for track-type tractors was not included in the Federal standard.

Based on the foregoing, the exemption of roll-over protective structures from these tractors is not considered to be at least as effective as the OSHA standard in that the absence of this overhead protection exposes the tractor operator to death or serious physical harm in the event of a tractor roll-over.

3. *A copy of the supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workmen's Compensation Board, Labor and Industrial Building Room 204, Salem, Oregon 97310; and the Technical Data Center, Room N-3620, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Interested persons are hereby given until September 12, 1977, in which to submit written data, views, and arguments concerning whether the supplement should be approved or disapproved. Such submissions are to be addressed to the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Washington 98174, where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplement by filing particularized written objections with respect thereto within the time allowed for comments with the Regional Administrator. If the Regional Administrator finds that substantial objections are filed which relate to the proposed rejection, an informal hearing on the subjects and issues shall be held.

The Regional Administrator shall consider all relevant comments, arguments, and requests submitted in accordance with the notice and thereafter initiate further proceedings, if necessary.

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

Signed at Seattle, Washington this 12th day of April 1977.

RICHARD L. BEESTON,
Acting Regional Administrator, Occupational Safety and Health Administration.

[FR Doc77-23599 Filed 8-15-77;8:45 am]

WASHINGTON STATE STANDARDS

Intent to Reject

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 Administrators 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 16, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington State plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. 29 CFR 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

By letter dated March 16, 1977 from partment of Labor and Industries, Department of Labor and Industries, to James W. Lake, Regional Administrator, Occupational Safety and Health Administration, the State submitted a standard in response to Federal standard changes, comparable to 29 CFR 1928.51, Roll-Over Protective Structures (ROPS) for Tractors Used in Agricultural Operations. Having reviewed the State submission in comparison with the Federal standard, it appears that the State standard is not at least as effective as the comparable Federal standard; therefore, in accordance with 29 CFR 1953.23 (d)(2) rejection of the standard is currently at issue before the Regional Administrator.

2. *Issues.* The State has adopted an exemption from the roll-over protective structure requirements for track-type agricultural tractors, which does not appear in the corresponding OSHA standard 29 CFR 1928.51(b)(1) and (b)(5).

The Washington standard states:

WAC 296-306-200 ROLL-OVER PROTECTIVE STRUCTURES (ROPS) FOR TRACTORS USED IN AGRICULTURAL OPERATIONS

General Requirements:

(1) Scope. Agricultural tractors manufactured after October 25, 1976, shall meet the requirements in this section.

(2) Roll-over protective structure. A roll-over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee. Except as provided in subsection (6) of this section, ROPS used on wheel-type tractors shall meet the test and performance requirements of WAC 296-306-250 through WAC 296-306-25023 and ROPS used on track-type tractors shall meet the test and performance requirements of WAC 296-306-260 through WAC 296-306-270. (See ROPS Design and Testing Criteria Addendum.)

(6) Exempted uses. Items (2) and (3) of this section do not apply to the following uses:

(a) "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein.

(b) "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein.

(c) Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers, and fruit harvesters.)

(d) Tract-type agricultural tractors whose overall width (as measured between the outside edges of the tracks) is at least three times the height of their rated center of gravity, and whose rated maximum speed in either forward or reverse is not greater than 7-miles per hour, when used only for tillage or harvesting operations and while their use is incidental thereto, and which:

(i) Does not involve operating on slopes in excess of 40 degrees from horizontal, and

(ii) Does not involve operating on slopes in excess of 40 degrees from horizontal, and

(iii) Does not involve operating in close proximity to irrigation ditches, streams or other excavations more than two (2) feet deep which contain solpes of more than 40 degrees from horizontal.

The Federal standard states:

§ 1928.51

* * * * *

(b) General requirements. Agricultural tractors manufactured after October 25, 1976, shall meet the following requirements:

(1) Roll-over protective structure. A roll-over protective structure (ROPS) shall be provided by the employer for each tractor operated by an employee. Except as provided in paragraph (b)(5) of this section, ROPS used on wheel type tractors shall meet the test and performance requirements of § 1928.52 or § 1928.53 of this part or § 1926.-1002 of Part 1926, and ROPS used on track type tractors shall meet the test and performance requirements of § 1926.1001 of Part 1926.

(5) Exempted uses. Paragraphs (b)(1) and (b)(2) of this section do not apply to the following uses:

(i) "Low profile" tractors while they are used in orchards, vineyards or hop yards where the vertical clearance requirements would substantially interfere with normal operations, and while their use is incidental to the work performed therein.

(ii) "Low profile" tractors while used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow a ROPS equipped tractor to operate, and while their use is incidental to the work performed therein.

(iii) Tractors while used with mounted equipment which is incompatible with ROPS (e.g. cornpickers, cotton strippers, vegetable pickers, and fruit harvesters).

One of the issues raised at the public hearings that were held during the promulgation process leading to adoption of the OSHA standard was the exemption of track-type tractors. Evidence presented at that time demonstrated that track-type tractors used in agriculture are, indeed, subject to roll-over. (A more thorough discussion of this issue is found in 40 FR 18256 dated April 25, 1975.) Therefore, an exemption for track-type tractors was not included in the Federal standard.

Based on the foregoing, the exemption of roll-over protective structures from these tractors is not considered to be at least as effective as the OSHA standard in that the absence of this overhead protection exposes the tractor operator to death or serious physical harm in the event of a tractor roll-over.

3. *A copy of the supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98504; and the Technical Data Center, Room N3620, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Interested persons are hereby given until September 15, 1977, in which to submit written data, views, and arguments concerning whether the supplement should be approved or disapproved. Such submissions are to be addressed to the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Washington 98174, where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplement by filing particularized written objects with respect thereto within the time allowed for comments with the Regional Administrator. If the Regional Administrator finds that substantial objections are filed which relate to the proposed rejection, an informal hearing on the subjects and issues shall be held.

The Regional Administrator shall consider all relevant comments, arguments, and requests submitted in accordance with the notice and thereafter initiate further proceedings, if necesary.

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

Signed at Seattle, Washington this 13th day of May 1977.

JACK R. JONES,
Acting Regional Administrator, Occupational Safety and Health Administration.

[FR Doc.77-23597 Filed 8-15-77;8:45 am]

WASHINGTON STATE STANDARDS

Intent to Reject

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 (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 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington State plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

Section 1952.123 of Subpart F sets forth the State's schedule for the adoption of at least as effective State standards. By letter dated October 7, 1976, from John Hillier, Assistant Director, to James Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR Part 1926, as published in the FEDERAL REGISTER (39 FR 22801) dated June 24, 1974. These standards, which are contained in WAC 296 Chapter 155 of the Washington Safety Standards for Construction, were promulgated after public hearing held on February 19, 1976.

Having reviewed the State submission in comparison with Federal standards, it appears that the State standards are not at least as effective as the comparable Federal standards. Therefore, in accordance with 29 CFR Part 1953, rejection of the State standard is currently at issue before the Regional Administrator.

2. *Issues.* (a) The State has adopted in its General Requirements an original standard that is applicable to all types of scaffolds, except needle beam scaffolds and floats. A corresponding standard does not appear in the General Requirements of the OSHA Construction Standards.

The Washington standard reads as follows:

WAC 296-155-485(1)(e) Guardrails and Toeboards. Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beam scaffolds and floats. The guardrail shall not be more than 18 inches from the edge of the outside platform plank on the outside face (opposite the building wall or structure except on plasterer's and lather's scaffolds as permitted by WAC 296-155-485(18)1). On the inside face (next to building or structure) the scaffold shall be as close to the building or structure as possible, but in no case shall the platform planks be more than 18 inches from the building or structure unless a standard guardrail is provided on the inside face of the scaffold. Scaffolds 4 feet to 10 feet in height, having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails and toeboards installed on all open sides and ends of the scaffold platform.

The OSHA standards which apply to the above situation read as follows:

29 CFR 1926.451(a)(4). Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beam scaffold and floats. Scaffolds 4 feet to 10 feet in height, having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform.

Section 1926.502(b) defines floor opening as—

"An opening measuring 12 inches or more in its least dimension in any floor, roof, or platform through which persons may fall."

Section 1926.500(b)(1) states:

"Floor openings shall be guarded by a standard railing and toeboards or cover.* * *"

A review of the State standard indicates that 18-inch platform openings are permitted before a guardrail is required between the outside vertical scaffold members and the edge of the outside plank of the scaffold platform and between the building wall and the edge of the inner plank of the scaffold platform. The OSHA standards do not allow unguarded openings in the scaffold platform over 12 inches to prevent employees or objects from falling.

The adoption of this original State standard is not considered at least as effective as the OSHA standard in preventing employees or objects from falling through these platform openings which can cause death or serious physical harm to employees engaged in construction employment.

(b) The State has adopted an original scaffold guardrail standard for the plastering and lathing industry that is applicable to plasterers' and lathers' tubular welder frame scaffolds. A corresponding standard does not appear in the OSHA Construction Standards.

The Washington standard reads as follows:

WAC 296-155-485(18)(i) Plasterers' and Lathers' Tubular Welded Frame Scaffolds. The outside face (opposite the building wall) of the scaffold shall be fully cross-braced with a horizontal continuous guardrail attached to the lower cross-brace lock pins. (See Figure J-1.) (Note: Figure J-1 permits the variable height cross diagonal bracing to act as a guardrail with an added member as a midrail.)

The general OSHA standard which applies to this situation reads as follows:

29 CFR 1926.451(a)(5). Guardrails shall be 2 x 4-inches, or the equivalent, approximately 42 inches high, with a midrail, when required. Supports shall be at intervals not to exceed 8 feet. Toeboards shall be a minimum of 4 inches in height.

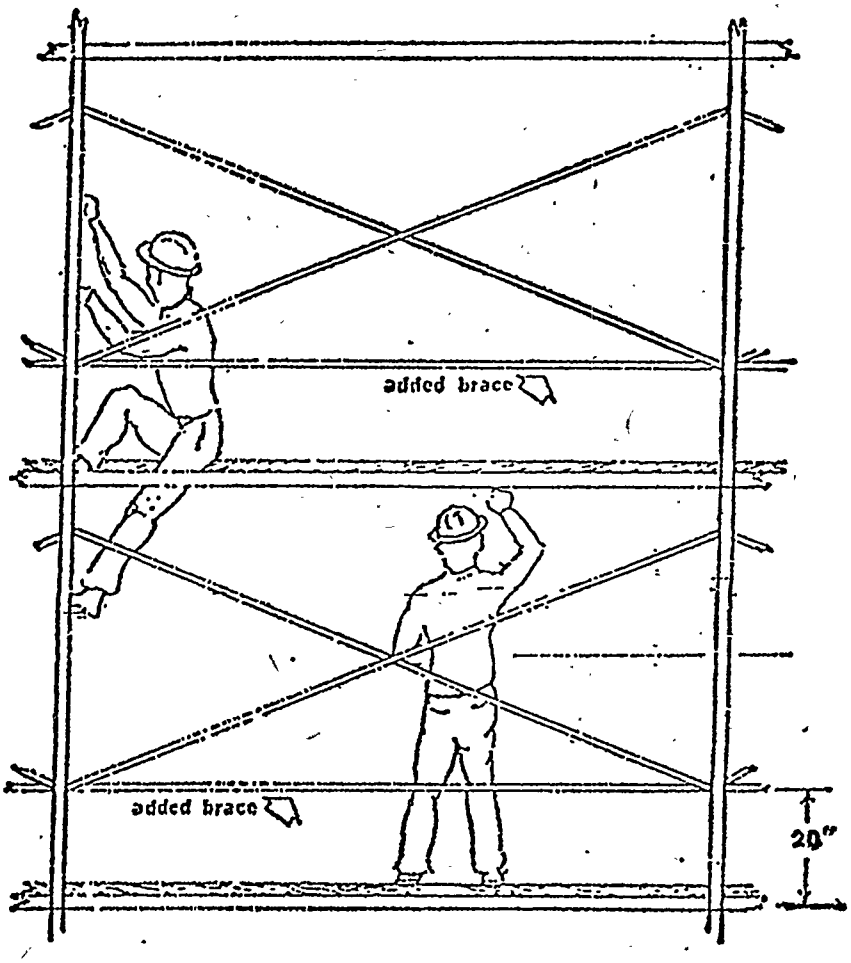
A review of Figure J-1 of the State standard indicates that tubular metal

cross (X) bracing is a permissible substitute for a standard guardrail when augmented with a horizontal continuous midrail (guardrail). Toeboards are not required.

The adoption of this original State standard with its procedure of providing employee protection, as indicated in Figure J-1, by allowing the variable height cross diagonal bracing to act as a guardrail, with an added member as a midrail is considered not at least as effective as the OSHA guardrail standard 29 CFR 1926.451(a)(5) in that the required approximate height of 42 inches for the top rail is not maintained the full distance between the vertical supports and is in fact reduced to approximately 20 inches at the lowest points.

FIGURE J 1

WELDED TUBULAR SCAFFOLD
Plasterers-Lathers



BACK BRACE DETAIL

(c) The State has adopted an original scaffold platform standard for the plastering and lathing industry that is applicable to plasterers' and lathers' tubular welded frame scaffolds. A corresponding standard does not appear in the OSHA Construction Standards.

The Washington standard reads as follows:

WAC 296-155-485(18) (k) and (l) Plasterers' and Lathers' Tubular Welded Frame Scaffolds.

(k) The outrigger plank shall be no more than 18 inches from the finished wall.

(l) The scaffold platform shall be planked to leave no more than a 22 inch maximum opening between the outside plank and the outside vertical member of the scaffold frame. (See Figure J-2.)

The comparable OSHA standard reads as follows:

29 CFR 1926.451(a)(4). Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor.

Section 1926.502(b) defines floor opening as—

"An opening measuring 12 inches or more in its least dimension in any floor, roof, or platform through which persons may fall."

Section 1926.500(b)(1) states:

"Floor openings shall be guarded by a standard railing and toeboards or cover. * * *"

A review of the State standard indicates that a platform opening up to 22 inches wide, between the outside vertical scaffold members and the edge of the outside plank of the scaffold platform, and another floor opening up to 18 inches wide, between the building wall and the edge of the inner plank of the scaffold platform, are permitted before a guardrail is required.

The adoption of this original State standard is not considered to be at least as effective as the OSHA standard which limits floor openings to 12 inches in order to prevent employees or objects from falling through these platforms opening which can cause death or serious injury to employees engaged in the plastering or lathing industry.

(d) The State has inserted a "Note" after their standard WAC 296-155-18(1) that is applicable to scaffolds which are three frames high or less. A corresponding note does not appear in the comparable OSHA Construction Standards. The Note reads as follows:

The scaffold frame may be utilized to travel from one working level to another working level, provided the scaffold is of the type typified in Figure J-2.

Comparable OSHA standards read as follows:

29 CFR 1926.451(a)(13). An access ladder or equivalent safe access shall be provided.

29 CFR 1926.450(a)(1). General Requirements: (1) Except where either permanent or temporary stairways or suitable ramps or runways are provided, ladders described in this subpart shall be used to give safe access to all elevations.

29 CFR 1926.450(a)(5). Fixed ladders shall be in accordance with the provisions of the American National Standards Institute. A 14.3–1956 Safety Code for Fixed Ladders.

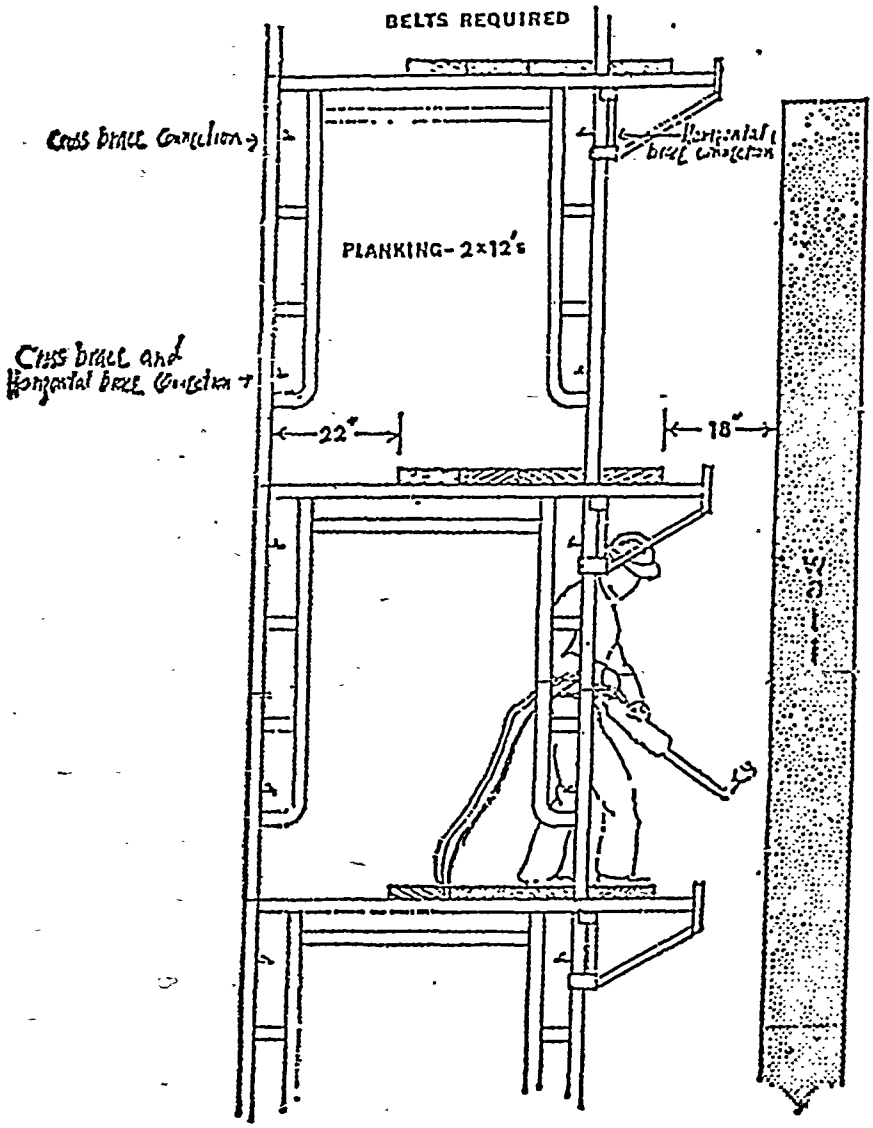
The ANSI standard, A 14.3–1956, Safety Code for Fixed Ladders, requires a minimum distance of 16 inches between the side rails of fixed ladders and a maximum spacing of 12 inches from center line to center line of the ladder rungs.

A review of the State "Note" and Figure J–2 indicates that the scaffold frame, which appears to have a rung spacing of nearly twice that required by the OSHA standards, and a distance between the side rails of approximately one-half of that required by the OSHA standards, provides in its rung design unnaturally high steps and deficient footing which can cause employees to lose their footing resulting in falls.

The adoption of the State "Note" is not considered at least as effective as the OSHA standards in preventing employee falls that could result in death or serious injury.

FIGURE J-2

WELDED TUBULAR SCAFFOLD
Plasters-Lathers



FRAME DETAIL

3. *A copy of the supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Wash. 98174; Department of Labor and Industries, General Administration Building, Olympia, Wash. 98504; and the Technical Data Center, Room N3620, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Interested persons are hereby given until September 15, 1977, in which to submit written data, views, and arguments concerning whether the supplement should be approved. Such submissions are to be addressed to the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, 909 First Avenue, Seattle, Wash. 98173, where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplement by filing particularized written objections with respect thereto within the time allowed for comments with the Regional Administrator. If the Regional Administrator finds that substantial objections are filed which relate to the proposed rejection, an informal hearing on the subjects and issues shall be held.

The Regional Administrator shall consider all relevant comments, arguments, and requests submitted in accordance with the notice and thereafter initiate further proceedings, if necessary.

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

Signed at Seattle, Wash., this 27th day of April 1977.

JACK R. JONES,
Acting Regional Administrator, Occupational Safety and Health Administration.

[FR Doc.77-23598 Filed 8-15-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR MINORITY PROGRAMS IN SCIENCE EDUCATION

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Minority Programs in Science Education.

DATE: September 1–2, 1977.

TIME: 9:00 a.m. each day.

PLACE: Room 651, 5225 Wisconsin Avenue NW., Washington, D.C.

TYPE OF MEETING: Open.

CONTACT PERSON:

Ms. Fran Watts, Staff Assistant, Science Education Directorate, National Science Foundation, Room W-600, Washington, D.C. 20550.

SUMMARY MINUTES: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, National Science Foundation, Room 248, Washington, D.C. 20550.

PURPOSE OF ADVISORY COMMITTEE: To assist in the evaluation and assessment of activities within the Minority Centers for Graduate Education Program and other ethnic minority-focused Foundation programs.

AGENDA:

SEPTEMBER 1

Status of FY 1978 Budget for Science Education.

Plans for New Minorities Fellowship Program.

Resource Center for Science and Engineering Program Development.

Priority areas where New Programs should be developed.

Need to Increase Emphasis on Support of Engineering Projects.

SEPTEMBER 2

Mechanism(s) for Providing Released Time for Minority Faculty.

Results of Study of Fellowships Programs Application Evaluation Process.

Consideration of Recommendations that Address Separate Problems of the Various Minority Groups.

M. REBECCA WINKLER,
Acting Committee Management Officer.

AUGUST 10, 1977.

[FR Doc.77-23527 Filed 8-15-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List 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 August 9, 1977 (44 USC 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 thru 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

Followup to Holder on Intent to Foreclose—LCS:

26-8801, on occasion, loan holders, Warren Topelius, 395-5872.

DEPARTMENT OF LABOR

Employment and Training Administration:

National Program for Selected Population Segments Study, MT-282, single time, participants in DOL job training programs, Strasser, A., 395-5867.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration:

State Motor Vehicle Registration Fees and Other Receipts, Initial Distribution by Collecting agencies, PR-566, annually, 50 States, District of Columbia, Puerto Rico, Guam, American Samoa, Strasser, A., 395-5867.

REVISIONS

DEPARTMENT OF LABOR

Employment and Training Administration:

National Longitudinal Surveys, Survey of Work Experience of Young Women—1975 Questionnaire and Advance Letter, LGT-481, LGT-483, annually, women between the ages of 14 and 24 in 1968, Strasser, A., 395-5867.

EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of Census:

Vending machines (coin operated), MA-35U, annually, manufacturing establishments, Marsha Traynham, 395-4529.

VELMA BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-23625 Filed 8-15-77;8:45 am]

SUSQUEHANNA RIVER BASIN COMMISSION

SOUTH HARRISBURG LOCAL FLOOD PROTECTION PROJECT

Public Meeting

The Susquehanna River Basin Commission and U.S. Army Corps of Engineers, Baltimore District, will hold a joint public meeting to receive public reaction and comment on the proposed local flood protection project for South Harrisburg, Dauphin County, Pa. The meeting will be held on September 6, 1977, beginning at 7:00 p.m. in the College Center, Harrisburg Area Community College, 3300 Cameron Street, Harrisburg, Pa.

Designed to mitigate Agnes flood flows, the proposed project's main features are as follows:

(1) A wall, beginning at high ground just south of Chestnut Street, that would run southward along the north side of Second Street to high ground at the Junction of Paxton and Second Streets. From the high ground at Paxton Street, the wall would run along the riverside of the electrical substation, then south along the railroad passing behind the shipoke area to the southern edge of I-83. Then, the wall would run westward to the riverfront levee.

(2) A levee that would begin where the wall ends and run south along the Susquehanna River to near the southern limits of Harrisburg; then inland to high ground near the intersection of Cameron and Elliot Streets.

(3) Channel improvements to Paxton Creek that would extend from Wildwood Lake to Paxton Street. At Paxton Street, the flows would be diverted from the natural channel to a point south of I-83, crossing under the Penn Central Railroad tracks and then into the Susquehanna River. The existing channel from Paxton Street to Hemlock Street would be upgraded.

(4) A small detention reservoir that would be built at Asylum Run. This dry-dam would reduce flood flows into Paxton Creek.

Recreational improvements would be part of the proposed project. The recreation features include work at the Asylum Run Detention Reservoir and continuation of the riverfront part along the levee south of I-83. Based on current prices, the overall project construction cost is estimated at $129.8 million. The non-Federal share would be $20.2 million.

The project description is available from either the SRBC located at 5012 Lenker Street, Mechanicsburg, Pa. 17055 or the Corps' office at P.O. Box 1715, Baltimore and Charles Streets, Baltimore, Md. 21203.

The SRBC will review the testimony received at this meeting as part of its evaluation of the proposed project for possible inclusion in the Commission's Comprehensive Plan. Additionally, its findings and recommendations will be included in the Corps' report in connection with any request for authorization of the project.

All interested government agencies and citizens are urged to attend.

ROBERT J. BIELO,
Executive Director.

[FR Doc.77-23562 Filed 8-15-77;8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 77-200; Customs Delegation Order No. 1 (Rev. 1) amended]

PERFORMANCE OF FUNCTIONS IN CUSTOMS SERVICE

Delegation of Authority

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This document amends a Customs delegation order by delegating authority to make certain decisions under the Freedom of Information and Privacy Acts. The Commissioner of Customs is delegating this authority to enable Customs to respond more promptly to requests under these Acts.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Steven I. Pinter, Chief, Freedom of Information and Privacy Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-8467).

SUPPLEMENTARY INFORMATION: Under § 103.3 of the Customs Regulations (19 CFR 103.3) and Appendix C, Subpart A, Part 1 of the Treasury Department Regulations (31 CFR Part 1), the Director, Classification and Value

Division, may grant requests for records under the Freedom of Information Act (5 U.S.C. 552) that are directed to Customs Service Headquarters. Those regulations also provide that the Assistant Commissioner, Office of Regulations and Rulings, is the official authorized to deny such requests. Due to a reassignment of functions within the Office of Regulations and Rulings and a desire to respond more promptly to requests for information, the Commissioner of Customs has determined that the Director, Entry Procedures and Penalties Division, should be authorized to grant or deny those requests.

Under Appendix C, Subpart C, 31 CFR Part 1, the Director, Entry Procedures and Penalties Division, may grant requests made under the Privacy Act (5 U.S.C. 552a) that are directed to Customs Service Headquarters. That Appendix also provides that the Assistant Commissioner, Office of Regulations and Rulings, is the official authorized to deny such requests. The Commissioner of Customs has determined that authorizing the Director, Entry Procedures and Penalties Division, to both grant and deny requests made under the Privacy Act that are directed to Customs Service Headquarters will enable Customs to respond more promptly to such requests.

Under section 103.5 of the Customs Regulations (19 CFR 103.5) and Appendix C, Subpart A, 31 CFR Part 1, the Commissioner of Customs will decide all appeals of denials of requests under the Freedom of Information Act. Under Appendix C, Subpart C, 31 CFR Part 1, the Commissioner will also decide all appeals of denials of requests to amend records under the Privacy Act. The Commissioner has determined that, to expedite the administrative review of such denials, the authority to decide appeals under the Freedom of Information and Privacy Acts should be delegated to the Assistant Commissioner, Office of Regulations and Rulings.

Inasmuch as this rule relates solely to agency organization, procedure, or practice, notice and public procedure thereon are unnecessary and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

This delegation is made under the authority given to the Commission of Customs by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended.

Conforming amendments to the regulations that are affected by this delegation will be prepared

DRAFTING INFORMATION

The principal author of this document was Richard M. Belanger, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, United States Customs Service. However, personnel from other offices of the Customs Service participated in developing the document, both on matters of substance and style.

AMENDMENT TO DELEGATION ORDER

Customs Delegation Order No. 1 (Revision 1) (T.D. 69-126, 34 FR 8208), as amended, is amended as set forth below:

Paragraph A is amended to read as follows:

A. Assistant Commissioner of Customs, Office of Regulations and Rulings:

Decisions with respect to any claim (including claim for liquidated damages), fine, or penalty (including forfeiture) now delegated to the Commissioner of Customs by paragraph (h) of Treasury Department Order No. 165, Revised, as amended, (supra), decisions with respect to appeals from denials of requests for information under 5 U.S.C. 552, decisions with respect to appeals from denials of requests for amendment of records under 5 U.S.C. 552a, decisions denying or approving requests for extension of the time for the submission of comments on proposed amendments to the Customs Regulations, and decisions and functions relating to all matters in which authority also is delegated by this Order to the Director, Classification and Value Division, the Director, Entry Procedures and Penalties Division, and the Director, Carriers, Drawback and Bonds Division.

* * * * *

(b) *Director, Entry Procedures and Penalties Division:*

(1) * * *

(2) * * *

(3) Decisions denying or approving requests under 5 U.S.C. 552 and 5 U.S.C. 552a.

(4) All other decisions in matters arising under provisions of law administered in the Entry Procedures and Penalties Division.

* * * * *

G. R. DICKERSON,
Acting Commissioner of Customs.

[FR Doc.77-23504 Filed 8-15-77;8:45 am]

Office of the Secretary

ADVISORY COMMITTEE ON REFORM OF THE INTERNATIONAL MONETARY SYSTEM

Meeting

Notice is hereby given that the Advisory Committee on Reform of the International Monetary System will meet at the Treasury Department on September 22, 1977.

The meeting is called in order to obtain the opinions of the participants in the Advisory Committee regarding international monetary questions to be discussed at the annual meeting of the Board of Governors of the International Monetary Fund on September 26-30 and the related meeting of the Interim Committee of the Board of Governors.

A determination as required by Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set for in 5 U.S.C. 552b(c)(1) and that the public interest requires such meeting be closed to public participation.

Any comment or inquiry with respect to this notice can be addressed to Donald Syvrud, Director, Office of International Monetary Affairs, U.S. Department of the Treasury, Washington, D.C. 20220, (202) 566-5365.

Dated: August 9, 1977.

ANTHONY M. SOLOMON,
Under Secretary for Monetary Affairs.

[FR Doc.77-23520 Filed 8-15-77;8:45 am]

RAILWAY TRACK MAINTENANCE EQUIPMENT FROM AUSTRIA

Antidumping Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that railway track maintenance equipment from Austria is being sold at less than fair value under the Antidumping Act. (Sales at less than fair value generally occur when the price of merchandise for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries.) This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: August 16, 1977.

FOR FURTHER INFORMATION CONTACT:

David Mueller, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: Information was received in proper form on September 23 and October 1, 1976, from counsels acting on behalf of the Kershaw Manufacturing Company, Inc., Montgomery, Alabama, and Tamper, Inc., Columbia, South Carolina, respectively, indicating that railway track maintenance equipment from Austria was being sold at less than fair value, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of a "Notice of Reopening of Discontinued Investigation" which was published in the FEDERAL REGISTER of November 1, 1976 (41 FR 47970-71).

A "Withholding of Appraisement Notice" issued by the Secretary of the Treasury was published in the FEDERAL REGISTER of May 10, 1977 (42 FR 23672).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reasons stated below, railway track maintenance equipment is being or is likely to be sold at less than fair value within the meaning of the section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* It appears that all imports of the subject merchandise from Austria were manufactured by Plasser and Theurer, Linz, Austria. Therefore, investigation was limited to this manufacturer.

b. *Basis of Comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between exporter's sales price and the third country price of such or similar merchandise or the constructed value of such merchandise, as appropriate.

Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since all export sales are made to a related purchaser in the United States which in turn sells to unrelated purchasers. Third country price, as defined in § 153.3, Customs Regulations (19 CFR 153.3), was used since such or similar merchandise is not sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes. Constructed value, as defined in section 206 of the Act (19 U.S.C. 165) was used in those instances where there were no sales of such or similar merchandise in the home market or to third countries.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States and to appropriate third countries during the period March 1, through December 31, 1976, as well as appropriate constructed value information.

c. *Exporter's Sales Price.* For the purpose of this determination of sales at less than fair value, exporter's sales price has been calculated on the basis of the price to unrelated United States customers, with deductions for ocean freight, insurance, inland freight, brokerage and handling charges and U.S. customs duties. Deductions have also been made for cash and quantity discounts, and for selling and warranty expenses, as appropriate.

d. *Third Country Prices.* For the purpose of this determination of sales at less than fair value, the third country price has been calculated based upon the ex-works or delivered price to unrelated customers in Italy, Canada and Egypt, as appropriate. Deductions were made for inland and ocean freight, insurance, handling charges and bank and stamp tax fees, as appropriate. Adjustment for quantity discounts were also made, in accordance with § 153.9(b), Customs Regulations (19 CFR 153.9(b)). In accordance with § 153.10, Customs Regulations (19 CFR 153.10), adjustment was also made for warranty expenses applicable to third country sales, as appropriate.

Adjustment was claimed, under § 153.10 (b), Customs Regulations (19 CFR 153.10 (b)), for commissions incurred in connection with sales to third countries. Commissions incurred vis-a-vis unrelated agents have been adjusted. Adjustments for commissions incurred vis-a-vis related persons have been disallowed, as such commissions represent an intra-company transfer.

Claims have been made for adjustment for selling expenses in third country markets, under § 153.10, Customs Regulations (19 CFR 153.10). These claims have been denied because varified information has not been received documenting actual selling expenses related to the sale of the particular merchandise under consideration in individual third countries. Section 153.10(b), Customs Regulations (19 CFR 153.10(b)) permits allowance only for actual selling expenses.

Claims have been made for differences in merchandise sold in the United States and to third countries. These claims have been allowed to the extent that such differences, based upon material and labor cost differentials, have been documented. Section 153.11, Customs Regulations (19 CFR 153.11) provides that in comparing the exporter's sales price with the selling price for exportation to third countries in the case of similar merchandise, due allowance shall be made for differences in the merchandise. Section 153.11 further provides that, in determining the allowance for such differences, the Secretary shall be guided primarily by differences in cost of manufacture. The term "cost of manufacture" does not include general selling and administrative expenses nor profit. That term does include the costs of materials and direct labor, for which adjustments have been made. Since no evidence has been presented in the instant case with respect to direct factory overhead costs, no adjustments for such costs have been made.

(e) *Constructed Value.* For the purposes of this determination, constructed value has been calculated on the basis of the sum of the cost of materials and of fabrication of the merchandise, an amount for general expenses and profit related to the manufacture and sale of merchandise of the same general class or kind as the merchandise under consideration, and the cost of all containers and coverings used to pack the merchandise ready for shipment to the United States.

f. *Results of Fair Value Comparisons.* Using the above criteria, exporter's sales price was found to be lower than the third country price, or constructed value, as appropriate, of such or similar merchandise. Comparisons were made on approximately 83 percent of the merchandise sold to the United States during the investigative period. Margins were found, ranging from 5 to 42 percent on approximately 75 percent of the sales compared. The weighted average margin on those sales on which margins were found was approximately 32 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

HENRY C. STOCKELL, Jr.,
Acting General Counsel

AUGUST 10, 1977.

[FR Doc.77-23536 Filed 8-15-77;8:45 am]

VETERANS ADMINISTRATION

ADVISORY COMMITTEE ON STRUCTURAL SAFETY OF VETERANS ADMINISTRATION FACILITIES

Meeting

The Veterans Administration gives notice pursuant to Public Law 92–463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration Facilities will be held in Room 442 at the Veterans Administration Central Office, 811 Vermont Avenue NW., Washington, D.C. on September 23, 1977 at 10 a.m. The Committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake, and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. James Lefter, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202–389–2868), prior to September 21, 1977.

Dated: August 10, 1977.

MAX CLELAND,
Administrator.

[FR Doc.77–23546 Filed 8–5–77;8:45 am]

MEDICAL RESEARCH SERVICE MERIT REVIEW BOARDS

Notice of Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92–463 of meetings of the following Merit Review Boards.

Merit Review Board	Date	Time	Location
Cardiovascular studies	Aug. 29, 1977	7:30 to 11 p.m.	Potomac Room, The Lee House.[1]
Do	Aug. 30, 1977	8:30 a.m. to 5 p.m.	Do.
Nephrology	Sept. 12, 1977	do	Do.
Alcoholism and drug dependence (clinical pharmacology).	Sept. 20, 1977	do	Do.
Respiration	do	do	Conference Parlor No. 286, Sheraton-O'Hare Motor Hotel.[2]
Basic sciences	Sept. 23, 1977	7 to 11 p.m.	The Lee House.
Do	Sept. 24, 1977	8 a.m. to 5 p.m.	Do.
Oncology	Sept. 26, 1977	8:30 a.m. to 5 p.m.	Do.
Hematology	Sept. 30, 1977	do	Do.
Gastroenterology	Oct. 3, 1977	do	Room 817, VA Central Office.[3]
Behavioral science	do	2 to 11 p.m.	The Lee House.
Do	Oct. 4, 1977	8:30 a.m. to 5 p.m.	Do.
Immunology	do	7:30 to 11 p.m.	Do.
Do	Oct. 5, 1977	8:30 a.m. to 5 p.m.	Do.
Endocrinology	Oct. 6, 1977	do	Do.
Neurobiology	do	6:30 to 11 p.m.	Do.
Do	Oct. 7, 1977	8:30 a.m. to 5 p.m.	Do.
Infectious diseases	Oct. 9, 1977	do	Leira Suite, Americana Hotel.[4]
Surgery	Oct. 19, 1977	7:30 to 11 p.m.	Mustang Room, Dallas Hilton.[5]
Do	Oct. 20, 1977	8 a.m. to 6 p.m.	Do.

[1] The Lee House, 15th and L Sts. NW., Washington, D.C. 20005.
[2] Sheraton-O'Hare Motor Hotel, 6810 North Mannheim Rd., Chicago, Ill. 60018.
[3] VA Central Office, 810 Vermont Ave. NW., Washington, D.C. 20420.
[4] Americana Hotel, 7th Ave. at 52d St., New York City 10019.
[5] Dallas Hilton, 1914 Commerce St., Dallas, Tex. 75201.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration hospitals and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. In accordance with the provision set forth in section 552b(c)(6), title 5, United States Code, all of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meetings involve: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents which are exempt from disclosure under the interagency memoranda exemption (exemption (6)) to section 552b(c)(6) of title 5, United States Code. The portion of the meeting which necessitates examination of these documents will be closed to prevent inadvertent disclosure of these exempt records.

Because of the limited seating capacity of the rooms, those who plan to attend should contact Jane S. Schultz, Ph. D., Chief, Program Development and Review Division, Medical Research Service, Veterans Administration, Washington, D.C., (202) 389–5065 at least five days prior to each meeting. Minutes of the meeting and rosters of the members of the Boards may be obtained from this source.

Dated: August 10, 1977.

MAX CLELAND,
Administrator.

[FR Doc.77–23504 Filed 8–15–77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 450]

ASSIGNMENT OF HEARINGS

AUGUST 11, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 141663, Robert E. Moore Common Carrier Application now being assigned October 12, 1977 (8 days), at Greensboro, N.C., in a hearing room to be later designated.

MC 142712, Jerry Paul, d.b.a. Jerry Paul Trucking, now being assigned October 18, 1977 (4 days), at Santa Fe, N. Mex., in a hearing room to be later designated.

MC 135236 (Sub-No. 17), Logan Trucking, Inc., now being assigned October 3, 1977 (1 week), at New York, N.Y., in a hearing room to be later designated.

MC 87730 (Sub-No. 27), R. W. Bozel Transfer, Inc., now being assigned November 16, 1977, at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 4405 (Sub-No. 555), Dearlers Transit, Inc., now being assigned November 30, 1977, at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 112288 (Sub-No. 14), Yarborough Transfer Co., now being assigned November 16, 1977, at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 9859 (Sub-No. 4), Kane Transfer Co., now assigned September 26, 1977, at Salisbury, Md., has been postponed to October 3, 1977, (4 days), at the Old Federal Savings and Loan Bank, 306 Carroll Street, Salisbury, Md.

MC 142880, Victor Ismael Marquez, now assigned October 3, 1977, at Miami, Fla., will be held in Tax Court Room, 1524 Federal Building, 51 Southwest First Avenue.

MC 107107 (Sub-452), Alterman Transport Lines, Inc., now assigned October 4, 1977, at Miami, Fla., will be held in Tax Court Room, 1524 Federal Building, 51 Southwest First Avenue.

MC121489 (Sub-No. 12), Nebraska-Iowa Express, Inc., now being assigned November 28, 1977 (3 weeks), at Denver, Colo., in a hearing room to be later designated.

MC 119619 (Sub-No. 96), Distributors Service Co., now assigned September 7, 1977, at Chicago, Ill., will be held in room 1319, Everett McKinley Dirksen Bldg., Chicago, Ill.

MC 138469 (Sub-No. 30), Donco Carriers, Inc., now assigned September 7, 1977 at Chicago, Ill., will be held in room 1319, Everett McKinley Dirksen Bldg., Chicago, Ill.

MC 113855 (Sub-No. 364), International Transport, Inc., now assigned September 8, 1977, at Chicago, Ill., will be held in room 1319, Everett McKinley Dirksen Bldg., Chicago, Ill.

MC 51146 (Sub-No. 479), Schneider Transport, Inc., MC 114457 (Sub-No. 276), Dart Transit Co., MC 114457 (Sub-No. 287), Dart Transit Co., MC 126276 (Sub-No. 161), Fast Motor Service, Inc., MC 118989 (Sub-No. 145), Container Transit, Inc., and MC 2860 (Sub-No. 159), National Freight, Inc., now assigned September 12, 1977, at Chicago, Ill., will be held in room 1319, Everett McKinley Dirksen Bldg., Chicago, Ill.

MC 108053 (Sub-No. 135), Little Audrey's Transportation Co., Inc., now assigned September 14, 1977, at Chicago, Ill., will be held in room 1319, Everett McKinley Dirksen Bldg., Chicago, Ill.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77–23571 Filed 8–15–77;8:45 am]

[No. 36589]

EXPERIMENTAL PIGGYBACK TRAIN SERVICE

Joint Petition; Order

Present: Dale W. Hardin, Commissioner, to whom this matter has been assigned for action thereon.

By petition filed May 12, 1977, the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (Milwaukee) and Unit-Trainship, Inc., (UTI) seek an order declaring the lawfulness of the proposed innovative service described in their petition or a finding of exemption under section 12(1)(b) of the Interstate Commerce Act. Replies were filed June 9, 1977, by the Burlington Northern, Inc., and June 13, 1977, by the Union Pacific Railroad Co.

The Milwaukee and UTI propose to establish dedicated non-stop piggyback train service on a round-trip basis with established mutually agreed upon schedules and subject to existing railroad rates applicable on Freight, All Kinds, between Chicago, Ill., on the one hand and Seattle/Tacoma, Wash., and Washington/Portland, Oreg., on the other. UTI, acting in the capacity of a broker, contractually undertakes to provide the Milwaukee with a minimum of 60 loaded or empty trailers or containers three times a week in each direction. In return for the guarantee of a minimum fixed amount of revenue for each 60 unit train, UTI receives a commission equal to 10 percent of the applicable tariff rate applying to the revenue traffic carried by the Milwaukee pursuant to the agreement. UTI receives 20 percent of the tariff rate for revenue traffic offered but not accommodated by the Milwaukee, excluding empty units tendered by UTI to satisfy minimum guarantees. In addition to promoting traffic UTI will prepare a comprehensive manifest for the Milwaukee and take over billing and collecting. Each Monday the Milwaukee will submit a statement of charges and UTI will undertake to remit payment within the specified period less its compensation and credit for each unit not accommodated and for failure to accommodate units.

The Milwaukee on its part agrees to provide and control all rail services necessary to accommodate traffic generated by UTI in accordance with the terms of the agreement. It will pay penalties for its failure to accommodate the agreed upon level of generated traffic, and it will retain sole liability for traffic tendered to it through the agreement that is lost, damaged, stolen or delayed.

Because of the novelty of the experimental proposal, interested persons are urged to participate in the development of a record in this proceeding. All statements should address the underlying lawfulness of the proposal with respect to the applicable provisions of the Interstate Commerce Act, 49 U.S.C. 1 et seq., the Elkins Act, 49 U.S.C. 41(1), and such issues as (1) the status of UTI, (2) whether the proposal constitutes a special service such as would require tariff publication, and (3) the penalty aspect of the agreement.

It is ordered: Pursuant to section 5(e) of the Administrative Procedure Act, 5 U.S.C. 554 (e), and in the exercise of the Commission's sound discretion thereunder, this petition for a declaratory order is granted to determine the lawfulness of the proposed arrangement between petitioners.

Petitioners, the Burlington Northern Inc., and the Union Pacific Railroad Co. are made parties to this proceeding. All other persons desiring to participate shall make such fact known by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before September 5, 1977. As soon as practicable the Commission will serve a list of the names and addresses of all persons whom service of statements under the Commission's modified procedure shall be made and the schedule to be followed.

A copy of this order shall be served upon petitioners, the Burlington Northern Inc., and the Union Pacific. Copies shall also be deposited in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and given to the public along with a copy of the petition and the attached draft agreement by delivery to the Director, Office of the Federal Register for publication.

Dated at Washington, D.C. this 27th day of July 1977.

By the Commission, Commissioner Hardin.

H. G. HOMME, Jr.,
Acting Secretary.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Co. and Unit-Trainship, Inc. for an Order declaring the lawfulness of or a finding of exemption for a proposed experimental piggyback train service.

Docket No. 36589.
Filed: May 12, 1977.

PETITION

Come now the Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (Railroad) and Unit-Trainship, Inc. (UTI) pursuant to Rule 102 of the Interstate Commerce Commission General Rules of Practice and Section 554(e) of the Administrative Procedure Act, 15 U.S.C. § 554(e) and jointly petition your Commission for an Order declaring the lawfulness of the proposed service described herein or for a finding of exemption under Section 12(1)(b) of the Interstate Commerce Act based on the following facts and for the following reasons:

THE PROPOSED SERVICE ARRANGEMENT PRESENTS A UNIQUE OPORTUNITY FOR INNOVATION IN RAIL TRANSPORTATION SERVICES

Petitioner, Chicago, Milwaukee, St. Paul and Pacific Railroad Co., is a common carrier by railroad subject to Part I of the Interstate Commerce Act. Petitioner Unit-Trainship, Inc. is a broker of rail transportation services, not subject to Part I of the Act and holding no Commission authority under any Part of the Act.

Pursuant to a proposed formal Agreement between Petitioners (draft Agreement attached as Appendix A) an innovative experimental transportation service is proposed to be inaugurated between Chicago and the Pacific Northwest. It is contemplated that active operations could commence within 60 days from the receipt of the order requested by this Petition.

Under the basic terms of the proposed Agreement, UTI will employ its expertise to secure to the Railroad, freight traffic moving on the Railroad's Freight All Kinds rates east and westbound in an amount sufficient to load 30 railroad flatcars, each with two loaded or empty trailers or containers, three times a week in each direction between the Railroad's Bensenville Yard, Illinois and the Railroad's Black River Yard, Washington, on mutually agreed upon schedules. For its part, the Railroad will provide such trains, motive power, cars and crews as are necessary to handle the traffic generated by UTI and maintain the agreed terminal-to-terminal schedules. The Railroad agrees to accept for loading, only such traffic as identified and designated by UTI for transportation in such trains. For this service, UTI guarantees to the Railroad, a minimum fixed amount of revenue for each 60 unit shipment. As the sole compensation for its services, UTI will receive a commission from the Railroad equal to ten percent of the applicable tariff rate applying to the revenue traffic carried by the Railroad pursuant to the Agreement with UTI and twenty percent of the tariff rate for revenue traffic offered to the Railroad by UTI which the Railroad is unable to accommodate for transportation. UTI, however, is not entitled to any compensation based on empty trailers or containers tendered by UTI to satisfy UTI's minimum guarantees. In the event that the Railroad on any occasion is unable to fully perform except for causes beyond its control, credits will be allowed to UTI according to a schedule to be specified in the Agreement and such credits may be deducted by UTI in payment of the Railroad's invoices.

As a measure of protection for the Railroad's incurrence of start-up costs in connection with providing this service, UTI will post with the Railroad its performance bond at an amount to be determined which represents the amount of the Railroad's funds that are committed and expended for the exclusive purpose of initiating this service.

The innovativeness of this experimental service is matched by the simplicity of its operation. It is contemplated by Petitioners that the facilities of this service will be available by contract with UTI to the full spectrum of the shipping public, including manufacturers, consolidators, freight forwarders, shipper's agents, over-the-road truckers, steamship lines, individual customers, etc. UTI will provide the Railroad with a list of all such shippers which through contract with UTI are to utilize this service.

Prior to the scheduled departure time, the Railroad will assemble the required number of empty flatcars along with sufficient motive power and crews. The shipper or his designated cartage company delivers the trailer or container and presents the Bills of Lading or waybills prepared by the shipper or his agent, to the Railroad at the piggyback checkpoint. The Railroad's weights and inspection crew will instruct the driver to drop the trailer or container at a location which the Railroad designates. Thereafter, any movement within the railroad yard and the actual loading onto the flatcars will be performed by railroad directed personnel. At or before the time each train is dispatched, UTI will submit to the Railroad a comprehensive manifest which will include: (1) the name and address of the beneficial owner of each trailer or container on the train, (2) the total loading weight of each trailer or

container on the train, and (3) the tariff reference including the applicable rates and charges for each shipment on the train, and (4) the name of the entity to which each trailer or container on the train may be released upon the arrival of the train at the opposite terminal.

At the scheduled time, the train departs and proceeds to its destination non-stop except for necessary servicing and crew and equipment changes and in accordance with the agreed operating schedule. Upon arrival at destination, all handling and movement of the trailers or containers is accomplished by railroad personnel. As at origin, the shipper makes his own arrangements for pick-up and delivery service.

UTI will bill its customers within 48 hours after the trailer or container is released at destination. Under the express terms of the proposed Agreement, each Monday the Railroad will submit to UTI a statement of its charges and UTI will remit within a specified number of days, the amount shown on the Railroad's statement less UTI's compensation and less any credits for units not accommodated or for failure to accommodate by the Railroad.

The potential additional revenue generated by this proposed service will assist the Railroad in its continuing efforts to strengthen its financial and competitive position. As the President of the Milwaukee Road recently testified in another proceeding before this Commission:

"Milwaukee Road, as a functioning railroad system is currently adversely affected in its ability to perform due to a lack of generation of sufficient revenue to support its plant. This lack of sufficient income combined with large plant has compelled the imposition of budgetary contraints that hinder accomplishment of necessary maintenance of both track structure and rolling stock. To perform well for the customer, the railroad must provide consistent service, both in providing suitable cars and in getting the shipper's goods over the road to destination or to connections within a timespan suitable to the shipper. In part, this inability to perform consistently to the shipper's satisfaction has caused the Milwaukee Road to be at a disability in the competitive struggle with other railroads where other conditions are equal, and with its truck and barge competition." F.D. No. 21478 (Sub-No. 4) Prepared Testimony of Worthington L. Smith, page 2, volume 1 of prepared testimony to Application, November 30, 1976.

Petitioners believe that operation of the proposed service presents a unique opportunity to generate additional revenue to the Railroad as well as providing a practical means of offering a consistent service to the shipping public. Under the proposed arrangement, the Railroad is guaranteed a minimum amount of revenue but as traffic under the service increases, so will the revenue derived from it. As discussed above, UTI has agreed to collect all charges from shippers who use the service, and then forward the appropriate amount to the Railroad within a specified number of days, thus relieving the Railroad of collecting individually from the shippers and thus improving the Railroad's cash flow. Furthermore, every time a train moves under this service it carries 100% payloads thereby maximizing the Railroad's utilization of its equipment and optimizing productivity. These factors permit the Railroad to guarantee availability of sufficient equipment and operation according to agreed schedules thus providing the consistency of service contemplated by Petitioners.

UNDER THE PROPOSED SERVICE ARRANGEMENT THE USUAL RESPONSIBILITIES BETWEEN RAILROAD AND SHIPPER REMAIN VIRTUALLY UNAFFECTED

As becomes readily apparent from an analysis of the terms of the proposed Agreement and its intended operation described above, the unique limited involvement of UTI permits shippers to benefit from the guaranteed service provided for under the proposed Agreement and yet the usual responsibilities between the Railroad and the shipper remain virtually unaffected. For example, under the proposal, shippers perform their own loading, counting and sealing at their own locations and make their own arrangements with the Railroad or with a local cartage company of their own choosing for pick-up and delivery service at origin and destination. Shippers or their agents have the responsibility of preparing their own Bills of Lading and submitting them directly to the Railroad. All movements of trailers or containers within the railroad yard and all loading and unloading of railroad owned or leased flatcars is performed by railroad personnel. Under the express terms of the proposed Agreement, while the shipments are in the possession of the Railroad, UTI has no liability to the shipper of the traffic tendered to the Railroad for lost, stolen, damaged or delayed shipments or for damage to the trailers or containers. Any claims that may arise are settled between the Railroad and the shipper directly. In short, the Railroad takes full responsibility for the entire shipment. The movement of the train itself throughout the entire length of the trip between terminals is at all times solely under the control, management and operation of the Railroad by its own employees.

Finally, involvement of UTI does not affect or alter any rules or regulations now in effect between shipper and railroad under piggyback plans, II½, III and IV. Most significantly, movement of all traffic encompassed by this service is according to applicable rates and charges on Freight, all kinds between Chicago and Seattle/Tacoma, Washington and Portland, Oregon, currently published in tariffs on file with the Commission. Once a shipper has entered a contract with UTI, the only significant difference from the usual shipper/carrier relationship is that such shipper will pay UTI for the service rather than paying the Railroad directly.

UTI AS A BROKER OF RAIL TRANSPORTATION SERVICES IS NOT REGULATED BY THE INTERSTATE COMMERCE ACT

Consideration of the foregoing factors reveals, Petitioners believe, that the status of UTI regarding the proposed rail service is unique to Part I of the Interstate Commerce Act.

For example, the function of UTI is not included in the term "common carrier" in Part I, Section 1(3)(a) of the Act:

"The term 'common carrier' as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." 49 U.S.C. § 1(3(a).

Under the proposal, UTI does not engage in the transportation of property as a common carrier for hire. UTI does not hold itself out to the public as a common carrier. UTI does not own or operate a common carrier by railroad nor does it own, lease or otherwise control any trains, railroad cars, tracks or other rail transportation equipment. Under the proposed service Agreement, the Railroad performs all the physical acts of transportation and controls the movement of all trains and rail equipment.

Nor is the status of UTI properly that of a shipper or shipper's agent. Under the proposal, UTI will not ship goods under its own name. All shipments tendered to the Railroad pursuant to the Agreement will be owned by others. UTI will not prepare any of the paperwork required for transporting the goods, nor will it give shipping instructions nor sign Bills of Lading. Its customers have the full responsibility for preparing their own Bills of Lading. Furthermore, UTI does not act on behalf of a particular shipper or group of shippers when dealing with the Railroad. All customers of UTI must deal directly with the Railroad when utilizing the guaranteed service, with the exception of payment which is made directly to UTI. In short, at all times UTI deals with both its customers and the Railroad as an independent contractor.

Finally, the status of UTI is clearly not that of a "freight forwarder" as that term is defined in Part IV, Section 402(a)(5) of the Act: "The term 'freight forwarder' means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public as a common carrier to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act." 49 U.S.C. § 1002(a)(5).

Notably absent from the proposed arrangement is the assumption of responsibility for the transportation of property from point of receipt to point of destination. Under the express terms of the Agreement, full responsibility for the shipment will remain with the Railroad. Of course, UTI holds no freight forwarder authority from this Commission.

Rather, the status of UTI is more akin to that of a "broker" of rail transportation service. It shall be acting as the Railroad's "super salesman." Brokers, as defined in Part II of the Act, require authority to conduct their operations in connection with motor carrier transportation. However, there is no such requirement in Part I of the Act with respect to rail transportation.

Therefore, Petitioners believe that a "broker" of rail transportation service, such as UTI under the proposed arrangement, and its relationship with the Railroad are not regulated by the Interstate Commerce Act and consequently, no authority is in fact required from this Commission to initiate the service contemplated herein.

NO ADDITIONAL TARIFF PUBLICATION IS NECESSARY TO INITIATE THE PROPOSED SERVICE

Petitioners believe that Section 6(7) of the Interstate Commerce Act is inapplicable and no special tariff publication and filing covering the proposed service is necessary.

Although certain types of contracts for special services have in the past been deemed to constitute an undue advantage to a shipper in violation of the Elkins Act and Section 6(7) of the Interstate Commerce Act,

unless the service is published in a tariff and made available to all, *Chicago and Alton RR. Co.* v. *Kirby*, 225 U.S. 155 (1911); *Union Pacific RR. Co.* v. *United States*, 173 F. Supp. 397 (1959) aff'd 362 U.S. 327 (1960), these cases involve a special service being rendered by the Railroad to a shipper without appropriate tariff authority.

The status of UTI under the proposed service arrangement, as an unregulated broker of rail transportation services has an important bearing on the requirement of tariff publication in Section 6 of the Act. Under the proposed service arrangement, shippers will be protected. All shipments will be made at the applicable rate contained in tariffs published and on file with the Commission. The Railroad will not be granting any special service to any individual shipper or any organized industry group of shippers. The proposed service arrangement is not a mere subterfuge to offer a special service to a particular industry group, as for example, potato growers, lumber companies, orange growers, and the like, whether acting through an association or otherwise. The fact is that no single industry group is involved. As stated above (pp. 3–4) Petitioner UTI's service will be available to the full spectrum of the shipping public, including manufacturers, consolidators, freight forwarders, shipper's agents, over-the-road truckers, steamship lines, as well as individual shippers.

Furthermore, there are at least two other significant points differentiating the proposed service arrangement from a prohibited type of special service:

1. Petitioner UTI has guaranteed coverage of the Railroad's start-up costs in initiating the service and has guaranteed use of the Railroad's services; that is, the service must be paid for by Petitioner UTI whether or not used. Moreover, to the extent that train space is not utilized with loaded trailers or containers, no commissions are payable to Broker;

2. Petitioner UTI has undertaken to guarantee a round trip use of the Railroad's facilities. The significant savings to Railroad in such a complete utilization of Railroad's facilities is self-evident. This feature alone results in the elimination of substantial losses incurred in empty movements or idle storage of railroad equipment. In no other comparable situation is the Railroad assured of such round-trip utilization.

It must be emphasized, moreover, that the service aspects of the proposal are strictly a matter of contract between the Railroad and the unregulated broker who is not a shipper, and the assurances provided for under the proposed Agreement run only between the Railroad and Broker. Since the broker and its relationship with the Railroad are not regulated by the Interstate Commerce Act, the service aspects of the proposal should not be subject to the tariff filing requirements of Section 6(7).

PAYMENT OF A COMMISSION TO UTI DOES NOT VIOLATE THE INTERSTATE COMMERCE ACT NOR THE ELKINS ACT

Under the proposed service arrangement, the Railroad will pay to UTI a commission for brokerage services rendered. Payment of such a commission by the Railroad to a transportation broker such as UTI, does not violate section 6(7) of the Interstate Commerce Act nor the Elkins Act. Although the Supreme Court has held that the Elkins Act prohibits even mere solicitation of rebates by any person, no matter for whose benefit the rebate is sought, *United States* v. *Braverman*, 373 U.S. 405 (1963), no rebate, concession or discrimination whereby property would be transported at a rate less than that named in published and filed tariffs would result under the proposed arrangement. As discussed above, all shippers who wish to use the proposed service are subject to the full tariff charges to obtain the transportation service provided by the Railroad. No reduction in lawful tariff charges occurs. There is no advantage or concession given to one shipper over another. UTI's commission is its compensation for the performance of a valid, tangible service for the Railroad. As one court long ago observed:

"The test by this statute (Elkins Act) is whether the carrier has transported the property at a less rate than that named in the tariff. In determining this question no legitimate expense of doing the business by the carrier should be deducted. The carrier has a right to employ persons to solicit business, just as it has a right to employ clerks and employes of all kinds to do the business, and any payments for such a purpose cannot constitute a rebate, concession, or discrimination within the meaning of the act * * *" United States v. Delaware, L.&W. RR, 152 F. 269, 273 (S.D.N.Y. 1907)

The Railroad would use its freight revenues to pay the broker's commission in the same way it uses its freight revenues to pay its other expenses. Reference to the applicable tariff rates in paragraph 2.2 of the proposed Agreement, dealing with Broker's Commission is for the purpose of computing the amount of UTI's Commission and is not intended nor construed by the parties as a discount, rebate or refund of tariff charges to UTI.

Petitioners emphasize that under the proposed service arrangement, at no time will the Railroad "refund" or "remit" any of the rates, fares and charges to anyone. Since all tariff charges are paid through UTI and therefore UTI itself does not pay any tariff charges, there can be no "refund" of any of the charges to UTI. In effect, UTI forwards the full tariff charges to the Railroad and thereafter the Railroad pays UTI its commission for services rendered according to the formula contained in the proposed Agreement. As a practical matter the forwarding of the collected tariff charges to the Railroad and the payment of the appropriate commission to UTI is proposed to be handled as a single transaction to expedite handling and avoid unnecessary, excessive paperwork and transfer of funds.

THE SEPARATE CONTRACTUAL RELATIONSHIP BETWEEN UTI AND ITS CUSTOMERS IS NOT PART OF THE SUBJECT MATTER OF THIS PETITION

Petitioners, by this Petition, seek an Order of this Commission declaring the lawfulness of the proposed service arrangement between the Railroad and UTI as described above. It is not intended by Petitioners to include as part of the subject matter of this Petition, the separate contractual relationship between the unregulated broker (UTI) and its customers, if any exist. Consequently, Petitioners do not seek to include this latter relationship within the coverage of the declaratory Order or exemption sought by this Petition. Nevertheless, in the interest of full disclosure, a copy of a proposed type of Agreement which will be offered by Petitioner UTI to its customers is attached hereto as Appendix B.

THE PROPOSED SERVICE ARRANGEMENT MEETS THE CRITERIA FOR A FINDING OF EXEMPTION UNDER SECTION 12(1)(b) OF THE ACT

As an alternative to the declaratory Order sought by this Petition, Petitioners request that this Commission find that the proposed service arrangement contemplated by Petitioners, be exempt from the provisions of Part I of the Interstate Commerce Act, pursuant to this Commission's authority in Section 12(1)(b) of the Act. Section 12(1)(b) states in relevant part:

"Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matters relating to a common carrier by railroad subject to this part, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order."

Petitioners believe that application of the provisions of Part I of the Act, by reason of the limited scope of the proposed service, is not necessary to effectuate the national transportation policy declared in the Act. Rather the implementation of the proposed service will, of itself, effectuate the national transportation policy. Petitioners further believe that application of the provisions of Part I would place an undue burden on Petitioners at the critical stage of initiation of this innovative transportation service and would serve little or no useful public purpose since both the shipping public which uses the transportation service and benefits from it, and the Railroad which provides the service to the public are protected. A determination by this Commission that the proposed service arrangement is exempt from the provisions of Part I of the Act, does not constitute a permanent finding since the Commission has the authority under Section 12(1)(b) to revoke previously-granted exemptions.

Furthermore, as discussed above, whereas Congress has specifically included "broker" within the regulatory scheme applicable to common carriers by motor vehicle in Part II of the Act, Congress has made no such provision for "brokers" of rail transportation services under Part I of the Act. This conspicuous Congressional omission to include "brokers" under Part I of the Act, is entirely consistent with a determination by this Commission pursuant to Section 12(1)(b) that the proposed service arrangement contemplated by Petitioners is exempt from the application of the provisions of Part I of the Act.

WHEREFORE, Petitioners respectfully request that this Commission enter an appropriate Order, declaring the lawfulness of the proposed service described herein or alternatively that this Commission, pursuant to Section 12(1)(b) of the Interstate Commerce Act, determine the proposed service arrangement to be exempt from the provisions of Part I of the Act. Petitioners also hereby respectfully request that the Bureau of Investigations and Enforcement be directed to participate in this proceeding and, if the Commission deems it prudent in the public interest, to monitor the implementation of this experimental transportation concept.

Respectfully submitted,

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.

By THOMAS H. PLOSS, Attorney for Petitioner, Chicago, Milkwaukee, St. Paul and Pacific Railroad Co., 516 West Jackson Boulevard, Chicago, Ill. 60606.

Unit-Trainship, Inc.

By JACOB BLOOM, Attorney for Petitioner, Unit-Trainship, Inc., 221 North LaSalle Street, Chicago, Ill. 60601.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Co. and Unit-Trainship, Inc. for an Order declaring the lawfulness of or a finding of exemption for a proposed experimental piggyback train service.

AMENDMENT TO PETITION FOR DECLARATORY ORDER/REQUEST FOR EXEMPTION

Supplementing the joint Petition for Declaratory Order Request for Exemption filed in this matter on May 5, 1977, Petitioners respectfully represent that this action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, and said petition is amended to request such finding, pursuant to 49 CFR § 1108.10.

Respectfully submitted,

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.

By THOMAS H. PLOSS, Attorney for Petitioner, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 516 W. Jackson Blvd., Room 888, Chicago, Illinois 60606.

Unit-Trainship, Inc.

By JACOB BLOOM, Attorney for Petitioner, Unit-Trainship, Inc., 221 North LaSalle Street, Chicago, Illinois 60601.

APPENDIX A

DRAFT AGREEMENT

This Agreement, made this ____ day of _____, 1977, by and between Chicago, Milwaukee, St. Paul and Pacific Railroad Co., a corporation of Wisconsin, hereinafter referred to as "Railroad," and Unit-Trainship, Inc., a corporation of Illinois, hereinafter "Broker";

Witnesseth,

That Broker as an independent contractor, on the terms hereinafter set forth, offers its services to Railroad, for the purpose of securing to Railroad additional freight traffic to its lines; and

That Railroad is desirous of accepting the services of Broker for said purpose;

Wherefore, for and in the consideration of the sum of Ten Dollars ($10), and other good and valuable consideration, Railroad and Broker agree, the one with the other, as follows:

I. BROKER'S UNDERTAKING

1.1. Broker agrees to use its best efforts to secure and provide to Railroad freight traffic moving on Railroad's FAK rates east and westbound in an amount sufficient to load thirty (30) flatcars each with two loaded or empty trailers or containers, thrice weekly commencing with the week following the execution and delivery of this Agreement by Broker, and continuing for 90 days thereafter, to be transported by Railroad westbound between Railroad's Bensenville Yard, Illinois, and Railroad's Black River Yard, Washington, and eastbound between Black River Yard, Washington, and Bensenville Yard, Illinois, on such schedules as shall be mutually agreed upon between Railroad and Broker.

1.2. Broker agrees to guarantee its performance under Paragraph 1.1 hereof by first posting with Railroad its performance bond (or other chose in action assigned to Railroad) in the amount of $_____ as a condition precedent to the effectiveness of this Agreement. The amount of the above-stated performance bond required by Railroad above is represented by Railroad to Broker and accepted by Broker as Railroad's conclusive statement of the amount of Railroad's funds that are committed and expended for the exclusive purpose of initiating the service for Broker as contemplated by this Agreement, and said performance bond shall expire with the net revenues (tariff charges less Broker's commission as specified in Section 2.2 of this Agreement) received by Railroad pursuant to this Agreement equal to said amount. Thereafter, Broker agrees to submit to Railroad such evidence of its assurance of payment to Railroad of Railroad's invoices to Broker as shall be acceptable to Railroad.

1.3. In compliance with Sections 1.1 and 1.2 of the agreement broker guarantees to cause to be tendered to Railroad not less than 60 (but not more than ____) loaded or empty trailers/containers for transportation by Railroad three times per week in a westerly direction from Bensenville Yard, Illinois to Black River Junction (Yard), Washington and like volume tendered three times per week for easterly handling by Railroad from Black River Junction (Yard), Washington to Bensenville Yard, Illinois.

1.4. For each such volume shipment Broker guarantees Railroad a minimum fixed amount of revenue as shown in Section 1.6 (A) below. For each pair of loaded or empty trailers or containers offered Railroad over 60 units, Railroad will receive, and Broker guarantees, a fixed amount as indicated in Section 1.6(B) below.

1.5. In the event Railroad is unable to furnish Broker an adequate number of freight cars to accommodate 60 loaded or empty trailers or containers tendered by Broker on a given daily departure, the guaranteed minimum specified in Section 1.6(A) below will be reduced by amounts as indicated in Sections 1.6(C) and 1.6(D) below. For the purposes of Sections 1.3 and 1.5 of this Agreement, the words "tender" and "tendered" are agreed to mean Broker's stated willingness to perform its obligations under this Agreement, which Railroad agrees as assumed to be the case during the term of this Agreement except in the event of inability to perform under this Agreement by reason of the existence of a labor dispute (strike), fire, flood, adverse weather conditions, civil unrest, or other *force majeure* effectively preventing the parties hereto, or either of them, from performing their obligations under this Agreement.

1.6. Broker agrees to accept Railroad's statement of its charges to Broker during the term of this Agreement on each Monday following the effectivenes of this Agreement as specified in Section 1.1 above in the following manner: (Note.)

(A) Minimum charge for each volume shipment, based upon 60 units (i.e. trailers or containers gross 40,000 lb per unit, or less)	$------
(B) Plus additional charge for each pair (2) of units tendered	------
(C) Less credit for each pair of units not accommodated	------
(D) Less credit for failure to accommodate	------
Net charge to broker	------

NOTE.—Charges (A) and (B) are subject to any future increases or decreases in Railroad's published tariff rates or charges and will be reflected therein concurrently with the effective date of such tariff change(s). Credits under (C) and (D) above, will be adjusted proportionately.

II. RAILROAD'S UNDERTAKING

2.1. Railroad agrees to provide, for the use of Broker, its trains, power, crews, and cars sufficient at all times to load, unload and accommodate the traffic generated by Broker, and to adhere to the terminal-to-terminal schedules agreed upon. Railroad agrees not to accept traffic not identified by Broker as generated by Broker for transportation in such trains as are provided for Broker's use. It is further agreed, however, that the concept of Broker's use does not embrace or include any form of control by Broker over the operation of such of Railroad's trains as are provided for the traffic generated by Broker pursuant to this Agreement, and all control over Railroad's operations is specifically reserved exclusively to Railroad. In consideration of the guaranty of performance herein required of Broker, Railroad agrees that failure of full performance on its part, except for cause beyond its control (as outlined in Section 1.5 hereof), shall result in credits to be allowed to Broker upon the following schedule:

Such credits may be deducted by Broker in the payment of Railroad's invoices.

2.2. Railroad agrees to pay Broker, as its sole compensation for its services, sums of money equal to Ten Per Centum (10%) of the applicable tariff rate(s) applying to the revenue traffic carried by Railroad pursuant to this Agreement, and Twenty Per Centum (20%) of the tariff rate for revenue traffic offered Railroad by Broker which Railroad is unable to accommodate for transportation, provided however, that Broker shall not be entitled to any compensation based on empty trailers or containers tendered by Broker to satisfy Broker's minimum guarantees hereunder.

III. MUTUAL COVENANTS AND AGREEMENT

3.1. While shipments are in the possession of Railroad, Broker shall have no liability to the shippers of the traffic tendered Railroad prusuant to Section 1.1 above for lost, damaged, stolen or delayed shipment, and Railroad agrees that it will not look to Broker for subrogation of any claim by a shipper or Railroad for lost, damaged, stolen or delayed shipment.

3.2. Railroad will accept individual bills of lading by persons not parties to this Agreement, and Broker agrees to identify its customers to Railroad and to submit to Railroad one comprehensive listing or manifest for each train of Broker-generated traffic dispatched by Railroad at or before the time each train is dispatched. Such comprehensive listing or manifest shall include at least the following information:

(A) Name and address of beneficial owner of each trailer or container on the train.

(B) Total lading weight of each trailer or container on the train.

(C) Tariff reference including applicable rates and charges for each shipment on the train.

(D) Name of the entity to which each trailer or container on the train may be released upon the arrival of the train at the terminal.

Railroad will then prepare necessary waybill(s) to accompany the transportation of the traffic from origin ramp facility to destination ramp facility.

3.3. Broker agrees to remit to Railroad sums in the amount specified in Section 1.6 above within ____ days of receipt of the Section 1.6 statement, less its compensation as specified in Section 2.2 and less any applicable credits accuring pursuant to Section 2.1.

3.4. This Agreement shall extend for an initial term of Ninety (90) days from the date of its effectiveness as specified in Sections 1.1 and 1.2 above, and may thereafter be renewed at the option of Broker for additional 90-day periods by written notice to Railroad given not less than twenty days prior to the end of each such 90-day period, until the fifth anniversary of the applicable effective date of this Agreement, whereupon this Agreement shall cease, determine, and expire unless further extended by mutual

agreement of the parties hereto. This Agreement may be terminated or renegotiated at the instance of Railroad whether or not extended in the event that the tariff rates and charges, under which traffic contemplated by this Agreement moves, are reduced Fifteen Per Centum (15%) or more from the level existing on the effective-date of this agreement; Railroad shall notify Broker upon the effectiveness of such tariff reduction, and Broker agrees promptly to meet with Railroad to attempt to renegotiate the terms of this Agreement, and the parties agree in such event to bargain in good faith towards a renewal of this Agreement. If the parties hereto cannot agree on mutually satisfactory terms further to extend the term of this Agreement, this Agreement shall cease, determine, and expire with the effective date of the tariff reduction.

3.5. This Agreement spells out the entirety of the understandings and agreements made between the parties hereto and these parties agree that no other agreements or understandings written or oral, survive the execution of this Agreement. It is agreed by the parties hereto that this Agreement is not intended to be a third-party beneficiary Agreement.

3.6. Broker and Railroad each warrant, the one to the other, that the signatures appearing below attesting to the execution of this Agreement are those of their duly authorized officers and each waives any objection to the effectiveness of this Agreement as ultra vires the corporate authority of Broker and Railroad or as improperly executed.

3.7. If Broker fails to arrange for transportation by Railroad of the full amount of traffic specified in Sections 1.1 and 1.3 above, and if within any consecutive 15 day period, the traffic tendered shall aggregate less than 50% of the minimum amount, unless such tender shall be excused pursuant Section 1.5 hereof, Railroad may in its discretion declare this Agreement terminated. In such event, Railroad shall have not further obligation to furnish the service contemplated herein. Should Railroad waive any breach, such waiver shall not act as a waiver of any other provision of this Agreement and shall not be considered precedent for any later breach.

3.8. In the event that Railroad shall fail to provide the services required by Broker to accommodate the traffic tendered by Broker hereunder, and if within any consecutive fifteen day period such failures shall affect an aggregate of _____% or more of the traffic so tendered unless such failure shall be excused pursuant to Section 1.5 hereof, Broker shall have the right, by notice in writing, to declare this Agreement terminated. In such event, Broker shall have no further obligation to tender traffic as contemplated herein.

IV. CONSTRUCTION AND APPLICATION

4.1. The parties hereto agree that this Agreement contemplates and is to be construed as intending volume trailer/container movements of 60 or more units but in no case more than _____ units, to be transported by Railroad subject to existing Railroad rates and charges applicable on Freight. All Kinds, between Chicago and Seattle/Tacoma, Washington/Portland, Oregon, currently published in tariffs lawfully on file with the Interstate Commerce Commission and shippers/receivers of such freight will be governed by all such publications, and nothing in this Agreement shall be construed as abrogating, altering, or changing any existing rate lawfully on file with said Commission, except as may be provided for in this Agreement.

4.2. In the event that on any date scheduled for the departure of a train on any route provided for herein, Broker shall tender more than the maximum number of trailers or containers specified in the preceding Section 4.1 and if Railroad shall be unable to accommodate such excess on the unit train dedicated to Broker hereunder, Railroad agrees that it will use its best efforts to transport such excess trailers or containers, on Railroad's earliest available other regularly scheduled trains to the same destination point, if such other trains shall be scheduled, and do in fact depart, prior to the next scheduled train pursuant to the schedules arranged for Broker under Section 1.3 hereof. Railroad shall compensate Broker for such excess trailers or containers so accommodated, in the same manner provided in Sections 1.6 and 2.2 hereof, provided however, that neither the penalties specified in Sections 2.1 and 2.2, nor the default provisions of Section 3.8 shall be applicable to the handling of such excess trailers or containers.

4.3. This Agreement shall be construed in case of dispute in accordance with Section 4.1 above and the laws of the United States and the State of Illinois.

4.4. In the event this Agreement is found to be unlawful in any respect by the Interstate Commerce Commission or any court of competent jurisdiction, this Agreement shall be considered as terminated and of no further force and effect between the parties hereto and neither party shall have any right against the other hereunder.

4.5. All notices to Railroad required herein shall be addressed to:

Vice President—Traffic, Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 516 West Jackson Boulevard, Chicago, Illinois 60606.

All notices to Broker required herein shall be addressed to:

President, Unit-Trainship, Inc., 500 North Mannheim Road, Hillside, Illinois 60161.

Done at Chicago, Illinois this _____ day of _____ 1977.

For the Broker:

_____

For Railroad:

_____

APPENDIX B

AGREEMENT

This agreement, made this__day of_____ _____, 1977, by and between Unit-Trainship, Inc., an Illinois corporation, hereinafter sometimes referred to as UTI and _____, hereinafter sometimes referred to as Shipper.

WITNESSETH

Whereas UTI has entered into agreements with the _____ Railroad, hereinafter referred to as Railroad, and other railroads, pursuant to which such railroad or railroads, have agreed to make available TOFC or COFC train service to UTI, for freight train or trains operating on one or more routes as outlined in the Appendix hereto.

Whereas it is the purpose of the UTI unit train service to be able to provide for shippers a more efficient freight service operating on a stipulated and rigidly maintained schedule with, as near as possible, no stops for drop-off or pick-up, so that a true through train may be operated exclusively for the benefit of Shipper and other shippers who have likewise entered into agreements with UTI for such service; and

Whereas Shipper is engaged in the business of forwarding or consolidating and shipping trailers or containers over one or more of the routes along which UTI may be operating its unit trains, and Shipper is desirous of using UTI's freight trains on one or more of said routes, upon the terms and conditions hereinafter set forth,

Now, therefore, for and in consideration of the sum of Ten Dollars ($10.00) and the mutual promises and undertakings herein provided for, and other good and valuable considerations, UTI and Shipper, agree as follows:

I. UTI'S UNDERTAKING

1.1 Inasmuch as the program for the unit train service is a relatively new one, it is understood and agreed that the initial schedule outlined in the Appendix hereto is on a "trial" nature. After a reasonable test period, appropriate adjustments may be required to reflect actual performance records.

1.2 When UTI is prepared to inaugurate unit train freight service to one or more other routes, appropriate details of schedules will be added to this Agreement by written Appendix executed by UTI and delivered to Shipper.

1.3 UTI represents that its agreements with the railroad or railroads to provide the service contemplated in this Agreement, stipulate that the respective railroads shall provide its trains, power, crews and cars sufficient to load, unload and accommodate the traffic generated by UTI within the limits therein set forth, and to adhere to the terminal-to-terminal schedules agreed upon. The Railroad also agrees not to accept, for shipment on UTI's train, traffic not identified as being traffic concerning which UTI has contracted for with Shipper. However, the furnishing of such unit train for UTI's use as herein contemplated, does not include any form of control by UTI over the operation of the train. All such control over the operation of the train is specifically reserved exclusively to the Railroad. Accordingly, UTI shall have no liability to the Shipper for any traffic tendered to the railroad pursuant hereto, for lost, damaged, stolen or delayed shipments. These claims are handled by Shipper directly with Railroad.

1.4 The undertaking on the part of UTI hereunder to Shipper is limited to a guarantee of a minimum of _____ flat cars on each unit train reserved for UTI. In the event that on any date schedule for the departure of a train on any route provided for herein, Shipper shall tender more than the number of trailers contracted for between Shipper and UTI hereunder, or shall tender more than the maximum number of trailers or containers than can be accommodated on such train, UTI agrees that it will use its best efforts to cause the Railroad to transport such excess trailers or containers, on the Railroad's earliest available other regularly scheduled trains to the same destination point, if such other trains shall be scheduled, and do in fact depart, prior to the next scheduled train pursuant to the schedules arranged for UTI's trains.

1.5 The undertaking on the part of UTI relates to the transportation of trailers or containers, by the applicable Railroad, subject to the Railroad's existing rates and charges applicable on Freight all kinds, published in tariffs lawfully on file from time to time, with the Interstate Commerce Commission. Shipper will be governed by all such publications and nothing in this Agreement shall be construed as abrogating, altering or changing an existing or future rate lawfully on file with said Commission, nor in any way abrogating, altering, or violating any pro-

vision of law or any regulation applicable to the transactions contemplated in this Agreement.

II. FORWARDER'S UNDERTAKING

2.1 Shipper hereby guarantees to tender to Railroad not less than _____ containers or trailers on each of the days upon which UTI's unit trains shall operate during the term of this Agreement on the route or routes designated in the Appendix hereto, and pursuant to the provisions of paragraphs 1.3, 1.4, and 1.5 hereof.

2.2 Shipper will prepare its own bills of lading for all shipments tendered to Railroad, as aforesaid, and will further identify each such shipment, in a suitable manner, as being attributed to the UTI unit train.

2.3 Shipper agrees to pay to UTI, an amount equal to Railroad's published tariff for each such trailer or container times the number of trailers or containers tendered, but in no event shall Shipper pay for less than _____ trailers or containers for each UTI unit train which shall operate as provided for in paragraph 1.4 hereof. Such minimum payment shall be paid whether or not Shipper shall tender such minimum number of trailers or containers for each such unit train.

2.4 The payments required pursuant to paragraph 2.3 shall be made by Shipper within three (3) days of the date upon which Shipper shall tender trailers or containers to Railroad; and in the case of the failure to tender the guaranteed number of trailers, within three (3) days from the date that each such unit train shall depart. In the event that UTI shall establish a program at a bank for the purpose of receiving payments from Shipper, as may become payable hereunder, Shipper agrees to establish an appropriate account at such bank and to direct such bank to honor drafts thereon drawn by UTI supported by copies of Shipper's bills of lading evidencing trailers or containers tendered to Railroad for shipment for UTI's account.

2.5 In the event that UTI shall notify Shipper of the inauguration of any additional routes other than as described in this Agreement, and if Shipper shall have trailers or containers for shipment on such route or routes, then Shipper shall tender such shipments to the appropriate Railroad for transportation on UTI's unit trains and all of the provisions of this Agreement shall become applicable to such shipments and such route or routes.

III. MUTUAL COVENANTS AND AGREEMENTS

3.1 This Agreement shall extend for an initial term of _____ from the effective date of the aforesaid agreement between UTI and Railroad. UTI has the right thereunder to renew its agreement with the Railroad at its sole option for successive periods until the fifth anniversary of the effective date thereof. Each such renewal shall automatically renew this Agreement between UTI and Shipper. In the event of the termination of UTI's agreement with Railroad as therein provided, this Agreement shall automatically terminate.

3.2 In the event that Shipper shall fail:

a. To tender the minimum guaranteed number of trailers or containers as specified in paragraphs 2.1 and 2.3, as may be applicable; and even though Shipper shall make payment for the minimum guaranteed number of units, nevertheless if within any consecutive fifteen day period, Shipper shall fail to tender the minimum number of units; or

b. To extend its guaranteed minimum performance to an increased number of unit trains on the route or routes specified in any appendix hereto, or to use the additional routes as provided in paragraphs 1.2 and 2.5; or

c. To make payment for either the minimum guaranteed units or the actual units shipped over and above the minimum, as provided in paragraphs 1.4, 1.5, 2.3 and 2.4 hereof; or

d. To abide by each of the undertakings herein made by Shipper, then, in each such event, UTI shall have the right in its sole discretion to declare this Agreement terminated by notice to Shipper, in writing, specifying the date of such termination.

3.3 The words "tender" and "tendered" as used herein, are agreed to mean Shipper's performance of its obligations hereunder, except in the event of Shipper's inability to perform by reason of the existence of a strike affecting either Railroad or Shipper, fire, flood, adverse weather conditions rendering performance impossible, civil unrest, or other force majeure effectively preventing either Shipper or Railroad from performing their respective obligations under this Agreement.

IV. CONSTRUCTION AND APPLICATION

4.1 This Agreement spells out the entirety of the understandings and agreements made between the parties hereto and these parties agree that no other agreement or understandings, written or oral, survive the execution of the Agreement.

4.2 UTI and Shipper each warrant that the signatures appearing below attesting the execution of this Agreement are those of their respective fully authorized officers and each waives any objection to the effectiveness of this Agreement as ultra vires the corporate authority of UTI or Shipper, or as improperly executed.

4.3 This Agreement shall be construed in case of dispute in accordance with the laws of the United States and the State of Illinois.

4.4 In the event that this Agreement or any integral provision thereof is found to be unlawful by the Interstate Commerce Commission or by any Court of competent jurisdiction, this Agreement shall be considered as terminated and of no further force and effect between the parties hereto, and neither party shall have any right against the other hereunder.

Dated at Chicago, Illinois, this __ day of _____, 1977.

UNIT TRAINSHIP, INC. (UTI).

By _____
President

_____, Shipper.

_____
President

[FR Doc.77-23572 Filed 8-15-77;8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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	Items
Commodity Credit Corporation	1
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Civil Service Commission	7

1

COMMODITY CREDIT CORPORATION.

TIME AND DATE: 2:00 p.m., August 23, 1977.

PLACE: Room 218-A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED:

1. Minutes of CCC Board meeting on June 1, 1977.
2. Docket SCP 109a, Amendment 1 re: 1977 gun naval stores purchase program.
3. Docket SCP 31a re: 1977-crop peanut loan and purchase program.
4. Docket HCY 167, Revision 2 re: Program to finance the purchase or construction of farm storage and drying equipment for agricultural commodities.
5. Docket SCO 30 9re: Research project—tobacco storage insect control.
6. Memorandum pursuant to Docket CZ 200, Revision 4, as amended, re: Commodities available for sale to foreign governments, international organizations and relief organizations during fiscal year 1977.
7. Docket SNP 307, Amendment 1 re: Fiscal year 1977 commodity purchases and donations.
8. Docket SNP 307, Amendment 2 re: Fiscal year 1977 commodity purchases and donations.
9. Docket CZ 266, Resolution No. 15 re: Commodities available for Public Law 480 during Fiscal year 1978.

CONTACT PERSON FOR MORE INFORMATION:

Bill Cherry, Acting Secretary, Commodity Credit Corporation, Room 202-W, Administration Buliding, U.S. Department of Agriculture, Washington, D.C. 20013, telephone 202-447-7583.

[S-1107-77 Filed 8-12-77;9:38 am]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, August 18, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Motions to consolidate proceedings on the applications of Wayne J. Franco for renewal of citizen band radio station license and for amateur radio and novice class operator licenses in Des Moines, Iowa (Docket Nos. 21184 and 21306).

General—1—Public Notice relating to deletion of Commission supervised amateur morse code sending tests.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number 202-632-7260.

Issued: August 11, 1977.

[S-1104-77 Filed 8-11-77;1:59 pm]

3

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: Follows 9:30 a.m. Open Meeting, Thursday, August 18, 1977.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Hearing—1—Motion for extension of time to file an amendment in the Bardstown, Kentucky comparative FM broadcast proceeding (Docket No. 21241).

Hearing—2—Appeal from Order of Administrative Law Judge and motion to strike in the Rochester and Cheektowaga, New York, renewal proceeding (Docket Nos. 20791 and 20792).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone number 202-632-7260.

Issued: August 11, 1977.

[S-1105-77 Filed 8-11-77;1:59 pm]

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, August 18, 1977.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

I. Future Meetings.
II. Correction and Approval of Minutes—August 8, 1977.
III. Advisory Opinions—AO 1977-29.
IV. Appropriations and Budget.
V. Pending Legislation.
VI. Liaison with Other Federal Agencies.
VII. Pending Litigation.
VIII. Report on Section 439—State Filings.
IX. Commission Procedures for Responding to Congressional Requests—Commission Memorandum No. 1422.
X. Routine Administrative Matters.

PORTIONS CLOSED TO THE PUBLIC
EXECUTIVE SESSION)

Audit Matters, Compliance, Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, press officer, telephone 202-523-4065.

[S-1106-77 Filed 8-11-77;3:36 pm]

5

OCCUPATIONAL SAFETY AND HEALTH.

REVIEW COMMISSION.

TIME AND DATE: 9:00 a.m., August 18, 1977.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudication process.

CONTACT PERSONS FOR MORE INFORMATION:

Mrs. Nori Heuberger or Ms. Lottie Richardson, 202-634-7970.

Date: August 12, 1977.

[S-1108-77 Filed 8-12-77;10:41 am]

6

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

TIME AND DATE: August 26, 1977, 8:30 a.m.

PLACE: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20014 (Rooms 131 and 265).

STATUS: Open.

MATTERS TO BE CONSIDERED:

8:30 MEETING—EDUCATIONAL AFFAIRS COMMITTEE

(1) Report: Applications/Process, Classes of 1981 and 1982; (2) Report: Status of Graduate Education Program; (3) Report: Non-Citizen Participation in Graduate Program; (4) Report: Liaison Committee for Medical Education Visit and Report; (5) Report: Faculty Status; (6) Action: Proposed New Faculty; (7) Action: Salary Approval; (8) Report: Tax Deferred Annuities.

8:30 MEETING—ADMINISTRATIVE AFFAIRS COMMITTEE

(1) Action: USUHS Participation in National Naval Medical Center Retrofit; (2) Report: Naval Facilities Military Engineering Command Construction Report; (3) Report: USUHS Funds Obligation Status FY 77; (4) Action: 1979 Budget.

9:30 MEETING—BOARD OF REGENTS

(1) Report: Educational Affairs Committee; (2) Report: Administrative Affairs Committee; (3) Report: President (Acting) (a) Action: Faculty Appointments, approval; (b) Action: Retrofit of Naval Hospital; (c) Action: 1979 Budget, approval; (d) Action: Salary Approval; (e) Action: General Procedures and Delegations of the Board of Regents; (f) Report: Review of Correspondence. New Business.

SCHEDULED MEETINGS: December 11–12, 1977.

CONTACT PERSON FOR MORE INFORMATION:

Tor Richter, Capt., MC USN, Executive Secretary of the Board, AC 202-227-1990.

[S-1109-77 Filed 8-12-77;10:51 am]

7

CIVIL SERVICE COMMISSION

AGENCY HOLDING MEETING: Civil Service Commission.

TIME AND DATE OF MEETING: 3 p.m., Wednesday, August 17, 1977.

PLACE: Commissioners' Meeting Room, Room 5H09 (fifth floor), 1900 E Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE DISCUSSED: Negotiations with insurance carrier under section 890.204 of the Federal Employees Health Benefits Regulations.

CONTACT PERSON FOR MORE INFORMATION:

Georgia Metropulos, Office of the Executive Assistant to the Commissioners (202-632-5556).

CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[S-1119 Filed 8-15-77;11:00 am]

federal register

TUESDAY, AUGUST 16, 1977
PART II

DEPARTMENT OF JUSTICE

Bureau of Prisons

■

CONTROL, CUSTODY, CARE, TREATMENT, AND INSTRUCTION OF INMATES

DEPARTMENT OF JUSTICE

Bureau of Prisons

[28 CFR, Parts 540, 541, 548, and 551]

CONTROL, CUSTODY, CARE, TREATMENT, AND INSTRUCTION OF INMATES

Proposed Rulemaking and Request for Comments

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: This document contains proposed rules relating to the control, custody, care, treatment, and instruction of Federal prison inmates. This document represents the Bureau of Prisons' initial publication of these particular rules in the FEDERAL REGISTER and is intended to give the public notice and opportunity to comment on all rules in this area, not just on changes from prior policy.

COMMENT DATES: Comments must be received on or before September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Curtis Sitterson, phone number 202-724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 18 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), notice is hereby given that the Bureau of Prisons intends to publish in the FEDERAL REGISTER, as proposed rules, those regulations which generally govern the control, custody, care, treatment, and instruction of inmates in Federal correctional institutions administered by the Bureau of Prisons.

The regulations according to which the Bureau of Prisons manages inmates in Federal correctional institutions are presently contained in Policy Statements and Operations Memoranda which have been made available to inmates in each institution's inmate law library and to members of the general public upon request. Most of these regulations have not been published in the Code of Federal Regulations.

While the Bureau of Prisons has frequently received and considered comments from the public relating to Bureau regulations, there has not been a systematic process whereby these comments are solicited and considered before regulations take effect. This publication process will afford interested persons additional notice of Bureau regulations and proposed regulations and will create a formal process for solicitation and consideration of comments.

The Bureau of Prisons does not, however, intend to publish regulations which relate exclusively to the following:

(1) Employment or personnel policies with respect to Bureau of Prisons employees; and

(2) Internal management policies and nonsubstantive interpretations, such as administrative staff manuals, procurement and budget procedures, record keeping and reporting requirements, and instructions issued to implement those regulations which are published.

On May 23, 1977, the Bureau of Prisons published its first group of proposed rules (see 40 FR 26334 et seq.). Comments from the public concerning those proposals are now being considered. In this issue of the FEDERAL REGISTER, the Bureau of Prisons has published proposed regulations which relate most directly to the following:

(1) Telephone Rules and Requirements of Inmates.
(2) Dress and Grooming of Inmates.
(3) Religious Practices and Observances of Inmates.
(4) Controlled Unit Programs.
(5) Inmate Manuscripts.
(6) Inmate Organizations.

In future issues of the FEDERAL REGISTER the Bureau of Prisons will publish (other) regulations which relate to the control, custody, care, treatment, and instruction of inmates.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 665, 320 1st Street NW., Washington, D.C. 20534. Comments received before September 30, 1977, will be considered before final action is taken on these proposals. Copies of all written comments received will be available for examination by interested persons at the Bureau of Prisons, Room 665, 320 1st Street NW., Washington, D.C. 20534. The proposals may be changed in light of the comments received. No oral hearings are contemplated.

In consideration of the foregoing, it is proposed the following be added to 28 CFR Chapter V: Parts 540, 541, 548, and 551 as set forth below:

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart I—Inmate Telephone Use

Sec.
540.140 Purpose and scope.
540.141 Monitoring of inmate telephone calls.
540.142 Inmate telephone calls to attorneys.
540.143 Responsibility for inmate misuse of telephones.
540.144 Expenses of inmate telephone use.
540.145 Telephone calls for inmates in disciplinary segregation.
540.146 Telephone calls for inmates in admission, holdover status, and for unsentenced inmates.

AUTHORITY: 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509; 28 CFR 0.95-0.99.

Subpart I—Inmate Telephone Use

§ 540.140 Purpose and scope.

An inmate may call a person of his choice outside the institution on a telephone provided for that purpose. Inmate telephone use is subject to limitations and restrictions which the Warden determines are necessary to insure the security, good order, and discipline of the institution and to protect the public. The Warden shall establish procedures and facilities for inmate telephone use. The Warden shall permit an inmate who has not been restricted from telephone use under § 540.143 to make at least one telephone call each three months.

§ 540.141 Monitoring of inmate telephone calls.

The Warden may direct that inmate telephone calls be monitored to provide for the security, good order, and discipline of the institution and to protect the public.

§ 540.142 Inmate telephone calls to attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

§ 540.143 Responsibility for inmate misuse of telephones.

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. If an inmate violates the institution's telephone regulations, the Warden may direct that the inmate's telephone privileges be suspended or that other appropriate disciplinary action be taken.

§ 540.144 Expenses of inmate telephone use.

An inmate is responsible for the expense of inmate telephone use except that the Warden may direct the government to bear the expense of inmate telephone use under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

§ 540.145 Telephone calls for inmates in disciplinary segregation.

The Warden shall allow an inmate in disciplinary segregation to make phone calls to the greatest extent practical.

§ 540.146 Telephone calls for inmates in admission, holdover status, and for unsentenced inmates.

To the greatest extent practical each inmate in admission, holdover status, or who is unsentenced shall be permitted to make telephone calls. Normally an inmate in holdover status who is scheduled for transfer may not make a telephone call prior to the transfer. An inmate who is unsentenced shall be allowed to make telephone calls to family members and to his attorney of record when there is evidence that other means of communication are inadequate because of time.

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart D—Control Unit Programs

Sec.
541.50 Purpose and scope.
541.51 Approval.
541.52 Criteria for selection.
541.53 Programs.
541.54 Classification review.
541.55 Release.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-66, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart D—Control Unit Programs

§ 541.50 Purpose and scope.

(a) The Bureau of Prisons establishes Control Unit Programs designed to separate those inmates, whose behavior seriously disrupts the orderly operation of an institution, from inmates who wish to participate in regular institution programs. The Warden shall provide within a control unit humane living conditions and an opportunity to engage in self-improvement activities. An inmate placed in a control unit remains in the unit as long as a definite need for separation is demonstrated.

§ 541.51 Approval.

Recommendations for transfer to Control Unit Programs may be initiated by the appropriate staff or the Institution Discipline Committee, who shall then refer the recommendation to the Warden. Those inmates recommended by the Warden shall be referred to the Regional Director who may approve or disapprove the recommendations for transfer. If approved, the recommendation shall be forwarded to the Assistant Director, Correctional Programs Division, who shall make a final decision approving or disapproving the transfer. The Assistant Director, Correctional Programs Division, shall make all final decisions concerning removal from the Control Unit Program and any change in the Unit's programs.

§ 541.52 Criteria for selection.

(a) An inmate is classified for a control unit if he meets the following criteria:

(1) The inmate poses a serious threat to other inmates or staff if allowed to remain in the general population (e.g., by repeated acts or threats of an assaultive nature, escapes or attempted escapes).

(2) The inmate is ordinarily in segregation.

(3) The inmate shows little or no mental and no major physical disabilities.

(b) A protection case, such as an informant, aggressive homosexual, etc., is not ordinarily considered for a control unit unless he meets all of the general criteria described in paragraphs 1, 2, and 3 of this section.

§ 541.53 Programs.

(a) Minimum guidelines for an inmate program are as follows:

(1) Each program consists of three levels.

(2) Each successive level provides increased privileges and responsibilities, offers some advantage to the participant, and creates an incentive to advance.

(3) Each inmate entering the program shall start on the lowest level and progress through the levels.

(4) Each unit team shall decide, based on the achievement of clearly observable goals, when an inmate is ready to move to another level, subject to review of the Warden.

(5) Standards for all levels may not be less than that of segregation (See § 541.20).

(b) The following are minimum programs acceptable to form a control unit:

(1) *Education.* The Warden shall assign to a member of the education staff the responsibility for developing educational programs in the unit. Staff shall make these education programs available to inmates during evenings and weekends. Staff shall provide study courses for all levels of academic needs in compliance with § 544.30 of this chapter.

(2) *Legal.* The unit shall provide legal materials as required by § 541.54.

(3) *Counseling.* Personnel assigned to the unit are trained in these skills. Unit Managers shall continuously monitor and evaluate counseling efforts.

(4) *Work.* The Warden shall establish an industry or other work program that is custodially suitable.

(5) *Visiting.* In some instances, particularly where an inmate in the unit is a threat to the lives of others, special controlled visiting facilities may be necessary.

(6) *Correspondence.* See § 540.10 of this chapter.

(7) *Religion.* Chaplains shall visit the unit on a regular basis and provide religious programming as provided in Part 548 of the chapter.

(8) *Recreation.* Staff shall arrange a minimum of two hours weekly for recreation and exercise out of the cell. Where group activities are possible, this provision may be extended and become a part of the level rewards system. Various table games and exercise material may be provided which do not disrupt the good order of the institution.

(9) *Leisure activities.* In addition to the regular period of physical exercise, staff shall make available other cultural or leisure activities.

(10) *Commissary.* Purchase of items shall be guided by custodial considerations. Staff shall regulate the degree of commissary participation by level assignments as an incentive for participation in other program areas.

§ 541.54 Classification review.

Staff shall conduct classification review of inmates in the unit in accordance with Part 524 of this chapter. The unit team shall review each case at least monthly and document this by recording any positive and negative changes. Unit staff shall conduct additional personal interviews at specified, frequent intervals, and shall record findings or observations in the inmate's record.

§ 541.55 Release.

An inmate shall be released from the unit when staff find that he no longer poses the degree of threat to others which existed when he was admitted to the unit, and he is ordered released by the Assistant Director, Correctional Program Division, upon the recommendation of the staff. An inmate may be released from the unit in any of the following ways:

(1) An inmate may be returned to the institution from which he was originally transferred.

(2) An inmate may be transferred to another institution which may differ significantly in its degree of controls.

(3) An inmate may be placed directly into the general population of the institution in which the control unit is located.

PART 548—RELIGIOUS PROGRAMS

Subpart B—Religious Beliefs and Practices

Sec.
548.10 Purpose and scope.
548.11 Procedures.
548.12 Diet.
548.13 Rescheduling to observe religious holidays, services, meetings and activities.

AUTHORITY: 18 U.S.C. 4001, 4042; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart B—Religious Beliefs and Practices

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons extends to an inmate the greatest amount of freedom of and opportunity for pursuing individual religious beliefs and practices as is consonant with the maintenance of security and good order of the institution.

(b) When it is considered necessary for security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity, service, or meeting. The Warden may not restrict or allow the religious group itself to restrict attendance at or participation in a religious activity, service, or meeting on the basis of race, color, nationality, or creed.

(c) All religious services, activities, and meetings must comply with institution regulations.

§ 548.11 Procedures.

(a) Institution Chaplains shall assist in the expansion of an inmate's knowledge and understanding of and commitment to the beliefs and principles of the inmate's religion. The Chaplain shall provide pastoral care, counseling, religious education, and religious instruction to inmates.

(b) Institution Chaplains shall schedule religious services of worship, activities, and meetings. All religious services, meetings, and activities are under the general supervision of the Chaplain, but specific supervision procedures are designated by the Warden. If an institution has no staff Chaplain, a staff member designated by the Warden shall exercise the authority of the Chaplain.

(c) Institution staff may contract with clergy or representatives of faith groups in the community, to help achieve the purposes of the Bureau of Prisons policy regarding religious practices and beliefs of inmates.

(d) No one may disparage the religious beliefs of an inmate, nor deliberately seek to persuade an inmate to change religious affiliation.

(e) An inmate may designate a religious preference. An inmate may change this designation at any time.

(f) Participation in religious activities and attendance at religious services or meetings is voluntary.

(g) An inmate may wear, during a religious service, appropriate personal liturgical apparel. An inmate may retain this apparel in accordance with Part 551 and it may be worn or used only during scheduled religious services or in private devotional observances.

(h) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding the retention and accumulation of personal property. (See Part 551 of this chapter). Literature, publications, or books about religion or religious teaching are permitted in accordance with Part 551 of this chapter.

§ 548.12 Diet.

(a) An inmate may abstain from eating food items served to the general inmate population which are prohibited by the inmate's religion.

(b) As a once a year accommodation, staff may make arrangements with an inmate religious group to have a special meal which meets liturgical standards of the religion. In most situations, all or most food items to be served are from the main serving line. If the inmates representing the organization request, based upon documented necessity, staff may purchase specially prepared food items which meet religious requirements from a food supplier. Funds for the purchase of special food items are provided from—

(1) Funds from Chaplain's budget;
(2) Inmates' commissary accounts; or
(3) Funds provided by the community organization.

§ 548.13 Rescheduling to observe religious holidays, services, meetings, and activities.

(a) The Warden shall endeavor to facilitate the observance of important religious holidays, sacraments, or celebrations that do not coincide with legal holidays, and to facilitate that observance in accordance with specific requirements of a faith group, e.g., fasting, worship, diet, or work proscription. The inmate must initiate a request for specific observance of a religious holiday.

(b) The Warden may relieve an inmate from a work assignment if a religious activity, service, or meeting is also scheduled at that time. The Warden may schedule the inmate to make up work at another time. The Warden shall take into consideration the availability of staff and space within the institution when scheduling religious services, activities or meetings.

(c) The Chapel may be open during the noon meal hour for prayer and worship.

PART 551—MISCELLANEOUS

Subpart A—Inmate Grooming

Sec.
551.1 Policy.
551.2 Mustaches and sideburns.
551.3 Beards.
551.4 Hair pieces.
551.5 Hair length.
551.6 Restrictions and exceptions.
551.7 Bathing and clothing.

Subpart D—Inmate Organizations

Sec.
551.60 Purpose and scope.
551.61 Approval.
551.62 Accountability for funds.
551.63 Dues.
551.64 Meetings.
551.65 Fund raising projects.
551.66 Special activities.

Subpart F—Inmate Manuscripts

551.100 Definition of manuscripts.
551.101 Manuscript preparation.
551.102 Mailing inmate manuscripts.
551.103 Limitations on an inmate's accumulation of manuscript material.

AUTHORITY: 18 U.S.C. 4001, 4042; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—Grooming

§ 551.1 Policy.

The Bureau of Prisons permits an inmate to select the hair style of personal choice, and expects personal cleanliness and dress in keeping with standards of good grooming and the security, good order, and discipline of the institution.

§ 551.2 Mustaches and sideburns.

An inmate may wear a mustache or sideburns or both.

§ 551.3 Beards.

An inmate may not wear a beard.

§ 551.4 Hair pieces.

An inmate may not wear a hair piece, toupee, or other artificial hair.

§ 551.5 Hair length.

(a) The Warden may not restrict hair length if the inmate keeps it neat and clean.

(b) The Warden shall require an inmate with long hair to wear a cap or hair net when working in food service or where long hair could result in increased likelihood of work injury.

(c) The Warden may require an inmate to wear shorter hair when necessary to wear protective head gear because of a specific job assignment.

§ 551.6 Restrictions and exceptions.

The Warden may impose restrictions or exceptions for documented medical reasons.

§ 551.7 Bathing and clothing.

Each inmate must observe the standards concerning bathing and clothing that exist in the institution as required by standards of 551.1.

Subpart D—Inmate Organizations

§ 551.60 Purpose and scope.

The Bureau of Prisons permits inmate organizations to function for recreational, social, civic, and benevolent purposes.

§ 551.61 Approval.

(a) A Warden may approve an inmate organization when—

(1) The organization has a constitution and bylaws which include its purpose and operation and the duties and responsibilities of the officer; the Warden may amend the constitution and bylaws; and

(2) The organization does not operate in opposition to the security, good order, and discipline of the institution.

(b) Every inmate organization shall be coordinated by a staff sponsor whose duties are performed while in official duty status. Staff may volunteer off-duty time to work with inmate organizations.

§ 551.62 Accountability for funds.

(a) The organization treasurer shall keep financial records to reflect—

(1) Income identified by source; and
(2) Expenditures with applicable receipts.

(b) The treasurer of the inmate organization shall prepare financial statements by April 20, July 20, October 20, and January 20 each year. The treasurer shall present the reports to the membership, the staff sponsor, and the Warden.

(c) The Warden shall require an audit of each inmate organization at least once a year.

(d) The inmate organization may not use its funds to compensate or to furnish gifts to staff or to finance the staff sponsors' activities.

§ 551.63 Dues.

The organization may not make payment of dues a requirement of membership for an inmate who lacks funds. The organization may not collect dues unless the Warden has approved the rate and method of collection.

§ 551.64 Meetings.

All meetings scheduled must be approved by the Warden and supervised by staff. The organization may not hold meetings at times which are competitive with scheduled inmate work and program activities.

§ 551.65 Fund raising projects.

Inmates shall do most of the work in fund raising projects. The Warden may not approve a project that is competitive with the commissary nor one that creates work beyond the resources available to the institution.

§ 551.66 Special activities.

Banquets, community programs, charitable contributions, or the attendance of guests at regular meetings require the Warden's approval. The Warden shall require guests to purchase a meal ticket when attending banquets where the government incurs the cost.

Subpart F—Inmate Manuscripts

§ 551.100 Definition of manuscripts.

"Manuscript" means fiction, nonfiction, poetry, music and lyrics, drawings and cartoons, and other writings of a similar nature.

§ 551.101 Manuscript preparation.

An inmate may prepare a manuscript for private use or for publication while in custody without staff approval. The inmate may use only leisure time to prepare a manuscript.

§ 551.102 Mailing inmate manuscripts.

An inmate may mail a manuscript as general correspondence, in accordance with Part 540, Subpart B of this chapter. An inmate may not circulate his manuscript within the institution.

§ 551.103 Limitations on an inmate's accumulation of manuscript material.

The Warden may limit, for housekeeping, fire-prevention, or security reasons, the amount of accumulated inmate manuscript material.

Dated: August 11, 1977.

SHERMAN R. DAY,
Acting Director,
Bureau of Prisons.

[FR Doc.77-23602 Filed 8-15-77;8:45 am]

federal register

TUESDAY, AUGUST 16, 1977

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

AEROSOL DRUG AND COSMETIC PRODUCTS CONTAINING ZIRCONIUM

Title 21—Food and Drugs

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

[Docket No. 75N-0003]

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 310—NEW DRUGS

SUBCHAPTER G—COSMETICS

PART 700—GENERAL

Aerosol Drug and Cosmetic Products Containing Zirconium

AGENCY: Food and Drug Administration, HEW.

ACTION: Final rule.

SUMMARY: The agency is issuing final regulations declaring that any aerosol drug or cosmetic product containing zirconium is a new drug or an adulterated cosmetic. The Commissioner of Food and Drugs has adopted this position after reviewing an advisory panel report on the use of aerosol antiperspirant products containing zirconium. This regulation will keep these products off the market until safety testing adequate for approval of a new drug application has been done.

EFFECTIVE DATE: September 15, 1977.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857 (301-443-4960).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 5, 1975 (40 FR 24328), the Commissioner proposed that any aerosol drug or cosmetic product containing zirconium is a new drug or an adulterated cosmetic. Interested persons were given until September 3, 1975, to file written comments regarding this proposal. The Commissioner granted a request by The Procter & Gamble Company for an extension of the comment period to October 3, 1975, by notice published in the FEDERAL REGISTER of August 21, 1975 (40 FR 36574), to permit time for compilation of extensive new data that arguably would resolve the issues of toxicity raised in the proposal. Data and comments filed with the office of the Hearing Clerk, Food and Drug Administration, up to March 26, 1976, have been considered in order to include as much of the complex data as possible in reviewing the issue.

The June 5, 1975 proposal was in response to a report submitted to the Commissioner by the over-the-counter (OTC) Panel on Review of Antiperspirant Drug Products. This panel concluded in their report that zirconium compounds have caused skin granulomas and toxic effects in the lungs and other organs of experimental animals and expressed concern about the potential toxicity of such compounds when used in humans over an extended period of time. Although extensive animal toxicity data were received, these data failed to provide a basis for establishment of a safe level for long-term use. The panel also concluded that the benefit likely to be derived from the use of zirconium-containing aerosol antiperspirants is unsupportable in view of the risks involved. The benefit from the use of zirconium-containing aerosol antiperspirants is available to consumers from other products that are generally recognized as safe.

Therefore, the panel recommended that:

1. All zirconium-containing aerosol antiperspirants be placed in Category II (not generally recognized as safe), and

2. Because conclusive testing to establish the safety might take years to accomplish, the Commissioner should take immediate steps to remove these ingredients from interstate commerce until safety has been demonstrated.

The Commissioner, after an extensive review of the data and conclusions of the panel, adopted their position in the June 5, 1975 proposal. He further concluded that, based on this adverse benefit-to-risk ratio and the recommendation for prompt action, any delay in action regarding the use of these drug and cosmetic products was unjustified and contrary to the public interest. He decided that this action should not await the final report of the OTC Panel on Review of Antiperspirant Drug Products but should be implemented as soon as possible. In fact, companies who submitted data to the panel on zirconium-containing aerosol antiperspirants have already indicated compliance with the panel's recommendation (see below).

The Commissioner reviewed extensively all of the comments to the proposal and all new data submitted through March 26, 1976. Because of the complexity of the data, he further solicited comments from experts in inhalation toxicity specifically for the purpose of reviewing the new data submitted in response to the June 5, 1975 proposal.

The Commissioner is aware that in May 1976 the United States manufacturers of zirconium-containing aerosol antiperspirants announced voluntary cessation of the manufacture of the zirconium complexes discussed in the June 5, 1975 proposal. He also has information that no further manufacturing of OTC products containing this ingredient as an antiperspirant in aerosol form has occurred since that time, although distribution of some previously manufactured products had continued into October 1976.

The agency received 21 comments from consumers supporting the proposed action and 10 from 3 pharmaceutical manufacturers against the proposed action. A summary of the significant comments to the proposal and the Commissioner's conclusions are as follows:

1. *Inhalation toxicity.* One comment stated that zirconium aluminum glycine complex (ZAG) and aluminum chlorhydrate elicited only the effects of a nonspecific irritant. New studies, not available to the Commissioner when he issued his proposal, were submitted by several manufacturers to illustrate this nonspecific irritant effect. They consisted of several short-term, high concentration exposure tests.

The Commissioner recognizes that short-term, acute aerosol animal studies are helpful in establishing a complete toxicity profile. However, he is obliged to assess the toxicity of zirconium compounds in their intended use, i.e., daily application over a period of years, perhaps decades. Acute and subchronic (less than 90 days) toxicity studies, while helpful, cannot be relied upon to extrapolate long-term effects. Granulomatous lung disease is chronic in nature and develops slowly. Long-term studies are particularly important when consideration is given to a large population that may be at special risk by virtue of preexisting impairment of lung function, e.g., asthmatics, individuals with emphysema, or even heavy cigarette smokers. Consequently, the Commissioner concludes that the acute and subchronic studies submitted do not address the considerations needed to resolve the safety problems posed by long-term use.

Some of the studies submitted were 6-month and 1-year interim reports on chronic inhalation studies in monkeys and rats. The submitters stated that the limited results available to date suggest that exposure of monkeys and rats over a 1-year period did not produce obvious pulmonary changes.

While the Commissioner believes that this information is encouraging, the study has not been completed. The Commissioner is unable to make a decision based on such incomplete data. Consequently, the issue of long-term toxicity remains unresolved.

2. *Granuloma formation.* One comment stated that ZAG produced only the effects of foreign body irritants and only after extreme overdosing. A study was submitted in which hamsters were intratracheally infused with ZAG, sodium zirconium lactate, and aluminum chlorhydrate. Lesions were produced in all animals. There were qualitative differences in the lesions produced by ZAG and aluminum chlorhydrate. ZAG tended to produce a lesion with granulomatous inflammation predominating, whereas aluminum chlorhydrate produced, primarily, bronchiolar adenomatoid lesions (a nonspecific microscopic lesion of the terminal bronchioles).

In another study submitted by the same commentor, single intradermal injections of ZAG and sodium zirconium lactate were given to each of nine guinea pigs. All animals were subsequently challenged by intradermal injections of the same compounds. Beryllium sulfate was included as a positive control and elicited the classical exudative skin reaction indicative of delayed hypersensitivity. ZAG was found to produce granulomas in the skin of all animals receiving as little as 1 microgram of zirconium. The lesions were described as a varying combination of necrosis of dermal collagen and giant and epithelial [sic] cells. The Commissioner believes that the presence of epithelioid cells is indicative of a high-turnover granuloma

and not the simple deposition of an inert foreign body.

In a third study from the same commentor, sodium zirconium lactate, ZAG, and aluminum chlorhydrate were tested. In this study, ZAG was also shown to cause granulomatous lesions.

The Commissioner concludes that exposure to ZAG and other zirconium salts by the inhalation route still tends to be associated with granuloma formation. Assertions of safety and submissions designed to demonstrate that safety leave this issue unresolved.

3. *Safety versus toxicity testing.* One commentor submitted partially complete long-term inhalation studies to demonstrate safety.

Because toxic effects have been found in animals exposed to one zirconium-containing aerosol antiperspirant, the Commissioner concure with the panel's report that modern toxicological research dictates that the dose-response curve of the material be determined so that safety factors can be estimated under normal usage and potential abuse conditions. The partially complete long-term inhalation studies performed and submitted with the comment contain as insufficient range of dosages to reasonably determine the dose-response relationship. Even with the completion of the long-term inhalation studies, the Food and Drug Administration (FDA) will still lack sufficient data needed to establish such a curve. The Commissioner therefore concludes that the acute, short-term, and chronic toxicity studies submitted by the commentor fail to resolve the long-term toxicity issues raised in the June 5, 1975 proposal, and, even if present chronic inhalation studies were complete, they would still be insufficient to resolve these issues.

4. *Skin irritation and sensitization.* Several comments alleged that no sensitization occurs with ZAG, and studies were submitted to support this contention.

The panel stated that no adequate tests had been submitted to show lack of potential for zirconium to cause irritancy and sensitization. Subsequent to the proposal, studies were presented to assess the potential of zirconium compounds to cause sensitization. In these studies, animals (monkeys, guinea pigs, hamsters, and rabbits) were intradermally administered either a zirconium compound or a control substance (a substance known to produce sensitization: in these experiments, either ovalbumin or beryllium sulfate). From these studies, no evidence was found that ZAG produced sensitization.

The Commissioner reviewed the animal studies designed to produce allergic response or sensitization. Under conditions of the tests, there was no evidence that ZAG produced sensitization. The Commissioner agrees that these animal studies have shown that ZAG does not produce a sensitization reaction under these test conditions and is therefore not considered acutely allergenic. However, he is unable to conclude, on the basis of the data submitted with the comments, that ZAG or other zirconium compounds would not yield sensitizing derivatives if retained for long periods of time in lung tissue. It is not predictable from these tests if there would be sensitization as a result of long-term exposure in humans.

5. *Particle size effets.* Two manufacturers stated that their products have been reformulated such that all zirconium- containing aerosol particles are 10 microns or larger in diameter. According to the Task Group on Lung Dynamics of the International Radiological Protection Commission report (Health Physics 12:173–207, 1966, a copy of which is on file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857), all inhaled particles larger than 10 microns are deposited in the tracheobronchial and nasopharnygeal regions and will not reach the deep portions of the lung. Particles lodging in the upper respiratory tract would be cleared from the body via natural mucociliary escalator (normal lung clearance mechanism).

The Commissioner agrees that if the production of such a formulation is technically feasible, the possibility of deep lung deposition and the attendant local pulmonary responses discussed in the June 5, 1975 proposal would be substantially reduced. However, the production of aerosols with most of the particles greater than 10 microns does not eliminate all particles that may reach the pulmonary region (respiratory bronchioles and alveoli). Particle size distribution should be determined by impaction (a method for measuring particles) of the macrospherical (larger size) particles with optical or electron microscopy confirmation of the particle size characteristics. Such data have yet to be submitted to FDA.

The change in particle size will change the deposition sites from the deep lung to the upper respiratory tract and nasopharyngeal areas. The Commissioner feels that the anatomical redistribution of deposition sites does not necessarily alter zirconium toxicity, only the possible site of the lesion. Granulomas of the upper respiratory tract and gastrointestinal tract have been reported with other substances.

The Commissioner concludes that further particle sizing data are required and that the potential for zirconium compounds to cause graulomas in the upper respiratory tract or the nasopharyngeal area must also be investigated. In addition, because zirconium-containing aerosol antiperspirants produce relatively insoluble particles, the amount may increase from daily dosing such that the ability of normal lung clearance mechanisms (mucociliary, lymphatic, and circulatory removal) to cope with these particles may be inhibited. Investigation, particularly with respect to the length of time particles remain in the lung, the time required for clearing such particles from the lung, and the specific mechanism of clearance is mandatory.

6. *Cytotoxicity.* Two commentors reported testing in progress to determine the cytotoxic potential of zirconium complexes. These studies were designed to assess the cytotoxic and functional effects on rabbit and human alveolar macrophages (specialized cells in the lung).

The Commissioner has reviewed the limited interim data to date and is aware that the results do not indicate that ZAG or other complexes are directly toxic to replicating cells in vitro. However, the Commissioner believes that the tests to date are not sufficient to allow him to conclude that the complexes, some degradation product thereof, or a catalyzed reaction may not produce toxic cellular effects. Further, these studies have not been completed and the Commissioner concludes that there are insufficient data on which to base a decision.

7. *Allergenicity/hypersensitivity.* Five studies were submitted with two comments to illustrate lack of potential for allergenicity of ZAG. ZAG and other zirconium salts were administered by intratracheal infusion or by means of a skin patch to induce sensitization. The animals were subsequently tested for sensitization with the same material. Although lesions were produced, no sensitization was said to occur.

In all these studies, either the frequency of inoculation was inadequate or the duration was too short. The panel indicated that "single-shot" attempts to induce hypersensitivity were often ineffective. Potent sensitizers like beryllium sulfate have required as long as 16 months to produce sensitivity.

In all these tests, the inoculum was administered either intratracheally or via the skin patch. Inhaled particles possess different characteristics than particles intratracheally infused, insufflated, or injected. They are distributed in a manner completely different from those introduced by other methods. The panel emphasized this point in the proposal. In normal usage, the product would be applied and inhaled daily over a period of years. Inhalation of particles over this period of time could theoretically produce sensitization. Mucosal surfaces provide a uniquely active site for the development of immunologic hypersensitivity. None of the allergenicity/hypersensitivity tests received thus far approximate actual use conditions which allow the Commissioner to make a safety determination.

8. *Chemical identity.* One comment discussed the means of production of the macrospherical material that has an increased average particle size. The comment concluded that the data submitted during the comment period show that ZAG in the macrospherical formulation is chemically identical to the smaller particle size material. Furthermore, a recently developed method for utilizing differential scanning colorimetry to additionally characterize ZAG was reported, thus defining the chemical identity and integrity of ZAG and differentiating it from other zirconium aluminum compounds. However, in contrast,

another comment was received reflecting the opinion of a noted expert on the chemical reactions of zirconium and zirconium complexes. This comment pointed out that the zirconium materials presently used in antiperspirants are complex polymeric compounds. Though chemical analysis has enabled their empirical formulae to be determined, the molecular structures of these materials are still unknown. The polymerization process produces not a single molecular entity, but a range of structures varying in molecular weights. Depending on the solvent system, acidity of the solution, and the time of exposure to that acidity, a variety of polymeric species will form. The polymers can differ not only in molecular weight but can differ topologically (spatial relationship of atoms within the molecule).

The Commissioner agrees that the chemical tests submitted show similarity in chemical identity between the small particle and macrospherical formulation. However, data submitted in the comments show that the identification of ZAG powder by a single analytical technique has not yet been achieved. In addition, in attempting to characterize the regular and macrospherical forms, it was found that both forms of the aerosol antiperspirant material are slightly soluble in human serum albumin. Polymeric zirconium compounds are known to be excellent catalysts for a host of chemical reactions. The Commissioner is concerned that a possible explanation of the different toxic effects reported for zirconium-containing aerosol antiperspirant ingredients may be found in the variety of polymeric species which may form depending on the conditions of chemical reaction.

The Commissioner recognizes that many aspects of zirconium chemistry have not been completely determined and concludes that sufficient data have not been submitted concerning the formation of different polymeric species, the activity of zirconium complexes as catalysts, and the potential interactions of zirconium complexes with cellular constituents.

REGULATORY ACTION

Because it appears that conclusive testing to establish the safety of zirconium-containing aerosol antiperspirants would take years to accomplish, and because during that time millions of consumers would be unnecessarily subjected to risk, the Commissioner has decided to stop movement of these agents in interstate commerce until safety testing adequate for approval of a new drug application has been done, as recommended in the proposed rule making.

Based on the estimates of outstanding stocks of zirconium-containing aerosol antiperspirants currently on the market, and in keeping with the conclusions presented in the proposed rule making that the major safety issue is attributable to prolonged use, the Commissioner does not at this time anticipate that a recall of previously marketed zirconium-containing aerosol drug and cosmetic products is necessary to protect the public health. Upon the effective date of this final order, FDA will conduct an appropriate surveillance program to assure that no substantial stocks of zirconium-containing aerosol drug and cosmetic products remain on the market.

The available toxicological data indicate that zirconium compounds may be responsible for human skin granulomas as well as toxic effects in the lungs and other internal organs of test animals. Accordingly, these ingredients in aerosol formulations are not generally recognized as safe, and the Commissioner considers any drug product containing zirconium in aerosol form to be a new drug. Furthermore, the Commissioner believes that the available information is sufficient to show that aerosol cosmetic products containing zirconium may be injurious to users. The regulation as proposed stated that regulatory action was being taken with respect to cosmetic products "[b]ased upon the lack of toxicological data adequate to establish a safe level for use * * *." The final regulation relating to cosmetic products has been revised to delete this phrase, to identify the risks from zirconium use that are of concern, and to refer to the statutory test for determining when a product is adulterated. This change brings the regulation into conformity with the format used in Part 700, Subpart B, for requirements for specific cosmetic products, which inadvertently was not followed in the proposed regulation. As revised, the regulations states the considerations on which the Commissioner relied in issuing the proposed and final regulations finding that aerosol cosmetic products containing zirconium are adulterated.

This determination does not affect zirconium-containing, nonaerosol antiperspirspants that are being reviewed by the OTC Antiperspirant Panel. Determination of their safety and effectiveness will progress through the normal administrative process of the OTC review (21 CFR 330.10).

The Commissioner has carefully considered the environmental effects of the regulation and, because the action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact analysis report and environmental impact assessment are on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 601(a), 701(a), 52 Stat. 1052–1055, as amended (21 U.S.C. 355, 361(a), 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner is amending Parts 310 and 700 as follows:

1. In Part 310, by adding new § 310.510 to Subpart E to read as follows:

§ 310.510 Use of aerosol drug products containing zirconium.

(a) Aerosol products containing zirconium have been used in over-the-counter drug products as antiperspirants. Based upon the lack of toxicological data adequate to establish a safe level for use and the adverse benefit-to-risk ratio, such aerosol products containing zirconium cannot be considered generally recognized as safe for use in drug products. The benefit from using aerosol drug products containing zirconium is insignificant when compared to the risk. Safer alternative antiperspirant products are available.

(b) Any aerosol drug product containing zirconium is a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act for which an approved new drug application pursuant to section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD-1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that such preparation is safe for the purpose intended.

(d) Any such drug product introduced in interstate commerce after September 15, 1977 that is not in compliance with this section is subject to regulatory action.

2. In Part 700, by adding new § 700.16 to Subpart B to read as follows:

§ 700.16 Use of aerosol cosmetic products containing zirconium.

(a) Zirconium-containing complexes have been used as an ingredient in cosmetics and/or cosmetics that are also drugs, as, for example, aerosol antiperspirants. Evidence indicates that certain zirconium compounds have caused human skin granulomas and toxic effects in the lungs and other organs of experimental animals. When used in aerosol form, some zirconium will reach the deep portions of the lungs of users. The lung is an organ, like skin, subject to the development of granulomas. Unlike the skin, the lung will not reveal the presence of granulomatous changes until they have become advanced and, in some cases, permanent. It is the view of the Commissioner that zirconium is a deleterious substance that may render any cosmetic aerosol product that contains it injurious to users.

(b) Any aerosol cosmetic product containing zirconium is deemed to be adulterated under section 601(a) of the Federal Food, Drug, and Cosmetic Act.

(c) Any such cosmetic product introduced in interstate commerce after September 15, 1977 is subject to regulatory action.

Effective date: This order shall be effective on September 15, 1977.

(Secs. 505, 601(a), 701(a), 52 Stat. 1052–1055, as amended (21 U.S.C. 355, 361(a), 371(a)).)

Dated: August 6, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc.77-23570 Filed 8-15-77;8:45 am]

Federal Register

TUESDAY, AUGUST 16, 1977

PART IV

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

■

WOMEN IN CONSTRUCTION

Proposed Goals and Timetables

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

[41 CFR 60-4]

CONSTRUCTION CONTRACTORS

Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed rule.

SUMMARY: Specific affirmative action standards for women in construction and the consolidation and standardization of requirements for construction contractors and subcontractors subject to Executive Order 11246 are proposed to promote equal opportunity for minorities and women.

DATE: Comments on this proposal will be received until September 30, 1977.

ADDRESSES: Send comments to the Director, Office of Federal Contract Compliance Programs, Room C3324, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210. Comments received will be available for inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT:

William Raymond, Associate Director, Construction Division, Office of Federal Contract Compliance Programs, Room N3402, Constitution Avenue NW., Washington, D.C., 20210, telephone 202-523-9447.

SUPPLEMENTARY INFORMATION: Executive Order 11246, as amended, prohibits covered Federal contractors and subcontractors from discriminating against any employee or applicant for employment based on race, color, religion, sex or national origin. In addition, contractors and subcontractors are required to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Section 201 of the Order provides that the Secretary of Labor shall adopt rules, regulations and orders as he deems necessary and appropriate to achieve the purposes of the Order. The proposed regulations would apply to Federal and federally assisted construction contractors and subcontractors.

Presently, all nonexempt Federal and federally assisted construction contractors are required to comply with the Equal Opportunity clause. See 41 CFR 60-1.4 (a) and (b). In addition, to implement the affirmative action obliga- Office of Federal Contract Compliance Programs (OFCCP) has developed three different types of affirmative action programs. The programs include Imposed Plans, Hometown Plans, and Special Bid Conditions.

Imposed Plans for the most part cover major metropolitan areas where there is substantial Federal or federally assisted construction, and apply only to those projects which are in excess of $500,000. These areas include Philadelphia, Washington, D.C., San Francisco, St. Louis, Atlanta, Camden, New Jersey, and Chicago. Imposed Plans generally have been published in 41 CFR Chapter 60 but the Philadelphia Imposed Plan has not been codified in the Code of Federal Regulations.

Hometown Plans are tripartite agreements among the contractors and the unions in a local area and the local minority community. The three groups develop a plan for compliance with the Executive Order and present it to the OFCCP for approval. If the plan is approved it constitutes the contractors' obligations under the Executive Order and so long as they comply with the plan they also are in compliance with the Order. Presently, there are 42 Hometown Plans in operation.

Special Bid Conditions apply to contractors working on certain high impact projects which are being constructed in an area which is not covered by a Hometown or Imposed Plan.

These three types of affirmative action plans are not implemented through a regulatory scheme. Rather they are included in the solicitations which precede the award of contracts. One of the problems with this process is that substantial Federal or federally assisted construction is being conducted without benefit of specific affirmative action requirements. Also, contracting officers are confused by the different types of affirmative action plans and sometimes do not know which ones cover what areas or projects. In addition, some contracting agencies do not adhere to the different notices and formats developed by OFCCP. The imposed plans present a special problem because a number of contractors have failed to sign the certification which appears in the appendix of Imposed Plans. Failure to sign the certification frequently has been unrelated to the contractors' commitment to the affirmative action requirements. However, the certification has been held to be a material part of the bid and those bids which have not contained a signed certification have been rejected as nonresponsive. A number of these rejected bids have been the low bids, and the result has been to increase the cost of construction to the Government.

Another deficiency in the present scheme is that no specific affirmative action standards are applicable to women in the construction industry. Although the word minority is defined to include minority women, that definition alone has had little or no impact with respect to women gaining access to the construction industry.

Under present procedures, compliance agencies develop Special Bid Conditions for high impact projects for which they have compliance responsibility. OFCCP approves the Bid conditions which have application only to the project for which they were approved. Accordingly, if a compliance agency fails to develop Special Bid Conditions for a project for which it has compliance responsibility the project is not covered by an affirmative action plan (i.e., if the project is not in an area covered by a Hometown or an Imposed Plan). This would be true even though another project in the same labor market area may be covered by Special Bid Conditions. The Special Bid Conditions do apply, however, to a covered contractor's entire workforce working in the labor market area where the covered project is located although some employees may not work on the project.

To correct these deficiencies, the Department of Labor proposes to delete certain parts in 41 CFR, Chapter 60, to discontinue and terminate the use of certain practices and formats and to promulgate a new 41 CFR Part 60-4. This proposed Part 60-4, however, will not relieve contractors from the obligations it may have under State or local affirmative action or equal employment opportunity programs. Similarly, this proposed Part 60-4 will not relieve the contractor of local resident hiring requirements such as those in the Public Works Employment Act of 1977 and the Community Development Block Grant Program.

Specifically, Parts 60-5 through 60-8 and Parts 60-10 through 60-11 (the published Imposed Plans) are proposed to be deleted. Although Hometown Plans would be continued, signatories to those plans would be required to submit goals and timetables for women to the Director within 45 days from the effective date of the regulations. Or if the Hometown Plan is scheduled to expire prior to or shortly after the effective date of the regulations, signatories to the plan would be required to submit a new Plan which contains goals and timetables for women.

Imposed plans and Special Bid Conditions would be discontinued as a means of complying with the Executive Order. In addition, the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and federally assisted construction (41 FR 32482), commonly known as the Model Federal EEO Bid Conditions, would be discontinued.

The new Part 60-4 would apply to all Federal and federally assisted construction contractors and subcontractors holding Federal or federally assisted construction contracts or subcontracts in excess of $10,000. Procedures also are established which all Federal contracting officers and applicants shall follow in awarding Federal or federally assisted construction contracts. The proposed regulations also would establish procedures administering agencies would follow in making grants which would result in the award of federally assisted construction contracts.

GOALS AND TIMETABLES

Proposed § 60-4.6 provides that the "Director, from time to time shall issue goals and timetables for minority and female participation" on Federal or federally assisted construction projects. The goals and timetables would cover specific geographical areas and will be based on appropriate workforce, demographic or other relevant data. Each nonexempt construction contract performed in an area in which such goals and timetables

have been issued shall be subject to the goals and timetables. However, a contractor participating in a Hometown Plan covering that same area would comply with the affirmative action requirements and goals and timetables of that plan in lieu of the goals and timetables established pursuant to § 60–4.6. (See proposed § 60–4.5.)

The goals and timetables are proposed to be published in the FEDERAL REGISTER as a notice to the public. Thereafter, all solicitations for Federal or federally assisted construction contracts to be performed in the covered area shall include the goals and timetables as part of the Notice required by proposed § 60–4.2.

As a general rule, the standard geographical unit will be the Standard Metropolitan Statistical Area (SMSA) and where there is no SMSA, a specific county or groups of counties. In some instances it may be necessary to establish goals for an area which may not always coincide with the SMSA, county or groups of counties.

It is not contemplated that goals and timetables will be issued for all areas immediately. It is proposed therefore that if goals are not issued immediately for areas presently covered by a Hometown Plan, Imposed Plan or Special Bid Condition, the goals and timetables contained in those plans or Bid Conditions will be inserted in the solicitations for offers on contracts to be performed in those areas until goals are issued pursuant to § 60–4.6.

NEW FORMATS ESTABLISHED

As indicated above, the proposed regulations create a new notice to be included in all solicitations for Federal and federally assisted construction contracts. (See proposed § 60–4.2.) In addition, a new clause is established which will be inserted in all nonexempt construction contracts (see proposed § 60–4.3(a)). The clause is in addition to the standard EEO clauses required by section 202 of the Executive Order and 41 CFR 60–1.4(a) and (b). The new clause contains specific affirmative action standards each construction contractor and subcontractor would be required to undertake as part of its contractual obligation.

These two proposed formats are designed to serve the same purposes which the Bid Conditions now serve. The contract specifications proposed in § 60–4.3(a) would, however, make the most of the present good faith steps of contract requirements. The proposed regulations, for example, require the contractor to implement the standards set forth in paragraph 7 of the contract specifications in § 60–4.3(a) as minimum affirmative action obligations.

This process is expected to eliminate confusion and to bring about greater uniformity in the construction contract compliance program. In addition, it is expected to establish a system by which a contractor's affirmative action efforts can be measured and demonstrated concretely.

AFFIRMATIVE ACTION STANDARDS FOR WOMEN IN CONSTRUCTION

The Department's experience with affirmative action has demonstrated that goals and timetables are the most concrete and effective system for implementing the affirmative action obligation in the Executive Order. Since the Executive Order was amended to include sex as a protected class, nonconstruction contractors have been required to take the same types of affirmative action, including goals and timetables, for women as they have for minorities. Construction contractors, however, have not been required to establish goals and timetables for women.

According to the 1970 Census of Population, women constituted 37 percent of the experienced civilian labor force, and 19 percent of all persons 18 years or older with vocational training in trades or crafts. At the same time, however, women constituted only 5 percent of the experienced labor force in craft and kindred occupations, and only 1.2 percent of the experienced construction labor force. The gross disparity between the percentage of women in the labor force and the percentage of women in the construction trades undoubtedly will continue until positive action is taken to ensure that construction jobs are made available to women. A system of goals and timetables for women in construction will, based on prior experience, help to rectify the near total exclusion of female representation in the construction trades.

The interest of women in the construction trades and their availability for employment has been clearly demonstrated. In October, 1975, for example, the OFCCP conducted fact-finding hearings in Baltimore, Maryland, specifically relating to equal employment opportunity in the construction industry. Representatives from EEOC, various women's organizations, and academic institutions testified that discrimination and not the lack of available and interested female applicants is keeping the percentage of women in the construction trades at such a low level. Typical situations described in that testimony involved women trained as construction workers who gained membership in a union local but who were not hired although they stood at the front of the hall or at the top of the referral list, and who were subsequently told at a job site that they would never be hired because they were women. In another typical case a woman gained employment in a craft in which her husband already worked; subsequently both were laid off and after numerous attempts to find work the man was informed that he would not find a job until his wife left the craft.

Further evidence of the interest of and discrimination against women in the construction industry was presented at recent hearings held in California and Washington on the amendments of their State laws to include goals and timetables for women in apprenticeships. The growing number of organizations across the country whose purpose is the placement of women in the construction trades illustrates the high degree of interest and the large number of women interested in pursuing careers in the construction trades.

The longstanding reputation of the trades for excluding women discourages many women from applying for construction jobs. Thus, although many women are inclined toward jobs in the trades, far fewer actually apply. A study by two Stanford University psychologists demonstrates that the number of women applying for jobs in the construction trades would substantially increase were there goals for women. In that study, two groups of female job seekers were given three detailed job descriptions and were asked to rate their interest in the jobs on a scale of 1 to 5, from "not interested" to "extremely interested." Two of the three jobs described were traditionally female jobs and one was a construction job. Half of the booklets contained the following statement under the title of the construction job: "Equal Opportunity for Women, Note: Federal Law Now Requires That Companies Train and Hire a Certain Percentage of Women for the Job of [carpenter] Each Year." The other half of the booklets contained no statement about affirmative action. In the affirmative action group 33 percent of the women indicated a strong interest in the construction job, twice the percentage indicating a strong interest in the other group. Seventy percent of the women in the affirmative action group expressed some degree of positive interest in construction jobs, one and one half as many as the other group. Clearly, there exists an available pool of women interested in applying for construction jobs.

The Maritime Administration which which oversees enforcement of the Executive Order in the shipbuilding industry has provided the Department with some very useful documentation on both the availability of women for construction-related jobs and the positive impact of goals and timetables on the employment of women in those jobs. A number of the jobs in the shipbuilding industry are comparable to jobs in construction; the Maritime experience therefore is particularly useful. In early 1972 the Maritime Administration began requiring goals and timetables for women by shipbuilding contractors. Their experience was that as more women were employed, more women applied. Once women knew that they would be hired without regard to sex, they applied in large numbers. In at least one shipyard the applicant flow is now running at the rate of the normal workforce rate of women in that area. Unquestionably, the key reason for the increase of women in that industry is goals and timetables.

The results achieved in locations where goals for women have been set have been dramatic. In Seattle, Washington, since the imposition of goals for women in city construction, nearly every city construc-

tion project has had at least one women working on the construction site. In California, the imposition of goals has resulted in the placement of 50 percent more women in construction jobs by Women in Apprenticeship, an outreach program operating in San Francisco designed to help place women in the skilled trades. Similarly, although there were only two women on Madison, Wis., construction jobs in 1975, there were, in 1976, after the imposition of goals, 15 women in those jobs.

The exclusion of women from well-paying jobs in the construction industry exists despite persistent efforts among women to break into construction work. Although women have made substantial gains in other nontraditional jobs, the above statistics demonstrate that the exclusion of women from construction work will not be corrected and that the objectives of the Executive Order will not be realized unless positive steps are taken to bring together the female worker and the construction job. Accordingly, it is necessary to establish specific standards of affirmative action for women in the construction industry under Executive Order 11246, a amended. Therefore, the specific affirmative action requirements incorporated into these proposed regulations include specific requirements for ensuring equal employment opportunities for women as well as for minorities.

This document was prepared under the direction and control of William Raymond, Associate Director, OFCCP.

Accordingly, the Department of Labor proposes to revamp the obligations of construction contractors and subcontractors by deleting 41 CFR Parts 60-5, 60-6, 60-7, 60-8, 60-10, and 60-11 and by amending 41 CFR Chapter 60 by adding a new Part 60-4 as set forth below.

Dated: August 8, 1977.

RAY MARSHALL,
Secretary of Labor.

DONALD ELISBURG,
Assistant Secretary, Employment Standards Administration.

WELDON J. ROUGEAU,
Director, OFCCP.

PART 60-4—GENERAL OBLIGATIONS OF CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

Sec.
60-4.1 Scope and application.
60-4.2 Solicitations.
60-4.3 Equal opportunity clauses.
60-4.4 Affirmative action requirements.
60-4.5 Hometown plans.
60-4.6 Goals and timetables.
60-4.7 Effect on other regulations.
60-4.8 Show cause notice.

AUTHORITY: The provisions of this Part 60-4 issued pursuant to sec. 201, E.O. 11246 (30 FR 12319) and E.O. 11375 (32 FR 14303).

§ 60-4.1 Scope and application.

This part applies to all contractors and subcontractors which hold Federal or federally assisted construction contracts or subcontracts in excess of $10,000. The regulations in this part are applicable to a construction contractor's or subcontractor's construction employees who are engaged in performing work at the construction site. This part also establishes procedures which all Federal contracting officers and all applicants, as applicable, shall follow in soliciting for and awarding Federal or federally assisted construction contracts in excess of $10,000. Procedures also are established which administering agencies shall follow in making any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended.

§ 60-4.2 Solicitations.

All Federal contracting officers and all applicants shall include the notice set forth below and the specifications set forth in § 60-4.3 of this part in all solicitations for offers involving Federal and federally assisted construction projects, as applicable, designated by the Director pursuant to § 60-4.6 of this part and in all solicitations for offers on Federal and federally assisted construction contracts or subcontracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part. Administering agencies shall require the inclusion of the notice set forth below and the specifications set forth in § 60-4.3 of this part as a condition of any grant, contract, loan, insurance or guarantee in excess of $10,000 involving federally assisted construction on a project or in a geographical area designated by the Director pursuant to § 60-4.6 of this part.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for each construction trade, are as follows:

Construction trade(s)	Goals for minority participation	Goals for female (minority and nonminority participation)
List individual trades.	Insert ranges for each year.	Insert goals for each year.

These goals shall be used as a measure of the Contractor's efforts to fulfill its specific affirmative action obligations set forth in the specifications for this contract. With respect to women, a single goal without ranges is established and compliance with the goal will be measured against the total work hours performed during each 12-month period.

3. Any successful offeror shall submit the following information to the Contracting Officer or a duly authorized representative within seven (7) calendar days of award of a contract containing these specifications. The Contracting Officer shall provide all such information to the appropriate Executive Order 11246 Compliance Agency in a timely fashion.

(a) A list of the construction trades which will be used, either directly or through subcontractors at any tier, in the performance of the work covered by this solicitation; and

(b) A list of all current construction contracts to which it is a party in any capacity in the covered area or on the project.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" or "project" is (insert description).

§ 60-4.3 Equal opportunity clauses.

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in all nonexempt Federal contracts and subcontracts including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers and all applicants, as applicable, shall include the specifications set forth below in all Federal and federally assisted construction contracts for projects designated by the Director pursuant to § 60-4.6 of this part and in all Federal or federally assisted construction contracts to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

a. The "covered area" or "project" means the geographical area or project described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Compliance Agency" means the agency designated by the Director on a contractor, geographical, industry or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of Executive Order 11246 as the Director may determine to be appropriate.

d. "Minority" includes:

(i) *Black* (All persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) *Hispanic* (All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture of origin, regardless of race);

(iii) *Asian and Pacific Islander* (All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) *American Indian or Alaskan Native* (All persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall (a) notify the responsible compliance agency and (b) physically include in each such subcontract exceeding $10,000 the provisions of these specifications and the Notice setting forth the applicable goals for minority and female participation set forth in the solicitation from which this contract resulted.

3. If the Contractor is participating in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations shall be in accordance with that Plan.

4. The Contractor shall implement the specific affirmative action standards provided in 7 (a) through (o) of these specifications. The goals set forth in the solicitations from which this contract resulted shall be used to measure the Contractor's efforts to meet the affirmative action standards. The goals are expressed as percentages of the total hours of employment and training of minority and female employees the Contractor should achieve in each construction trade on all the Contractor's construction work in the covered area. The percentage of work hours for minority and female employment and training shall be substantially uniform for each craft. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the nonreferral of minorities and women by the union with whom the Contractor has a collective bargaining agreement shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The compliance of the Contractor with these specifications shall be based upon its efforts to achieve maximum results from its actions. The Contractor shall fully document these efforts and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to the construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain records regarding the organizations' response.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant or minority or female referral from a craft union, recruitment source and community organization to the Contractor and make note of what action was taken with respect to each such referred individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reasons, therefore, along with whatever additional actions the Contractor may have undertaken.

d. Provide immediate written notification to the responsible Compliance Agency and OFCCP when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the Contractor, or the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs, and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7(b) above.

f. Disseminate the Contractor's EEO policy by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; by posting the company's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed; and by providing notice of the policy to unions and training programs for dissemination.

g. Reviewing the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions at least every three months, including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, Foremen, etc., prior to the initiation of construction work at any job site. Minutes shall be recorded identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media; and by providing written notification to and documenting discussions regarding the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, women's and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Three months prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth—both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct an inventory and evaluation of all minority and female personnel for promotional opportunities on a quarterly basis and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities must be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. To the degree that the efforts of a contractor association, joint contractor-union or contractor-outreach program, or other similar group, of which the Contractor is a member and participant, impacts favorably on the Contractor's obligations under paragraph 7 of these specifications, the compliance agency shall consider such efforts in determining the contractor's compliance with the Order, the regulations and these specifications. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were under utilized even though the Contractor had achieved its standards for women generally.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. If any work under this contract takes place in a period later than the latest period for which goals are provided, the highest goal for that latest period shall apply.

12. The Contractor shall not enter into any subcontract with any person or firm debarred from or known not to be a responsible bidder for Government contracts pursuant to Executive Order 11246, except as provided by regulations in 41 CFR Chapter 60. The Contractor shall have the responsibility to determine whether or not such person or firm has been declared not to be a responsible bidder.

13. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the agency or the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action, at least as extensive as those standards prescribed in paragraph No. 7 of these specifications, so as to achieve maximum results from its efforts

to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the compliance agency shall proceed in accordance with 41 CFR 60-4-8.

15. The Contractor shall designate a responsible official to (a) monitor all employment related activity to ensure that the company EEO policy is being carried out and (b) to submit reports relating to the provisions hereof as may be required by the Government and (c) to keep records. Records shall at least include for each employee: name, construction trade name, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, and locations at which work was performed. (Clarification of means of displaying these data requirements may be obtained from the responsible Compliance Agency.)

16. Nothing herein provided shall be construed as a limitation upon the application of State or local affirmative action or equal opportunity requirements which establish higher standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program), for work performed pursuant to this contract.

(b) The notice set forth in § 60-4.2 of this part and the specification set forth in § 60-4.3 of this part replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form Shall not be used after the regulations in this part become effective.

§ 60-4.4 Affirmative action requirements.

(a) To implement the affirmative action requirement of Executive Order 11246 in the construction industry, the Office of Federal Contract Compliance Programs previously has approved affirmative action programs commonly referred to as "Hometown Plans," has promulgated affirmative action plans referred to as "Imposed Plans" and has approved "Special Bid Conditions" for high impact projects constructed in areas not covered by a Hometown or an Imposed Plan. All solicitations for construction contracts made after the effective date of the regulations in this part shall include the notice specified in § 60-4.2 of this part and the specifications in § 60-4.3 of this part in lieu of the Hometown and Imposed Plans (including the Revised Philadelphia Plan (see 41 FR 1578)) and Special Bid Conditions. Until the Director has issued an order pursuant to § 60-4.6 of this part establishing goals and timetables for minorities in the appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice required by 41 CFR 60-4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved. Except as provided in paragraph (b) of this § 60-4.4, and until further notice, the goals and timetables for women to be inserted in the Notice required by 41 CFR 60-4.2 shall be those goals published this same date in the FEDERAL REGISTER.

(b) Signatories to a Hometown Plan shall have 45 days from the effective date of the regulations in this part to submit goals and timetables for women to the Director for approval. If the Hometown Plan is scheduled to expire prior to or shortly after the expiration of the 45-day period, the signatories should submit for approval a new plan which contains goals and timetables for women. Failure of the signatories to submit goals for women or a new plan, as appropriate, shall result in an automatic termination of the Office of Federal Contract Compliance Program's approval of the Hometown Plan. At any time the Office of Federal Contract Compliance Programs terminates or withdraws its approval of a Hometown Plan, the Contractors signatory to the Plan shall be covered automatically by the specifications set forth in § 60-4.3 of this part and by the goals and timetables established for that geographical area or project pursuant to § 60-4.6 of this part.

§ 60-4.5 Hometown plans.

A contractor participating, either individually or through an association, in a Hometown Plan shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the Hometown Plan. If a contractor is not participating in a Hometown Plan it shall comply with the specifications set forth in § 60-4.3 of this part and with the goals and timetables for the appropriate area or project as listed in the Notice required by 41 CFR 60-4.2. For the purposes of this part 60-4 a contractor is not participating in a Hometown Plan if it:

(a) Ceases to be signatory to a Hometown Plan;

(b) Is signatory to a Hometown Plan but is not party to a collective bargaining agreement;

(c) Is signatory to a Hometown Plan but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan;

(d) Is signatory to a Hometown Plan and is party to collective bargaining agreements with labor organizations but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan;

(e) Is participating in a Hometown Plan which is no longer acceptable to the Office of Federal Contract Compliance Programs;

(f) Is signatory to a Hometown Plan but is party to collective bargaining agreements with labor organizations which together have failed to make a good faith effort to comply with their obligations under the Hometown Plan.

§ 60-4.6 Goals and timetables.

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover specific construction projects or specific geographical areas. The goals shall be applicable to a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables. Such goals and timetables shall be published as notices in the Federal Register, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2.

§ 60-4.7 Effect on other regulations.

The regulations in this part are in addition to the regulations contained in this chapter which apply to construction contractors and subcontractors generally. See particularly 41 CFR 60-1.7, 60-1.8, 60-1.26, 60-1.29, 60-1.30, 60-1.32, 60-1.41, 60-1.42, 60-1.43 and 41 CFR Part 60-3, Part 60-20, Part 60-30, Part 60-40 and Part 60-50.

§ 60-4.8 Show cause notice.

If an investigation or compliance review reveals that a construction contractor or subcontractor has violated the Executive Order, any contract clause, specifications or the regulations in this chapter, the compliance agency shall issue to the contractor or subcontractor a notice to show cause which shall contain the items specified in (i)-(iv) of 41 CFR 60-2.2(c)(1). If the contractor does not show good cause within 30 days, it shall take corrective action. If the contractor does neither, the compliance agency shall follow the procedure in subparagraph (2) of 41 CFR 60-2.2(c).

[FR Doc.77-23611 Filed 8-15-77;8:45 am]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

WOMEN IN CONSTRUCTION UNDER EXECUTIVE ORDER 11246, AS AMENDED

Proposed Goals and Timetables Pursuant to Proposed Rule

Regulations (41 CFR Part 60-4) proposed by the Department of Labor in the FEDERAL REGISTER today would authorize the Director of the Office of Federal Contract Compliance Programs (OFCCP) to issue goals and timetables for minority and female participation on Federal or federally assisted construction projects. The goals would be based on workforce, demographic or other relevant data of Standard Metropolitan Statistical Areas, counties, or groups of counties, or some other geographical area in which the construction is being performed.

Under the proposed regulations, the goals and timetables would be published in the FEDERAL REGISTER in a notice of general information to the public but would not be published for public comment. However, because the OFCCP previously had not required goals for women in the construction industry under the Executive Order program, and because of the general interest in this subject, public comment is invited on this proposed notice until September 30, 1977.

A review of statistics relating to the construction industry shows a virtual exclusion of women from employment in the construction industry. Continued reliance by contractors on established hiring practices may reasonably be expected to result in continued exclusion of women. Accordingly, to implement the provisions of Executive Order 11246, as amended by Executive Order 11375, and to achieve a program of equal employment opportunity in the construction industry for women, it is proposed to develop goals and timetables for female participation in the construction industry. OFCCP has examined and considered a number of approaches for developing affirmative action goals for women. Some such methods include the female workforce, different proportions of the female workforce, and female representation in apprenticeship positions. Thought also has been given to establishing a pilot program for the purpose of developing a data base on which female goals could be developed. Each of these methods, however, suffers from certain deficiencies but basically they would establish initial goals either so high or so low that the result would be meaningless. The proposal adopted here considers both the relevant characteristics of the construction industry as they relate to developing goals and timetables for women, and the need to establish an effective implementation of the Executive Order.

Under this proposal, goals for women in construction would be established for a period of three years. The goals would be 3.1 percent, 5.0 percent, and 6.9 percent for the first, second and third years, respectively. These goals were developed using two sets of statistics. First, according to the 1970 census, the female workforce in the construction industry is 1.2 percent. Also, according to the 1970 census, women constitute 5 percent of all craft and kindred workers. This latter group of workers are in occupations which are similar to construction occupations, and possess educational levels, skills and abilities comparable to those possessed by employees working in the construction industry. It is reasonable to expect therefore that within a two-year period the construction industry, with active recruitment, could achieve a 5 percent female participation goal. This same effort would raise the goal to 6.9 percent in the third year. The statistics on which these goals are based, of course, are national in scope and are not presently available in usable form on an SMSA or county basis. It is proposed therefore that a single goal for female participation in the construction industry be adopted. Contractors are advised however, that where higher State, local or other jurisdictional goals for women are in effect, compliance with the goals and timetables proposed herein would not relieve the contractor of its obligation to comply with the higher local goal. Similarly, the proposal does not affect or limit in any way the application of requirements providing for the employment of local residents such as those contained in the Community Development Block Grant and the Public Works Employment Act grant programs.

The goals would be applied in all geographical areas and on all projects which have goals and timetables for minorities. Also, under the proposed regulation governing construction contractors under Executive Order 11246 published today in the FEDERAL REGISTER, Hometown Plans would be allowed to submit goals for women to the Director for approval. It is proposed that no goals lower than the ones proposed herein would be approved. If the Hometown Plans do not submit female affirmative action goals within the specified period and receive approval, it is proposed that the Department's approval of the plan will be automatically withdrawn and the goals proposed herein would be applicable in those Hometown areas.

These initial goals are intended to provide immediate equal employment opportunity for women in the industry until more meaningful goals based on appropriate female workforce figures can be developed and implemented. Toward this latter end and in order to develop goals and timetables for women in construction on a more permanent basis, a working committee is proposed to be established to make recommendations to the Director, OFCCP, on the total involvement of women in the construction industry. The exact structure and composition of the committee has not been determined, and comments specifically are invited on this issue. It is contemplated, however, that the committee would work closely with outreach and community groups and would operate for a period of at least five years. It also would receive input from the general public and examine the progress of women in the construction industry. In addition, at least six months before the expiration of the third year goal proposed herein, the committee would recommend meaningful female goals to the Director of the OFCCP to cover, at the minimum, an additional three-year period. The Director would, pursuant to 41 CFR 60-46, proposed in the FEDERAL REGISTER today, issue meaningful goals and timetables based on the committee's recommendations or on other appropriate data.

It is intended that the final Notice which would establish the goals would list those geographical areas and projects for which goals for minorities and women shall be applicable. These areas would include those currently covered by Imposed Plans and those projects covered by Special Bid Conditions. And as indicated in the regulations proposed in the FEDERAL REGISTER today, the goals and timetables contained in those plans and Bid Conditions would constitute the initial goals and timetables for minorities.

Accordingly, it is proposed to establish goals and timetables for women in the construction industry for use on projects and in geographical areas as designated by the Director, Office of Federal Contract Compliance Programs, as follows:

Time frame:	*Goals (in percent)*
1st year	3.1
2d year	5.0
3d year	6.9

These goals would apply to a covered contractor's or subcontractor's entire workforce which is working on construction projects in an area covered by the goal. Compliance with the goal will be measured against the total work hours performed during each 12-month period. The goal would apply to the contractor's entire workforce in that area notwithstanding that not all employees would be working on the Federal or federally assisted construction project.

Send comments to Weldon J. Rougeau, Director, Office of Federal Contract Compliance Programs, Room C-3324, 200 Constitution Avenue, N.W., Washington, D.C., 20210. Comments received will be available for inspection during regular working hours at the above address.

Dated: August 8, 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

[FR Doc.77-23609 Filed 8-15-77;8:45 am]

federal register

TUESDAY, AUGUST 16, 1977
PART V

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

ON-SITE CONSULTATION AGREEMENTS

Title 29—Labor

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

PART 1908—ON-SITE CONSULTATION AGREEMENTS

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The existing regulation is amended by rewording and reorganizing its present provisions, and adding new provisions. The new regulation is designed to further the Agency's objective to provide free on-site consultation to as many employers requesting this service as possible, with priority given to small business employers. The proposal was prepared to implement the policy directive of the Congress. The regulation as amended will: change the level of Federal funding from the present fifty percent to ninety percent for on-site consultation activities; expand the program to include States with approved plans under section 18 of the Occupational Safety and Health Act of 1970; set out new requirements for monitoring and evaluating State performance under the contract; further define the State's obligation to publicize the availability of the program, further define the obligations of the employer and the consultant to protect employees; and prescribe new requirements for consultant qualifications and numbers.

EFFECTIVE DATE: August 1, 1977.

FOR FURTHER INFORMATION CONTACT:

William J. Higgins, Chief, Division of Voluntary Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210 (202-634-4923).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 29, 1977, (42 FR 22060) notice was published in the FEDERAL REGISTER requesting public comment on proposed changes to regulations for on-site consultation contracts at 29 CFR Part 1908. After consideration of more than 50 public comments received, discussions with the States and internal review by the Federal Occupational Safety and Health Administration (hereinafter referred to as the Agency), the proposal has been amended and is published as a final regulation. The new regulation is designed to further the Agency's objective to provide free on-site consultation to as many employers requesting this service as possible, with priority given to small business employers. This program must also be consistent with public policy and the goals of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act will later be referred to as the Federal OSH Act).

The need for a greater understanding by employers of their obligations under the Federal or State OSH Acts has been widely acknowledged. The interpretation of complex standards and the ability to recognize hazards may pose difficulties for employers, but small business employers, who may lack the financial resources to utilize private consultants, are often faced with a greater difficulty in understanding their obligations under the Act.

Under the Federal OSH Act, on-site consultation services by Agency personnel cannot be provided without triggering the normal enforcement provisions of the Federal OSH Act, including citation and possible penalties for any hazards observed. Because of this restriction, Federally funded on-site consultation, prior to the promulgation of this Part, could be conducted only by States with approved plans under section 18 of the Act utilizing State personnel. These States were able to conduct on-site consultation, with fifty percent Federal funding, subject to certain restrictions and conditions similar to those under this Part. At the present time twenty-two State plans provide these services. However, because there is no comparable on-site consultation provided under the Federal program, States were not required to provide these services as part of their plan in order to meet the Federal OSH Act's requirement that they be "at least as effective."

In response to the demand for consultation in other States, regulations were promulgated on May 20, 1975, to extend fifty percent Federal funding, through contracts entered into under the authority of sections 21(c) and 7(c)(1) of the Federal OSH Act, to States without approved State plans. This fifty-percent funding level was established to place the contract States in the same position respecting funding as those States with approved plans. Twelve additional States were participating in this program at the end of fiscal year 1976. Because many States still did not provide on-site consultation, specific funds were provided for on-site consultation in the Labor-HEW Appropriation Act for fiscal year 1977, and the Appropriations Committee Report on the Act (Senate Report No. 94-997) directed the Agency to increase the level of Federal funding to a ratio which would ensure fuller State participation in the program.

The proposal was prepared to implement the policy directive of the Congress. In addition, the regulation was redrafted; provisions that had in the past been subject to misinterpretation were clarified; and, a more precise policy statement of the Agency's position was provided. In the majority of instances, the rewording and revision in many of the provisions was for the purpose of clarification and does not represent a change in intention or effect.

The following are the major issues raised by the proposal:

NEW FUNDING LEVEL

In response to the Congressional directive, the Agency proposed to increase the level of Federal funding to ninety percent, a level considered necessary to provide a stronge incentive for States to enter the program, while at the same time requiring some financial commitment on their part. It was recognized, however, that certain States would not participate in an on-site consultation program regardless of the percentage of Federal funding. These States either have legal contraints which prevent their participation, or have indicated a policy or philosophy which would prohibit it.

Several of the public comments received addressed the new funding level. Most were favorable including those from John Wenning, Administrator of the Wisconsin Division of Safety and Buildings, and Robert Palmer of the National Association of Manufacturers. On the other hand, Charles T. Greene, Director of Industrial Safety of the District of Columbia, and Allan Harvey, Deputy Director, Bureau of Safety and Regulations of the Michigan Department of Labor, along with Irving Davis, Chief, Division of Occupational Health of the Michigan Department of Public Health, objected to the new level on the grounds that it would discourage States from developing section 18 plans and encourage States with existing plans to drop their programs. In anticipation of this possible effect, the proposal expanded the eligibility for the program to include all States, including those with approved plans under section 18. Under the existing regulation, States with approved plans were not eligible to enter into on-site consultation contracts. Although some disincentive for State plans may remain, it has been minimized by the expansion of eligibility, because a State can maintain its plan under section 18 and also enter into a contract under this Part, at the increased funding level.

EFFECT UPON STATES WITH PLANS APPROVED UNDER SECTION 18

Several public comments including those from Joshua Agsalud, Director of the Hawaii Department of Labor and Industrial Relations, Steven Jablonsky, Program Manager of the Department of Industrial Relations of the California Occupational Safety and Health Administration, John Brooks, Commissioner of the North Carolina Department of Labor, and Charles Daniels, Director of the Arkansas Department of Labor, whose comments were supported by Senator John McClellan, Senator Dale Bumpers, and Congressman Ray Thornton objected to the exclusion of public employers or requested clarification of the language in the proposal. The Agency is aware of the importance of programs to protect the safety and health of employees of State and local governments. At the present time, States with approved section 18 plans must, to the extent permitted under this law, institute "effective and comprehensive" occupational safety and health programs for public employees; these programs, of course, may provide consultation services to public employees. States may also submit for approval under section 18 programs for "public-employees only"

(29 CFR 1956). Finally, States may institute public employer programs with one-hundred percent State funds.

Under the final regulation no provision is made for inclusion of consultation for public employers under these agreements. However, the agency believes that protection of public employees should be expanded to the extent possible, in all States; to this end it will explore possible strategies available to increase the Federal role in this area.

Under the final regulation, if States with approved plans wish to provide on-site consultation to private employers, with Federal funding, they must chose whether to enter into a 7(c)(1) contract under this regulation with ninety percent Federal funding, or to provide such services under their plans, with fifty percent Federal funding. They cannot do both. This restriction was placed in the proposal because of the likelihood of administrative, accounting and monitoring problems associated with dual programs, and remains unchanged in the final regulation.

LIMITATION OF ACTIVITIES UNDER THE CONTRACT

Several public comments, including those submitted by John J. Horn, Acting Commissioner of the Department of Labor and Industry for the State of New Jersey, Steven Jablonsky of the California Occupational Safety and Health Administration, William Wilkins, Administrator of the Wyoming Occupational Safety and Health Agency, and others, objected to the provisions in the proposal which would limit the authorized activities under the contract to on-site consultation only. The suggestion was made that this restriction, which is unchanged in the final rule, was designed to provide the maximum emphasis on on-site consultation, because under the Federal OSH Act the Agency is able, under section 21(c), to engage in its own Federal training and education activities. Since these services are provided on the Federal level, the prudent use of the limited on-site consultation contract funds dictates their expenditure for the purpose of filling a need to which the Agency is otherwise unable to adequately meet. Under the final regulation, State consultants may participate in seminars and employer conferences, but this participation would be for the purpose of program promotion rather than direct training and education of employers. Federal training and education activities will be concentrated in States without plans approved under section 18, because States with approved plans are required to maintain their own State program of training and education as a condition of plan approval.

UNSCHEDULED VISITS TO WORKSITES

Numerous public comments, including those of John J. Horn of the New Jersey Department of Labor and Industry, James McCain, Secretary of the Kansas Department of Human Resources, John Brooks of the North Carolina Department of Labor, Philip Ross, Commissioner of the New York Department of Labor, and others, objected to the provision in § 1908.4(b) of the proposal which specifically prohibited unscheduled visits to employer worksites for the purpose of conducting an on-site consultation, if entry were granted. Many of these comments emphasized the utility of individual contact with employers, and stressed that employers could be more effectively informed of the program in this manner. In consideration of these comments, the final regulation changes the proposal and authorizes visits to employer workplaces for the purpose of explaining the availability of the program. However, because of the necessity for adequate preparation by a consultant before an effective on-site visit may be conducted, the final regulation does not authorize the conduct of on-site consultation on the basis of an unscheduled visit to a workplace.

INFORMING AN EMPLOYER OF HIS OBLIGATIONS UNDER THE PROGRAM

New language has been included in the final regulation under § 1908.4(a)(3), Scope of service. This new language requires a State to clearly explain in its program promotion activities and in response to inquiries, the important aspects of the program. It was considered to be essential that employers be clearly informed of the State and Federal partnership in this program and of their responsibilities in the event an on-site visit is conducted, including those safeguards for employee protection which could require employer action. Therefore, under the final regulation, these responsibilities must be explained to an employer before a request can be accepted.

EMPLOYEE PARTICIPATION

In the preamble to the proposal for the revision of this Part, public comments were requested on the issue of employee participation in the on-site visit. The proposed regulation was essentially a restatement of the existing regulation, which provided for employee participation only with the employer's express permission. The Agency, however, was interested in receiving comments concerning the expansion of employee participation rights to parallel the employee walkaround rights associated with enforcement inspections under section 8(e) of the Federal OSH Act. It was considered that employees could provide some assistance to a consultant during a consultation visit as they provide to an inspector during an inspection. Further, it was believed that, because employees may have been exposed to hazards the consultant might find, they had a right to be informed of their discovery.

Numerous public comments were received in response to the request. Steven Jablonsky of the California Occupational Safety and Health Administration, and Dr. N. H. Dyer, Director of the West Virginia Department of Health, commented that there were clearly instances where employees must participate in an on-site visit in order to make the visit effective. According to the comment from the California agency, contact would be essential for example, during a health consultation where individual employee exposure levels must be determined or where a firm had an active employee/employer in-plant safety committee.

Other comments expressed the opinion that such participation should be permitted only to the extent allowed by the employer and strongly objected to any mandatory walkaround on the grounds that it would greatly discourage employer requests for the program. Consideration has been given to these factors, and the final regulation specifies that employee contact by a consultant is necessary in order to properly identify hazards in the workplace, and that a consultant must explain to an employer the possibility that such contact may have to be initiated. An employer must agree to this form of contact before a visit may proceed. In addition, the regulations require the consultant to encourage employers to permit additional employee participation to the extent practicable, including participation in the walkaround but does not mandate such participation.

EMPLOYEE PROTECTION REQUIREMENTS

The discussion under this heading encompasses the provisions in the regulation concerning the requirement that the employer take necessary action to eliminate hazards which present an imminent danger or serious violation. The proposal contained three provisions which affected this requirement, § 1908.4(d)(5)(v), which provided for the classification of hazards, § 1908.4(d)(6), which placed the obligation on the employer to take action if an imminent danger or serious violation was identified, and § 1908.5(b), which required the consultant to notify the appropriate OSHA enforcement authority if the employer refused to cooperate in the elimination of such hazards.

The majority of the public comments received addressed this issue. The comments ranged from strong objections to any action related to enforcement to acceptance of the concept with questions only on the procedure to be followed. Most comments, however, were opposed to the mandatory referral to enforcement authorities where an employer fails to take action to eliminate a serious violation. The terminology utilized was also questioned, with several objections to the use of the definition of a serious violation, and the requirement that the consultant must make a judgment as to how a compliance officer would cite a particular hazard.

This issue has been the subject of careful consideration. The Agency is cognizant of the need for full employer utilization of the consultation program and is aware of the argument that the requirement for referral might deter some employers from requesting on-site consultation. However, other provisions of the regulation are intended to assure the fundamental separation between the consultation program and enforcement, and would minimize this disincentive.

Thus, the regulation requires that the consultation operate independently from OSHA enforcement and that it have its own separate and distinct staff and management. Further, even in the monitoring of a State's performance, the identity of employers receiving on-site consultation is not revealed. In addition, an on-site visit in progress will delay certain types of OSHA inspections, and an employer is not required to make the consultation report available to a compliance officer during a subsequent inspection.

The only situation in which information about a consultation visit is referred to enforcement authorities is if an imminent danger or serious violation is identified and the employer fails to take the necessary action to eliminate the hazard and protect the employees. In the case of a serious violation a reasonable period for the elimination of the hazard is to be provided. Thus, an employer who in good faith seeks consultation advice to identify hazards so that they can be eliminated need have no concern about enforcement action being taken against him or her. It is only in what is likely to be the extremely rare case of an employer who, although aware of the imminent danger or serious violation, fails to act to eliminate them in the workplace that referral will occur. The Agency believes that in these limited circumstances the underlying policies of the Federal OSH Act mandate that the matter be referred for appropriate enforcement action.

Accordingly, the final regulation, although reworded, retains the provision of the present regulation and the proposal requiring referral to enforcement authorities in specified situations.

The use of the definition of a serious violation under the Federal OSH Act was determined to be necessary because, by the use of a currently available and known standard, the characterization of hazards by consultants will be more uniform throughout the program. Consequently, employers will be able to have a better understanding of their obligations, and the monitoring and subsequent evaluation of consultant performance will be facilitated. The final regulation therefore, describes both the employer's and the consultant's obligations in the event that an imminent danger or serious violation is identified, and new provisions in the regulation specify that an employer be clearly informed of these obligations before a request for an on-site consultation visit may be accepted.

A provision is also added to clarify the obligation of the OSHA enforcement authority which receives a referral for a serious violation which an employer has refused to eliminate. The new provision specifies that the OSHA authority is not automatically required to make an immediate inspection, but rather has the flexibility to take whatever action it determines is warranted, given the facts of the case.

In addition, a procedure is created by which an employer, who in good faith disagrees with the period of time established for the elimination of a hazard, may promptly discuss the time period with the program consultation manager, who may amend the time period allowed.

RELATIONSHIP TO ENFORCEMENT

Several public comments, including Nicholas Roussos, Commissioner of the Massachusetts Department of Labor and Industries, Larry Swanda of the Jensen Construction Company, Philip Ross of the New York Department of Labor, Charles Daniels of the Arkansas Department of Labor, William Foster, Commissioner of the Oklahoma Department of Labor, and others addressed a delay of an inspection occurring when a consultation visit is in progress. Most of these comments favored broadening this provision to ensure that an employer was given some period of time after a consultation visit before any enforcement activity would be initiated. The rationale advanced for this delay was that the employer should be allowed the opportunity to act upon the consultant's advice. The comments emphasized that this would result in the more efficient use of resources and point to the bad publicity that was likely to ensue if an enforcement inspection occurred shortly after the conduct of an on-site visit. After consideration of these comments, the Agency has decided to adhere to its position that no inspection should be delayed beyond the time necessary for the consultant to complete the on-site visit. The Agency must reserve the option to conduct an inspection immediately after the visit.

Accordingly, this provision, although reworded, remains essentially unchanged in the final regulation. In addition, under the final regulation certain types of inspections may not be delayed, despite the fact that a consultation visit is in progress.

Further, a new provision has been added to clarify the circumstances when an employer may receive an on-site visit subsequent to an enforcement inspection. This new provision, § 1908.5(b)(3), acknowledges the role of consultation in aiding an employer in the abatement of violations, and permits employers to request on-site consultation for the purpose of obtaining abatement advice. A restriction is placed upon this consultative activity in that an on-site consultation visit may not take place subsequent to an enforcement inspection until the employer has been notified that no citation would be issued or, where a citation is issued, until those citation items for which consultation is desired have become final orders. A citation item becomes a final order if, within the number of days specified under the applicable law, the employer does not file a notice of contest or, if a notice of contest is filed, after a final decision by the Occupational Safety and Health Review Commission or corresponding State authority.

Certain provisions of the proposal address the effect of an on-site consultation visit on a subsequent inspection. These provisions, which appeared at § 1908.5(d)(1), resulted in several comments. James McCain, of the Kansas Department of Human Resources, Governor Joseph Teasdale of the State of Missouri, L. W. Murray, Jr., Director of the Governor's Office of Illinois Manpower and Human Development, and others objected to the fact the compliance officer was not bound by the consultant's advice. It is the Agency's view, however, that because conditions in a workplace are constantly changing, the views expressed by the consultant cannot limit the effects of a subsequent inspection or preclude citations and proposed penalties being issued for violations discovered. Further, under the final regulation, a compliance officer would not ordinarily know that a consultation visit has occurred unless the employer volunteers the information or makes the written report available. Under § 1908.6(c)(4), if the report is given to the compliance officer, the advice given by the consultant would be considered and used to determine the employer's good faith. In addition, it will be the Agency's policy to permit, where warranted, a good faith penalty adjustment greater than the thirty percent currently allowed under the Field Operations Manual, thus a employer who, has taken action based on the advice of a consultant, and who was cited for a violation, may not use the advice or opinions of the consultant as a defense to the citation; but the fact that the employer did follow the consultant's advice could result in a substantial reduction of any penalty assessed.

The application of this additional good faith adjustment must, of course, be determined by the Area Director or corresponding State official on a case-by-case basis.

NUMBER OF CONSULTANTS

In the proposal, a two-year ceiling was placed on the number of consultants which could be funded in a State under an agreement pursuant to this Part, and an exception from this ceiling was allowed for States with current agreements or approved plans under section 18 of the Federal OSH Act. The proposal would have required that exempted States reduce the number of consultants down to the twenty-five percent ratio through attrition. Numerous comments received addressed this limitation on the number of consultants. The comments objected to the apparent inflexibility in the provisions and questioned whether it would be possible for a State exceeding the ratio to hire more qualified consultants or increase the number of industrial hygienists if no staff vacancies could be filled until the State was below the twenty-five percent level. In response to these comments, the final regulation, while retaining the twenty-five percent ratio as a general guideline for one year, provides that those States with current contracts may be exempted from the ration requirement if the current number is justified based on program performance, demand for services, or other factors. The final rule creates a far greater degree of flexibility in the determination of an appropriate number of consultants in all States. The ratio itself is also re-

cast in terms of a "positions" concept rather than in terms of individual consultants.

A new provision has been added requiring the regional administrator to determine the types of consultant expertise necessary to meet the needs of the State. This would include not only the safety/health ratio, but also any particular need present in the State, such as a need for consultants with experience in maritime. After determining the State needs, the regional administrator will negotiate a reasonable response to those needs, and could require specialized training or the assignment of consultants with particular qualifications.

QUALIFICATIONS OF CONSULTANTS

The proposal contained explicit details on minimum qualifications for consultants, including specific educational and experience requirements. The provision in the existing regulation requiring regional administrator interview and approval consultants was also retained in the proposal.

Numerous public comments were addressed to these provisions, including comments from officials from the States of California, Oklahoma, Michigan, Oregon, Kansas, Wisconsin, North Carolina, New York, West Virginia, Texas, Missouri, Illinois, Virginia, Massachusetts, Colorado, and Kentucky. One of the objections raised by the comments concerned the requirement for regional administrator interview. States strongly objected to this provision on the grounds that it would interfere with normal State hiring practices.

The comments from Philip Ross of the New York Department of Labor indicate that under the State's Merit System and Civil Service Law, certain persons have an absolute preference to any job opening for which they are qualified under State law. If the regional administrator were to reject such a person, the consultant position could not be filled until another position outside of the program was vacated. A similar concern was raised by Robert Beard, Acting Commissioner of the Virginia Department of Labor and Industry, on the grounds that the regional administrator could reject an applicant certified by the State Merit System as being qualified.

In response to this criticism, the requirement for an regional administrator interview has been removed in the final regulation. However, the requirement that the regional administrator must approve State consultants before assignment to this program is retained, and individual regional administrators may determine that an interview is essential in order to ascertain whether a consultant is, in fact, qualified to do the job. In such a case the regional administrator has the authority to conduct an interview. Other State comments objected to the minimum qualifications as too restrictive or impossible to meet given current State salary levels. On the other hand, several States, along with the Association of Federal Safety Employees and the Iron Casting Society, thought that the qualifications should be raised.

The Agency has concluded that establishment of specific minimum qualifications requirements could be counterproductive and could be a disincentive for States to participate in this program. The final regulation, therefore, provides greater flexibility in this area. This does not imply that the Agency has determined to place a lesser emphasis on consultant qualifications. The opposite is in fact the case. In order to meet the needs of the nation's employers, particularly those in small businesses, the Agency is firmly committed to a program to upgrade the qualifications of State consultants under these programs. It believes that a well-trained, highly qualified cadre of consultants is essential for an effective program. It was apparent from the State comments, however, that the existing consultation staff, as well as the ability to make changes in State hiring practices, differs widely from State to State. In addition, the demand for more qualified consultants will vary from State to State due to the differences in the types of business activities conducted and the types of hazards which may be present. A highly industrialized State would therefore require, as a general rule, a consultant with different qualifications than would an agricultural State, due to the nature of the conditions which the consultant would be likely to encounter. Therefore, it was determined that the most effective program would be a flexible one.

Accordingly, the final regulation does not contain the specific minimum qualifications listed in the proposal; instead, it includes in their place provisions which require the adoption by each State of a plan to upgrade the qualifications which it requires of consultants. These plans must contain specific goals consistent with State needs and must describe and contain the steps which shall be taken by the State to reach these goals and specific timetables for the implementation of changes. The implementation dates for these changes shall be no later than August 1, 1980. The plan must be initially submitted within 120 days of the effective date of these revisions, and thereafter revised annually to reflect the State's progress toward specific goals. The plan will become a part of a contract under this regulation and a State must satisfy the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) that it is taking appropriate action to implement its plan in order to be eligible for continued funding.

MONITORING

Section 1908.7 of the proposal outlined new monitoring provisions for contracts under the regulations. States under contract would be required to establish an effective internal monitoring system, to prepare quarterly reports and to submit various other documents to the regional administrator. The State would be required to conduct a performance evaluation of every consultant annually, and conduct actual on-the-job evaluations. An internal self-monitoring system was determined to be the most viable alternative because except in States with approved plans under section 18, Federal OSHA could not conduct on-the-job evaluations of consultant performance without taking appropriate enforcement action against the employer for any hazards observed at the worksite. Relatively few public comments addressed the monitoring changes. James Gillice, of the American Mutual Insurance Alliance praised the new requirements, and comments from Edward Otterson, Chief of the Wisconsin Department of Health and Social Services, and others were favorable to the new program.

The final regulation is essentially unchanged from the proposal, with the exception that the regional administrator's right to conduct concurrent monitoring activities is clearly described. This Federal monitoring may take any number of forms, including the use of private contractors, or any other methods which may be desirable.

EFFECTIVE DATE

The proposal which, among other things, increased the level of Federal funding under contracts pursuant to these regulations to ninety percent, was published in the FEDERAL REGISTER on April 29, 1977. In the interim period between the proposal and this final regulation, existing contracts with several States expired and were renewed on an interim basis. Some of these States adjusted their budgets in anticipation of prompt modification of the funding provisions. In consideration to these States and due to the delay of the promulgation of the final regulation, the Assistant Secretary finds that good cause exists for making the effective date of these revisions August 1, 1977. Those States with existing contracts as of that day, may, if a contract is renegotiated within 30 days, receive ninety percent funding for allowable costs as of the effective date. Accordingly, 29 CFR Part 1908 is hereby amended as follows:

These revisions shall be effective August 1, 1977.

Sec.
1908.1 Purpose and scope.
1908.2 Definitions.
1908.3 Eligibility and funding.
1908.4 Requests and scheduling.
1908.5 Conduct of a visit.
1908.6 Relationship to enforcement.
1908.7 Consultant specifications.
1908.8 Monitoring and evaluation.
1908.9 Agreements.
1908.10 Exclusions.

AUTHORITY: Secs. 7(c)(1), 21(c), 84 Stat. 1598, 1612; (29 U.S.C. 656(c)(1), 670(c)).

§ 1908.1 Purpose and scope.

This part contains requirements for agreements between States and the Federal Occupational Safety and Health Administration (hereinafter referred to as the Agency under Sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) under which the Agency will utilize State personnel to provide on-site consultation

services to employers. The service will be made available at no cost to employers to assist them in providing their employees employment and a place of employment which is safe and healthful. Consultants will identify specific hazards in the workplace and provide advice on their elimination. Although on-site consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect his employees, and, in certain instances, will be required to take necessary protective action. States entering into agreements under this Part will receive ninety percent Federal reimbursement for allowable costs and will provide on-site consultation for employers requesting the service, subject to scheduling priorities and available resources, and will offer advice and technical assistance to each requesting employer on job-related safety and health hazards.

§ 1908.2 Definitions.

As used in this part:

"Act" means the Federal Occupational Safety and Health Act of 1970.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

"Compliance officer" means a Federal or State compliance safety and health officer.

"Employer" means a person engaged in a business, who has employees, but does not include the United States, or any State or political subdivision of a State.

"On-site consultation" means all activities related to the conduct of an on-site consultative visit, including a written report to the employer.

"OSHA" means the Federal Occupational Safety and Health Administration or the State agency responsible under a Plan approved under Section 18 of the Act for the enforcement of occupational safety and health standards in that State.

"State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

"RA" means the Regional Administrator for Occupational Safety and Health of the Region in which the State concerned is located, or his designee.

§ 1908.3 Eligibility and funding.

(a) *State eligibility.* (1) Any State may enter into an agreement with the Assistant Secretary to perform on-site consultation for private-sector employers.

(2) A State having a Plan approved under Section 18 is eligible to participate in the program if that Plan does not include provisions for federally-funded on-site consultation to private-sector employers.

(b) *Reimbursement.* (1) The Assistant Secretary will reimburse 90 percent of the costs incurred under an agreement entered into pursuant to this part. Agreements negotiated within 30 days of the effective date of these revisions will be reimbursed at the level of ninety percent for allowable costs incurred as of that date. Approved training and specified out-of-State travel will be fully reimbursed.

(2) Reimbursement to States under this Part is limited to costs incurred in providing on-site consultation to private-sector employers only.

(i) In all States with Plans approved under Section 18, on-site consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c)(2)(xiii), will not be affected by the provisions of this part, with Federal reimbursement for these activities in accordance with the provisions of Section 23(g) of the Act.

(ii) In States without Plans approved under Section 18, no Federal reimbursement for on-site consultation provided to State and local governments will be allowed, although this activity may be conducted independently by a State with 100 percent State funding.

§ 1908.4 Requests and scheduling.

(a) *Encouraging requests.*—(1) *State responsibility.* The State shall be responsible for encouraging employers to request on-site consultative visits, and shall publicize the availability of its on-site consultation service and the scope of the service which will be provided. The Assistant Secretary may also engage in activities to publicize and promote the program.

(2) *Promotional methods.* To inform employers of the availablity of its on-site consultation service and to encourage requests, the State may use methods such as the following:

(i) Paid newspaper advertisements;

(ii) Newspaper, magazine, and trade publication articles;

(iii) Special direct mailings or telephone solicitations to establishments, based on Workers' Compensation data or other appropriate listings;

(iv) In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;

(v) Solicitation of support from State business and labor organizations and leaders, and public officials;

(vi) Preparation and dissemination of publications, descriptive materials, etc., on on-site consultation services;

(vii) Free public service announcements on radio and television.

(3) *Scope of service.* In its publicity for the program, in response to any inquiry, and before an employer's request for a consultation visit may be accepted, the state shall clearly explain that the service is provided at no cost to an employer through federal and state funds for the purpose of providing the employer with a better understanding of the requirements of the applicable State or Federal law and regulations. The State shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful working conditions for employeees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take action necessary to eliminate a hazard which in the judgment of the consultant, represents an imminent danger to employees, or which would be classified as a serious violation. The State shall emphasize, however, that the discovery of such a hazard will not initiate any enforcement activity, and that referral will not take place unless the employer fails to cooperate in the elimination of the identified hazard.

(b) Employer requests. (1) An on-site consultative visit will be provided only at the request of the employer, and shall not result from the enforcement of any right of entry under State law. A consultant is not authorized to make an unscheduled appearance at the workplace of an employer who has not made a request to conduct an on-site consultative visit at that time.

(2) When making the request, the employer shall describe those specific working conditions, hazards or situations for which on-site consultation is desired; the smaller the employer's business, the less specific the request must be.

(3) Employers may request on-site consultation to assist in the abatement of hazards cited during an OSHA enforcement inspection. However, an on-site consultation visit may not take place after an OSHA inspection until the employer has been notified that no citation will be issued or, if a citation is issued, until those citation items for which consultation is requested have become final orders.

(c) *Scheduling priority.* Priority shall be assigned to requests from smaller businesses, based on their number of employees, with emphasis on those workplaces of a highly hazardous nature.

§ 1908.5 Conduct of a visit.

(a) *Preparation.* An on-site consultative visit shall be made only after appropriate preparation by the consultant. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment's operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall asssure that all necessary technical and personal protective equipment is available and functioning properly.

(b) *Structured format.* An on-site consultative visit shall follow a structured format, which will consist of an opening conference, a walk through the workplace, and a closing conference. The visit shall be followed by a written report to the employer.

(c) *Employee participation.* (1) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards. The consultant shall explain the necessity for this contact to the employer during the opening

conference, and an employer must agree to this contact before a visit can proceed.

(2) In addition, employees, their representatives, and members of a workplace joint safety and health committee, may participate in the on-site consultative visit, to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

(d) *Opening conference.* In addition to the requirements of § 1908.5(c), the consultant shall, in the opening conference, explain to the employer the relationship between on-site consultation and OSHA enforcement activity and shall explain the obligation to protect employees in the event that certain hazardous conditions are identified.

(e) *On-site activity.* (1) Activity during the on-site consultative visit will be focused primarily on those conditions, hazards or situations described by the employer when the request was made.

(2) The consultant shall advise the employer as to the employer's obligations and responsibilities under applicable Federal or State law and implementing regulations.

(3) To the extent of their capability and training, consultants shall identify and provide advice on elimination of those hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the on-site consultative visit. The consultant shall conduct sampling and testing, with subsequent analyses, as may be necessary to confirm the existence of health hazard.

(4) Advice and technical assistance on the elimination of identified safety and health hazards may be provided to employers during and after the on-site consultative visit. Descriptive materials may be provided on approaches, means, techniques, etc., commonly ultilized for the elimination or control of such hazards. This advice should include basic information indicating the possibility of a solution and describing the general form of this solution. However, the advice and assistance shall not include engineering services or the provision of engineering design solutions. The consultants shall also advise the employers of additional sources of assistance, if known.

(5) When a hazard is identified in the workplace, the consultant shall indicate to the employer his or her best judgement as to whether this situation would be classified as a "serious" or "other-than-serious" violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual. (The element of employer knowledge shall not be considered.)

(6) At the time that the consultant determines that an identified hazard which would be classified as a serious violation, the consultant and the employer shall develop a specific plan to eliminate the hazard, affording the employer a reasonable period of time to complete the necessary action. If, within 10 days of the development of this plan, an employer, in good faith, disagrees with the period of time established for the elimination of a hazard, the State shall provide an opportunity for an expeditious informal discussion with the State consultation manager on the time period set by the consultant.

(f) *Employer obligations.* (1) An employer must take immediate actions to eliminate employee exposure to a hazard which, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant must immediately notify the affected employees and the appropriate OSHA enforcement authority and provide the relevant information.

(2) An employer must also take the necessary action in accordance with the plan developed under § 1908.5(e)(6) to eliminate employee exposure to any identified hazard which, in the judgment of the consultant, would be classified as a serious violation. In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action. If the employer fails to take the action necessary to eliminate a hazard which would be classified as a serious violation, the consultant shall immediately notify the appropriate OSHA enforcement authority and provide the relevant information. The OSHA enforcement authority will make a determination, based on a review of the facts, whether enforcement activity is warranted.

(g) *Written report.* A written report shall be prepared for each visit and sent to the employer. The timing and format for the report shall be approved by the Assistant Secretary. The report shall restate the employer's request and desrcibe the working conditions examined by the consultant; shall identify specific hazards; shall describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazard; and, to the extent possible, shall include suggested means or approaches to their elimination or control. Additional sources of assistance should also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, etc. The report shall also include references to the completion dates for the situations described in §§ 1908.4(e)(5), (6).

(h) *Confidentiality.* The consultant shall preserve the confidentiality of information obtained as the result of an on-site consultative visit which contains or might reveal a trade secret of the employer.

§ 1908.6 Relationship to enforcement.

(a) *Independence.* (1) On-site consultation activity by a State shall be conducted independently of any Federal or State OSHA enforcement activity.

(2) The consultation activity shall have its own identifiable managerial staff. In States with Plans approved under Section 18, this staff will be separate from the managing compliance inspections and scheduling.

(3) The identity of employers requesting on-site consultation as well as the file of the consultant's visit shall not be forwarded or provided to OSHA for use in any compliance inspection or scheduling activities.

(4) Employers receiving on-site consultative visits shall not be identified to OSH, unless the employer fails to take the necessary action to protect employees from a hazard considered by the consultant to be an imminent danger or serious violation.

(b) *Effect upon scheduling.* (1) An on-site consultative visit already in progress will have priority over OSHA compliance inspections except as provided in 1908.5(b)(2). The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. A request for on-site consultation shall not be the basis for the delay of a compliance inspection.

(2) The consultant shall terminate an on-site consultative visit already in progress where one of the following kinds of OSHA compliance inspections is about to take place:

(i) Imminent danger investigations.

(ii) Fatality/catastrophe investigations.

(iii) Complaint investigations.

(iv) Follow-up inspections.

(v) Other critical inspections as determined by the Assistant Secretary.

(3) An on-site consultation visit shall not take place subsequent to an OSHA enforcement inspection until the employer has been notified that no citation will be issued, or if a citation is issued, on-site consultation shall only take place with regard to those citation items which have become final orders.

(c) *Effect upon enforcement.* (1) The advice of the consultant and the consultant's written report will not be binding on a compliance officer in a subsequent enforcement inspection. In a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions, or violations of standards, rules or regulations, for which citations would be issued and penalties proposed.

(2) The hazard identification and abatement advice given by a State consultant, or the failure of a consultant to point out a specific hazard, or other possible errors or omissions by the consultant shall not be binding upon a compliance officer, and will not affect the regular conduct of a compliance inspection, or preclude the finding of alleged violations and the issuance of citations, or act as a defense to any enforcement action.

(3) In the event of a subsequent inspection, the employer is not required to either inform the compliance officer of the prior visit or provide a copy of the State consultant's written report to the compliance officer.

(4) If, however, the employer chooses to provide a copy of the consultant's report to a compliance officer, it may be used to determine the employer's good faith for purposes of proposing penalties.

§ 1908.7 Consultant specifications.

(a) *Number.* (1) The number of consultant positions which will be funded under an agreement pursuant to this Part for the purpose of providing on-site consultation to private sector employers will be determined by the Assistant Secretary on the basis of program performance, demand for services, resources available, and the recommendation of the RA, and may be adjusted periodically.

(2) For a period of one year from the effective date of this revision, the number of on-site consultant positions funded in a state which does not have an agreement under this Part as of the effective date of these revisions shall not exceed 25 percent of the number of full-time Federal and State compliance officer positions present within that State. The number of "compliance officer positions present" shall be the number of allocated Federal compliance officer positions for that State and, if the State has an approved Plan under Section 18, the number of compliance officer positions provided in the State's 23(g) grant. The Assistant Secretary may exempt a State from this limitation if it is determined that this exemption is warranted and consistent with available resources.

(3) States shall make efforts to utilize consultants with the safety and health expertise necessary to properly meet the demand for consultation by the various industries within a State. The RA will determine and negotiate a reasonable balance with the State on an annual basis.

(b) *Qualifications.* (1) All consultants utilized under agreements pursuant to this Part shall be employees of the State, qualified under State requirements for employment in occupational safety and health. They must demonstrate adequate education and experience to satisfy the RA, before assignment to work under an agreement, and annually thereafter, that they meet the requirements set out in § 1908.6(b)(2) and that they have the ability to perform satisfactorily pursuant to the agreement. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended, entitled "Equal Employment Opportunity."

(2) Minimum requirements shall include:

(i) Consultants shall demonstrate the following: the ability to identify hazards; the ability to assess employee exposure and risk; knowledge of OSHA standards; knowledge of abatement techniques and practices; knowledge of workplace safety and health program requirements; and the ability to effectively communicate, both orally and in writing.

(ii) Consultants shall meet any additional degree and/or experience requirements as may be established by the Assistant Secretary.

(3) A specific plan to upgrade the qualifications for all State consultants shall be developed by each participating State according to guidelines established by the Assistant Secretary.

(i) The plan shall include a timetable with final implementation dates for specific actions which the State shall take in order to upgrade the education and experience of State consultants, including revision of job descriptions, establishment of additional qualifications and training and increases in State salary levels.

(ii) The plan must be submitted to the RA within 120 days of the effective date of an agreement under this Part and shall be revised annually to reflect the State's progress toward specific goals.

(iii) The implementation dates in initial plans shall be no later than August 1, 1980.

(c) *Training.* As necessary, the Assistant Secretary will specify immediate and continuing training requirements for consultants. Expenses for training which is required by the Assistant Secretary or approved by the RA will be reimbursed in full.

§ 1908.8 Monitoring and evaluation.

(a) *Regional administrator responsibility.* A State's performance under the agreement will be regularly monitored and evaluated by the RA. The RA may direct changes as a result of these evaluations to foster conformance with consultation policy as established by the Assistant Secretary. All aspects of the agreement with the State will be continually monitored and evaluated as part of a systematic Federal regional plan for this activity.

(b) *State performance.* The RA or his designee will periodically meet with State project officials to assess project status and to seek resolution to any operating problems. An appropriate number of State files (without identification of the employer) on individual on-site consultative visits will be audited. Special attention will be given to determine whether the provisions of §§ 1908.5 (e) and (f) are being followed. A written report of these periodic reviews will be forwarded by the RA to the State.

(c) *Consultant performance.* (1) *State activity.* The State shall establish and maintain an organized consultant performance monitoring system under the agreement:

(i) The system shall be established within 60 days of the execution of the contract, or within 60 days from the date the Assistant Secretary publishes a program directive on the design of the performance monitoring system. Whichever occurs later. Operation of the system shall conform to all requirements established by the Assistant Secretary. The system shall be approved by the RA before it is placed in operation.

(ii) A performance evaluation of each individual State consultant performing on-site consultation for employers shall be prepared annually. All aspects of a consultant's performance shall be reviewed at that time. Recommendation for remedial action shall be made and acted upon. The annual evaluation report shall be a confidential State personnel record and may be timed to coincide with regular personnel evaluations.

(iii) Performance of individual consultants shall be measured in terms of their ability to identify hazards in the workplaces which they have visited; their ability to determine employee exposure and risk, and in particular their performance under §§ 1908.5 (e) and (f); their knowledge and application of applicable Federal or State statutes, regulations or standards; their knowledge and application of appropriate abatement techniques and approaches; and their ability to effectively communicate their findings to employers.

(iv) Accompanied visits to observe consultants during on-site consultative visits shall be conducted at least semi-annually for each consultant. The State may also conduct unaccompanied visits to workplaces which received on-site consultation, for the purpose of evaluating consultants. A written report of each visit shall be provided to the consultant. These visits shall be conducted only with the expressed permission of the employer who requested the on-site consultative visit.

(v) The State will report quarterly to the RA on system operations, including copies of accompanied visit reports (without identification of the employer) completed that quarter.

(2) *Federal activity.* State consultant performance monitoring as set out in § 1908.7(c)(1) shall not preclude Federal monitoring activity by methods determined to be appropriate by the Assistant Secretary.

(d) *State reporting.* For Federal monitoring and evaluation purposes, the State shall compile and submit such factual and statistical data in the format and at the frequency required by the Assistant Secretary. The State shall prepare and submit to the RA any narrative reports, including copies of written reports to employers (without identification of the employer) as may be required by the Assistant Secretary.

§ 1908.9 Agreements.

(a) *Who may make agreements.* The Assistant Secretary may make an agreement under this part with the Governor of a State or with any State agency designated for that purpose by the Governor.

(b) *Negotiations.* (1) Procedures for negotiations may be obtained through the RA who will negotiate for the Assistant Secretary and make final recommendations on each agreement to the Assistant Secretary.

(2) States with Plans approved under Section 18 may initiate negotiations in anticipation of the withdrawal of federally funded on-site consultation services to private-sector employers from the Plan.

(3) Renegotiation of existing agreements funded under this Part shall be intiated within 30 days of the effective date of these revisions.

(c) *Contents of agreement.* (1) Any agreement and subsequent modifications shall be in writing and signed by both parties.

(2) Each agreement shall provide that the State will conform its operations under the agreement to:

(i) The requirements contained in this Part 1908;

(ii) Al related formal directives subsequently issued by the Assistant Secretary implementing this regulation.

(3) Each agreement shall contain an explicit written commitment for each major lettered paragraph in §§ 1908.4, 1908.5, 1908.6, 1908.7, and 1908.8, with particular emphasis placed on the following elements:

(i) Consultation management structure separate from enforcement;

(ii) Consultant numerical limitation and safety and health objective;

(iii) Assignment of qualified personnel;

(iv) Submission of a plan for upgrading consultant qualifications;

(v) Advertisement of consultation services;

(vi) Early notification to employers of the scope of services provided and their obligations;

(vii) Employee participation in on-site visits;

(viii) Employee protection requirements;

(ix) Provision of written report to employers; and

(x) Monitoring and evaluation procedures;

(4) Each agreement shall also include a budget of the State's anticipated expenditures under the agreement, in the detail and format required by the Assistant Secretary.

(d) *Location of sample agreement.* A sample agreement is available for inspection at all Regional Offices of the Occupational Safety and Health Administration of the U.S. Department of Labor.

(e) *Action upon requests.* The State will be notified within a reasonable time of any decision concerning its request for an agreement. If a request is denied, the State will be informed in writing of the reasons supporting the decision. If an agreement is negotiated, the initial funding will specify the period for the agreement. Additional funds may be added at a later time provided the activity is satisfactorily carried out and appropriations are available. The State may also be required to amend the agreement for continued support.

(f) *Termination.* Either party may terminate an agreement under this part upon 30 days written notice to the other party.

§ 1908.10 Exclusions.

An agreement under this part will not restrict in any manner the authority and responsibility of the Assistant Secretary under Sections 8, 9, 10, 13, and 17 of the Act, or any corresponding State authority.

Signed at Washington, D.C., this 11th day of August, 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-23650 Filed 8-15-77;8:45 am]

federal register

TUESDAY, AUGUST 16, 1977
PART VI

FEDERAL ENERGY ADMINISTRATION

LOWER AND UPPER TIER CRUDE OIL PRICE CEILINGS

Resumption of Adjustments to Reflect Impact of Inflation

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 212]

LOWER AND UPPER TIER CRUDE OIL PRICE CEILINGS

Resumption of Adjustments To Reflect Impact of Inflation

AGENCY: Federal Energy Administration.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Federal Energy Administration ("FEA") proposes in this proceeding to resume in September 1977, price increases to take into account the impact of inflation, which are permitted under the Emergency Petroleum Allocation Act of 1973, as amended ("EPAA"). These price increases were discontinued because during 1976 and part of 1977 actual weighted average prices for domestic crude oil exceeded the statutory maximum weighted average first sale ("composite") price.

Currently, lower tier ceiling prices are frozen at their June 1976 levels, resulting in a projected average first sale price in August 1977 of approximately $5.17 per barrel; upper tier prices have been rolled back to a projected average first sale price in August 1977 of approximately $10.97 per barrel.

Under the proposal set forth in this Notice FEA would, beginning in September 1977, apply the inflation adjustment to the projected August lower tier price (approximately $5.17 per barrel), and would begin to restore over a 3 month period the upper tier price to a level that would represent the $11.28 per barrel price originally intended to be achieved for upper tier crude oil in February 1976 by the Energy Policy and Conservation Act ("EPCA") crude oil pricing policy, plus the $.27 per barrel increase in upper tier prices that was authorized for the months of March through June 1976. Pursuant to this proposal, lower tier prices would be approximately $5.24 per barrel by November 1977, and upper tier prices would be approximately $11.71 per barrel.

Thereafter, lower tier and upper tier prices would be allowed to rise at the rate of inflation, as was proposed in the National Energy Plan issued by the President on April 20, 1977.

DATES: Comments by Friday, August 26, 1977, 4:30 p.m.; Requests to speak by Friday, August 19, 1977, at 4:30 p.m.; Hearing date: Friday, August 26, 1977, 9:30 a.m.

ADDRESSES: Comments and requests to speak to: Executive Communications, Room 3317, Federal Energy Administration, Box OP, Washington, D.C. 20461; Hearing location: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

Ed Vilade (Media Relations), 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461 (202) 566-9833.

William D. Carson (Office of Regulatory Programs), 2000 M Street NW., Room 2310, Washington, D.C. 20461, 202-254-7477.

Everard A. Marseglia, Jr. (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 5140, Washington, D.C. 20461, 202-566-9567.

SUPPLEMENTARY INFORMATION:

A. *Background.*
B. *Proposed Amendments.*
C. *Comment Procedures.*

A. BACKGROUND

Under the Emergency Petroleum Allocation Act of 1973, as amended ("EPAA," Pub. L. 93-159), Congress provided FEA with flexibility to control first sale prices of domestic crude oil as long as the national weighted average first sale price ("actual composite price") did not exceed $7.66 per barrel ("statutory composite price") for all domestic crude oil produced and sold in February 1976.

Beginning in March 1976, the EPAA authorized increases in the statutory composite price to reflect the effects of inflation and to provide production incentives. Under present authority, the statutory composite price is adjusted upward at the rate of 10 percent annually.

Under FEA price regulations adopted to implement the pricing policy that included the statutory composite price restrictions, domestic crude oil is classified either as lower tier (which accounts currently for about 50 percent of total domestic production), upper tier (which accounts currently for about 36 percent of total domestic production) and crude oil produced from stripper well properties (which accounts currently for about 14 percent of total domestic production).

Stripper well property crude oil, which is production from properties that have declined to a level of 10 barrels or less per well per day for a preceding consecutive 12-month period, is permitted by statutory authority to be sold at market price levels, so as to encourage continued production from such marginal properties for as long as possible. For purposes of determining compliance with the statutory composite price limitation, however, stripper well property crude oil is given by statutory formula an imputed value which approximates the average upper tier price. (Section 121 of the Energy Conservation and Production Act, "ECPA", Pub. L. 94-385.)

Upper tier crude oil generally includes production from properties which first began producing crude oil after 1972 (except those which qualify as stripper well properties or which produce crude oil that is otherwise exempt from first sale price controls), plus incremental production from older properties which exceeds a certain "base production control level." The upper tier price (an average of $11.64 per barrel at the end of 1976) is generally designed to stimulate increased production from older properties and to encourage further exploration and development of domestic crude oil resources. The lower tier price, which averaged about $5.17 per barrel nationally at the end of 1976, applies to all domestic production which is not exempt or which does not qualify as upper tier crude oil.

Effective July 1, 1976, FEA halted further monthly increases in crude oil price ceilings and continued them at their June 1976 levels order to compensate for actual composite prices in excess of adjusted statutory composite price levels. FEA took further corrective action to achieve compliance with statutory composite price restrictions by reducing upper tier price ceilings by 20 cents per barrel effective January 1, 1977, and by an additional 45 cents per barrel effective March 1, 1977. These actions were projected to eliminate all excess crude oil receipts by June 30, 1977 (see 42 FR 13013, March 8, 1977). (Although the ceiling prices for lower tier crude oil have been frozen since June 1976, and the ceiling prices for upper tier crude oil have been frozen—and subsequently rolled back—since June 1976, ceiling prices for lower and upper tier crude oil are determined on a field-by-field basis. As a result, the average actual prices for lower tier and upper tier crude oil vary from month to month as a function of the mix of types of crude oil selling at varying ceiling prices from field to field.)

On March 15, 1977, FEA submitted Energy Action No. 11 to the Congress, pursuant to section 8(f) of the EPAA, to continue in effect that portion of the 10 percent annual increase in the statutory composite price relating to production incentives. That action, having undergone legislative review without disapproval by either house of Congress, permits the statutory composite price to continue to increase at an annual rate of 10 percent.

In congressional hearings relating to Energy Action No. 11, FEA stated that the 10 percent annual adjustment in the statutory composite price was anticipated to be entirely or almost entirely used to reflect the impact of inflation on the ceiling prices for lower and upper tier crude oil (anticipated at between 5.5 and 6.5 percent annually) and to account for the automatic increase in the actual composite price attributable to the continuing decline in the percentage of lower tier crude oil (resulting in an increase in the actual composite price of approximately 3.0 to 3.6 percent annually). Accordingly, FEA stated that it intended in the future to adjust lower tier and upper tier prices by not more

than the amount necessary to reflect the impact of inflation.

Pursuant to Section 8(d) of the EPAA, the impact of inflation is measured for purposes of adjusting the composite price by using the "adjusted GNP deflator." The Act defines the term "adjusted GNP deflator" to mean:

> * * * the first revision of the quarterly percent change, seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product which shall be computed and published for each calendar quarter by the Department of Commerce, subject to such additional modification as the President shall make to exclude therefrom any amount which he determines is attributable solely and directly to increases which occur after the date of enactment of this section in prices of imported crude oil, residual fuel oil, or any refined petroleum product resulting from concerted action of two or more petroleum exporting countries.

For purposes of this notice, the inflation adjustment for the months of September, October, and November 1977 has been computed at an annual rate of 5.5 percent. This is the most recent first revision of the GNP deflator, published by the Department of Commerce in late June 1977. Actual adjustments to crude oil price ceilings for the months of September through November 1977, pursuant to the regulations proposed in this rulemaking will be based on the first revision of the GNP deflator to be published on or about August 20, 1977. Beginning in December the first revision of the GNP deflator published on or about November 20, 1977 would be used to adjust ceiling prices for the next three months to reflect the rate of inflation, and so forth.

The purpose of this proceeding is to specify the price levels for lower tier and upper tier crude oil to which such adjustments for inflation should be applied and to implement the provision of the National Energy Plan that calls for allowing lower tier and upper tier ceiling prices to rise at the rate of inflation.

B. Proposed Amendments

As indicated above, monthly increases in both lower tier and upper tier crude oil price ceilings have been deferred and upper tier crude oil price ceilings have been reduced in order to compensate for actual composite price levels in excess of statutory composite price limits. This elimination of excess receipts is projected to be completed by June 30, 1977—final data for a particular month are not available to FEA until the end of the third month following that month—and resumption of monthly price adjustments can therefore be resumed September 1, 1977. As FEA indicated in the notice accompanying Schedule No. 7 of Monthly Price Adjustments (42 FR 38894, August 1, 1977), this more conservative pricing policy is intended to further the EPAA goal of providing a more stable and predictable basis for future pricing actions by decreasing the potential for future price freezes or rollbacks.

FEA proposes to apply such inflation adjustments prospectively to existing lower tier prices and to upper tier prices adjusted to reflect (1) the fact that actual upper tier prices when the upper tier ceiling price was first imposed in February 1976 were higher than the average of $11.28 per barrel that was intended, and (2) the fact that upper tier prices have been reduced by a total of $.65 per barrel in recent months. Because the restoration of upper tier prices will represent a price increase of some significance, it is proposed to be phased in over a 3 month period so as to avoid creating any substantial incentive unnecessarily to withhold production in anticipation of a price increase.

FEA has concluded that it would not be appropriate to seek to restore lower tier and upper tier price levels to the real dollar equivalent of their February 1976 price levels because the overall economic impact of such an action would not, in all likelihood, be counterbalanced by any measurable production response. Domestic crude oil production has been subject to frozen or reduced price levels for more than a year without any measurable effect on production. (FEA has granted price relief on a case-by-case basis in all instances in which those price levels have resulted in a demonstrable threat to continued production.)

Accordingly, FEA has concluded that restoration of crude oil ceiling prices to their February 1976 real dollar equivalent would constitute essentially a windfall to producers, in that it would constitute a form of payment for production that has already taken place under economically advantageous circumstances. In this regard, however, FEA has also concluded that equitable considerations favor the restoration of upper tier prices to a level that recognizes the initial pricing objectives of the EPAA crude oil pricing policy and the fact that the upper tier price has, in fact, been rolled back to compensate for prices in excess of the statutory composite price.

In specifying a composite price of $7.66 per barrel for all domestic crude oil in February 1976, Congress assumed that the existing ceiling price on domestic old crude oil (lower tier) would be continued and that the average price of old crude oil was $5.25 per barrel. The $5.25 per barrel estimate was derived originally by the Cost of Living Council ("CLC") as the average first sale price of controlled domestic crude oil in December 1973. FEA was not required, nor did it have any regulatory need, to monitor actual first sale prices of controlled domestic crude oil until the advent of EPCA. Inasmuch as old crude oil prices had remained frozen from December 1973, the $5.25 figure was thought to be a reasonable estimate of lower tier crude oil prices.

In specifying the $7.66 per barrel composite price, the Congress also assumed that "new," "released," and "stripper well" crude oil (which were not then subject to ceiling price limitations), would not have to be rolled back from the average first sale price of uncontrolled domestic crude oil in January 1975, which was $11.28 per barrel. The January 1975 price was based on the most recent price data available and which was free from the influence of (1) the 1975 supplemental import fees on crude oil, and (2) the effect of the October 1975 price increase by the Oil Producing and Exporting Countries which subsequently affected domestic crude oil prices.

It was also estimated that sixty percent of total domestic crude oil would constitute old crude oil. The $7.66 per barrel composite price figure was therefore calculated as follows:

$$(.6)\ ($5.25) + (.4)\ ($11.28) = $7.66.$$

(*See generally* S. Rept. No. 94–516, 94th Cong., 1st Sess. 187–191 (1975).)

FEA adopted regulations to implement the composite price limitation of EPCA that were predicated on the same estimates and assumptions that had been used by the Congress. Pursuant to those regulations, which became effective February 1, 1976, comprehensive data on actual first sale prices were obtained for the first time. Those data revealed that the average first sale price for lower tier crude oil was, in fact $5.05 per barrel, rather than the estimated $5.25 per barrel; that lower tier crude oil constituted approximately 56.1 percent of domestic production rather than the estimated 60 percent; and that the upper tier ceiling price of (the September 30, 1975 posted price, less $1.32 per barrel) had resulted, in February 1976, resulted in average upper tier prices of $11.48 per barrel rather than the intended $11.28 per barrel. These factors, among others, led FEA to discontinue price increases in July 1976.

Under the amendment proposed herein, the existing lower tier ceiling price (the May 15, 1973 posted price plus $1.48 per barrel, currently resulting in an average first sale price of approximately $5.17 per barrel), would be adjusted for inflation beginning with September 1977.

Thus, the lower tier ceiling price for lower tier crude oil and the approximate average first sale price pursuant to that price in September, October and November, would be determined as follows:

Month	Ceiling price	Estimated average 1st sale price
August	May 15, 1973, highest posted field price plus $1.48.	$5.17
September	May 15, 1973, highest posted field price plus $1.51.	5.20
October	May 15, 1973, highest posted field price plus $1.53.	5.22
November	May 15, 1973, highest posted field price plus $1.56.	5.24

The upper tier ceiling price would be derived as follows: First, as noted above, the upper tier ceiling price is established by reference to September 30, 1975

highest posted field prices. When the ceiling price rule was first promulgated, FEA estimated the average of highest posted field prices on September 30, 1975 to be $12.60 per barrel; hence the price rule provided for a subtraction of $1.32 from that posted price for February 1976, with the intent of achieving an average price of $11.28. Actual upper tier pricing data have varied from month to month (which results from changes in the volumes of the various grades and qualities of upper tier crude oil produced and sold each month).

For the months of June through December 1976, when upper tier prices were frozen at the September 30, 1976 posted prices less $1.05 per barrel, actual average first sale prices ranged from $11.60 to $11.65 per barrel, averaging $11.62 per barrel. These data therefore indicate that the September 30, 1975 reference postings average approximately $12.67 per barrel (i.e., $11.62+$1.05=$12.67), rather than the $12.60 per barrel estimated by FEA when the upper tier price rule was first adopted.

Based on the foregoing actual pricing data, a February 1976 upper tier ceiling price of $11.28 per barrel would best be approximated by a ceiling price of the September 30, 1975 posted price (averaging $12.67 per barrel), less $1.39 per barrel. The adjustments to the upper tier ceiling price provided during March through June totalled $.27 per barrel. Applying this $.27 adjustment to the Congressionally intended February 1976 upper tier price of $11.28 results in a price of $11.55. The ceiling price for September that would be most likely to result in an average first sale price of $11.55 per barrel is, therefore, the September 30, 1977 posted price (approximately $12.67 per barrel), less $1.12 per barrel.

As noted above, however, the restoration of the upper tier ceiling price is proposed to be phased in over a 3-month period. Application of the 5.5 percent annual rate of inflation to the "restored" upper tier price level of $11.55 for September yields an average upper tier price of $11.71 for November 1977.

FEA does not currently have final or preliminary data with respect to actual prices in August 1977. However, assuming that the September 30, 1975 posted price averages $12.67 per barrel in August 1977, applying a $1.70 reduction in that month pursuant to Schedule No. 7 of Monthly Price Adjustments (42 FR 38894, August 1, 1977) results in a projected average upper tier price of $10.97 for August 1977 $12.67 less 1.70).

In order to provide a smooth transition from the projected August 1977 average upper tier price of $10.97, to the November 1977 target price of $11.71, FEA proposes to add to the projected August 1977 upper tier price approximately $.24 per barrel in September and approximately $.25 per barrel in October and November 1977.

Thus, the upper tier ceiling prices would be determined as follows:

Month	Ceiling price	Estimated average 1st sale price
August	Sept. 30, 1975, highest posted field price less $1.70.	$10.97
September	Sept. 30, 1975, highest posted field price less $1.46.	11.21
October	Sept. 30, 1975, highest posted field price less $1.21.	11.46
November	Sept. 30, 1975, highest posted field price less $0.96.	11.71

Beginning in December, the upper tier ceiling price would be adjusted each month at not more than the rate of inflation as determined by the most recent first revision to the GNP deflator.

The following table summarizes on a monthly basis the projected cumulative excess receipts for the months February 1976 through November 1977.

Month	Lower tier percent	Lower tier price	Upper tier price	Statutory composite price	Actual composite price1/	Cumulative excess receipts (millions)
1976						
February	56.12	$5.05	$11.48	$7.66	$7.07	$ 49
March	56.93	5.07	11.39	7.72	7.79	67
April	56.69	5.07	11.52	7.78	7.86	86
May	57.04	5.13	11.55	7.84	7.89	97
June	55.92	5.15	11.60	7.88	7.99	123
July	55.58	5.19	11.60	7.93	8.04	152
August	55.68	5.18	11.62	7.98	8.03	181
September	53.41	5.17	11.65	8.04	8.19	198
October	52.39	5.15	11.62	8.11	8.23	228
November	49.94	5.17	11.62	8.17	8.40	282
December	50.07	5.17	11.64	8.24	8.40	322
1977						
January	50.61	5.17	11.44	8.30	8.28	316
February	49.52	5.18	11.39	8.37	8.33	308
March	49.18	5.19	11.03	8.44	8.19	246
April2/	49.46	5.15	10.97	8.50	8.14	161
May3/	49.15	5.17	10.99	8.57	8.18	65
June3/	48.84	5.17	10.99	8.64	8.20	-32
July3/	46.22	5.17	10.99	8.71	8.16	-101
August3/	44.87	5.17	10.97	8.78	8.14	-350
September3/	43.59	5.20	11.21	8.85	8.24	-509
October3/	42.36	5.22	11.46	8.92	8.33	-672
November3/	41.18	5.24	11.71	8.99	8.42	-826

1/ Beginning with the month of September 1976, includes prices for stripper well crude oil production at values imputed in accordance with section 121 of the EPA.
2/ Preliminary.
3/ Projected. Effects of Alaska North Slope (ANS) crude oil production, which commenced June 20, 1977, are included.

C. Comment Procedures

1. *Written Comments.* Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice. Comments should be identified on the outside envelope and on documents submitted with the designation "Resumption of Adjustments to Lower and Upper Tier Crude Oil for Inflation," Box OP. Fifteen copies should be submitted. All comments received by FEA will be available for public inspection in the FEA Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

2. *Public Hearing.*—a. *Request Procedure.* The time and place for the hearing are indicated in the "Dates" section of this preamble. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the next business day following the date of the hearing.

Any person who has an interest in the proposed amendments issued today, or who is a representative of a group or class of persons that has an interest in today's proposed amendments, may make a written request for an opportunity to make oral presentation. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why he or she is a proper representative of a group or class of persons that has such an interest, and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through the day before the hearing.

Each person selected to be heard will be so notified by the FEA before 4:30 p.m., Tuesday, August 23, 1977 and must submit 100 copies of his or her statement to Regulations Management, Room 2214, 2000 M Street NW., Washington, D.C., before 4:30 p.m., on Thursday, August 25, 1977.

Any interested person may submit questions to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., Tuesday, August 23, 1977. Any

person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In the event that it becomes necessary for the FEA to cancel the hearing, FEA will make every effort to publish advance notice in the FEDERAL REGISTER of such cancellation. Moreover, FEA will notify all persons scheduled to testify at the hearing. However, it is not possible for FEA to give actual notice of cancellations or changes to persons not identified to FEA as participants. Accordingly, persons desiring to attend the hearing are advised to contact FEA on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

NOTE.—This proposal has been reviewed in accordance with Executive Order 11821 and OMB Circular A-107 and has been determined not to be of a nature which requires an evaluation of its economic impact.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, it is proposed to amend Part 212 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., August 11, 1977.

ERIC J. FYGI,
Acting General Counsel
Federal Energy Administration.

1. Section 212.77 is revised in paragraph (c) to read as follows:

§ 212.77 Adjustments to ceiling prices.

* * * * *

(c) *Application of price adjustments.*

(1) Price adjustment schedules issued pursuant to paragraph (b) of this section shall, beginning with prices for September 1977, adjust the lower tier and the upper tier ceiling prices by not more than the amount necessary to reflect the impact of inflation on the weighted average first sale price for each tier.

(2) Notwithstanding paragraph (c)(1) of this section, FEA may issue price adjustment schedules pursuant to paragraph (b) of this section to: (i) Discontinue or restrict price adjustments or require reductions in ceiling prices to the extent deemed necessary by the FEA to achieve compliance with the Act, or (ii) Restore, in part or in full, to the upper tier ceiling prices for months prior to September 1977.

APPENDIX.—*Schedule No. 7 of monthly price adjustments effective Sept. 1, 1977*

Month	Lower tier, May 15, 1973, posted price [1] (plus)	Upper tier, Sept. 30, 1975, posted price [2] (less)
1976:		
February	1.35	1.32
March	1.38	1.25
April	1.41	1.18
May	1.45	1.11
June	1.48	1.05
July	1.48	1.05
August	1.48	1.05
September	1.48	1.05
October	1.48	1.05
November	1.48	1.05
December	1.48	1.05
1977:		
January	1.48	1.25
February	1.48	1.25
March	1.48	1.70
April	1.48	1.70
May	1.48	1.70
June	1.48	1.70
July	1.48	1.70
August	1.48	1.70
September	1.51	1.46
October	1.53	1.21
November	1.56	.96

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

This schedule of monthly price adjustments was issued by the Federal Energy Administration on September , 1977, pursuant to 10 CFR 212.77. It restates without change the lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February 1976 through August 1977, as determined under 10 CFR 212.73, 212.74, and 212.77. Upper tier ceiling prices, which were reduced under Schedule No. 5 effective January 1, and further reduced effective March 1, 1977, are increased as indicated in this schedule. Also, lower tier ceiling prices, which were held at the ceiling price level for the month of June 1976, are increased as indicated in this schedule.

This schedule is effective only through November 30, 1977. Price ceilings for subsequent months will be provided by Schedule No. 8, to be issued on or about November 30, 1977. This schedule may, however, be superseded prior to November 30, 1977, by early issuance of Schedule No. 8 to reflect further ceiling price adjustments based on presently unanticipated trends in actual composite price levels.

[FR Doc.77-23606 Filed 8-12-77;10:46 am]