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federal register

WEDNESDAY, FEBRUARY 1, 1978

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Monday	Tuesday	Wednesday	Thursday	Friday
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	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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

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

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

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Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for FEDERAL REGISTER scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

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AGENCY ABBREVIATIONS USED IN HIGHLIGHTS AND REMINDERS
(This List Will Be Published Monthly In First Issue Of Month.)

USDA—AGRICULTURE DEPARTMENT

AMS—Agricultural Marketing Service
ARS—Agricultural Research Service
ASCS—Agricultural Stabilization and Conservation Service
APHIS—Animal and Plant Health Inspection Service
CCC—Commodity Credit Corporation
CEA—Commodity Exchange Authority
CSRS—Cooperative State Research Service
EMS—Export Marketing Service
ERS—Economic Research Service
FmHA—Farmers Home Administration
FCIC—Federal Crop Insurance Corporation
FAS—Foreign Agricultural Service
FNS—Food and Nutrition Service
FSQS Food Safety and Quality Service
FS—Forest Service
PSA—Packers and Stockyards Administration
RDS—Rural Development Service
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT

Census—Census Bureau
EDA—Economic Development Administration
ITA—Industry and Trade Administration
MA—Maritime Administration
MBE—Minority Business Enterprise Office
NBS—National Bureau of Standards
NFPCA—National Fire Prevention and Control Administration
NOAA—National Oceanic and Atmospheric Administration
NSA—National Shipping Authority
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

DOD—DEFENSE DEPARTMENT

AF—Air Force Department
Army—Army Department
DCPA—Defense Civil Preparedness Agency
DIA—Defense Intelligence Agency
DLA—Defense Logistics Agency
Engineers—Engineers Corps
Navy—Navy Department

DOE—ENERGY DEPARTMENT

ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT

ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CDC—Center for Disease Control

FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HDSO—Human Development Services Office
HRA—Health Resources Administration
HSA—Health Services Administration
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SSA—Social Security Administration

HUD—HOUSING AND URBAN DEVELOPMENT DEPARTMENT

CARF—Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD—Community Planning and Development, Office of Assistant Secretary
FDAA—Federal Disaster Assistance Administration
FHEO—Fair Housing and Equal Opportunity, Office of Assistant Secretary
FHC—Federal Housing Commissioner, Office of Assistant Secretary for Housing
FIA—Federal Insurance Administration
GNMA—Government National Mortgage Association
ILSRO—Interstate Land Sales Registration Office
NCA—New Communities Administration
NCDC—New Community Development Corporation
NVACP—Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR—INTERIOR DEPARTMENT

BPA—Bonneville Power Administration
BIA—Bureau of Indian Affairs
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
MESA—Mining Enforcement and Safety Administration
Mines—Mines Bureau
NPS—National Park Service
OHA—Office of Hearings and Appeals
Reclamation—Reclamation Bureau
SMRE—Surface Mining Reclamation and Enforcement Office

JUSTICE—JUSTICE DEPARTMENT

DEA—Drug Enforcement Administration
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
NIC—National Institute of Corrections

LABOR—LABOR DEPARTMENT

BLS—Bureau of Labor Statistics
BRB—Benefits Review Board
ESA—Employment Standards Administration
ETA—Employment and Training Administration
FCCPO—Federal Contract Compliance Programs Office
LMSEO—Labor Management Standards Enforcement Office
OSHA—Occupational Safety and Health Administration
P&WBP—Pension and Welfare Benefit Programs
W&H—Wage and Hour Division

STATE—STATE DEPARTMENT

AID—Agency for International Development
FSGB—Foreign Service Grievance Board

DOT—TRANSPORTATION DEPARTMENT

CG—Coast Guard
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
MTB—Materials Transportation Bureau
NHTSA—National Highway Traffic Safety Administration
OHMO—Office of Hazardous Materials Operations
OPSO—Office of Pipeline Safety Operations
SLS—Saint Lawrence Seaway Development Corporation
UMTA—Urban Mass Transportation Administration

TREASURY—TREASURY DEPARTMENT

ATF—Alcohol, Tobacco and Firearms Bureau
Customs—Customs Service
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
FS—Fiscal Service
IRS—Internal Revenue Service
Mint—Mint Bureau
PDB—Public Debt Bureau
RSO—Revenue Sharing Office

INDEPENDENT AGENCIES

ATBCB—Architectural and Transportation Barriers Compliance Board
CAB—Civil Aeronautics Board
CASB—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPSC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/FPRAC—Federal Prevailing Rate Advisory Committee
EEOC—Equal Employment Opportunity Commission
EXIMBANK—Export-Import Bank of the U.S.
EPA—Environmental Protection Agency
ESSA—Endangered Species Scientific Authority
ERDA—Energy Research and Development Administration
FCC—Federal Communications Commission
FCSC—Foreign Claims Settlement Commission
FDIC—Federal Deposit Insurance Corporation
FEA—Federal Energy Administration
FEC—Federal Election Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/FSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/PBS—Public Buildings Service
ICC—Interstate Commerce Commission
ICP—Interim Compliance Panel (Coal Mine Health and Safety)
ITC—International Trade Commission
LSC—Legal Services Corporation
NACEO—National Advisory Council on Economic Opportunity
NASA—National Aeronautics and Space Administration
NCUA—National Credit Union Administration
NFAH/NEA—National Endowment for the Arts
NFAH/NEH—National Endowment for the Humanities
NLRB—National Labor Relations Board
NRC—Nuclear Regulatory Commission
NSF—National Science Foundation
NTSB—National Transportation Safety Board
OFR—Office of the Federal Register
OMB—Office of Management and Budget
OPIC—Overseas Private Investment Corporation
PADC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
RB—Renegotiation Board
RRB—Railroad Retirement Board
ROAP—Reorganization, Office of Assistant to President
SBA—Small Business Administration
SEC—Securities and Exchange Commission
TVA—Tennessee Valley Authority
USIA—United States Information Agency
VA—Veterans Administration
WRC—Water Resources Council

reminders

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

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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.

[3195-01]

Title 3—The President

Memorandum of January 27, 1978

Determination Under Section 202(a) of the Trade Act; High Carbon Ferrochromium

Memorandum for the Special Representative for Trade Negotiations

THE WHITE HOUSE,
Washington, January 27, 1978.

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (P.L. 93-618, 88 Stat. 1978), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC) dated December 1, 1977, concerning the results of its investigation of a petition for import relief filed by the Committee of Producers of High Carbon Ferrochromium on behalf of the domestic industry producing ferrochromium, containing over 3% by weight of carbon, provided for in item 607.31 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those set forth in Section 202(c) of the Trade Act of 1974, I have determined that provision of import relief is not in the national economic interest of the United States.

I have determined that the imposition of import relief would not be an effective means to promote adjustment in the industry since the dominant firm in the domestic industry now supplies over half of all domestic production and utilizes one of the world's largest, most technologically advanced furnaces. The other domestic producers, which now operate technologically obsolete furnaces, are unlikely to modernize their facilities.

Import relief would substantially increase costs for domestic stainless steel producers by raising prices of high carbon ferrochrome, low carbon ferrochrome, stainless steel scrap and chrome ore. Increased costs are estimated to be $27 million per year based on the USITC recommendation. In view of the quotas on stainless steel imports, such increases would be likely to be passed through to consumers of stainless steel. In a time when we are striving to control inflation, this cost is too high.

Provision of import relief is unlikely to induce substantial production or employment gains for the domestic industry producing these articles. The Department of Labor has informed me that prospect of further layoffs in the industry during 1978 are doubtful and employment prospects of those workers already laid off are considered "fair" because the stainless steel industry is expected to maintain an adequate level of demand in the coming year.

The Trade Act of 1974 requires that the President consider the effect of increased import restraints on the international economic interests of the United States. The provision of import relief to the American producers of high carbon ferrochromium would entitle Brazil, the Republic of South Africa, Yugoslavia, other major supplier countries whose exports are affected to request compensatory tariff reductions. If compensation is not provided, the affected countries could retaliate by increasing their restrictions on products which American firms export.

This determination is to be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-2920 Filed 1-30-78; 4:09 pm]

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.

[1505-01]

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1976/1977 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal regulations issued to date for 1976 and 1977. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

For a Checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the Cumulative List of CFR Sections Affected, which is revised monthly.

The rate for subscription service to all revised volumes issued for 1977 is $350 domestic, $75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1977):

Title	Price
1	$1.65
2 [Reserved]	
3	3.00
4	3.25
5	4.70
7 Parts:	
0-45	5.30
46-51	4.20
52	5.20
53-209	5.80
210-699	6.10
700-749	4.10
750-899	1.80
900-944	4.25
945-980	2.40
981-999	2.50
1000-1059	4.25
1060-1119	4.40
1120-1199	3.20
1200-1499	4.20
1500-end	7.25
8	2.60
9	6.80
10 Parts:	
0-199	4.40
200-end	4.60
11 (Rev. 5/1/77)	2.30
12 Parts:	
1-299	7.40
300-end	7.30
13	4.20
14 Parts:	
1-59	6.00
60-199	5.10
200-1199	6.20
1200-end	2.20
15	5.35
16 Parts:	
0-149	5.50
150-999	4.25
1000-end	3.00

CFR Unit (Rev. as of April 1, 1977):

Title	Price
17	6.75
18 Parts:	
1-149	4.25
150-end	4.00
19	5.75
20 Parts:	
01-399	3.25
400-499	5.00
500-end	4.00
21 Parts:	
1-99	3.25
100-199	4.75
200-299	2.10
300-499	5.00
500-599	4.00
600-1299	3.50
1300-end	4.25
22	4.50
23	5.50
24 Parts:	
0-499	5.00
500-end	5.25
25	4.50
26 Parts:	
1 (§§ 1.0-1.169)	4.75
1 (§§ 1.170-1.300)	4.00
1 (§§ 1.301-1.400)	3.75
1 (§§ 1.401-1.500)	4.00
1 (§§ 1.501-1.640)	4.00
1 (§§ 1.641-1.850)	4.35
1 (§§ 1.851-1.1200)	5.25
1 (§§ 1.1201-end)	6.75
2-29	4.50
30-39	4.35
40-299	4.50
300-499	4.35
600-end	2.40
27	7.00

CFR Unit (Rev. as of July 1, 1977):

Title	Price
29 Parts:	
0-499	5.75
1920-end	4.50
30	6.00
32 Parts:	
1-39 (V. I) (Rev. 7/1/76)	4.75
(V. II) (Rev. 7/1/76)	7.50
(V. III) (Rev. 7/1/76)	5.25
400-589	5.00
590-699	4.00
1000-1399	2.75
1400-1599	4.25
1600-end	2.75
32A	3.75
33 Parts:	
1-199	7.00
34	1.70
35	4.00
36	4.50
37	3.00
39	3.50
40 Parts:	
0-49	4.25
50-59	5.75
60-99	5.00
100-399	4.75
400-end	5.75
41 Chapters:	
1-2	5.25
7	2.75
8	2.30
9 (Rev. 9/26/77)	5.00
19-100	4.50
101-end	5.75

CFR Unit (Rev. as of Oct. 1, 1976):

Title	Price
42	5.95
43 Parts:	
1-999	3.10
1000-end	6.00
44 [Reserved]	
45 Parts:	
1-99	3.45
100-199	10.00
200-499	3.15
500-end	6.40
46 Parts:	
1-29	2.15
30-40	2.20
41-69	4.00
70-89	2.10
90-109	1.95
110-139	1.90
140-165	4.00
166-199	2.65
200-end	7.25
47 Parts:	
0-19	3.80
20-69	5.00
70-79	4.90
80-end	6.20
48 [Reserved]	
49 Parts:	
1-99	2.05
100-199 (Rev. 12/31/76)	6.50
200-999	7.55
1000-1199	3.95
1200-1299	7.40
1300-end	3.60
50	4.20

[3410-08]

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amendment No. 85]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

CORN ENDORSEMENT

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation is amending its regulations by combining the elements of the programs relating to corn endorsement (grain and silage), corn-silage endorsement, and corn endorsement with production guarantees in bushels of grain and tons of silage. By this action, the Corporation's corn crop insurance program is made simpler and more effective administratively. This regulation also removes several restric-

tions to provide more benefits to the policyholders under the program.

EFFECTIVE DATE: October 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby establishes a new section to Title 7, Part 401, of the Code of Federal Regulations to be known as 7 CFR § 401.154 The Corn Endorsement. This section combines three other sections dealing with the provisions of Corn Crop Insurance; 7 CFR § 401.142 The Corn Endorsement (Grain and Silage), appearing in the FEDERAL REGISTER on September 7, 1968 (33 FR 12721), § 401.143 The Corn-Silage Endorsement, appearing in the FEDERAL REGISTER on September 6, 1968 (33 FR 12670), and § 401.151 The Corn Endorsement (Grain and Silage) with production guarantees in bushels of grain and tons of silage, appearing in the FEDERAL REGISTER on November 10, 1975 (40 FR 52339). These sections are hereby deleted and reserved and all amendments thereto (Nos. 18, 19, 23, 36, 53, and 71) are superseded by this Amendment No. 85 to the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years (7 CFR § 401.154 The Corn Endorsement). By combining the elements of the three previous regulations, the Corporation's corn crop insurance program is made simpler and more effective administratively. The provisions contained in this Amendment No. 85 remove several restrictions to provide more benefit to the policyholder. In view of this, the Corporation has found and determined that inasmuch as this Amendment No. 85 removes several restrictions to benefit the policyholder, and that reissuance of the Corn Endorsement to each policyholder, along with many other administrative details to be attended to prior to December 15, 1977, would consume more time than would be available if the procedure for notice and public participation were followed prior to the issuance of this Amendment No. 85 as a final rule, that this amendment is hereby issued without compliance with such procedure. However, in the spirit of the public policy set forth in 5 U.S.C. 553 (b) and (c), interested persons may submit written comments, views, and suggestions to the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days from the effective date of this amendment. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal.

Pursuant to the authority contained in the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), as amended, the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years, effective with the 1978 crop year, are amended by deleting and reserving § 401.142, § 401.143, and § 401.151 of Title 7 of the Code of Federal Regulations, and by adding a new § 401.154 to read as follows:

§ 401.154 The Corn Endorsement.

(a) *Insured crop.* The crop insured shall be field corn planted for harvest as grain or silage and silage-type corn only where a silage guarantee is shown on the county actuarial table (hereinafter called "actuarial table"). Insurance may attach only by written agreement with the Corporation on corn which is planted for the development or production of hybrid seed.

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

(c) *Insurance period.* Insurance on insured acreage shall attach at the time the corn is planted and shall cease in the same calendar year as follows: The earliest of (1) final adjustment of a loss, (2) harvest, or (3) December 10 in all states except North Dakota (where insurance ceases October 31): *Provided,* That where the actuarial table shows both a grain and a silage guarantee, insurance shall remain in effect no later than September 30 on any acreage of silage-type corn or any acreage of field corn harvested for silage, and any loss of production of such corn occurring thereafter shall be regarded as lost from an uninsured cause.

(d) *Additional notice of loss requirements.* (1) In addition to the requirements of section 8 of the policy, if any acreage intended for harvest as silage has been damaged to the extent that a loss is probable, the insured shall give written notice to the Corporation as follows: (i) Where the actuarial table shows only a grain guarantee, and the insured desires to harvest any acreage for silage, the insured shall give notice before the start of harvest of such acreage. (ii) Where the actuarial table shows both a grain and a silage guarantee, the insured shall give notice prior to harvest if it will not be possible to determine the harvested production, or prior to October 1 for unharvested acreage of silage-type corn or field corn intended for silage.

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

(e) *Claims for loss.* (1) Any claim for loss on an insurance unit (hereinafter called "unit") shall be submitted to the Corporation on a form prescribed by the Corporation not later than 60 days after the time of loss. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(2) It shall be a condition precedent to the payment of any loss that the insured: (i) Establish the production of the insured corn on the unit and that such loss has been directly caused by one or more of the hazards insured against during the insurance period for the crop year for which the loss is claimed, and (ii) furnish any other information regarding the manner and extent of loss as may be reuired by the Corporation.

(3) Losses shall be determined separately for each unit. The amount of loss with respect to any unit shall be determined by (i) multiplying the insured acreage of corn on the unit by the applicable guarantee per acre, and multiplying such result by the applicable price for computing indemnities, which product shall be the dollar amount of insurance for the unit, (ii) subtracting therefrom the dollar amount obtained by multiplying the total production to be counted for the unit by the applicable price for computing indemnities, and (iii) multiplying the result obtained in step (ii) by the insured share: *Provided,* That if the insured fails to report all of the insurable acreage or share for the unit, the amount of loss shall be determined with respect to all of the insurable acreage and share, and in such case, if the premium computed on the basis of the insurable acreage and share exceeds the premium computed on the acreage and share shown on the acreage report, the amount of loss shall be reduced proportionately. Where the actuarial table shows only a grain guarantee, all production and appraisals shall be determined in bushels. Where the actuarial table shows both a grain and a silage guarantee, the production and appraisals shall be determined in bushels or tons, depending upon whether the acreage is harvested for grain or silage, except that the production and appraisals of silage-type corn shall be in tons. Where a unit contains acreage to which both a grain and a silage guarantee apply, the dollar amount of insurance and dollar amount of the production to be counted shall be determined separately for each portion and then added together

to determine the total amount for the unit.

(4) The total production to be counted for a unit shall be determined by the Corporation and, subject to the provisions hereinafter, shall include all harvested production and any appraisals made by the Corporation for unharvested or potential production, poor farming practices, uninsured causes of loss, or acreage abandoned or put to another use without the consent of the Corporation: *Provided*, That the total production to be counted on any acreage shall be as follows for the conditions described: (i) The greater of the appraised production or 50 percent of the guarantee for any acreage which, with the consent of the Corporation, is planted before harvest of corn becomes general in the current crop year to any other crop insurable on such acreage under the regulations of the Corporation (excluding small grains normally maturing for harvest in the following calendar year). (ii) Not less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause.

(5) If the insured intends to harvest any acreage for silage and gives notice pursuant to section 4 of this endorsement: (i) Where the actuarial table shows only a grain guarantee, the Corporation will appraise the production in bushels of grain. (ii) Where the actuarial table shows both a grain and a silage guarantee, the Corporation will appraise the production in tons of silage only if the harvested production could not be determined, and such appraisal of field corn will be used in computing the amount of loss only if such corn is actually harvested for silage. When an appraisal of production is required, the Corporation will make such appraisal before harvest starts; but, if unable to do so, the insured may harvest the acreage, provided that representative areas are left unharvested for a Corporation appraisal.

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

(7) Notwithstanding the provisions of subsection (d) of this section, in determining the production to count when the production was damaged by an insurable cause occurring within the insurance period, the total production of grain produced shall be reduced as follows: (i) 0.6 percent if the moisture is 16 percent; 1.2 percent for each full percent of moisture in excess of 16 percent up to and including 30 percent; and 2 percent for each full percent of moisture in excess of 30 percent up to and including 40 percent. (ii) If the mositure is over 40 percent, or the test weight is below 40 pounds per bushel, the percent of the production to be counted shall be that agreed upon by the Corporation and the insured or, in the absence of agreement, as determined by the Corporation: *Provided, however*, That for harvested production, the percent of the production to be counted shall not be less than 25 percent.

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

(f) *Meaning of terms.* For the purpose of corn insurance, the terms:

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

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

(g) *Cancellation and termination for indebtedness dates.* For each year of the contract, the cancellation date is December 31, and the termination date for indebtedness is, by states, as follows: Florida, Georgia, Louisiana—March 31; California, Mississippi, North Carolina, North Dakota, Virginia—April 15; Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania—April 30; all other states—April 25. These dates are those immediately preceding the beginning of the crop year for which the cancellation or termination is to become effective.

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

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942. The Federal Crop Insurance Corporation 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.

Approved by the Board of Directors on October 27, 1977.

Effective: October 31, 1977.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

Approved: January 25, 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-2750 Filed 1-31-78; 8:45 am]

[3410-02]

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

[Docket No. AO-269-A6]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIF.

Order Amending the Order, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing agreement and order, as amended, covering California dates, to improve procedural operations and program effectiveness. The changes are on proposals submitted by the California Date Administrative Committee, the group established under the program to administer its terms and provisions, and were considered at a public hearing last March.

EFFECTIVE DATES: All changes are effective March 15, 1978, except the amendment of § 987.72(a) which is effective October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued February 18, 1977; published February 23, 1977 (42 FR 10695). Notice of Recommended Decision—Issued September 6, 1977; published September 12, 1977 (42 FR 45680). Final Decision—Issued December 16, 1977; published December 22, 1977 (42 FR 64122).

Date growers voted to amend their order in a referendum conducted by mail ballot December 19, 1977–January 9, 1978. One of the amendatory changes revises volume regulation provisions so the order can respond to market conditions more effectively. Since the inception of the program in 1955, the export and product markets have grown in importance and a mechanism to protect these markets from excess supplies may be needed in the future.

Another revision recognizes changes which have occurred in the date industry's structure affecting representation. Membership still will include producers and handlers, but producer membership no longer will include producers who handle dates or be apportioned between cooperative date producers and date producers who do not belong to cooperatives. Producers who handle dates and date handlers who do not produce dates will be covered under the term "producer-handler". At the same time, Committee membership will be increased from eight to nine.

Other changes: (1) Permit a handler to move dates to storage for his own account in any county adjoining the area of production free from regulatory requirements; (2) lengthen committee members' terms from one year to two; (3) provide for a polling place and allow absentee ballots for nomination of Committee members; (4) authorize the committee to include a consumer consultant on its staff; (5) make other minor changes in Committee voting procedures and changes in procedures for filling vacancies; and (6) make minor changes in assessment and record-keeping provisions.

FINDINGS AND DETERMINATIONS

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed further amendment of the marketing agreement,[1] as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in Riverside County, Calif.

Upon the basis of the record it is found that:

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

(2) The order, as amended, and as hereby further amended, regulates the handling of domestic dates produced or packed in Riverside County, Calif., in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

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

(4) There are no differences in the production and marketing of domestic dates in the production area covered by the order, as amended, and as hereby further amended, which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of domestic dates produced or packed in the production area as defined in the marketing order, as amended, and as hereby further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs of affects such commerce.

(b) *Additional findings.* The effective date of the amendatory change made in § 987.72(a) should be delayed beyond March 15, 1978, the effective date of the rest of the amendatory provisions. The change in § 987.72(a) would subject utility dates used in product outlets to assessments for program activities. The current 1977–78 crop year began October 1 and an assessment was fixed by the Secretary at a rate to provide adequate funds for the Committee's authorized expenses this year. No useful purpose would be served by making utility dates subject to assessments during the current crop year. They should not be assessed until next crop year. Therefore, the amendatory provisions in § 987.72(a) should not become effective until October 1, 1978, the beginning of the 1978–79 crop year.

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

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Domestic Dates Produced or Packed in Riverside County, California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping dates covered by the said order, as amended, and as hereby further amended) who, during the period October 1, 1976, through September 30, 1977, handled not less than 50 percent of the volume of such dates covered by the said order, as amended, and as hereby further amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period October 1, 1976, through September 30, 1977 (which has been deemed a representative period), have been engaged in the production for market of Deglet Noor, Zahidi, Halawy, and Khadrawy varieties of domestic dates produced or packed in Riverside County, Calif., such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of domestic dates produced or packed in Riverside County, Calif., shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

1. Section 987.6 is amended to read:

§ 987.6 Crop year.

"Crop year" means the 12-month period beginning October 1 of each year and ending September 30 of the following year.

§ 987.8 [Amended]

2. Section 987.8 is amended by deleting reference to "§ 987.22" and substitute "§ 987.21".

§ 987.9 [Amended]

3. Section 987.9 is amended by deleting that part of the provision starting with "the counties of San Bernardino" through "as handling" and substitute "or counties adjoining the area of production, shall not be considered handling. The Committee, with the approval of the Secretary, may establish monitoring procedures for storage of dates in Orange, San Diego, and Yuma Counties."

4. Section 987.11 is amended to read:

§ 987.11 Trade demand.

"Trade demand" means those quantities of marketable dates which the Committee finds are required to satisfy the need for dates in specific outlets in which marketable dates are handled.

5. Section 987.12 is revised to read:

§ 987.12 Marketable dates.

"Marketable dates" means those dates which are certified as equal to or higher than the applicable minimum grade and size requirements in effect pursuant to § 987.39, and any additional applicable requirements in effect pursuant to § 987.40. Marketable dates shall include but not be limited to the following:

(a) *DAC dates.* DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and identification requirements established by the Committee, with the approval of the Secretary, for a specific variety for handling in the United States and Canada.

(b) *Dates for further processing.* Dates for further processing (FP) are marketable whole dates acquired by one handler from another handler

[1] The marketing agreement as amended was filed as a part of the original document.

that are certified as meeting the same grade and size requirements for DAC dates, with the exception of moisture requirements, and such identification requirements applicable to FP dates that are established by the Committee, with the approval of the Secretary, for any specific variety.

(c) *Export dates.* Export dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and identification requirements established by the Committee, with the approval of the Secretary, for a specific variety, to be handled in export to any country or group of countries with the exeption of Canada. The Committee may establish different requirements for different countries.

(d) *Product dates.* Product dates are marketable dates that are inspected and certified as meeting the applicable grade and size requirements for dates to be handled in such forms as rings, chunks, pieces, butter, macerate, paste, or any other forms which the Committee deems appropriate and which will result in dates moving into consumption in a form other than that of whole or pitted dates.

6. Section 987.13 is amended to read:

§ 987.13 Free dates.

"Free dates" means dates of any variety that are at the time of certification destined for consumption in whole or pitted form in the United States and Canada (and such other countries as the Committee determines are likely to acquire them at prices reasonably comparable with prices received domestically) and which are free to be handled pursuant to any free percentage established by the Secretary in accordance with § 987.44.

§§ 987.9, 987.15, 987.47, 987.56, 987.57 and 987.64 [Amended]

7. Sections 987.9, 987.15, 987.47, 987.56, 987.57, and 987.64 are amended by substituting "utility dates" in lieu of "substandard dates."

§ 987.16 [Amended]

8. Section 987.16 as amended by deleting the words "section 798 of the Agricultural Code" and inserting in lieu thereof "Title 3, Group 4, Article 24, section 1434 of the Food and Agricultural Code."

9. Section 987.21 is revised to read:

§ 987.21 Establishment and membership.

A California Date Administrative committee consisting of nine members is hereby established to administer the terms and conditions of this part. For each member there shall be an alternate member and the provisions of this part applicable to the number, nomination, qualification and selection of members shall apply in like manner to alternate members. Three of the members, referred to in this part as "producer members", shall be producers or officers or employees of producers, and shall not be handlers, or directors, officers, or employees exercising a supervisory or managerial function of a handler. The six remaining members, referred to in this part as "producer-handlers", shall be selected from (1) handlers, or directors, officers or employees of a handler, or (2) producers who are also handlers or directors, officers, or employees exercising a supervisory or managerial function of a handler. The Committee, with the approval of the Secretary, may issue rules and regulations covering matters of eligibility for producer members, or revising the composition of the Committee prescribed in this section if it no longer is representative following a substantial change in the industry.

§ 987.22 [Deleted]

10. Section 987.22 is deleted.

11. Section 987.23 is revised to read:

§ 987.23 Term of office.

The term of office for members and alternate members shall be 2 years beginning August 1, except such term may be shorter if the Committee composition is changed in the interim pursuant to § 987.21. Each member and alternate member shall, unless otherwise ordered by the Secretary, continue to serve until his successor has been selected and has qualified.

12. Section 987.24 is revised to read:

§ 987.24 Nomination and selection.

(a) Nomination for members and alternate members of the Committee shall be made not later than June 15 of every other year.

(b) Opportunity shall be provided producers and handlers to nominate individuals to serve on the Committee by establishing a day for polling and also for casting absentee ballots. Persons will only be able to vote in nominations for the group in which they would be qualified to serve on the Committee, and shall nominate the applicable number of individuals for the positions prescribed pursuant to § 987.21. Each producer, regardless of the number and locations of his date gardens, voting in the nominations for producer members and producer alternate members, shall be entitled to one vote for each member and alternate member position to be filled. The individual receiving the highest number of votes for a position shall be the nominee. Each person voting in the nominations for producer-handler members and producer-handler alternate members, shall be given the opportunity to vote for one member and one alternate member position. His ballot shall be weighted by the pounds of dates he had certified as marketable dates, from the beginning of the then current crop year through April which he produced in his own gardens or acquired from other producers. The individual receiving the highest weighted vote for a producer-handler position shall be the nominee. The Committee, with the approval of the Secretary, may issue rules and regulations on the manner in which nominees for a position may be obtained, polling, balloting, absentee ballots, and the weighting of votes for producer-handler positions when the Committee is restructured during a term of office.

(c) In the event that nominees for all available positions are not provided by the aforesaid procedure, the then current Committee may recommend nominees for the unfilled positions.

(d) Promptly after each election, the Committee shall report to the Secretary the results thereof, including the eligibility of the nominees, and any other information requested by the Secretary. The Secretary shall select members and alternate members on the basis of representation provided in § 987.21 from nominations made pursuant to this subpart, or from other eligible persons. If nominations are not made within the time and manner prescribed herein, the Secretary may, without regard to nominations, select the members and alternate members on the basis of representation provided in § 987.21.

13. Section 987.26 is amended to read:

§ 987.26 Vacancies.

In the event of any vacancy occasioned by the failure to qualify, declination to serve, removal, resignation, disqualification, or death of any person nominated to serve on the Committee, or any member or alternate member selected by the Secretary, the Committee shall promptly submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified for the group in § 987.21. If the vacancy is for a member position, the Committee shall recommend appointment of the alternate member if that person is willing to serve in that position. If the Committee's recommendation is not submitted within 30 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, and the selection shall be made on the basis of representation provided in § 987.21.

§ 987.27 [Amended]

14. Section 987.27 is amended by deleting from the second sentence the words "(producers or handlers as the case may be) they represent" and substitute instead "he represents".

15. Section 987.30 is amended by adding a new paragraph (h) to read:

§ 987.30 Duties.

* * * * *

(h) To furnish the Committee viewpoints of the consumer, the Committee may utilize a consumer consultant. The consumer consultant shall have no financial interest in the date industry and shall receive no compensation, however, such person shall be reimbursed for necessary expenses attendant to those assignments that the Committee has given prior support and approval.

16. Section 987.31 (a), (c), (d), (e) and (f) are amended to read:

§ 987.31 Procedure.

(a) A majority of the Committee shall constitute a quorum.

(b) * * *

(c) For any decision of the Committee to be valid, a concurring vote of at least five members is required, except as follows:

(1) In matters relating to restructuring Committee composition pursuant to § 987.21, concurrence by at least eight members is required;

(2) In matters relating to establishment, modification and application of free and restricted percentages pursuant to §§ 987.44 and 987.46, concurrence by at least seven members is required; and

(3) In matters relating to recommendation of any program of paid advertising or major program of market promotion pursuant to § 987.33, concurrence by at least six members is required.

(d) At all assembled meetings each vote shall be cast in person.

(e) The Committee may vote upon any proposition by mail, or telephone when confirmed in writing within 2 weeks, or telegram, upon due notice and full and identical explanation to all members, including alternates acting as members, but any such action shall not be considered valid unless unanimously approved.

(f) If the total number of members of the Committee is changed pursuant to § 987.21, the minimum voting requirements shall be in the same ratio to the revised total number of members, as nearly as practicable, as the minimum voting requirements prescribed in paragraph (c) of this section are to nine.

§ 987.33 [Amended]

17. Section 987.33 is amended by deleting the third sentence.

18. Section 987.34 is revised to read:

§ 987.34 Development.

As early as practicable, but no later than October 31, the Committee shall prepare and submit to the Secretary, a report setting forth its marketing policy, including data on which it is based, by variety, for regulation of dates in the crop year.

(a) The committee shall consider such factors as: (1) The estimated production of dates during the crop year; (2) the estimated production of DAC dates, export dates, and product dates; (3) the handler carryin on October 1 of dates of those qualities; (4) the estimated trade demand in each outlet during the crop year; and (5) the desirable carryout, by outlet.

(b) If dates to be handled as free dates are not synonymous with those to be handled in DAC outlets, the Committee shall consider such additional factors as: (1) The supply of marketable dates that will be available from the estimated production, and from the October 1 carryin, that could be used as free dates, and (2) the estimated trade demand for free dates during the current crop year, and the desirable carryout for free dates.

(c) The Committee shall submit its recommendation as to grade, size, and container regulations and its recommendation whether free and restricted percentages should be established and if so, the free and restricted percentages and the appropriate withholding factor.

19. A new § 987.38 is added to read as follows:

§ 987.38 Handlers of record.

Each crop year but no later than October 10 for continuing handlers and prior to handling dates in the case of new handlers, any person desiring to handle dates shall submit a report to the Committee on a form prescribed by it containing the following information with respect to all dates which such person expects to handle:

(a) The name and address of each producer;

(b) The location of each date garden; and

(c) The acreage and estimated current season's production thereon.

Those reports required to be filed by October 10 shall reflect producers who are signed up with the handlers as of October 1 of the then current crop year. The Committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions of this section.

20. The first and third sentences in § 987.39 are amended to read:

§ 987.39 The establishment of minimum standards.

In order to effectuate the declared policy of the act, all dates handled as marketable dates shall meet the requirements of U.S. Grade C, or if for further processing, U.S. Grade C (Dry) of the effective U.S. Standards for Grades of Dates, 7 CFR 52.1001: *Provided*, That the Secretary, may upon recommendation of the Committee, prescribe other minimum standards of grades and sizes for marketable dates of any variety to be handled in any designated outlet. * * * The provisions hereof relating to minimum standards of grades and sizes for marketable dates and inspection requirements, within the meaning of section 2(3) of the act, and any other provisions relating to the administration and enforcement thereof shall continue in effect irrespective of whether the season average price to producers for dates is or is not in excess of the parity level specified in section 2(1) of the act. * * *

21. The first and last sentences in § 987.40 are amended to read:

§ 987.40 Additional grade or size regulations.

Whenever the Committee deems it advisable to establish grade or size requirements for any variety of dates, in addition to the minimum standard provided pursuant to § 987.39, to govern dates of such variety to be handled in any designated outlet or to be withheld to meet withholding obligation, or both, it shall recommend to the Secretary requirements as to grade based on the effective United States Standards for Grades of Dates or any modification thereof, and such size requirements as it may deem appropriate. * * * On and after the effective date no handler shall handle dates of such variety in any designated outlet or withhold such dates to meet withholding obligation except in accordance with such regulations.

22. Section 987.43 is added to read:

§ 987.43 Outlets and specifications for marketable dates.

Marketable dates shall not be handled or otherwise disposed of except as provided in this subpart. This shall not preclude dates of better grades or sizes being handled or otherwise disposed of in any outlet established for dates of lesser grades or sizes. The Committee, with the approval of the Secretary, may modify the designations specified in § 987.12 to reflect new major outlets and regulatory requirements needed because of changes in marketing conditions. Marketable dates shall include but not be limited to the following: DAC dates, Dates for further processing, Export dates, and Product dates.

23. Section 987.44 is amended "by revising the first sentence of paragraph (a)" to read:

§ 987.44 Free and restricted percentages.

(a) Whenever the Committee finds that the available supply of marketable dates of applicable grade and size available to supply the trade demand

for free dates of any variety is likely to be excessive, and that limiting the volume of marketable dates to be handled as free dates through establishment of free and restricted percentages applicable to such variety of such dates would tend to effectuate the declared policy of the act, it shall recommend such percentages to the Secretary. * * *

§ 987.45 [Amended]

24. Section 987.45 is amended as follows:

In paragraph (a) delete the part of the first sentence that reads "or for further processing" and insert in lieu thereof; "as free dates (including those for further processing that are to be handled as free dates)".

In paragraph (b) after the word "handled" in the last sentence, insert "as free dates (including those for further processing that were handled as free dates),".

In paragraph (c) insert the word "free" before the word "dates" where that word appears in the first sentence, the fourth sentence and the fifth sentence.

In paragraphs (d) and (f) wherever "restricted obligation" or "restricted obligations" appear, substitute the words "withholding obligation" or "withholding obligations", as applicable.

In the first sentence of paragraph (e), delete the words "from handling".

§ 987.46 [Amended]

25. Section 987.46 is amended as follows:

In the first sentence after the words "trade demand" and "available supply" insert the words, respectively, "for free dates" and "of marketable dates of applicable grade and size". In the second sentence before the word "dates" insert the word "free".

§ 987.50 [Amended]

26. Section 987.50 is amended as follows:

Insert the word "free" before the word "dates" wherever that word appears in this section.

§ 987.54 [Deleted]

27. Section 987.54 is deleted.

28. Section 987.55 is revised to read:

§ 987.55 Outlets for restricted dates.

Restricted dates may be disposed of only through exportation to such countries as the Committee may approve or by diversion in product outlets described in § 987.43 which the Committee concludes to be appropriate and which will result in dates moving into consumption in a form other than that of whole or pitted dates. To facilitate sales and promote orderly marketing of any variety of restricted dates handled in export, the Committee may participate in or negotiate for handlers, the sale of such dates to meet all or a substantial part of the needs of the particular country, and, in connection with each such sale, the Committee shall extend to all handlers an opportunity to participate therein and shall distribute the returns therefrom to participating handlers according to their respective contributions of dates. The Committee, with the approval of the Secretary, may prescribe rules and regulations governing the opportunity to participate in such sales. The provisions of this section shall not preclude restricted dates being disposed of in outlets for utility and cull dates prescribed in § 987.56.

§ 987.56 [Amended]

29. Section 987.56 is amended by deleting from the first sentence the phrase "concludes are noncompetitive with the outlets for free and restricted dates:", and insert in lieu thereof "with the approval of the Secretary, may specify:".

30. Section 987.57 is amended by revising the title and the first sentence thereof to read:

§ 987.57 Approved manufacturers or feeders.

Diversion of dates pursuant to § 987.55 or § 987.56 shall be accomplished only by such persons (which may include handlers) as are approved manufacturers or feeders. * * *

31. Section 987.61 is revised to read:

§ 987.61 Reports of handler carryover.

Each handler shall file each year with the Committee written reports of his carryover of dates as of March 1, October 1, and at such other times as the Committee may prescribe: *Provided*, That during those seasons when volume regulations are established by the Secretary, the handler shall file an additional report on his January 1 carryover. Such reports shall be filed within 10 days of the date of the carryover. These reporting dates specified may be changed, upon recommendation of the Committee, together with substantiation of the need therefore, with the approval of the Secretary.

32. Section 987.64 is revised to read:

§ 987.64 Reports on disposition of restricted, other marketable, utility, and cull dates.

Each handler disposing of any dates pursuant to §§ 987.55 and 987.56 shall promptly thereafter report such disposition to the Committee in such form as the Committee may prescribe.

§ 987.68 [Amended]

33. Section 987.68 is amended by changing the third sentence to read: "All handlers shall establish and maintain complete records which accurately show the quantity of dates handled, disposed of, and withheld".

34. Section 987.72 is amended by changing the first sentence of paragraph (a) to read:

§ 987.72 Assessments.

(a) *Requirement for payment.* Each handler shall pay to the Committee upon demand, on all dates he has certified as meeting the requirements for marketable dates and utility dates utilized in product outlets including the eligible portion of any field-run dates certified and set aside or disposed of pursuant to § 987.45(f), his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the Committee during each crop year. Should the condition arise wherein the utility portion of dates handled in certain other outlets should not be, in the opinion of the Committee, subject to the payment of assessments on that portion, the Committee may recommend and the Secretary approve by rulemaking, such exclusion. * * *

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

Effective date: All changes are effective March 1, 1978, except the amendment of § 987.72(a) which becomes effective October 1, 1978.

Signed at Washington, D.C., on January 26, 1978.

JERRY C. HILL,
Deputy Assistant Secretary.

[FR Doc. 78-2731 Filed 1-31-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0141]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Divestiture of Bank Shares

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate performance of certain of its functions, the Board of Governors has delegated to each Federal Reserve Bank the authority to grant extensions of the two-year time period within which a company or bank must dispose of bank shares acquired in satisfaction of a debt previously contracted.

EFFECTIVE DATE: January 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate Gen-

eral Counsel, 202-452-3274, or Jennifer J. Johnson, Attorney, 202-452-3584, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Reform Act, which was signed by the President on November 16, 1977, amended section 2(a)(5)(D), and 3(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5)(D), 1842(a)) by granting the Board the authority to extend the time period within which a company or bank must dispose of bank shares acquired in satisfaction of a debt previously contracted. The Board has, by the instant amendment, delegated its authority in this regard to the Federal Reserve Banks.

The provisions of 5 U.S.C. 553 relating to notice and public participation and deferred effective date are not followed in connection with the adoption of this amendment because the change involved herein is procedural in nature and does not constitute a substantive rule subject to the requirements of such section. The amendment is effective immediately.

In order to accomplish this delegation, 12 CFR Part 265 is amended by adding new § 265.2(f)(37) to read as follows:

§ 265.2 Specific functions delegated to Board Employees and to Federal Reserve Banks.

* * * * *

(f) Each Federal Reserve Bank is authorized, as to member banks or other indicated organizations headquartered in its district, or under subparagraph (25) of this paragraph as to its officers:

* * * * *

(37) Under the provisions of section 2(a)(5)(D) and 3(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5)(D), 1842(a)), to extend the time within which a company or a bank must divest itself of bank shares acquired in satisfaction of a debt previously contracted.

Board of Governors of the Federal Reserve System, January 25, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-2736 Filed 1-31-78; 8:45 am]

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-1441]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Delegation of Authority to Director of Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing the delegation of authority to the Director of its Division of Corporation Finance. The new amendment authorizes the Director to grant exemptive orders with respect to applications for exemption from the registration, reporting, proxy and insider trading provisions of the Securities Exchange Act of 1934. Such authority, limited to applications which appear to the Director to be routine in nature and not requiring a hearing, will reduce the processing time for these applications.

EFFECTIVE DATE: January 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Barry Genkin, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-7969.

SUPPLEMENTARY INFORMATION: The Commission today announced the amendment, effective immediately, of its rules governing delegation of authority to the Director of the Division of Corporation Finance (17 CFR 200.30-1) with respect to the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)).

Section 12(h) of the Exchange Act establishes a procedure whereby interested persons may file applications for exemption from the registration, reporting, proxy and insider trading provisions of that Act. Inasmuch as many applications filed under this section are routine in nature, and do not involve policy considerations or novel questions, it is not necessary for the Commission to consider each application on an individual basis. Accordingly, authority is being delegated to the Director to grant exemptive orders with respect to such applications.

17 CFR 200.30-1(d)(7) already delegates to the Director authority to issue notices of applications for exemptions under section 12(h) of the Exchange Act.

To accomplish the additional delegation of authority, the Commission hereby amends 17 CFR 200.30-1(d)(7) to read as follows:

§ 200.30-1 Delegation of authority to the Director of the Division of corporation Finance.

* * * * *

(d) * * *

(7) to issue notices of applications for exemptions and to grant exemptive orders under section 12(h) of the Act (15 U.S.C. 78*l*(h)).

* * * * *

The Commission finds that the foregoing action relates solely to agency management and personnel and, accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary. This action, taken pursuant to Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-2), becomes effective immediately.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 26, 1978.

[FR Doc. 78-2725 Filed 1-31-78; 8:45 am]

[8010-01]

[Release No. 14413]

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

Expiration of Temporary Amendment

JANUARY 25, 1978.

AGENCY: Securities and Exchange Commission.

ACTION: Expiration of temporary amendment.

SUMMARY: The Securities and Exchange Commission today announced that it does not intend to extend beyond its scheduled expiration date of January 31, 1978, the temporary exemption in Securities Exchange Act Rule 15c2-11(f)(4)(T), 17 CFR 240.15c2-11(f)(4)(T), which facilitates the operation of a weekly quotation service for securities traded over-the-counter.

CONTACT PERSON FOR MORE INFORMATION:

David B. Bliss, Division of Market Regulations, Securities and Exchange Commission 20549, 202-755-2946.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2717 Filed 1-31-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

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

[T.D. 78-38]

PART 162—INSPECTION, SEARCH, AND SEIZURE

PART 171—FINES, PENALTIES, AND FORFEITURES

Specified Information

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations to provide that certain specified information shall be set forth in notices of fine, penalty, or forfeiture incurred and in prepenalty notices which are issued by the Customs Service. Notices occasionally have been unclear because of a lack of specific information as to the alleged violations on which liability is based. The purpose of this amendment is to enable the notified parties to make an informed response to the notices..

EFFECTIVE DATE: March 3, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.31(a) of the Customs Regulations (19 CFR 162.31(a)) provides that written notice of any fine or penalty incurred, as well as of any liability to forfeiture, shall be given to each party that the facts of record indicate has an interest in the claim or seized property. The notice shall also inform each interested party of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), or any other applicable statute authorizing remission or mitigation of penalties, or remission of forfeitures, in accordance with Part 171 of the Customs Regulations (19 CFR Part 171). One purpose of the notice of fine, penalty, or forfeiture is to give interested parties the opportunity to petition for relief.

Section 171.1(b) of the Customs Regulations (19 CFR 171.1(b)) provides that prior to the issuance of a claim for forfeiture value in excess of $25,000 for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to the entry, or attempted entry, of merchandise, the district director shall give a written notice to the specified party of his intention to issue such a claim. The notice shall contain a description of the merchandise and shall set forth the circumstances of entry or attempted entry, specifying the provisions of law alleged to have been violated and describing the acts or omissions on which the liability is based. The purpose of the prepenalty notice procedure is to give parties against whom Customs intends to issue a claim for forfeiture value for violation of 19 U.S.C. 1592 an opportunity to respond to the allegations prior to the issuance of the claim.

In order that parties might properly present their reasons why a claim for forfeiture value should not be issued for an alleged violation of 19 U.S.C. 1592, or why relief should be granted from any fine, penalty, or forfeiture incurred, it is desirable to specify the contents of the prepenalty notice and of the notice of fine, penalty, or forfeiture. Accordingly, both notices will contain the provisions of law alleged to have been violated and a description of the specific acts or omissions forming the basis of the alleged violations. If the alleged violations involve the entry or attempted entry of merchandise, both notices will also contain a description of the merchandise, the circumstances of entry or attempted entry, and the identity of each entry. In addition, if the alleged violations involve a loss of revenue, both notices will contain the total loss of revenue and how it was computed. The notices will also contain the loss of revenue attributable to each entry, if it is readily susceptible to calculation.

Inasmuch as these amendments benefit the public by providing specific information necessary to enable a party to respond to actions taken by the Customs Service, notice and public procedure thereon is found to be unnecessary.

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, U.S. 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

Parts 162 and 171 of the Customs Regulations (19 CFR Parts 162, 171) are amended in the following manner:

Section 162.31 is amended by redesignating present paragraph (b) as paragraph (c), and by adding a new paragraph (b) to read as follows:

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

* * * * *

(b) *Contents of notice.* The notice shall contain the following:

(1) The provisions of law alleged to have been violated;

(2) A description of the specific acts or omissions forming the basis of the alleged violations;

(3) If the alleged violations involve the entry or attempted entry of merchandise,

(i) A description of the merchandise and the circumstances of its entry or attempted entry, and

(ii) The identity of each entry, if specific entries are involved; and

(4) If the alleged violations involve a loss of revenue,

(i) The total loss of revenue and how it was computed, and

(ii) The loss of revenue attributable to each entry, if readily susceptible to calculation.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

The second sentence of paragraph (b)(1) of § 171.1 is amended to read as follows:

§ 171.1 Special procedures for certain liabilities incurred under section 592, Tariff Act of 1930, as amended.

* * * * *

(b) *Prepenalty notice procedure.*—(1) *Issuance of prepenalty notice.* * * * The notice shall set forth the information required by section 162.31(b) of this chapter. * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: January 18, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-2843 Filed 1-31-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER XIII—FEDERAL DISASTER ASSISTANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-501]

PART 2205—FEDERAL DISASTER ASSISTANCE

Individual and Family Grant Program

AGENCY: Federal Disaster Assistance Administration.

ACTION: Interim rule.

SUMMARY: This rule revises the eligibility criteria for the Individual and Family Grant Program to conform to the August 25, 1977 agreement between Farmers Home Administration

(FmHA) and the Small Business Administration (SBA) which permits either FmHA or SBA to make housing or personal property loans in a major disaster when farmers have suffered production and farm losses as well as housing and personal property losses.

EFFECTIVE DATE: February 1, 1978.

COMMENTS DUE: March 3, 1978.

ADDRESS: Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

C. T. Babcock, Federal Disaster Assistance Administration, Room B-133, 451 Seventh Street SW., Washington, D.C. 20410, 202-634-7860.

SUPPLEMENTARY INFORMATION: This rule updates and revises that currently published at 24 CFR 2205.48 (c)(1)(i)(A) and (c)(1)(ii). Pub. L. 94-305 amended the Small Business Act, and authorized SBA to assist small businesses engaged in farming and related activities under all of its programs including its physical and economic injury loan programs. On August 25, 1977 FmHA and SBA entered into a memorandum of understanding pertaining to disaster type loan assistance. This memorandum is aimed at improving and expanding, to the extent possible, the delivery of financial assistance to the agricultural segment of the country. One of the areas addressed is that of the farmer who has suffered housing and personal property losses. In this instance, it was agreed that when a farmer, rancher, or person engaged in aquaculture has suffered production and farm losses, as well as housing and personal property losses, either FmHA or SBA may make loans for those losses. This change necessitates a change in the eligibility criteria for the Individual and Family Grant Program to recognize that farmers, ranchers, and aquaculturists may now apply to SBA for loan assistance as well as to FmHA. The eligibility criteria specifies that a grant applicant must apply to available governmental disaster assistance programs before his eligibility for a grant is determined. Since both the FmHA and the SBA loan programs are considered governmental distaster assistance programs, under the current regulation, a farmer, rancher, or aquaculturist would have to apply to both programs before their eligibility for grant assistance could be determined.

Since the FmHA and SBA loan programs provide similar assistance, and since the eligibility criteria are also similar, FDAA has determined that a denial of loan assistance from either program (with one exception noted in § 2205.48(c)(1)(ii)) provides sufficient basis on which to determine eligibility for the Individual and Family Grant Program. This decision requires two changes to § 2205.48(c). First, at the end of subparagraph (c)(1)(i)(A) the following language is added: "(except as provided for in subparagraph (c)(1)(ii) below)". Second, subparagraph (c)(1)(ii) is revised to read as follows:

(ii) Farmers, ranchers and persons engaged in aquaculture must apply to either the Farmers Home Administration (FmHA) or the Small Business Administration (SBA) for loan assistance, and obtain a denial of such assistance from either FmHA or SBA before they may be considered eligible for a grant under this section. If applicants for FmHA loan assistance are unable to obtain such assistance because in FmHA's determination, they are able to obtain necessary credit from other sources, they will be considered ineligible for grant assistance for those items or services for which assistance may be provided by the FmHA's Emergency Loan program.

In order to insure that farmers, ranchers and aquaculturists receive maximum benefits as provided by the Disaster Relief Act of 1974, and more specifically Section 408, Individual and Family Grant Programs, at the earliest practicable date, FDAA has determined that it is in the public interest to publish these changes as interim regulations effective February 1, 1978. However, interested parties and government agencies are encouraged to submit written comments, suggestions data or arguments regarding this rulemaking to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All submissions received on or before March 3, 1978, will be evaluated and acted upon in the same manner as if this document were a proposal. All comments shall be available for inspection at the Office of the Rules Docket Clerk.

With the concurrence of the appropriate Departmental officials, the Administrator has issued a Finding of Inapplicability of Environmental Impact concerning this rule, in accordance with Section 102 of the National Environmental Policy Act of 1969 and the procedures in HUD Handbook 1390.1 (38 FR 19182). It is the position of the signatories to this finding that this rule in itself has no significant impact on the human environment. Copies of this finding may be inspected or obtained at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, § 2205.48(c) is amended to read as follows:

§ 2205.48 Individual and family grants.

* * * * *

(c) *National eligibility criteria.* In administering the Individual and Family Grant Program, a State shall determine the eligibility of an individual or family for a grant to meet a necessary expense or serious need in accordance with the following criteria.

(1) *General.* (i) In order to qualify for a grant under this section, an individual or family representative must certify:

(A) That application has been made to other available governmental disaster assistance programs for assistance to meet a necessary expense or serious need and that neither he nor any member of his family has been determined to be qualified for such assistance or, for demonstrated reasons, any assistance received has not satisfied any such necessary expense or serious need (except as provided for in paragraph (c)(1)(ii) of this section).

(B) That with respect to the specific necessary expense or serious need or portion thereof for which application is made, neither he, nor to the best of his knowledge, any member of his family, has previously received or refused assistance from other means.

(C) That should the individual or family receive a grant and assistance from other means later becomes available to meet the necessary expense or serious need, the individual or family shall refund to the State that part of the grant for which assistance from other means has been received.

(ii) Farmers, ranchers, and persons engaged in aquaculture must apply to either the Farmers Home Administration (FmHA) or the Small Business Administration (SBA) for loan assistance, and obtain a denial of such assistance from either FmHA or SBA before they may be considered eligible for a grant under this section. If applicants for FmHA loan assistance are unable to obtain such assistance because, in FmHA's determination, they are able to obtain necessary credit from other sources, they will be considered ineligible for grant assistance for those items or services for which assistance may be provided by the FmHA's Emergency Loan Program.

(iii) Individuals or families who incurred a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their residency in the major disaster area or within the State in which the major disaster had been declared.

* * * * *

(Sec 408, Pub. L. 93-288, 88 Stat. 156 (42 U.S.C. 5178); E.O. 11795 as amended by E.O. 11910, 39 FR 25939; Delegation of Authority, 29 FR 28227.)

NOTE.—The Federal Disaster Assistance Administration 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.

Issued at Washington, D.C., January 24, 1978.

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 78-2803 Filed 1-31-78; 8:45 am]

[4310-02]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 256—OFF-RESERVATION TREATY FISHING AMENDMENT

Identification Cards

JANUARY 20, 1978.

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

ACTION: Amendment of § 256.3 and waiver of 30-day effective date.

SUMMARY: The purpose of this amendment is to extend the deadline for issuing temporary identification cards to tribal members to be used in connection with treaty fishing rights. This extension is necessary to allow eligible tribal members to receive needed identification cards.

EFFECTIVE DATE: These regulations shall become effective February 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Ulyses S. St. Arnold, Hunting and Fishing Rights Specialist, Office of Trust Responsibilities, Bureau of Indian Affairs, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20245, 202-343-8018.

SUPPLEMENTARY INFORMATION: The primary author of this document is: Ulyses S. St. Arnold, Hunting and Fishing Rights Specialist, Office of Trust Responsibilities, Bureau of Indian Affairs, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20245, 202-343-8018.

Beginning on p. 24183 of June 5, 1975, FEDERAL REGISTER (40 FR 24183), there was published a notice of final rulemaking. Since this revision extends a deadline for issuing temporary identification cards to tribal members to be used in connection with treaty fishing rights, advance notice and public procedure thereon would delay extension of the deadline for issuing the identification cards and is deemed contrary to the public interest. Therefore, advance notice and public procedure are dispensed with under the exception provided in 5 U.S.C. 553(b)(B)(1970).

Since this revision extends the deadline to allow tribal members to receive needed identification cards, the 30-day deferred effective date is dispensed with under the exception provided in 5 U.S.C. (d)(1)(1970).

Section 256.3 of Subchapter W, Chapter I, Title 25 of the Code of Federal Regulations is hereby amended by revising paragraph (b) to read as follows:

§ 256.3 Identification cards.

* * * * *

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided*, That until December 31, 1980, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with Part 2 of this chapter.

* * * * *

NOTE.—The Bureau of Indian Affairs 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.

FORREST J. GERARD,
Assistant Secretary—Indian Affairs.

[FR Doc. 78-2766 Filed 1-31-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action approves a revision to the Ohio State Implementation Plan (SIP) submitted by the Governor of Ohio on October 17, 1975, and supplemented on November 17, 1976 and June 1, 1977. The revision exempts two units at Columbus and Southern Ohio Electric Co.'s Pickaway Generating Station (CSOE) from Ohio SIP regulations which control particulate matter emissions. Approval is conditioned on the nonsimultaneous operation of these units and their scheduled retirement on or before October 1, 1980. The supporting documentation demonstrates that this SIP revision will not interfere with attainment and maintenance of National Ambient Air Quality Standards for particulate matter.

EFFECTIVE DATE: February 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Patricia Springer, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn, Chicago, Ill. 60604, 312-353-2205.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On October 17, 1975, the Governor of the State of Ohio submitted to the Regional Administrator, Region V, a Consent and Abatement Order for CSOE as a proposed revision to the SIP. The Order, which was signed by the Director of the Ohio Environmental Protection Agency and CSOE on April 4, 1975, involves the applicable compliance schedules for several CSOE units and an exemption for two units at Pickaway Generating Station.

The need to consider revision of the SIP to include the Order's terms for most of CSOE's units was mooted by the Regional Administrator's approval on September 23, 1976 of an extension of the attainment date for primary and secondary National Ambient Air Quality Standards (NAAQS) for suspended particulate matter to April 15, 1977 (41 FR 41691). Only Pickaway units 3 and 4 (boilers 7 and 8) remain the subject of the SIP revision request.

For units 3 and 4 (boilers 7 and 8) at Pickaway Generating Station, the Consent Order reads as follows: "No control strategy required, provided use of both boilers is discontinued as soon as possible, consistent with load demand but no later than October 1, 1980." This provision of the Consent Order exempts units 3 and 4 (boilers 7 and 8) from compliance with Ohio regulation AP-3-11 (emissions of particulate matter from fuel-burning equipment) and AP-3-07 (visible air contaminants).

In support of the revision request, the Governor submitted on November 17, 1976, an air quality dispersion modeling analysis employing the MAX24 model and air quality monitoring data for 1974 and part of 1975. Upon review of the support materials, Region V determined that the exemption of the two Pickaway units, so long as the units are not operated simultaneously, will not interfere with the attainment and maintenance of the NAAQS for particulate matter.

In response to Region V's concern that an adequate public hearing in accordance with 40 CFR 51.4 had not

been conducted, the State noticed and held a public hearing on the Consent and Abatement Order on March 16, 1977, and submitted the required certification on June 1, 1977.

The revision was proposed as rulemaking and comment solicited on September 21, 1977 (42 FR 47564). The Regional Administrator stated in the proposal that any approval would be conditioned upon the nonsimultaneous operation of the units. In response, CSOE submitted a comment that a nonsimultaneous mode of operation was its understanding of the terms of the Order. In order to avoid any ambiguity in the terms of the Order, the revision specifies the intended condition.

Further, on December 15, 1977, Region V requested the opinion of the Ohio Attorney General's Office regarding the legally and enforceability of the Consent Order in light of several decisions of the Ohio Environmental Board of Review (EBR). The Ohio Attorney General's Office, by letter dated December 20, 1977, has determined that the Consent Order involved herein was legally adopted as a matter of State law and is, therefore, enforceable as required by 40 CFR 51.22.

II. Public Comments

In response to the proposed revision, two comments were received. Columbus and Southern Ohio Electric, as noted above, clarified its understanding of the terms of the Consent Order and the Ohio Environmental Council (OEC), through its counsel, commented that the Administrator should disapprove the revision. The OEC supplemented its comment on December 23, 1977. The OEC stated the following reasons for disapproval: The station is too close to a non-attainment area for particulates; the public hearing was inadequate; the Consent Order does not meet the requirements of section 113(d) of the Clean Air Act; and the Order was not authorized under State law. As is set forth below, the OEC's comments would not justify disapproval of the revision and accordingly, the revision has been approved under section 110(a)(3) of the Clean Air Act and 40 CFR Part 51.

A. Near Nonattainment Area

OEC states that Franklin County (Columbus, Ohio), which is contiguous to Pickaway County (where the Pickaway Generating Station is located) is a nonattainment area for particulates and that this should preclude exempting the CSOE sources from particulate controls. As demonstrated by the dispersion modeling analysis, the emissions from Pickaway Units 3 and 4 (boilers 7 and 8) will not interfere with the attainment and maintenance of the NAAQS for particulates in the area around the station or in the Columbus, Ohio nonattainment area.

B. Adequacy of Public Hearing

OEC states that the public hearing held on March 16, 1977 was "pro forma" since the Order which is the subject of the revision had already been signed and, therefore, the hearing does not meet the requirements of the Clean Air Act, as amended. Section 110(a)(3) requires that any revision approved by the Administrator must be adopted by the State after reasonable notice and public hearings. That requirement, as interpreted by the Agency in regulations, has been met here; moreover, the OEC had an opportunity under State law to participate in the proceedings which led to the issuance of the Order and, in fact, counsel for OEC did participate.

EPA regulations provide that one or more public hearings must be held on any discretionary revision pursuant to § 51.6(d) of Title 40, Code of Federal Regulations, prior to submission to the Administrator, as opposed to mandatory revisions pursuant to § 51.6(a), which must have public hearings prior to adoption by the State. See 40 CFR 51.4(a). The Consent and Abatement Order submitted by the State in this case is a § 51.6(d) revision. Therefore, the public hearing held March 16, 1977, prior to the final submittal to the Administrator on June 1, 1977, meets the requirements of section 110(a)(3) and 40 CFR 51.4.

The hearing required by section 110(a)(3) as outlined in 40 CFR 51.4(b) must include: reasonable notice of at least 30 days in prominent advertisement in the Region, announcing the date, time, and place of the hearing; availability of the revision for public inspection in at least one location in the Region where the affected source is located; notification to the Administrator and to affected local air pollution agencies. The State must make and retain a record of the hearing and must submit with the revision a certification that the hearing required by § 51.4(a) has been held in accordance with the notice requirements of § 51.4(b). All of these requirements have been met, as documented by the June 1, 1977 submission. The hearing meets all the requirements of 40 CFR 51.4.

In addition to the reasonable notice and public hearing provided by the March 16, 1977 hearing, the public and, in particular, counsel for the OEC, have participated in the decision-making which resulted in the Consent and Abatement Order. The CSOE Order was issued following lenghty adjudication proceedings in which several utilities and citizens, including Northern Ohio Lung Association (NOLA), contested variances and operating permits issued by the Director of Environmental Protection in May of 1973. Moreover, counsel for OEC, who represented NOLA in these proceedings, also appealed the Findings and Orders of the Director to the Environmental Board of Review on January 13, 1975.[1]

C. Applicability of Section 113(d)

OEC's contention that the revision (State Consent Order) must meet the requirements of section 113(d) of the Clean Air Act, 42 U.S.C. 7413, is misplaced. Section 113(d), which was added by section 112 of the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 705, is designed to authorize the issuance of delayed compliance orders to sources that are not in compliance and cannot come into compliance by the SIP attainment date. The section is not intended to authorize orders which will change the emission limitation of the sources or, as here, exempt the source from compliance with emission limitations. Such actions must be taken through SIP revisions under section 110(a)(3) of the act.

The State has the authority under section 110(a)(3) of the act to revise the SIP at any time, as long as the revision will not interfere with the attainment and maintenance of the NAAQS. As the Supreme Court stated in *Train* v *NRDC*, 421 U.S. 60 (1975), the State may change the mix of emission limitations in any fashion it wants, as long as the NAAQS are met.

The 1977 Amendments to the Clean Air Act have not altered the State's authority to revise the SIP under section 110(a)(3). The support documentation supplied by the State in this case demonstrates that the exemption of the two Pickaway units will not interfere with attainment and maintenance of the NAAQS. The revision is, therefore, properly within the authority of the State under section 110(a)(3).

D. The Legality of the SIP Revision Request Under State Law

OEC also commented that the terms of the Consent Order are not autho-

[1] The Ohio Revised Code and Ohio EPA rules and regulations provide that anyone aggrieved or adversely affected by the issuance of a variance may object and become a party in the subsequent adjudication hearing. See ORC § 3745.07. In addition, any person may intervene in an adjudication hearing (OEPA Rule OAC 3745-47-15), or may informally present views during the course of the hearing under Rule OAC 3745-47-21. Appeal from the order of the Director may be taken to the Environmental Board of Review (ORC § 3745.04). Orders of the EBR are appealable to the Court of Appeals of Franklin County. See ORC § 3745.081 Notice of the Director's actions is required by ORC § 3745.07.

rized under either the Clean Air Act or Ohio State law. However, as is explained above, the OEC comment is misplaced, since it is based on a misunderstanding of the effect of the Order and the SIP revision.

OEC argued that the State does not have the authority under Ohio law to issue an Order that extends the compliance date for a noncomplying source beyond the attainment date of the plan, citing *Cleveland Electric Illuminating and Northern Ohio Lung Association* v *Williams*, Case Nos. 76AP-929 and 934 (Franklin County Court of Appeals, December 8, 1977). The terms of the Consent Order for the sources subject to the Order and this SIP revision do not delay the compliance date for the sources beyond the attainment date as OEC contends. Rather, the Order and the SIP revision exempt the sources from any emission limitations based on the finding that such an exemption will not affect the attainment and maintenance of the NAAQS. The State has that authority under section 110(a)(3) and the court decision cited by the OEC recognizes the State's authority to revise the SIP in such a situation.

In addition, the OEC commented that under State law, Consent Orders cannot be issued and that, therefore, issuance of the Order is not a proper basis for a SIP revision under section 110(a)(3). The December 23, 1977 letter from the Ohio Attorney General's Office discussed each of the administrative decisions which might be interpreted as supporting OEC's position and concluded that State law did not preclude the Agency from considering the Consent Order as a proper request for a SIP revision. The Agency has reviewed both the opinion from the Attorney General's Office and the legal arguments presented by the OEC and has concluded that a sufficient basis for rejecting the opinion of the Attorney General's Office has not been presented. Moreover, the Agency has concluded that there is no basis, as the OEC argues, for rejecting the opinion from the Attorney General's Office because the Attorney General's Office represents the Director of the Ohio Environmental Protection Agency.

III. Request for a Stay

The OEC requested that if the Administrator approves this revision, he stay the regulation pending determination of a petition for review. Since the OEC presumably has not determined if it will file a petition to review this approval under section 307 of the Clean Air Act, a stay of the regulation would be inappropriate. OEC may request a stay after a petition is filed, if one is filed; however, based on the comments presented by OEC, a stay would appear to be inappropriate. OEC has had at least two opportunities to voice its objections to the revision and its comments would not justify staying the relaxation of the Ohio regulations. Therefore, OEC's request for an administrative stay is denied.

IV. The Effective Date

Section 553(d) of the Administrative Procedure Act requires that a rule will not be effective for thirty days following publication. However, a rule which grants or recognizes an exemption or relieves a restriction is specifically exempted from compliance with the 30-day rule. See 5 U.S.C. 553(d)(1). The revision in this case "relieves a restriction" and is, therefore, effective upon publication (February 1, 1978).

V. Approval of the SIP Revision

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

Part 51 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart kk—Ohio

1. Section 52.1870 is amended by adding new paragraph (c)(13) as follows:

§ 52.1870 Identification of plan.

* * * * *

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

* * * * *

(13) Consent and Abatement Order regarding Columbus and Southern Ohio Electric Company's Picway Units 3 and 4, submitted by Governor on October 17, 1975, supplemented on November 17, 1976 and June 1, 1977.

2. Section 52.1880 is amended by adding new paragraph (b) as follows:

§ 52.1880 Control strategies: particulate matter.

* * * * *

(b) In Pickaway County, Columbus and Southern Ohio Electric Company, or any subsequent owner or operator of the Picway Generating Station, shall not operate simultaneously Units 3 and 4 (boilers 7 and 8) at any time. These units will terminate operation no later than October 1, 1980.

(42 U.S.C. 7410.)

Dated: January 26, 1978.

Douglas M. Costle,
Administrator.

[FR Doc. 78-2800 Filed 1-31-78; 8:45 am]

[4310-10]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sex Discrimination

AGENCY: Office for Equal Opportunity, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule amends regulations concerning sex discrimination by deleting the word "sex" from wherever it appears therein. These amendments are made to clarify that Title VI does not provide authority to prohibit discrimination on the basis of sex. Although other authority is cited in the present regulations, it has been determined to set forth the requirements with regard to nondiscrimination on the basis of sex in a separate regulation.

EFFECTIVE DATE: March 3, 1978.

FOR FURTHER INFORMATION CONTACT:

William H. Hunter, Acting Assistant Director, Office of the Secretary, Office for Equal Opportunity, Title VI Division, Department of the Interior, telephone No. 202-343-4331.

SUPPLEMENTARY INFORMATION: The primary author of this document is Melvin C. Fowler, Equal Opportunity Specialist, Office of the Secretary, Office for Equal Opportunity, Title VI Division, Department of the Interior, telephone No. 202-343-6335.

Accordingly, 43 CFR Part 17 is amended ad follows:

§ 17.1 [Amended]

Section 17.1 is amended by deleting the word "sex."

§ 17.3 [Amended]

Section 17.3(a) (b)(1) and (b)(2) are amended by deleting the word "sex."

§ 17.11 [Amended]

Section 17.11(a) is amended by deleting the word "sex."

(Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.)

James A. Joseph,
Under Secretary.

January 24, 1978.

[FR Doc. 78-2775 Filed 1-31-78; 8:45 am]

[3510-03]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

PART 280—LIMITATIONS ON THE AWARD AND PAYMENT OF OPERATING DIFFERENTIAL SUBSIDY FOR LINER OPERATORS

Further Extension of Comment Period

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Further Extension of Comment Period.

SUMMARY: By notice published in the FEDERAL REGISTER on December 5, 1977 (42 FR 61460) the Maritime Subsidy Board/Assistant Secretary of Commerce for Maritime Affairs adopted interim regulations, to become effective January 1, 1978, revising regulations for limitations on the award and payment of operating differential subsidy for liner operators. Written comments were invited to be submitted by December 30, 1977. By notice published in the FEDERAL REGISTER on January 3, 1978 (43 FR 8) the time in which to submit comments was extended to January 31, 1978. A request has now been received for a further extension of time to submit comments, and is hereby granted until February 15, 1978.

DATE: Written comments are due on or before February 15, 1978.

ADDRESS: Submit (in triplicate) to Maritime Administration, Department of Commerce, Room 3099-B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

James S. Dawson, Jr., Secretary, Maritime Subsidy Board/Maritime Administration, Washington, D.C. 20230, telephone 202-377-2188.

Dated: January 26, 1978.

By order of the Maritime Subsidy Board/Assistant Secretary for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-2706 Filed 1-31-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19665; FCC 78-29]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

PART 91—INDUSTRIAL RADIO SERVICES

Providing Frequencies, Standards and Procedures for On-Board Communications in the Industrial and Maritime Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These amendments will provide frequencies, standards, and procedures for on-board communications in the Industrial and Maritime Mobile Services. These amendments are being made in response to requests from industry in regard to eligibility requirements and points of communication pertaining to on-board communications. The purpose of these amendments is to clarify existing regulations.

EFFECTIVE DATE: March 6, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Walter E. Weaver, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: January 17, 1978.

Released: January 27, 1978.

In the matter of amendments of Parts 2, 81, 83, and 91—to provide frequencies, standards and procedures for on-board communications in the Industrial and Maritime Mobile Services; memorandum opinion and order.

1. The Commission released its First Report and Order (FCC 73-884) in the instant proceeding on September 6, 1973, which was published in the FEDERAL REGISTER on September 12, 1973 (38 FR 25177).

2. Petitions for reconsideration were filed, on October 10, 1973, by the Central Committee on Communication Facilities of the American Petroleum Institute (API) and , on October 12, 1973, by the American Institute of Merchant Shipping (AIMS). With regard to the rule changes as set forth in the Appendix to the First Report and Order, API requested amendment of the supplemental eligibility requirements (section 83.813(a)(3)), and, in Part 91, the distance separating the transmitter control point (a hand carried mobile unit) and the radiating portion of the antenna (section 91.554(b)(50)). AIMS, in their petition, requested expansion of the permitted uses of on-board communications (section 83.815).

3. With regard to section 83.813(a)(3), API points out that as presently worded this subparagraph does not accommodate those practical situations where both the parent and subsidiary corporations are barred from holding their own authorization. Further, API points out that the Commission has consistently provided in the rules special provisions permitting any qualified "member" of a corporate "family" to obtain a station authorization allowing it to provide the actual user entity with a nonprofit radio communication service. We concur that section 83.813(a)(3) can be interpreted in the manner described by API, however, such was not our intent. On the other hand, the amendment proposed by API would fulfill our intent, and, at the same time, provide the clarification requested by API. We are, therfore, amending section 83.813(a)(3), as set forth in the attached Appendix, to include the added provision suggested by API.

4. With regard to section 83.815, AIMS requests amendment to clarify or to include in the rules provision permitting the use of on-board communications while engaged in the maneuvering of cargo barges (lighters) in the vicinity of an anchored ship. While the Final Report of RTCM Special Committee 62[1] did not provide for this usage, neither did it recommend that it not be permitted. It is our view that this is a valid and proper use of on-board communications and are, therefore, adding a new subparagraph (4) to section 83.815(a) to permit its use, as set forth in the attached Appendix.

5. AIMS also recommends amendment of Section 83.815 to permit the use of on-board communications for bunkering, or while vessels are secured together, and requests that we reconsider the provisions of that section. special Committee 62[1] strongly opposed the use of on-board facilities for communication between shore based personnel for the loading and unloading of cargo from vessels moored to a dock. It was the view of SC 62 that such communications were primarily a land based service, rather than a maritime mobile service. On the basis that bunkering of vessels usually occurs while the vessel is moored to a dock, we believe it is appropriate to categorize the requested usage as primarily shore based. As a primarily shore

[1]The Radio Technical Commission for Marine Services, an industry/Government advisory group, established SC 62 to consider "On-Board Communications". SC 62's work extended over a period of 3 years. Its final report is dated January 18, 1973.

based operation, it is not properly a part of the maritime mobile service and, therefore, should be excluded. Further, it was the view of SC 62 that communications of a vessel to vessel (intership) nature should not be on on-board channels, but should be handled on VHF channels allocated to the maritime mobile service and currently available under Part 83 of the FCC Rules. Accordingly, we are not persuaded that communications for bunkering or while vessels are secured together should be permitted on the on-board channels and they are, therefore, denied.

6. We turn now to API's petition that we reconsider the wording of section 91.554(b)(50)[2] as it pertains to the distance separating (a) the transmitter control point (hand carried mobile unit in this case) from (b) the radiating portion of the antenna. API expresses the view that limiting the separation between these two points to 10 feet is totally impractical and suggests that the last sentence of section 91.554(b)(50) be modified to apply the 10 feet to antenna height above the highest working deck. We concur and have, therefore, amended the concerned sentence of section 91.554(b)(50) to reflect that change, as set forth below.

7. In view of the foregoing, *it is ordered*, That pursuant to the authority contained in sections 4(i) and 303 (a), (b), (c), (d), (e), (f), and (r) of the communications Act of 1934, as amended, Parts 83 and 91 of the commission's rules, are amended, effective March 6, 1978, as set forth below.

8. *It is further ordered*, That the Petitions for Reconsideration submitted by the Central committee on Communication Facilities of the American Petroleum Institute and the American Institute of Merchant Shipping are granted to the extent set forth herein and are denied in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Parts 83 and 91 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In § 83.813, paragraph (a)(3) is amended to read as follows:

§ 83.813 Supplemental eligibility requirements.

(a) * * *

(3) A corporation proposing to furnish a nonprofit radio communications service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary where the party to be served is the owner or operator of the vessel aboard which the on-board station is to be installed and operated.

* * * * *

2. In § 83.815, a new paragraph (a)(4) is added to read as follows:

§ 83.815 Points of communication.

(a) * * *

(4) In the immediate vicinity of the same vessel for operational communications while engaged in the maneuvering of vessel cargo barges and lighters.

* * * * *

3. In § 91.554, paragraph (b)(50) is amended to read as follows:

§ 91.554 Frequencies available.

* * * * *

(b) * * *

(50) Frequencies subject to this assignment limitation are herein considered collectively for use for communications concerned with cargo handling from a dock, or cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

Mobile relay (MHz): 457.525, 457.550, 457.575, and 457.600.
Mobile (MHz): 467.750, 467.775, 467.800, and 467.825.

For single frequency simplex: 457.525, 457.550, 457.575, and 457.600 MHz. The effective radiated power (ERP) on any frequency shall not exceed 2 watts. The center of the radiating system of the on-board repeater antenna shall be located no more than ten (10) feet above the vessel's highest working deck.

[FR Doc. 78-2728 Filed 1-31-78; 8:45 am]

[2]API refers, correctly, to subparagraph (49) of section 91.554(b), since that is the designation set forth in the First Report and Order. However, this designation was later corrected, as now set forth in Part 91, to subparagraph (50).

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

PART 1125—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES IN THE NORTHEAST-MIDWEST REGION OF THE UNITED STATES

Interpretations of Standards

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Publication of interpretations.

SUMMARY: Pursuant to § 1125.1(e) of Title 49 of the Code of Federal Regulations, the Rail Services Planning Office is publishing three interpretations of its Regional Freight Standards as amended through May 10, 1977. Each interpretation gives the date it was issued.

FOR FURTHER INFORMATION CONTACT:

James R. Wells, Chief, Cost Evaluation Branch, Rail Services Planning Office, Interstate Commerce Commission, 1900 L Street NW., Washington, D.C. 20036, area code 202-254-7552.

INTERPRETATION No. 1 ISSUED MARCH 3, 1977.

On February 14, 1977, the Commonwealth of Virginia requested the Rail Services Planning Office (the Office) to issue an interpretation of § 1125.1(d) of the Standards, as amended on December 16, 1976 (41 FR 55686). The request states:

> It is our interpretation and understanding that this Section provides that the subsidizer must be notified within the first ten (10) months of the contract year that the actual costs will exceed the estimated costs by more than fifteen (15) percent before any adjustment is allowed on the first year's payments. If the subsidizer is notified of such excessive costs after the first ten months of the contract year, the excess is allowed only as an adjustment to the second year's payments.

An examination of the history of § 1125.1(d) makes it clear that the Virginia interpretation is correct. The original provision, which was promulgated January 8, 1975 (40 FR 1624), read in pertinent part as follows:

> The final payment will be adjusted based on data related to the subsidy period. Where an adjustment results in an increase in the estimated subsidy payment, the amount of such increase in excess of 15 percent of the estimated payment shall be treated as a carryover avoidable cost in the subsequent subsidy year.

This provision established a ceiling to the subsidy payment for a given year; the adjustment could not exceed 15 percent of the estimated payment. However, after reviewing petitions for reconsideration, the Office changed its approach concluding that "* * * the necessity for a fixed ceiling is not as important as the Office originally believed it to be." (40 FR 14187). Consequently, the Office amended the subsection by adding the following language to the last sentence: "unless the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent in one of the first three quarterly Financial Status Reports, required (by § 1125.9(f)), or the increase results from an expense preapproved by the subsidizer." The Standards required that quarterly reports be filed within 30 days after the end of each quarter of the subsidy year. Thus, the third quarterly report would be submitted at the end of the first ten months of the subsidy period.

In the discussion which was published with the amendment, the Office stated:

This modification will assure that the subsidizer is kept informed of the financial status of the line and will provide timely information either to secure the additional funds or to minimize the losses. It will also provide a means to cover expenses that were not anticipated but which both parties agree are necessary to the continued operation of the line. (40 FR 14187).

On December 16, 1976, the Office issued a number of amendments to the standards. In what it classified as a "technical amendment", the Office changed the requirement that the notification in § 1125.1(d) be contained in "one of the first three quarterly Financial Status Reports" and reworded the provision to read that the notification must be "based on the data contained in one of the Financial Status Reports issued during the first ten months of the subsidy year." (41 FR 55690). The change was made because, by contract, the Consolidated Rail Corporation (ConRail) has agreed to issue monthly reports in lieu of quarterly reports. Although the amended standard does not specify that the notification must be contained in one of the monthly reports submitted in the first ten months, the clear intent is that the notification must be made within that period, either in one of the reports itself or separately.

INTERPRETATION NO. 2 ISSUED

MARCH 11, 1977.

On January 16, 1977, the Hillsdale county Railway Company, Inc., (Hillsdale) requested the Rail Services Planning Office (the Office) to clarify several sections of the Standards. The following interpretations are issued in response to that request. The issues are addressed in the order in which they were presented.

The State of Michigan Department of Highways and Transportation has submitted a reply to the Hillsdale request, and, by separate letter, has requested clarification of the proper application of the amendment to § 1125.5(1) *Administrative costs,* which was issued December 16, 1976 (41 FR 55686). The issues raised by the State have been given full consideration by the Office in its resolution of the issues raised by Hillsdale.

1. *Section 1125.4 Revenue attributable to the rail properties.* Hillsdale requests a clarification as to how to treat certain interest income. Michigan states that the interest involved comes from three sources: Interest on cash received upon issuance of stock; interest on an interline savings account; and interest on an operating savings account. The interest earned on the first and third accounts, capital and operations savings, is a result of the owner's investment and should not be included in the computation of the subsidy payment. Interest on the second account, the interline savings account, represents interest earned on money which is not Hillsdale's but is merely being held by Hillsdale pending its transfer to another line. This income should be included in the subsidy calculation as revenue attributable to the rail property and should be reported under § 1125.4(d) *Account 143—miscellaneous.* This interest income will offset operating expenses and reduce the amount of the subsidy.

Hillsdale points out that, if income of this kind is attributable to the rail properties, then it should also be utilized in the computation of management and administrative fees. The Office agrees. To the extent that this interest income increases revenues, it will also increase any management or administrative fee calculated as a percentage of those revenues.

2. *Section 1125.5 Avoidable costs of providing service.* Hillsdale has raised three questions regarding costs includable in this section. First, Hillsdale requests confirmation of its interpretation that reimbursement of travel and subsistence costs of outside consultants are avoidable costs and reimbursable by the subsidizer. The Office agrees that reasonable travel and subsistence costs are allowable; however, it would urge that an estimate of any such costs be included in the estimated subsidy calculation. This approach would insure that the subsidizer was aware that such costs might be incurred and would also make it less likely that the inclusion of the actual costs at the end of the subsidy year would increase the estimated subsidy payment by more than the 15 percent limit.

Second, Hillsdale requests confirmation of its interpretation that travel and subsistence reimbursements and reasonable relocation allowances for selected key management personnel are avoidable costs and reimbursable by the subsidizer. Michigan objects to the inclusion of such costs and states that one of the criteria in selecting Hillsdale as designated operator was that "* * * the company, including its management team, would be located at the principle business site, at no cost to the State." The Office believes that this is a question of contractual intent which must be resolved by the parties. The parties may agree to include any of these costs as avoidable costs of providing the service; whether or not such agreement was reached in the instant case is not a question for the Office to decide.

In cases where the parties do agree to include such costs in the subsidy calculation, the Office would urge the railroad to include an estimate of the costs in the estimated subsidy calculation for the same reasons specified above with regard to costs of consultants.

Third, Hillsdale requests a clarification as to whether certain preoperating activities, which it terms "essential to compliance with the April 1, 1976, start-up date", were reimbursable avoidable costs. The costs, all of which were incurred after Hillsdale's selection as designated operator and before the start-up of operations, included such activities as coordination meetings with ConRail personnel and rail users; preparation of tariff adoption notices; establishment of divisions; establishment of an accounting system; preparation of wages, bills, and other documents; preparation of employee timetables and rule books; development of an operating organization and staff, including recruitment of personnel; execution of operating and other agreements with other railroads and States; execution of agreements with the AAR and tariff publishing agents; preparation of locomotives for revenue service; review of legal documents; coordination with the ICC; and arranging for an adequate supply of rolling stock for the start-up of operations. Michigan's position is that, unless otherwise stated in the operating agreement, costs incurred prior to the date of agreement are nonreimbursable. The Office agrees with Michigan. Start-up costs are not avoidable costs of providing service; they are includable only to the extent that the subsidizer agrees to pay for them. Michigan further notes that preoperating costs which could be considered as avoidable costs under the operating agreement have been charged to the appropriate expense account for the current period, whereas the charges designated as "Organizational Costs" and "Preoperating Expenses" have been set up as assets and subsequently amortized and charged off as avoidable costs of the operation. This treatment of "Organizational Costs" and "Preoperating Expenses" is not in accord with the standards and is unjustified, unless specifically agreed to by the subsidizer.

3. Subsection 1125.5(1) *Administrative costs.* Hillsdale notes, in its request, that it has expended a considerable sum to develop computer programs, accounting systems, procedures, and contract preparation in order to provide the reports necessary to administer the financial requirements under the subsidy contracts. Hillsdale submits that it is entitled to an administrative fee, in addition to reimbursement of such expenses, to reflect a return on the investment made in one-time start-up fees and expenses. Michigan, in its separate request for a clarification of this subsection's application, states that specific costs were included in the operating agreement with Hillsdale in lieu of providing for an administrative fee.

The administrative fee is included in the Standards to compensate the operating railroad for certain costs of administration not included elsewhere in the Standards. If the parties to an operating agreement agree to include such costs on an actual basis in the computation of the subsidy payment, the operator is not entitled to an additional flat fee based on a percentage of revenues. Furthermore, the administrative fee is not intended to serve as a return on investment in start-up fees and expenses.

4. Subsection 1125.5(k) *Off-branch costs.* Hillsdale's request for clarification of this provision results from the fact that the line which Hillsdale operates is located partially in Michigan and partially in Indiana. Hillsdale considers the Michigan and Indiana portions of the line to be two different segments and seeks clarification of the method for determining off-branch costs for each segment. They also raise the question of whether a portion of the revenue associated with the overhead Indiana traffic should be allocated on a formula basis to the Michigan line segment. Michigan concurs with Hillsdale's request for clarification and asks that it be extended to cover the method of allocating all costs between the two segments. The Offices does not believe that the line should be considered as two separate segments; consequently, no off-branch costs are involved. Hillsdale notes that Michigan has proposed a formula for allocating expenses, but Hillsdale does not believe the Michigan proposal to be in conformity with the standards. The Office has not reviewed the Michigan proposal; however, the Office does believe that Michigan, Indiana, and Hillsdale should agree upon a formula for allocating the costs of the subsidized operation of this line between Indiana and Michigan. The Office will provide assistance, if desired.

5. Paragraph 1125.5(j) *Freight train car costs.* Hillsdale is participating in an interline repair program for freight-train cars, revenues from which offset its costs and could, conceivably, produce a net profit. Hillsdale requests an interpretation as to the proper method for handling any profits from such a program. Michigan states that such activity is an integral part of the operation of the subsidized line and, as such, both the revenue and costs should be recog-

nized in computing the subsidy. Because of its interpretation, Michigan further concludes that the revenue from this operation should be included in the determination of the management fee. Michigan is incorrect. Any revenues from the operation of an interline repair program should be credited against the cost of freight train car repairs. Any profits from the operation of the interline repair program should be used, therefore, to reduce other operating expenses and should not be considered as revenue attributable to operation of the line. Therefore, such profits should not be included in the computation of the management or administrative fees.

INTERPRETATION NO. 3 ISSUED

JANUARY 6, 1978.

By letter dated November 1, 1977, Glenn L. Downing, representing the Kankakee, Beaverville & Southern Railroad Co. (KB&S), requested the Rail Services Planning Office to interpret § 1125.5(s) "Termination Costs" as it relates to a proposed agreement between KB&S and the Arrowhead & Southern Co. for the leasing of locomotives and servicing facilities. The lease proposal specifies a three year term for locomotives and a five year term for servicing facilities. It would obligate KB&S to make the remaining lease payments in the event the lease is cancelled by it prior to the end of the three and five year terms. KB&S inquires whether such a lump sum payment would constitute "Termination Costs" within the meaning of § 1125.5(s) of the Standards.

By letter dated December 5, 1977, KB&S advised RSPO that the lease proposal for locomotives has been revised to eliminate the provision requiring it to pay all remaining lease payments in the event the lease is cancelled at its request. The new lease proposal authorizes KB&S to sublease the locomotives and in any event permits it to cancel the locomotive lease on six months notice to the Arrowhead & Southern Co. KB&S requests an interpretation of § 1125.5(s) "Termination Costs" as it applies to the lease for servicing facilities and described in its November 1, 1977, letter and the modified locomotive lease as described in its December 5, 1977, letter.

Based upon the KB&S presentations and our informal communications with representatives of KB&S, the prospective subsidizer (Illinois DOT), and FRA, the Office concludes that the lease provisions in question appear to be consistent with § 1125.5(s). This standard views as avoidable "the actual costs reasonably and necessarily incurred as a result of terminating service to the subsidized branch."

The key provision of the standard is the phrase "reasonably and necessarily incurred." The servicing facilities are necessary to the subsidized operations and as fixed facilities are unlikely to be usable for other purposes and the lease payment for these facilities is relatively inconsequential. Therefore, the Office believes it reasonable to specify such payments for the remainder of the lease as termination costs in the event of cancellation.

The locomotive lease as modified appears fair to both parties. It enables KB&S to terminate service without undue financial hardship by authorizing it to sublease the locomotives and also affords the leasor a reasonable time (6 months) to secure another lease arrangement. Costs incurred by KB&S in cancelling this leasing arrangement would also appear consistent with § 1125.5(s).

As indicated the Illinois DOT was contacted concerning this matter but did not file a formal reply.

By the Commission, Rail Services Planning Office.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-2820 Filed 1-31-78; 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.

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 210]

[Release Nos. 33-5901, 34-14419, 35-20398, IC-10104; File S7-733]

QUALIFICATIONS OF ACCOUNTANTS

Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Extension of public comment period for proposed rule.

SUMMARY: The Commission extends the public comment period with respect to a proposed rule pertaining to the effect of litigation on the independence of accountants until March 3, 1978.

DATE: Comments must be received on or before March 3, 1978.

ADDRESS: Comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments will be available for public inspection (File No S7-733).

FOR FURTHER INFORMATION CONTACT:

Robert R. Love, 202-755-1773, or Edward R. Cheramy, 202-376-8020, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Release Nos. 33-5888, 34-1463, 35-20314 and IC-10060 (December 13, 1977) (42 FR 64311), the Commission published for comment a proposed amendment to Rule 2-01 of Regulation S-X (17 CFR 210.2-01), Qualifications of accountants, that specifies situations involving litigation that would adversely affect the independence of the public accountant involved in the litigation. The Commission stated that the public comment period would expire on January 31, 1978.

It has come to the Commission's attention that certain interested members of the public may require more time to complete their consideration of the proposal in order to respond to the Commission's solicitation of comments. The Commission has determined that it is appropriate in the public interest to allow additional time for the consideration of these proposals. Accordingly, the Commission hereby extends the period for public comment on the proposed amendment to Rule 2-01 of Regulation S-X from January 31, 1978 to March 3, 1978.

By the Commission.

GEORGE A. FITZSIMMONS, *Secretary.*

JANUARY 26, 1978.

[FR Doc. 78-2770 Filed 1-31-78; 8:45 am]

[4310-31]

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 270]

GEOTHERMAL RESOURCES OPERATIONS

Public, Acquired, and Withdrawn Lands

AGENCY: U.S. Geological Survey, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations concerning geothermal resources operations on public, acquired, and withdrawn lands to permit the construction and operation of geothermal steam power facilities on Federal lands leased for geothermal resources. The revision authorizes the Area Geothermal Supervisor to approve the construction of these facilities and to supervise their operation. The proposal also sets forth the procedural requirements which the operator of a proposed facility must satisfy in order to obtain the Supervisor's approval to construct and operate that facility.

DATE: Comments must be received on or before March 20, 1978.

ADDRESSES: Interested persons are invited to participate in the evaluation of the proposed revision by identifying the subject matter and submitting written comments, suggestions, or objections to the Chief, Conservation Division, U.S. Geological Survey, National Center (650), 12201 Sunrise Valley Drive, Reston, Va. 22092. Comments received will be available for public inspection in the Conservation Division on regular working days from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Billy J. Shoger, Conservation Division, U.S. Geological Survey, National Center (620), 12202 Sunrise Valley Drive, Reston, Va. 22092, 703-860-7535 (commercial), 928-7535 (FTS).

SUPPLEMENTARY INFORMATION: The primary author of these proposed revised regulations is Mr. Billy J. Shoger, Petroleum Engineer, U.S. Geological Survey, phone 703-860-7535.

The revision is proposed pursuant to the authority vested in the Secretary of the Interior by the Geothermal Steam Act of December 24, 1970 (30 U.S.C. 1001-1025).

The present geothermal operating regulations (Title 30 CFR Part 270) for leased Federal lands provide for drilling, producing, measurement, and payment of royalties, but do not contain procedures that would permit the construction and operation of geothermal steam power facilities on Federal lands leased for geothermal resources. Several of the Federal geothermal leases are nearing the stage at which the lessees will be capable of utilizing the discovered resources to power a facility for the generation of electricity or other beneficial use. The siting of these facilities is necessary to assure the orderly and timely development of Federal geothermal leases. Moreover, geothermal steam power facilities are needed for research and demonstration projects for the purpose of improving present technology as well as developing new methods of application to assure the efficient utilization of geothermal resources in this country.

The revised regulations will permit the Geological Survey's Area Geothermal Supervisor to approve the construction and operation of "Individual Well Facilities," "Research and Demonstration Facilities," and "Power Plant Facilities" on leased Federal land and to supervise operations for the utilization of geothermal resources. "Power Plant Facilities" will also require a license in accordance with Title 43 CFR Part 3250, which is being promulgated by the Bureau of Land Management.

As proposed, Title 30 CFR Part 270 would be modified as follows:

1. By revising § 270.1 to read:

§ 270.1 Purpose and authority.

The Geothermal Steam Act enacted on December 24, 1970 (30 U.S.C. 1001-1025), referred to in this part as "the Act," authorizes the Secretary of the Interior to prescribe rules and regulations applicable to operations conduct-

ed under a lease granted pursuant to the Act, and for the development, conservation, and utilization of geothermal steam and associated geothermal resources, the prevention of waste, the protection of the public interest, and the protection of water quality and other environmental qualities. The regulations in this part shall be administered by the Director through the Chief, Conservation Division, or his duly appointed representative.

2. By revising paragraph (o) of § 270.2 and adding paragraphs (r), (s), (t), (u), (v), and (w) to read:

§ 270.2 Definitions.

* * * * *

(o) "Area of Operations" means that area of the leased lands which is required for exploration, development, production, and utilization operations, and which is delineated on a map or plat that is made a part of the appropriate approved plan of operations or utilization. It encompasses the area generally needed for wells, flowlines, separators, surge tanks, drill pads, mud pits, workshops, powerplants, and other such facilities used on a lease for geothermal resources exploration, development, production, and utilization operations.

(p)-(q) [Reserved]

(r) "Individual Well Facility" means an electric power generating facility of not more than 10-megawatt net capacity located on a Federal geothermal lease and for which energy is supplied by a single well.

(s) "Research and Demonstration Facility" means a facility of not more than 20-megawatt net capacity located on a Federal geothermal lease for which the energy is supplied by one or more wells and which is utilized exclusively for the research and demonstration of applications in the development of geothermal resources during a project life of not more than 5 years.

(t) "Power Plant Facility" means any power generating facility, as defined in 43 CFR Subpart 3250, other than an Individual Well Facility or a Research and Demonstration Facility.

(u) "Utilization Facility Site" means that portion of an area of operations for which a plan of utilization filed pursuant to 30 CFR 270.34-1 has been approved for the siting of an Individual Well Facility, Research and Demonstration Facility, or Power Plant Facility, including appurtenant structures.

(v) "Facility Operator" means the lessee or the individual, corporation, association, or municipality designated by a lessee as the operator of any facility for the utilization of geothermal resources.

(w) "Joint Facility Operating Agreement" means an agreement between a lessee and another party for the siting, construction, and operation of power generation facilities for the utilization of geothermal steam and associated geothermal resources produced from the lessee's geothermal lease or leases.

3. By revising § 270.10 to read:

§ 270.10 Jurisdiction.

Drilling, production, construction, and operation of any facility for the utilization of geothermal resources, handling and measurement of production, determination and collection of royalty, and, in general, all operations conducted on a geothermal lease are subject to the regulations in this part and the applicable regulations contained in 43 CFR Group 3200. These operations are subject to the jurisdiction of the Supervisor for the area in which the leased lands are situated.

4. By revising § 270.11 to read:

§ 270.11 General functions.

The Supervisor is authorized and directed to carry out the provisions of this part. The Supervisor will require compliance with the terms of geothermal leases, with the regulations in this part, the applicable regulations in 43 CFR Group 3200, and with the applicable statutes. The Supervisor shall act on all applications, requests, and notices required in this part. In executing the functions under this part, the Supervisor shall assure that all permitted operations, within the area of operations, conform to the best practice and are conducted in a manner that protects the deposits of the leased lands and results in the maximum ultimate recovery and proper utilization of geothermal resources, with minimum waste. The Supervisor shall also assure that all permitted operations are consistent with the principles of the use of the lands for other purposes and the protection of the environment. As conditions in one area may vary widely from conditions in another area, the regulations in this part are intended to be general in nature. Detailed procedures hereunder in any particular area will be covered by GRO Orders. The requirements to be set forth in GRO Orders relating to surface resources or uses will be coordinated with the appropriate land management agency. The Supervisor may issue oral orders to govern lease operations, but such orders shall be confirmed in writing by the Supervisor as promptly as possible. The Supervisor may issue other orders and rules to govern the development, method for production, and the utilization of a deposit, field, or area. Prior to the issuance of GRO Orders, other orders and rules, or the approval of any plan of operation, the Supervisor shall consult with and receive comments from appropriate Federal and State agencies, lessees, operators, and other interested parties. Before permitting operations to be commenced on the leased lands, the Supervisor shall determine if the lease is in good standing; and whether the applicant is authorized to conduct the proposed operations; has filed an acceptable bond; and has, when required by the regulations of this part, an approved plan of operation and/or plan of utilization, notice of intent, sundry notice, or other appropriate permit application.

5. By redesignating the existing paragraph in § 270.31 as (a) and adding a new paragraph (b) to read:

§ 270.31 Designation of operator or agent.

* * * * *

(b) In all cases where an individual well facility, research and demonstration facility, or power plant facility is to be operated by other than the lessee, the lessee shall, for each proposed facility, submit in triplicate to the Supervisor, in a manner or in a form approved by the Supervisor, a "designation of facility operator" and three copies of the joint facility operating agreement between the lessee and the facility operator. Such designation, upon acceptance by the Supervisor, will authorize the facility operator to enter upon the proposed facility site and related sites and to conduct thereon, in accordance with 30 CFR 270.34-1, such preliminary geologic and soil studies as are appropriate for the planning and design of a power plant or other facilities necessary for the utilization of geothermal resources. A designated operator may also construct and operate such facilities as have been approved under a plan of operation or utilization and for which a permit has been issued pursuant to the regulations in this part and, if a power plant facility, for which a license has been issued in accordance with 43 CFR Part 3250.

6. By adding after § 270.34 a new subsection §§ 270.34-1 to read:

§ 270.34-1 Plan of utilization.

At any time after acquisition of a lease, the lessee or the designated facility operator may conduct preliminary soil tests or studies necessary for determining the site(s) most suitable for the construction of a proposed facility. Site investigations involving trenching or the construction of additional roads will require the prior written approval of the Supervisor and the appropriate surface managing agency. Prior to commencing any site preparation, road construction, or facility construction, unless already authorized under an approved plan of operation, the lessee or facility operator shall submit in triplicate a plan of utiliaztion and obtain the prior approval of the Supervisor and the appropriate land management agency. A plan of

utilization shall include, as appropriate:

(a) A description and/or plans for all proposed structures and facilities (other than proprietary data which may be submitted under 30 CFR 270.71-1) to be constructed, erected, or located on the facility site, including other support facilities or ancillary equipment. This portion of the plan should include:

(1) A contour map showing facility location(s);

(2) A description of the purpose and operation of each facility;

(3) A schematic flow diagram;

(4) The plan for architectural landscaping;

(5) A startup date and the schedule of construction;

(6) The planned safety provisions for emergency shutdown to protect public health and safety and for protection of the environment, including a schedule for the testing and maintenance of safety devices; and

(7) The manpower coverage to be provided during the operation of the facility.

(b) A copy of any site evaluation studies, soil reports, core logs, or laboratory reports which have been prepared for the site(s).

(c) A description of any additional tests, studies, or surveys which are planned to assess the geologic suitability of the site(s). Separate approval of any such tests, studies, or surveys may be granted by the Supervisor prior to approval of the overall plan of utilization.

(d) A map showing the existing and planned access and lateral roads and the source of road building material.

(e) The source and quality of the water supply.

(f) The identification of other areas of potential surface disturbance.

(g) The methods for disposing of waste water, solid wastes, and noncondensible gases.

(h) a narrative statement describing, as applicable, the proposed measures to be taken in protecting the environment including, but not limited to, the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface or groundwater, (4) damage to fish and wildlife or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety during normal operations. This portion of the plan should also detail the procedures to be followed in complying with existing Federal requirements and pertinent State and local standards.

(i) The provisions made for monitoring facility-operations to assure continuing compliance with applicable noise, air, and water quality standards and regulations under this part, and for other potential environmental impacts identified by the Supervisor. The lessee shall be responsible for the monitoring of readily indentifiable localized environmental impacts associated with specific activities that are under control of the lessee.

(j) Any additional information or data which the Supervisor may require in support of the plan of utilization.

In addition to a plan of utilization, the Supervisor may also require, as appropriate, the submission and approval of a plan of operation that conforms to the requirements of 30 CFR 270.34.

7. By revising § 270.42 to read:

§ 270.42 Noise abatement.

The lessee shall minimize noise during exploration, development, production, and utilization operations. The welfare of the operating personnel and the public must not be affected as a consequence of the noise created by expanding gases. The method and degree of noise abatement shall be as prescribed or approved by the Supervisor.

8. By redesignating the existing paragraph in § 270.50 as (a) and by adding a new paragraph (b) to read:

§ 270.50 Royalty payments.

* * * * *

(b) With respect to the pilot operation or testing of facilities permitted pursuant to 30 CFR 270.71-1(a) or (b), the Supervisor, in accordance with the provisions of 30 U.S.C. 1012, may waive, suspend, or reduce the royalty obligation for a period not to exceed 120 days of net operation upon application therefor. No form of relief from the royalty requirements of a lease will be granted in the absence of an application therefor, and a determination by the Supervisor that such action (1) would be in the interest of conservation, (2) would encourage the greatest ultimate recovery of geothermal resources, and (3) is necessry to promote development or to insure that the lease can be operated successfully under the lease terms. Each application for relief hereunder shall be filed in triplicate with the Supervisor and, as minimum, must (i) identify the facility, its location, and the facility operator; (ii) provide the serial number(s) of the lease(s) from which the geothermal resources are produced and the name(s) of the current lessee(s) and/or operator(s); (iii) contain the number and location of each well which will be utilized during the pilot operation or testing of facilities and the estimated daily volume of geothermal resources to be produced from each well; (iv) furnish a detailed statement of the estimated costs associated with the pilot or testing operations; and (v) supply other appropriate documentation to support the contention that relief from the royalty requirements of the lease could be granted in accordance with the provisions of 30 U.S.C. 1012, as set forth in the preceding paragraph.

9. By adding after § 270.71 a new subsection § 270.71-1 to read:

§ 270.71-1 Application for utilization permit.

(a) A permit to construct and operate a individual well facility of not more than 10-megawatt net capacity, including necessary related on-lease transmission facilities and substations, must be obtained from the Supervisor prior to commencing surface disturbing activities related to the construction and operation of each individual well facility. The application for a permit must be filed in triplicate with the supervisor and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level at these sites. The application must be accompanied by a proposed plan of utilization as required by 30 CFR 270.34-1. Permits granted under this subsection will satisy the requirements of 43 CFR Part 3250.

(b) A permit to construct and operate an on-lease research and demonstration facility (involving one or more wells) for an electrical generating plant of not more than 20-megawatt net capacity, including necessary related on-lease transmission facilities or substations in which power generated may be dissipated into a dummy load or similar device or sold for beneficial use, must be obtained from the Supervisor prior to commencing any surface disturbing activities related to the construction or operation of each on-lease research and demonstration facility. Applications submitted to the supervisor for a permit to construct and operate an on-lease research and demonstration facility shall be filed in triplicate and shall be accompanied by a plan of utilization as required by 30 CFR 270.34-1. Any permit issued shall be for a term of not more than 5 years. Permits granted under this subsection will satisfy the requirements of 43 CFR Part 3250. However, the continued beneficial use of an on-lease research and demonstration facility beyond the term provided by a permit, or the conversion of the facility to a power plant facility at any time during the permit period, will require that a license be obtained from the Authorized Officer pursuant to 43 CFR Part 3250.

(c) The siting of a power plant facility, other than as provided in (a) or (b) of this section, will require a license issued by the Authorized Officer pursuant to 43 CFR Part 3250. A permit to construct and operate a power plant

facility licensed under provisions of 43 CFR Part 3250 must also be obtained from the Supervisor prior to commencing any surface disturbing activities related to the construction or operation of the facility. The application for a permit shall be filed in triplicate with the Supervisor.

(d) Each application filed with the Supervisor for a permit to construct and operate a facility, as set forth in (a), (b), or (c) of this section, shall specifically identify the type of facility contemplated, the method of operation, and shall include:

(1) Designs, plans, and specifications for all improvements to be constucted or located at the principal facility site and at related facility sites in sufficient detail to permit a technical review for the purpose of determining that operational and design safety factors are adequate and that there will be compliance with all applicable regulatory requirements;

(2) An operating plan for the facility setting forth the procedures and standards pursuant to which the facility will be operated;

(3) The manner of metering facility input and output to determine plant performance and, when appropriate, to assure the proper calculation of the royalty value due;

(4) A schedule for the installation and pre-startup of the generating units or other facilities and, if applicable, for the commencement of operations for the commercial production of geothermal resources; and

(5) Any additional pertinent information or data which the Supervisor may require for the proper consideration of the application.

(e) Except as permitted by the lease access provisions, off-lease transmission facilities (lines and substations) and roads or pipelines located on Federal surface, shall require appropriate permits issued by the Authorized Officer pursuant to 43 CFR Part 3250 or other applicable regulations.

(f) When the construction and operation of a facility requires licensing or permitting by other Federal or State agencies prior to the commencement of these activities, three copies of each such permit and/or license shall be submitted.

10. By adding after § 270.74 a new subsection § 270.74-1 to read:

§ 270.74-1 Monthly report of facility operations.

A report of operations for each individual well facility, research and demonstration facility, or power plant facility, must be made by the facility operator for each calendar month beginning with the month in which operations are first commenced. The report must be filed in duplicate with the Supervisor on or before the last day of the month following the month for which the report is filed, unless an extension of time for filing is specifically granted by the Supervisor in writing.

(a) For each electrical power generation facility, the report shall show for each calendar month:

(1) The lease serial number(s) or the unit or communitization agreement number covering the lands from which the steam or water was produced and utilized in the power plant;

(2) The number of kilowatt hours (gross and net output) of electricity generated during such month and the value;

(3) The quantities (mass) of geothermal fluids entering the plant and the average intake temperature and pressure;

(4) The quantity of water utilized from sources other than the produced geothermal resources;

(5) The total quantities (mass), temperature, and pressure of the plant effluent (waste water); and

(6) A detailed statement as to the reason or reasons for any suspension of electric power generation during the month.

NOTE.—It has been determined that the revision of Title 30 CFR Part 270 does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852).

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring the preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 24, 1978.

CECIL D. ANDRUS,
Secretary.

[FR Doc. 78-2786 Filed 1-31-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 850-1]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Imperial County Air Pollution Control District's Rules and Regulations In State of California

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Imperial County Air Pollution Control District's (APCD) rules and regulations have been submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board for the purpose of revising the California State Implementation Plan (SIP). The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on these rules, especially as to their consistency with the Clean Air Act.

DATE: Comments may be submitted up to March 3, 1978.

ADDRESS: Comments may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Divison, Air Programs Branch, California SIP Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region IX Office at the above address and at the following locations: Imperial County Air Pollution Control District, 940 West Main Street, El Centro, Calif. 95814; Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

David R. Souten, Chief, California SIP Section, EPA, Region IX, 415-556-7288.

SUPPLEMENTARY INFORMATION: The California Air Resources Board submitted the following rules and regulations on November 4, 1977:

REGULATION I—GENERAL PROVISIONS

Rule
100—Title.
101—Definitions.
102—Public Records.
103—Inspection of Public Records.
104—Violations.
105—Enforcement.
106—Abatement.
107—Land Use.
108—Inspections.
109—Source Sampling.
110—Stack Monitoring.
113—Circumvention.
114—Severability Clause.
115—Legal Application.

REGULATION III—FEES

301—Permit Fees.
302—Fee Schedules.
303—Anaylsis Fees.
304—Technical Reports—Charges For.
305—Hearing Board Fees.

REGULATION IV—PROHIBITIONS

401—Opacity of Emissions.
402—Exceptions.
403—Quantity of Emissions.
404—Dust and Fumes.
405—Sulfur Compounds.
406—Disposal of Solid and Liquid Wastes.
407—Nuisances.
408—Frost Protection and Orchard Heaters.
409—Incinerators.
410—Scavenger Plants.
411—Sulfur Recovery Units.
412—Sulfur Acid Units.
413—Storage of Petroleum Products.

414—Oil-Effluent Water Separator.
415—Gasoline Loading from Tank Trucks and Trailers.
416—Gasoline Specifications.
417—Organic Solvents.
418—Disposal and Evaporation of Solvents.
419—Reduction of Animal Matter.
420—Livestock Feed Yards.
421—Open Burning.
422—Open Burning of Food Waste.
423—Exceptions.

REGULATION V—PROCEEDINGS BEFORE HEARING BOARD

501—General.
502—Petitions.
503—Contents of Petitions.
504—Petitions for Variances.
505—Supplemental Information.
506—Matters Initiated by Control Officer or Hearing Board.
507—Answers.
508—Withdrawal of Application.
509—Handling Preliminary Matters.
510—Time and Place of Hearing.
511—Notice of Hearing.
512—Continuances.
513—Record of Proceedings.
514—Evidence.
515—Official Notice.
516—Decisions.

REGULATION VII—AGRICULTURAL BURNING

701—Definitions.
702—Prohibitions.
703—Cotton Gin Waste Burning.
704—Exceptions.
705—Range Improvement Burning.
706—Penalty Clause.

In addition, regulations were submitted concerning new source review and emergency episodes. These regulations will be considered in separate FEDERAL REGISTER actions.

Pursuant to Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions, including those deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office.

Comments received on or before March 3, 1978, will be considered. Comments received will be available for public inspection at the EPA Region IX Office and the EPA Public Information Unit.

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

Dated: December 21, 1977.

PAUL DEFALCO, Jr.,
Regional Administrator.

[FR Doc. 78-2824 Filed 1-31-78; 8:45 am]

[6560-01]

[40 CFR Part 52]

[FRL 850-2]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Rules and Regulations of El Dorado County Air Pollution Control District in State of California

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The El Dorado County Air Pollution Control District (APCD) has adopted changes to its rules and regulations. The revisions have been submitted to the U.S. Environmental Protection Agency (EPA) by the California Air Resources Board (ARB) as revisions to the California State Implementation Plan (SIP). The intended effect of the revisions is to update the rules and regulations, and to correct certain deficiencies in the SIP. The EPA invites public comments on these proposed rules, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted up to March 3, 1978.

ADDRESSES: Comments may be sent to: Regional Administrator, Attention: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105. Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region IX Office at the above address and at the following locations: El Dorado County Air Pollution Control District, 2850 Cold Springs Road, Placerville, Calif. 95667; California Air Resources Board, 1709 11th Street, Sacremento, Calif. 95814; Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

David R. Souten, Chief, California SIP Section, EPA, Region IX, 415-556-7288.

SUPPLEMENTARY INFORMATION: The ARB submitted to EPA on behalf of the El Dorado County APCD on November 4, 1977 proposed revisions to the following rules:

Rule 102—Definitions.
Rule 201—Coverage.
Rule 203—Exceptions (to Rule 202, Visible Emissions).
Rule 205—Nuisance.
Rule 206(B)—Pathological Incineration.
Rule 207—Particulate Matter.
Rule 208—Orchard or Citrus Heaters.
Rule 210(B)—Total Reduced Sulfur.
Rule 213—Storage of Petroleum Products.
Rule 215—Abrasive Blasting.
Rule 216—Enforcement.
Rule 217—Existing Sources.
Rule 217-49—District-Wide Coverage.
Rule 217-50—Visible Emissions.
Rule 217-51—Exceptions to Rule 217-50.
Rule 217-52—Nuisance.
Rule 217-53—Exceptions to Rule 217-52.
Rule 217-54—Particulate Matter.
Rule 217-55—Dust and Condensed Fumes.
Rule 217-56—Specific Contaminants.
Rule 217-1—Title.
Rule 217-2—Definitions.
Rule 217-3—Standard Conditions.
Rule 302—Exceptions to Rule 301 (Open Outdoor Fires).
Rule 303—Burning Permits.
Rule 304—Exceptions to Rule 303.
Rule 307—Exceptions to Rule 306 (No-burn days).
Rule 308—Agricultural Burning Reports.
Rule 314—Exceptions to rule 313 (Minimum Drying Times).
Rule 319—Open Burning of Wood Waste on Property Where Grown.
Rule 320—Right-of-Way Clearing and Levee, Ditch and Reservoir Maintenance Burning.
Rule 321—Hazard Reductuon Burning.
Rule 322—Mechanized Burners.
Rule 324—Penalty.
Rule 402—Authority to Inspect.
Rule 404—Upset Conditions, Breakdown or Scheduled Maintenance.
Rule 407—Circumvention.
Rule 409—Public Records.
Rule 507—Provision of Sampling and Testing Facilities.
Rule 603—Hearing Board Fees.
Rule 700—Applicable Articles of the health and Safety Code.
Rule 703—Contents of Petition.
Rule 710—Notice of Public Hearing.

In addition, a rule on new source review was also submitted. It will be addressed in another FEDERAL REGISTER notice.

Pursuant to section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the proposed regulations as SIP revisions. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested parties may participate by submitting written comments to the EPA Region IX Office. Comments received on or before March 3, 1978, will be considered, and made available for public inspection at the EPA Regional Office and the EPA Public Information Reference Unit.

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

Dated: January 6, 1978.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc. 78-2825 Filed 1-31-78; 8:45 am]

[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR Part 1601]

CORPORATION'S BY-LAWS

Amendments

AGENCY: Legal Services Corporation.

ACTION: Proposed Amendments to By-Laws.

SUMMARY: Section 1601.44 of the Corporation's By-Laws, 45 CFR 1601.44, provides that the By-Laws may be amended by a vote of a majority of the Directors in office and requires, when feasible, that the proposed amendment shall have been published in the FEDERAL REGISTER at least thirty days before the meeting. Pursuant to this Section, the Legal Services Corporation hereby publishes notice that its Board of Directors will consider certain proposed amendments at the March 3-4, 1978 meeting.

DATE: Comments should be received by March 2, 1978.

ADDRESS: Send comments to Office of General Counsel, Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 733 Fifteenth Street NW., Suite 700, Washington, D.C. 20005, 202-376-5113.

SUPPLEMENTAL INFORMATION:

AMENDMENTS TO THE BY-LAWS

The following amendments to the By-Laws are necessary to conform to the requirements of the Government in the Sunshine Act:

1. The final sentence of § 1601.15(a) should be revised to read as follows:

§ 1601.15 Regular meetings.

(a) * * * Notice of the place of regular meeting should be mailed to each Director at least fifteen days before the date of the meeting, unless a majority of the members determines that Corporation business requires a meeting on fewer than fifteen days notice. In that event, notice shall be mailed at the earliest practicable time.

* * * * *

2. The second sentence of this section should be revised to read as follows:

§ 1601.16 Special meetings.

* * * Notice of any such meeting shall be mailed to each Director at least fifteen days before the date on which the meeting is to be held, unless a majority of the members determines that Corporation business requires a meeting on fewer than fifteen days notice. In that event, notice shall be mailed at the earliest practicable time. * * *

3. This section should be revised to read as follows::

§ 1601.18 Agenda.

For each regular and special meeting, the Chairman of the Board or the Presidents of the Corporation shall cause to be prepared an agenda of matters to be discussed at the meeting, and shall mail the agenda to all Directors with the notice required by §§ 1601.15 and 1601.16. Any matters appearing on the agenda which the Chairman of the Board or the President believes should be discussed in an executive session in accordance with § 1601.22 shall be so noted.

4. This section should be revised to read as follows:

§ 1601.19 General notice.

(a) General notice of any meeting of the Board shall be given at least seven days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In that event, general notice shall be given at the earliest practicable time.

(b) General notice shall include: (1) The time, place, and subject matter of the meeting; (2) whether the meeting or a portion thereof will be closed to public observation; and, (3), the name and telephone number of a person designated to respond to requests for information about the meeting. Changes in the information contained in a general notice may be made pursuant to the Corporation's Regulations implementing 5 U.S.C. 552b. Notice of such change shall be given in the manner prescribed by this Section and at the earliest practicable time.

(c) General notice shall be posted at the offices of the Corporation in an area to which the public has access and filed for publication in the FEDERAL REGISTER. Reasonable effort shall be made to send the notice to the Chairman of each State Advisory Council appointed pursuant to Section 1004(f) of the Act and to every recipient.

(d) Failure to give general notice in accordance with this section shall not affect the validity of Board action at any meeting.

5. This section should be revised to read as follows:

§ 1601.22 Public meetings; executive sessions.

All meetings of the Board shall be open to the public unless a majority of the members determines by a recorded vote that consideration of a specific matter should be closed to public observation pursuant to the Corporation's regulations implementing 5 U.S.C. 552b. That part of the meeting closed to the public shall be known as an executive session. The Chairman of the meeting shall announce the subject of the executive session prior thereto.

6. The final sentence of paragraph (a) is deleted and paragraphs (b) and (c) of this section should be revised to read as follows:

§ 1601.27 Committee procedures.

* * * * *

(b) Notice of a Committee meeting shall be provided to members of the Committee in the manner required for notice of special meetings of the Board by Sections 1601.16 and 1601.17(a). Notice may be waived in the manner described in Section 1601.17(b). The agenda for the meeting shall be prepared in accordance with Section 1601.18, and general notice of the meeting shall be given in accordance with Section 1601.19.

(c) All meetings of a Committee shall be open to the public unless a majority of the members of the Committee determines by a recorded vote that consideration of specific matter shall be closed to the public pursuant to the Corporation's regulations implementing 5 U.S.C. 552b.

STEPHEN S. WALTERS,
Deputy General Counsel,
Legal Services Corporation.

[FR Doc. 78-2799 Filed 1-31-78; 8:45 am]

[3510-03]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 283]

CONSERVATIVE DIVIDEND POLICY

Amendment of Standards for Dividend Declarations; Extension of Comment Period

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Proposed rulemaking.

SUMMARY: In FR Doc. 78-316, appearing in the FEDERAL REGISTER on January 9, 1978 (43 FR 1363) notice was given that the Maritime Subsidy Board, Maritime Administration, proposes to amend regulations concerning conservative dividend policy, to make more appropriate for the marine industry the financial requirements which an operator of vessels receiving operating-differential subsidy must satisfy before declaring a dividend.

Interested parties were invited to file written comments on the proposed amendments with the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, on or before February 15, 1978.

Upon request made and good cause shown by Waterman Steamship Corp.,

the date for submission of comments is hereby extended to close of business on March 15, 1978.

DATE: Comments must be received, in triplicate, on or before March 15, 1978.

ADDRESS: Secretary, Maritime Subsidy Board, Washington, D.C. 20230.

Dated: January 26, 1978.

By order of the Maritime Subsidy Board/Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-2705 Filed 1-31-78; 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.

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation No. A564]

CALIFORNIA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following California Counties as a result of extremely high winds accompanied by duststorms December 20 and 21, 1977: Humboldt; Kern; San Diego.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph VB, including the recommendation of Governor Edmund G. Brown, Jr., that such designation be made.

Applications for emergency loans must be received by this Department no later than July 24, 1978, for physical losses and January 23, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 25th day of January 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-2790 Filed 1-31-78; 8:45 am]

[3410-07]

[Designation No. A560]

TENNESSEE

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Tennessee Counties as a result of drought during periods ranging from May 1 through September 15, 1977, in Bradley, Gibson, Hardin, Polk, and Shelby Counties; also excessive rainfall October 15 through November 30, 1977, in Shelly Counties; and a flood October 1 and 2, 1977, in Johnson County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph VB, including the recommendation of Governor Ray Blanton that such designation be made.

Applications for emergency loans must be received by this department no later than July 19, 1978, for physical losses and January 18, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 25th day of January 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-2791 Filed 1-31-78; 8:45 am]

[3410-07]

[Designation No. A563]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Texas Counties as a result of drought July 15 through December 15, 1977, and hailstorms June 25, June 28, and October 21 and 22, 1977, in Hall County; and drought May 1 through September 15, 1977, in Walker County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph VB, including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than July 20, 1978, for physical losses and January 19, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 25th day of January 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-2792 Filed 1-31-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Order 78-1-116]

PROCEEDINGS

Orders

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of January, 1978.

In the matter of Phoenix-Des Moines/Milwaukee route proceeding, Docket 28800; improved authority to Wichita Case, Docket 28848; Additional Dallas/Fort Worth-Kansas City Nonstop Case, Docket 28778; Sacramento-Denver Nonstop Case, Docket 28961; Memphis-Twin Cities/Milwaukee Case, Docket 29186; and Greenville/Spartanburg - Washington/New York Subpart M Case, Docket 24778, Docket 28308.

A full public hearing having been held in the above-captioned proceedings, and the Board having issued its opinion containing its findings, conclusions and decision which is attached to and made a part of this order.[1]

It is ordered that: 1. Amended certificates of public convenience and necessity in the forms attached be issued to Hughes Air Corp. d.b.a. Hughes Airwest for Route 76, to Frontier Airlines, Route 73, and to Southern Airways, for Route 98;

[1] Opinion and certificates filed with the Office of the Federal Register. Copies may be obtained from Civil Aeronautics Board, Washington, D.C. 20428.

2. The certificates shall be signed on behalf of the Board by its Secretary, shall have affixed the seal of the Board, and, subject to the extension of their effective dates in accordance with the provisions of the certificates, shall be effective 60 days after the date of service of this order, *Provided*, That the continuing effectiveness of the authority granted here shall be conditioned upon the timely payment of such license fees as may be to be prescribed by the Board;

3. The temporary certificates issued to Frontier Airlines by Order 77-6-27 and to Southern Airways by Order 77-10-1 shall be cancelled upon the effective date of the certificates issued to these carriers here;

4. Interested parties are invited: To show cause why the Board should not issue an order making final the tentative findings and conclusions contained in the attached opinion that would; (a) require the sharing of net profits in subsidy-ineligible Category II without offsetting segmental losses in Category I; and (b) give Ozark Airlines' conditional authority in the Phoenix-Des Moines/Milwaukee markets;

5. Any interested person having objections to the issuance of an order making final any of the proposed findings and conclusions set forth in paragraph 4 shall, within 21 days after service of this order, file with the Board, and serve upon all parties to this proceeding a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support these objections;

6. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised before further action is taken by the Board; and

7. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Board will proceed to enter an order in accordance with the tentative findings and conclusions set forth here.

8. Except to the extent otherwise indicated, all applications, petitions, motions and requests are denied or dismissed.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A

HUGHES AIR CORP.

List of Certificated Operations Ineligible for Subsidy—Category I

I. Flight stages to and from the following points: Lake Tahoe, Reno (when served as an intermediate point between Lake Tahoe and another point in California or Nevada), Tucson, all points in Mexico.

II. Operations between Las Vegas and Orange County-Santa Ana-Anaheim.

III. Turnaround operations between Los Angeles and Indio-Palm Springs.

IV. Nonstop operations between the following pairs of points:

Boise—Las Vegas, Phoenix, Portland, Pullman-Moscow, Salt Lake City, Seattle-Tacoma, Spokane.

Burbank—Las Vegas, Phoenix, Salt Lake City.

Cedar City—Las Vegas.

Eureka-Arcata—Los Angeles-Ontaria.

Fresno—Phoenix.

Grand Canyon—Las Vegas.

Indio-Palm Springs—Las Vegas, Orange County-Santa Ana-Anaheim, San Diego.

Las Vegas—Los Angeles-Ontario, Oakland, Salt Lake City, San Diego, Spokane.

Los Angeles-Ontario—Pasco-Kennewick-Richland, Red Bluff-Redding, Salt Lake City, San Diego, San Francisco, Twin Falls, Yakima.

Medford—Oakland, San Francisco.

Monterey-Salinas—Phoenix.

Oakland—Phoenix.

Pasco-Kennewick-Richland—San Francisco.

Phoenix—San Jose, Spokane.

Portland—Reno, Salt Lake City, San Francisco, Seattle-Tacoma.

Reno—Seattle-Tacoma.

Salt Lake City—Seattle-Tacoma, Spokane.

San Francisco—Yakima.

Seattle-Tacoma—Spokane.

List of Certificated Operations Ineligible for Subsidy—Category II

I. Nonstop operations between the following pairs of points:

Des Moines—Milwaukee, Phoenix.

Milwaukee—Phoenix.

APPENDIX

FRONTIER AIRLINES, INC.

List of Operations Ineligible for Subsidy—Category I

1. Flight states to and from the following points: Bozeman, Chicago, Las Vegas, Memphis, Missoula, West Yellowstone.

2. Nonstop operations between the following pairs of points:

Albuquerque—Dallas/Ft. Worth, Salt Lake City, Phoenix, Winslow.

Amarillo—Fayetteville.

Billings—Great Falls, Salt Lake City.

Colorado Springs—St. Louis, Salt Lake City.

Cortez—Denver.

Dallas/Ft. Worth—Denver, Fayetteville, Ft. Leonard Wood, Kansas City, Joplin, Oklahoma City, Ponca City, Salt Lake City, Stillwater, Grand Junction.

Denver—Billings, Casper, Jackson, Kansas City, Lawton/Ft. Sill, Oklahoma City, Omaha, Phoenix, St. Louis, Salt Lake City, Tulsa.

Durango—Gunnison.

Kansas City—Manhattan, Omaha, St. Louis.

Lawton/Ft. Sill—Tulsa.

Lincoln—Phoenix, St. Louis.

Little Rock—Oklahoma City.

Oklahoma City—Salt Lake City.

Omaha—Phoenix.

List of Operations Ineligible for Subsidy—Category II

1. Nonstop operations between the following pairs of points: Denver—Sacramento.

APPENDIX C

SOUTHERN AIRWAYS, INC.

List of Certificated Operations Ineligible for Subsidy—Category

Flight stages to or from the following points: Chicago, Miami/Fort Lauderdale, New York/Newark, Orlando, St. Louis, Tallahassee, Washington, Detroit. Operations over segment 7.

Nonstop operations between the following pairs of points:

Atlanta—Chattanooga, Jackson/Vicksburg, Mobile/Pascaqula, Nashville.

Birmingham—Columbia, Jackson/Vicksburg, Jacksonville, Mobile/Pascaqula, Nashville.

Bristol/Kingsport/Johnson City—Memphis.

Charleston—Charlotte, Chattanooga, Jackson/Vicksburg, Memphis, New Orleans.

Charlottee—Chattanooga, Columbia.

Chattanooga—Columbia, Greeville/Spartanburg, Memphis, Nashville.

Columbia—Jackson/Vicksburg, Memphis, New Orleans.

Dothan—Jacksonville.

Eglin Air Force Base—Jacksonville.

Huntsville—New Orleans.

Jacksonville—Memphis, Montgomery, Panama City.

Knoxville—Memphis.

Memphis—New Orleans.

Mobile—New Orleans.

List of Certificated Operations Ineligible for Subsidy—Category II

Nonstop operations between the following pairs of points:

New York—Greenville/Spartanburg.

Washington—Greenville/Spartanburg.

[FR Doc. 78-2813 Filed 1-31-78; 8:45 am]

[6320-01]

[Docket No. 31946]

SINGAPORE AIRLINES LTD.

Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 28, 1978, at 10 a.m. (local time) in Room 1003 Hearing Room B, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned Administrative Law Judge.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before February 21, 1978.

WILLIAM H. DAPPER,
Administrative Law Judge.

[FR Doc. 78-2787 Filed 1-31-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

MARINE MAMMALS

Issuance of a Permit

On November 2, 1977, notice was published in the FEDERAL REGISTER (42 FR 57334), that an application had been filed with the National Marine Fisheries Service by Dr. Murray L. Johnson and Mr. Steven J. Jeffries, Puget Sound Museum of Natural History, University of Puget Sound, Tacoma, Wash. 98416, to take by killing 130 and to capture, mark, tag, and release 200 harbor seals (*Phoca vitulina richardii*), for the purposes of scientific research.

Notice is hereby given that on January 18, 1978, and as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit to Dr. Murray L. Johnson and Mr. Steven J. Jeffries, to take the above named species, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Wash. 98109.

Dated: January 18, 1978.

ROLAND FINCH,
Acting Deputy Assistant Director for Fisheries Management.

[FR Doc. 78-2794 Filed 1-31-78; 8:45 am]

[3510-22]

MARINE MAMMALS

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals 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).

1. Applicant: (a) Name: Hubbs-Sea World Research Institute, Dr. William E. Evans, Director; (b) Address: 1700 South Shores Road, San Diego, Calif. 92109.
2. Type of Permit: Scientific Research.
3. Name and Number of Animals: Leopard seals (Hydrurga leptonyx), 6.
4. Type of Activity: To import beached/stranded animals.
5. Location of Activity: Beached/stranded animals maintained by the Taronga Zoo, New South Wales, Australia.
6. Period of Activity: Two (2) years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before March 3, 1978. 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 Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: January 27, 1978.

ROLAND FINCH,
Acting Deputy Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc. 78-2796 Filed 1-31-78; 8:45 am]

[3510-22]

MARINE MAMMALS

Modification of Permit

Notice is hereby given that, pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Public Display Permit No. 127 issued to Mr. W. L. E. de Alwis, Director, National Zoological Gardens of Sri Lanka, Anagarika Dharmapala Mawatha, Dehiwala, Sri Lanka (Ceylon) on February 4, 1976 (41 FR 6786) is modified in the following manner:

Section B-4 has been changed to read, "This Permit is valid with respect to the taking authorized herein until December 31, 1978.

This modification is effective on February 1, 1978. The Permit, as modified, is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 White- haven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: January 13, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-2795 Filed 1-31-78; 8:45 am]

[3510-22]

PACIFIC FISHERY MANAGEMENT COUNCIL'S SQUID ADVISORY SUBPANEL

Public Meeting

A meeting of the Pacific Fishery Management Council's Squid Advisory Subpanel, established under Section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will be held on Wednesday, February 22, 1978, at the California Department of Fish and Game offices located at 350 Golden Shores, Long Beach, Calif. The meeting will convene at 10 a.m. and adjourn about 5 p.m.

Proposed agenda: Discussion of options for managing *Loligo opalescens, Dosidicus gigas,* and other squid species, to be implemented in March 1979.

The Squid Advisory Subpanel meeting is open to the public. For more information on seating, changes to the agenda, and/or written comments, contact Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201. Telephone: 503-221-6352.

Dated: January 27, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-2773 Filed 1-31-78; 8:45 am]

[3510-22]

PACIFIC FISHERY MANAGEMENT COUNCIL AND SCIENTIFIC AND STATISTICAL COMMITTEE AND SALMON ADVISORY PANEL

Public Meeting With Partially Closed Session

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix I, as amended, notice is hereby given of a meeting of the Pacific Fishery Management Council established by Section 302(a) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and its Scientific and Statistical Commit-

tee and Salmon Advisory Panel, both established under Section 302(g) of the Act.

The Council meeting will take place Thursday and Friday, February 16-17, 1978, at the Cosmopolitan Motor Hotel located at 1030 Northeast Union, Portland, Oreg.

The Scientific and Statistical Committee will meet on Wednesday and Thursday, February 15-16, 1978, and the Salmon Advisory Panel will meet on Wednesday, February 15, 1978, also at the Cosmopolitan Motor Hotel in Portland, Oreg.

The Salmon Advisory Panel will meet at 8 a.m. and adjourn about 5 p.m. on February 15. The proposed agenda for the Panel is as follows:

FEBRUARY 15

1. Consideration of salmon management plans.

The Scientific and Statistical Committee will meet at 1 p.m. and adjourn about 5 p.m. on February 15. The Committee will tentatively reconvene, dependent on Council developments, at 8 a.m. and adjourn about 5 p.m. on February 16. The proposed agenda for the Committee is as follows:

FEBRUARY 15-16

1. Consideration of development of fishery management plans.
2. Organization of the Council, including fishery advisory panel and management development teams, and operational procedural matters.
3. Other Committee business.

The Pacific Fishery Management Council will convene at 10 a.m. and adjourn about 5 p.m. on February 16. The Council will reconvene at 8 a.m. and adjourn about 5 p.m. on February 17. The meeting may be extended or shortened depending on progress on the agenda. The proposed agenda is as follows:

FEBRUARY 16

1. Closed 2-hour session (8 a.m. to 10 a.m.) to discuss classified material on the status of current maritime boundary and resource negotiations between the United States and Canada.
2. Organization of the Council, including its staff, advisory panels, and committees, and operational and procedural matters.
3. Consideration of reports from ad hoc committees.
4. Review of communications from other agencies and organizations.

FEBRUARY 17

1. Consideration of fishery management plans under development.

The Salmon Advisory Panel and SSC meeting will be open to the public, as will all but the first agenda item of the Council meeting. For more information on seating arrangements, changes to the agenda, and/or written comments, contact: Mr. Lorry M. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201. Telephone: 503-221-6352.

The closed session of the Council is planned for the early morning of the first day, February 16, from 8 a.m. through 10 a.m. to hear and discuss Department of State security classified material on the status of current maritime boundary and resource negotiation between the United States and Canada. Only those Council members and staff having security clearances will be allowed to attend this closed session.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined, on January 27, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(1) as information which is properly classified pursuant to Executive Order 11652. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 5317, Department of Commerce.

Dated: January 27, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-2797 Filed 1-31-78; 8:45 am]

[3510-04]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the patent application number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314

Patent application 833,788: Boundary Layer Scoop for the Enhancement of Coanda Effect Flow Deflection over a Wing/Flap Surface; filed Sept. 16, 1977.

Patent application 840,334: Potential Troughs for Charge Transfer Devices; filed Oct. 7, 1977.

Patent application 840,353: RF Excited Mercury Laser Lamp; filed Oct. 7, 1977.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 3,988,178: Method for Preparing Superconductors; filed Nov. 29, 1974; patented Oct. 26, 1976; not available NTIS.

Patent 3,994,279: Solar Collector with Improved Thermal Concentration; filed July 24, 1975; patented Nov. 30, 1976; not available NTIS.

Patent 3,995,485: Dry, Portable Calorimeter for Nondestructive Measurement of the Activity of Nuclear Fuel; filed Oct. 20, 1975; patented Dec. 7, 1976; not available NTIS.

Patent 4,009,614: Apparatus for Monitoring Two-Phase Flow; filed Dec. 19, 1975; patented Mar. 1, 1977; not available NTIS.

Patent 4,012,282: Multiple Lead Seal Assembly for a Liquid-Metal-Cooled Fast-Breeder Nuclear Reactor; filed May 17, 1976; patented Mar. 15, 1977; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 745,758: Stable Alkaline Zinc Electrode; filed Nov. 29, 1976.

Patent application 822,475: Non-Linear Acoustic Transducer; filed Aug. 8, 1977.

Patent application 828,809: Composite Video Signal Field Recognition Circuit; filed Aug. 29, 1977.

Patent application 829,542: Optical Photoemissive Detector and Photomultiplier; filed Aug. 31, 1977.

[FR Doc. 78-2847 Filed 1-31-78; 8:45 am]

[3510-17]

DEPARTMENT OF COMMERCE

Office of the Secretary

[4310-10]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Final Watch Quota Allocation Rules

AGENCY: Industry and Trade Administration, Bureau of Trade Regulation.

ACTION: Final watch quota allocation rules.

SUMMARY: Pursuant to § 303.3 of Title 15 of the Code of Federal Regu-

lations, the Secretaries of Commerce and the Interior published in the FEDERAL REGISTER dated December 21, 1977, proposed rules for the allocation of watch quotas under Pub. L. 890-805 (42 FR 63923 et seq.).

The proposed rules set forth the criteria and formulae which the Secretaries intend to use in calculating quota allocations for calendar year 1978, and propose new entrant provisions for Guam and American Samoa. A copy of the proposed rules was sent to each watch quota holder on December 15, 1977. Interested parties were invited to provide comments on or before December 29, 1977. The Secretaries have considered the single comment received (discussed below in Supplementary Information) and hereby publish the rules in final form.

DATE: These rules are effective January 26, 1978.

FOR ADDITIONAL INFORMATION CONTACT:

Mr. Richard M. Seppa, who can be reached by telephone on 202-377-2925.

SUPPLEMENTARY INFORMATION: No watch quota firm offered comments on the proposed rules. However, an association which has among its members some firms with territorial subsidiaries expressed the view that, while a step in the right direction, the proposal would do little to increase the economic benefits to the insular possessions and do nothing to stop the competitive advantage enjoyed by insular watch quota firms utilizing certain low-cost movements, the assembly of which generates insignificant insular labor. The party contended that unless the Departments refrained from reallocating quota earned but unused by firms assembling higher-cost movements requiring significant insular labor input, the proposed allocation formula would not curb the increased use of the disruptive low-cost movements.

The Departments have fully considered the comment received and have concluded it provides insufficient reason to modify the rules as proposed. The reasons for the Departments' conclusions follow:

1. Watch assembly firms contribute to the insular economies in two primary ways, (i) wages paid to permanent residents and (ii) corporate income tax payments. By increasing by 10 percent the amount of quota to be allocated on the basis of these two factors and reducing by an equal percentage the amount of quota to be allocated on the basis of the firms' shipments the preceding year, firms which produce movements requiring high local labor content and firms making meaningful income tax contributions will be eligible for a larger percentage of the 1978 quota. Given an adequate demand for insular watches, the allocation formula offers the prospect of increased economic benefits for the insular economies.

2. According to industry sources, the market for conventional watches has stabilized. Also, domestic consumption of watches is expected to turn out lower in 1977 than the preceding year and this will decrease the total amount of quota available in 1978 for allocation to insular firms. These two circumstances should diminish the amount of quota available on reallocation.

3. Pursuant to § 305.5(b) of title 15 of the Code of Federal Regulations (42 FR 62907 et seq.), the Secretaries are authorized to reallocate unutilized quota "in a manner which * * * is best suited to contribute to the economy of the territories" taking into account "the nature of the producer's present assembly operations and any other factors which, in the judgment of the Secretaries, bear on the well-being and established character of the industry and thereby on the economy of the territory." Moreover, § 303.9(b) provides that if unutilized quota becomes available, the Secretaries are not required to reallocate it or set it aside for new firms if that is "deemed in the best interest of territories and the established industry."

The Departments are of the view that if circumstances warrant, they have sufficient authority under present regulations to deal with the stated concerns of the commenting party at the reallocation stage by exercising the options contained in § 303.9(b) or by taking one or a combination of other steps such as limiting reallocations to firms then (i) assembling movements having a minimum number of discrete components, (ii) performing certain alternative assembly operations or (iii) making a specified average wage contribution per movement assembled.

References to Form DIB-334P in Section 4 of the proposed rules are modified to read "Form ITA-334P" to reflect the redesignation of the Domestic and International Business Administration as the Industry and Trade Administration.

Accordingly, the proposed rules are published below, without substantive change, as final rules.

SECTION 1. (Virgin Islands and Guam) Pursuant to 15 CFR Part 303.5(a)(2) the annual quotas for calendar year 1978 for the Virgin Islands and Guam will be allocated on the basis of (1) the number of units assembled in the territory and entered by each producer duty-free into the customs territory of the United States during calendar year 1977, (2) the dollar amount of wages, up to a maximum of $14,000 per person, paid by such producer in the territory whose pay was attributable to the producer's Headnote 3(a) watch assembly operation, and (3) the total dollar amount of income taxes paid by such producer during calendar year 1977 attributable to its Headnote 3(a) watch assembly operations, excluding penalty payments and less any income tax refunds and subsidies paid by the Territorial government to such producer during calendar year 1977.

In making allocations under this formula, a weight of 25 percent will be assigned to Headnote 3(a) shipment history, a weight of 55 percent will be assigned to wages paid as specified above, and a weight of 20 percent will be assigned to the total dollar amount of income taxes paid during calendar year 1977 and attributable to Headnote 3(a) watch assembly operations, with the exclusions and deductions specified above.

SEC. 2. Applications from new firms are invited for the calendar year 1978 American Samoa quota, because the sole recipient in the territory has advised the departments that it would discontinue operations by the end of calendar year 1977. Due to the limited size of the American Samoa quota, the Departments will allocate that quota to the single firm which offers the best prospect of making a meaningful long-term contribution to the economy of the territory. See section 4 below, for application procedures.

SEC. 3. Applications from new firms are invited for 150,000 units of the calendar year 1978 Guam quota, because of the low level of quota utilization in the territory during 1977.

SEC. 4. Applicants for new-entrant quotas in Guam or American Samoa must complete applicable sections of Form ITA 334P (formerly DIB-334P), copies of which may be obtained from the Statutory Import Programs Staff, Room 6894, U.S. Department of Commerce, Washington, D.C. 20230, and must provide such additional information as the Secretaries may require (15 CFR 303.5(b)). Detailed instructions for completing ITA-334P will be provided by the Statutory Import Programs Staff together with copies of the application form.

SEC. 5. If the Secretaries determine with respect to the new-entrant provisions for quotas in Guam or in American Samoa that no application has been received by March 1, 1978, proposing a sufficient number of assembly operations or otherwise offering the prospect of a meaningful contribution to the territorial economy, the Secretaries shall notify each applicant of the specific deficiencies and may issue a new invitation or extend the date for revised applications or applications from other new firms. In the event that any or all of the new-entrant quota in Guam is not allocated under this provision, the quota involved will be treated in accordance

with procedures set forth in 15 CFR 303.5(b) (42 FR 62907 et seq.).

Any new firm which is selected to receive a quota will be required to comply with specified conditions and applicable rules of the Departments and with United States Customs Service regulations regarding assembly operations which must be performed in the insular possession under General Headnote 3(a), Tariff Schedules of the United States, as well as with the general requirements of the Territorial government regarding the establishment and conduct of a business.

Dated: January 26, 1978.

RUTH VAN CLEVE,
Director, Office of Territorial Affairs, U.S. Department of the Interior.

[FR Doc. 78-2737 Filed 1-31-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

NEW OFFICIAL AUTHORIZED TO ISSUE EXPORT VISAS AND CERTIFICATIONS FOR EXEMPT TEXTILE PRODUCTS FROM THE REPUBLIC OF KOREA

JANUARY 26, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Authorizing Kim Chul Su to issue visas and certifications for exempt cotton, wool and man-made fiber textile products exported from the Republic of Korea to the United States, replacing Park Yong Dow.

SUMMARY: On May 25, 1972, a letter dated May 19, 1972, from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs was published in the FEDERAL REGISTER (37 FR 10605), prohibiting entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported to the United States, for which the Republic of Korea had not issued a visa. A further letter, dated August 22, 1973, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER on August 29, 1973 (38 FR 23357) and established an administrative mechanism to exempt from the limitations of the bilateral agreement between the Governments of the United States and the Republic of Korea certain textile products which have been certified for exemption by the Government of the Republic of Korea.

One of the requirements is that the visas and certifications for exemption include the signature of an official designated by the Government of the Republic of Korea. The Government of the Republic of Korea has informed the Government of the United States that, effective on January 1, 1978, Kim Chul Su, Chief of the Quota Management Division, Ministry of Commerce and Industry, is the official authorized to issue export visas and certifications for exempt items, replacing Park Yong Dow. Goods covered by visas and certifications issued by Park Yong Dow before January 1, 1978, will not be denied entry. A facsimile of the signature of Kim Chul Su is filed as part of the original document with the Office of the FEDERAL REGISTER.

EFFECTIVE DATE: January 1, 1978.

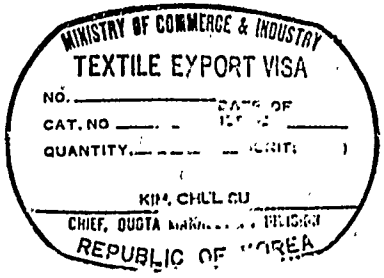
FOR FURTHER INFORMATION CONTACT:

Judith L. McConahy, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

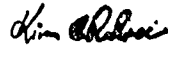
EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

The sample of visa stamp for textile export quota to U. S. A.

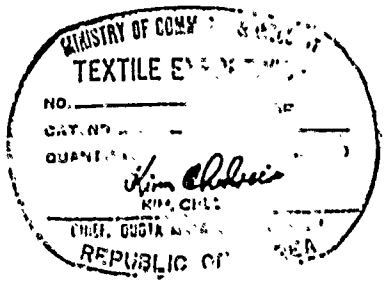
Visa stamp



Sign stamp



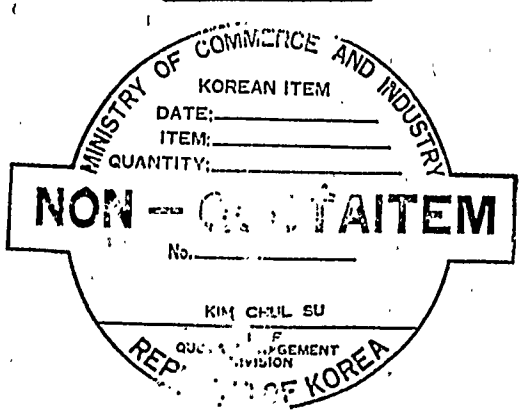
Visa & sign stamp



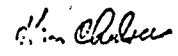
Steel stamp

The sample of visa stamp for non quota item to U. S. A.

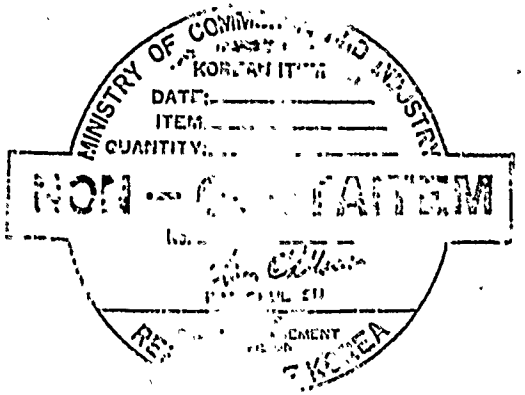
Visa stamp



Sign stamp



Visa & sign stamp



Steel stamp

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury, Washington, D.C. 20229

JANUARY 26, 1978.

DEAR MR. COMMISSIONER: This letter further amends, but does not cancel, the directive of May 19, 1972, from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit, effective 30 days after publication of notice in the FEDERAL REGISTER, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products, produced or manufactured in the Republic of Korea for which the Republic of Korea had not issued a visa. It also further amends, but does not cancel, the directive of August 22, 1973, which established a mechanism to exempt from the levels of the bilateral agreement between the Governments of the United States and the Republic of Korea, certain textile products which have been certified for exemption by the Government of the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, the directives of May 19, 1972, and August 22, 1973, as previously amended, are hereby further amended to authorize Kim Chul Su to issue visas and certifications for exempt cotton, wool, and man-made fiber textile products exported from the Republic of Korea, effective on January 1, 1978, replacing Park Yong Dow. Goods covered by visas and certifications issued by Park Yong Dow before January 1, 1978, shall not be denied entry.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool, and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-2757 Filed 1-31-78; 8:45 am]

[3810-71]

DEPARTMENT OF DEFENSE

Department of the Navy

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on February 22-23, 1978, at the Pentagon, Washington, D.C. sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on both days. All sessions will be closed to the public.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order, including discussions of U.S. Navy plans, force structure, program initiatives, and selected items of intelligence. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Commander William A. Armbruster, USN, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arlington, Va. 22209. Phone OX 4-3191.

Dated: January 27, 1978.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-2748 Filed 1-31-78; 8:45 am]

[3810-71]

REGIONAL DISCHARGE REVIEW SYSTEM

Suspension of Hearings

In FR Doc. 75-27207, published on October 9, 1975, 40 FR 47524, the Department of the Navy published notice that, beginning in November 1975, the Naval Discharge Review Board (NDRB) would convene and conduct hearings for a number of days each quarter in announced locations. The NDRB itinerary for November 1977 through April 1978 was published in FR Doc. 77-32728, on November 11, 1977, 42 FR 58779. That notice further provided that the itinerary remained subject to modification if necessary.

Due to the reconsideration requirements mandated by Pub. L. 95-126 and the limited personnel resources available to the Board, it is necessary to modify the previously announced NDRB itinerary. Accordingly, NDRB traveling operations subsequent to completion of the February 1978 schedule will be temporarily suspended. Projected completion of the reconsideration requirements mandated by Pub. L. 95-126 should enable traveling operations to be resumed in or about June 1978. No scheduled hearings are affected by this suspension. For further information concerning the NDRB, contact:

Capt. J. G. Shaw, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Va. 22203; telephone No. 202-692-4881.

Dated: January 27, 1978.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-2749 Filed 1-31-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

ISSUANCE OF DECISIONS AND ORDER BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of November 7 Through November 11, 1977

Notice is hereby given that during the week of November 7 through November 11, 1977, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Atlantic Richfield Co., Los Angeles, Calif., DFA-0013, Freedom of Information

The Atlantic Richfield Co. (Arco) appealed from a partial denial by the FEA Information Access Officer of a request for information submitted under the Freedom of Information Act (the Act). In its request, Arco sought the disclosure of documents relating to the FEA transfer pricing program. The Information Access Officer identified seven documents which were within the scope of Arco's request but declined to release any of them on the grounds that the documents were exempt from mandatory public disclosure under section 552(b)(5) of the Act. He determined that the documents were recommendatory in nature and consisted of opinions which are part of the process by which governmental decisions and policies are formulated. On appeal, the DOE determined that this determination was correct except for certain factual material contained in two documents which was segrega-

ble from the other portions which consisted of policy analysis and recommendations. The DOE also determined that the public interest would be served if additional portions of two other documents were released. The Arco appeal was therefore granted in part and denied in part.

Consumers Fuel Co., Martinsburg, W. Va., FRA-1309, Refined Products

Consumers Fuel Co., Inc. (Consumers), filed an appeal from a remedial order which FEA Region III issued to the firm on April 28, 1977. The remedial order found that during the period November 6, 1973, through July 16, 1974, Consumers sold kerosene and fuel oil at prices which exceeded the maximum price levels permitted in 10 CFR 212.93(a). Therefore, the remedial order directed Consumers to refund overcharges of $17,547, plus interest, to its customers. In considering the firm's appeal, the DOE detemined that Consumers failed to present any material during the course of the proceeding which would support it's allegation that the firm's sales of No. 2 fuel oil to its transport load customers were improperly treated in the remedial order. The DOE also determined that Consumers' assertion that the remedial order made no provision for the firm's increased cost of business operations constituted a contention that the underlying price regulations were invalid and was therefore irrelevant to the appeal proceeding. Finally the DOE noted that the financial material which Consumers submitted failed to demonstrate that the firm would experience any significant difficulty in refunding the overcharges. Accordingly, the Consumers appeal was denied.

Cotten, Day & Doyle, Washington, D.C., DFA-0009, Freedom of Information

The law firm of Cotten, Day & Doyle (Cotten) appealed from partial denial by the FEA Information Access Officer of a request for information which the firm submitted under the Freedom of Information Act (the Act). In its request for information, Cotten sought a copy of a letter which was submitted to the FEA Office of Exceptions and Appeals by the Guam Oil & Refining Co. (Gorco) in response to a request by the FEA in Case No. FEE-4105. The Information Access Officer released a copy of the letter to Cotten but deleted certain portions on the basis that they contained confidential commercial information which is exempt from disclosure under section 552(b)(4) of the Act. The information deleted consisted of: (i) A description of a contract between Gorco and the U.S. Defense Fuel Supply Center (DFSC), and (ii) the volumes and compositions of certain feedstocks which Gorco utilized in its refinery between 1970 and 1976. In considering Cotten's appeal, the DOE determined that the information concerning the Gorco/DFSC contract which the Information Access Officer withheld had been previously disclosed to the public. The DOE concluded that the information was therefore not confidential under section 552(b)(4) of the Act and should be released to Cotten. With respect to the feedstock volumes which were deleted from the Gorco letter, the DOE determined that this data was sensitive commercial information, the release of which is likely to result in substantial harm to Gorco's competitive position. The DOE therefore concluded that this information was properly withheld under section 552(b)(4) of the Act. Cotten's appeal was accordingly granted in part and denied in part.

Wilson Oil Co., Wabasha, Minn., FRA-1442, Refined Products

The Wilson Oil Co. (Wilson) appealed from a remedial order which FEA Region V issued to the firm on August 10, 1977. In the remedial order, Region V found that during the period November 1, 1973, through August 31, 1974, Wilson sold motor gasoline and heating oil at prices which exceeded the maximum permissible price levels computed in accordance with 10 CFR 212.93. On the basis of these findings, the FEA ordered Wilson to refund overcharges of $23,999, plus interest, to its customers. In its appeal, Wilson contended that the remedial order had incorrectly utilized a single, firmwide computation for the purpose of calculating the firm's May 15, 1973, weighted average cost of product in inventory and its current weighted averge cost of product in inventory. In this connection, Wilson maintained that it operated two retail outlets which were historically distinct and have maintained separate inventories as well as separate financial and accounting records since 1966. Wilson therefore claimed that its inventory costs should have been calculated separately for these two outlets. In considering the firm's contention, the DOE observed that Wilson's retail outlets comprised a single firm under section 212.31 of the Mandatory Petroleum Price Regulations, which defines a firm as "a parent and the consolidated or unconsolidated entities (if any) which it directly or indirectly controls." Moreover, prior to May 1, 1976, section 212.92 required a firm to calculate its cost of product in inventory on the basis of one firmwide computation, regardless of whether the firm had historically maintained separate inventories at various regional or local supply distribution centers. Consequently, the DOE concluded that the separate inventory computations which Wilson made during the period in which the violation occurred were not permissible practices. The DOE also found that the assessment of interest on the overcharges was appropriate in order to fully compensate Wilson's customers for the excessive amounts which they paid. Since Wilson failed to demonstrate that the remedial order was erroneous in fact or law or was arbitrary or capricious, the firm's appeal was denied.

REQUESTS FOR EXCEPTION

A & N Producing Services, Inc., Jackson, Miss., FXE-4478 Crude Oil

A & N Producing Services, Inc. (A&N), filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted would result in an extension of the exception relief previously granted to the firm and thereby permit it to continue to sell 100 percent of the crude oil produced from the USA well No. 2 lease (USA well) at upper tier ceiling prices. In considering A&N's exception request, the DOE found that the costs incurred in operating the USA well were continuing to increase and that, in the absence of exception relief, the working interests would therefore lack an incentive to produce crude oil from the property. In view of this situation and on the basis of the actual operating data which A&N has presented for the previous 6 months, the DOE concluded that the working interest owners should be permitted to sell at upper tier ceiling prices 56.8513 percent of the crude oil produced on their behalf from the USA well during the 6-month period ending April 30, 1978.

Gennuso's Service, Fresno, Calif., FEE-4140, Motor Gasoline

Gennuso's Service filed an application for exception from the provisions of 10 CFR 211.9 which, if granted, would result in the termination of the firm's supplier/purchaser relationship with its base period supplier of motor gasoline, the Red Triangle Oil Co. (Red Triangle), and the assignment of a major oil company as the firm's new supplier. Gennuso's Service asserted that it was experiencing difficulties as a result of Red Triangle's refusal since January 1, 1977, to accept the Gulf Oil Corp. credit card as payment for motor gasoline. Gennuso's Service further contended that local representatives of three major oil companies which offer use of their credit cards to their dealers were all unwilling to supply Gennuso's Service with motor gasoline on a long-term basis. In considering the exception request, the DOE concluded that Gennuso's Service failed to demonstrate that its inability to utilize a credit card issued by a major oil company was in any way attributable to the requirements of the DOE regulatory program. The application for exception submitted by Gennuso's Service was accordingly denied.

B. J. Hickman, Kimball, Nebr., FEE-4126, Crude Oil

B. J. Hickman (Hickman) filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell the crude oil produced from the Houtby "J" sand unit (the Houtby unit) located in Kimball, Nebr., at upper tier ceiling prices. In considering the exception application, the DOE found that the cost of producing crude oil from the Houtby unit had increased significantly since 1973 to a level where those costs now exceed the revenues which the firm may realize from the sale of the crude oil at lower tier ceiling price levels. The DOE concluded that under the circumstances, Hickman does not have an incentive to continue producing crude oil from the Houtby unit. The DOE also concluded that it was unlikely that the crude oil in the reservoir underlying the unit would be recovered by any other firm in the absence of exception relief. On the basis of precedents involving similar factual situations, the DOE concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to Hickman. Accordingly, on the basis of the operating data which had been submitted for the unit's most recently completed fiscal period, Hickman was granted exception relief which permits him to sell at upper tier ceiling prices 34.55 percent of the crude oil produced and sold from the Houtby unit for the benefit of the working interest owners.

Martha Jackson, Kermit, Tex., FEE-4058, Crude Oil

Martha Jackson filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would permit Jackson to sell her share of the crude oil produced from the Lum Daugherty "B" lease (the lease) during the period from February 1 through May 31, 1976, at upper tier ceiling prices. In considering the exception application, the DOE found that Jackson had convincingly demonstrated that she had attempted to certify the lease as a stripper well property in accordance with the provisions of 10 CFR 212.131. The DOE therefore concluded that the purchaser of the crude oil should have

paid upper tier ceiling prices for the crude oil involved. In addition, the DOE found that Jackson, a widow living on a fixed income, would experience a financial hardship unless the purchaser of the crude oil paid her the difference between the lower tier and upper tier prices for the crude oil involved. Accordingly, the exception application was granted and the purchaser was directed to pay this sum to Jackson.

Rickelson Oil and Gas Co., Tulsa, Okla., FEE-3597, Crude Oil

Rickelson Oil & Gas Co. (Rickelson) filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell additional quantities of crude oil produced from the Rosa Washington No. 3 well (the Washington well) located in Pottawatomie County, Okla., at upper tier ceiling prices to supplement the exception relief granted in *Rickelson Oil & Gas Co.*, 3 FEA Par. 83,217 (June 7, 1976). In its exception application Rickelson stated that the relief granted in the June 7 decision is insufficient to alleviate the gross inequity which was found to exist. In considering the request, the DOE determined that the actual capital investment necessary to repair the Washington well was substantially greater than that originally projected as a result of the fact that the firm had encountered unanticipated several holes in the well casing. The DOE also found that the firm had significantly underestimated operating expenses for the Washington well. As a result of these forecasting errors, the DOE concluded that if Rickelson were to continue to produce crude oil from the Washington well, the revenues which it would realize from the sale of the crude oil would not afford the firm the 15 percent return on its investment. Exception relief was therefore approved which permits the firm to sell at upper tier ceiling prices an additional portion of the crude oil produced for the benefit of the working interest owners from the Washington well during the remaining life of the investment project.

S&W Engine Supply Co., Oklahoma City, Okla., FEE-4357, Crude Oil

S&W Engine Supply Co. filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell the crude oil produced from the Baker Townsend lease located in Oklahoma County, Okla., at upper tier ceiling prices. In considering the exception request, the DOE found that S&W's operating costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the Baker Townsend lease. The DOE also determined that if S&W abandoned its operations at the Baker Townsend lease, a substantial quantity of domestic crude oil would not be recovered. On the basis of criteria applied in previous decisions, the DOE determined that S&W should be permitted to sell 70.23 percent of the crude oil produced from the Baker Townsend lease for the benefit of the working interest owner at upper tier ceiling prices.

Skelton Operating Co., Inc., Jackson, Miss., FEE-4407, Crude Oil

Skelton Operating Co., Inc., filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted would permit Skelton to sell the crude oil produced from the Lee Beard No. 2 well (the No. 2 well) at upper tier ceiling prices. In considering the exception application, the DOE found that the No. 2 well had generated substantial operating profits for the working interest owners during the 12-month fiscal period June 1, 1976, through May 31, 1977, and that in the absence of any evidence to the contrary, the material which Skelton had submitted indicated that the No. 2 well would remain an economically viable operation even in the absence of exception relief. The DOE also found that Skelton had not submitted any data to indicate that the crude oil reserves underlying the No. 2 well could not be recovered from neighboring properties. Therefore, the DOE concluded that Skelton had failed to establish that the application of the lower-tier ceiling price rule adversely affected the economic incentive of the working interest owners to produce crude oil from the No. 2 well. Accordingly, the exception application was denied.

Tenneco Oil Co., Houston, Tex., FEE-4788, Crude Oil

Tenneco Oil Co. (Tenneco) filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted would permit Tenneco to sell a percentage of the crude oil produced from the South Coast unit, located in St. Mary Parish, La., at upper tier ceiling prices. In considering the Tenneco exception request, the DOE found that operating costs at the South Coast unit had increased to the point where they exceeded the revenues which the firm received from the sale of crude oil at lower tier ceiling prices. Consequently the DOE determined that Tenneco had no economic incentive to continue its operations at the South Coast unit in the absence of exception relief. The DOE also found that the abandonment of the South Coast unit would result in the loss of significant quantities of otherwise recoverable crude oil. Since the mandatory petroleum price regulations were not intended to result in a reduction in the supply of domestic crude oil, the DOE concluded that exception relief should be granted to Tenneco in order to provide the firm with a sufficient economic incentive to continue its production operations. On the basis of the operating data submitted by Tenneco and previous precedents involving similar factual situations, the DOE concluded that the firm should be permitted to sell at upper tier ceiling prices 47.62 percent of the crude oil produced from the South Coast unit for the benefit of the working interest owners for a 6-month period.

Texas Oil & Gas Corp., Dallas, Tex., FEE-4401, Crude Oil

Texas Oil & Gas Corp. (TXO) filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Pete Rydolph lease (the Rydolph lease) at upper tier ceiling prices. In considering the exception application, the DOE determined that the costs of producing crude oil from the Rydolph lease have increased significantly since 1973, and, as a result of these increased costs, TXO's costs of production now exceed the prices which the firm is permitted to charge for the crude oil produced from the Rydolph lease. Consequently, the DOE concluded that TXO does not have an economic incentive to continue to operate the Rydolph lease. The DOE also found that there would be little possibility that the recoverable crude oil from the reservoir underlying the lease would be produced by another firm in the absence of exception relief. On the basis of precedents involving similar factual situations, the DOE concluded that the applications of the lower tier ceiling price resulted in a gross inequity to TXO. Accordingly, on the basis of the operating data which the firm submitted for its most recently compeleted fiscal period, TXO was granted exception relief which permits the firm sell at upper tier ceiling prices 7.11 percent of the crude oil produced and sold for the benefit of the working interest owners from the Pete Rydolph lease.

Whitco, Inc., Dallas, Tex., FXE-4777, Motor Gasoline

Whitco, Inc., filed an application for an extension of exception relief from the provisions of 10 CFR 211.25 (the supplier substitution rule) which the FEA had previously granted to the firm. The previous decision and order directed the Regional Administrator of FEA Region VI to determine whether Witco would experience a serious hardship of gross inequity in the absence of additional exception relief and to recommend whether the exception relief previously granted to Whitco should be extended. On the basis of the new material submitted by Whitco in this proceeding and the recommendations of the Regional Administrator, the DOE determined that Whitco would continue to experience a serious hardship and a gross inequity in the absence of exception relief. Accordingly, the exception relief previously granted to the firm was extended through December 31, 1977.

4-Way Grocery, Molalla, Oreg., FEE-4284, Motor Gasoline

The 4-Way Grocery (4-Way) filed an application for exception from the provisions of 10 CFR 211.9 which, if granted, would result in the termination of its relationshp with its base period supplier of motor gasoline, the Stein Oil Co. (Stein), and the assignment of the Union Oil Co. of California (Union) as 4-Way's current supplier. 4-Way stated that it has been purchasing all of its motor gasoline supplies from Union under terms of a contract which only requires Union to make surplus motor gasoline available to 4-Way. 4-Way claimed that in the event of a serious shortage of motor gasoline, Union would have no surplus motor gasoline and 4-Way would be unable to obtain adequate volumes of product from Union. In considering 4-Way's exception request, the DOE found that the firm was currently operating on a profitable basis and its claim that it might in the foreseeable future be prevented from obtaining adequate supplies of surplus motor gasoline from Union was speculative. On the basis of precedents established in a number of previous decisions, the DOE concluded that 4-Way had failed to demonstrate that its adherence to the provisions of the mandatory petroleum allocation regulations was likely to cause it to experience any serious hardship or gross inequity. The firm's application for exception was accordingly denied.

PETITIONS FOR SPECIAL REDRESS

Clark Oil & Refining Corp., Milwaukee, Wis., DSG-0003; DES-0009, Motor Gasoline

Clark Oil & Refining Corp. (Clark) filed a petition for special redress which, if granted, would have resulted in the issuance of an order quashing a subpena that DOE

Region V issued to the firm on August 12, 1977. Clark also requested a stay of the provisions of the subpena pending a final determination on its petition. In considering the Clark petition, the DOE noted that section 205.8(h)(4) of the DOE regulations sets forth criteria governing the review by the Office of Administrative Review of a petition in which a firm seeks to quash a subpena. That section provides that a preliminary review of the petition will be made in order to determine whether a reasonable probability exists that the petitioner will be able to satisfy the criteria for relief. If the Office of Administrative Review determines that a petition might satisfy those criteria, the petition will be considered on its merits. On the other hand, if the determination is made that the petition fails to meet this threshold standard, the petition will be dismissed. See 41 FR 55322 (December 20, 1976). The DOE reviewed the contention which Clark advanced in its petition and concluded that Clark had failed to demonstrate that an immediate review was warranted to correct substantial errors of law, to prevent substantial injury to legal rights, or to cure a gross abuse of administrative discretion. The Clark petition was therefore dismissed and its application for stay was denied.

Gulf Oil Corp., Los Angeles, Calif., DSG-0001; DES-0004, Motor Gasoline

On November 5, 1976, the FEA Office of Regulatory Programs issued a determination granting Gulf Oil Corp.'s request for termination of its regulatory obligation to maintain supplier/purchaser relationships for the sale of motor gasoline in northern California, northern Nevada, Oregon, and Washington. That order was subsequently appealed, and on March 30, 1977, the FEA Office of Exceptions and Appeals issued a decision and order in which it remanded the November 5 order to the FEA Office of Regulatory Programs for additional findings. In the March 30 decision, the FEA found that the November 5 order failed to sufficiently consider the possible adverse impact which Gulf's withdrawal might have on the distributors and marketers previously supplied by Gulf and on competition in the affected marketing area. Accordingly, the November 5 order was remanded for additional findings regarding the adverse impact which the termination of Gulf's supply obligation could have. In the interim, Gulf was required to maintain its base period supplier/purchaser relationships in the affected area to those firms which had challenged the November 5 order. On October 12, 1977, Gulf filed an application for stay and petition for special redress with the Office of Administrative Review of the Department of Energy, and those submissions were consolidated for consideration in this proceeding. In its submission, Gulf requested that the DOE vacate the stay of the November 5 order and authorize Gulf to discontinue suplying motor gasoline to all of its base period purchasers in the Pacific Northwest. Gulf contended that in the event its request for stay were denied, it would experience an irreparable injury and incur a more immediate hardship than the firms which Gulf is presently required to supply. In response to this claim, the DOE found that Gulf had failed to demonstratue that a termination of its remaining base period supply obligations in the Pacific Northwest would not have an adverse impact on its purchasers in that area, and that until such a determination was made by the DOE, it would be contrary to the principles which the FEA set forth in the March 30 decision and inequitable to the potentially aggrieved firms if Gulf's request for stay were granted. In addition, the DOE noted that Gulf had also failed to demonstrate that a denial of its stay request would result in an irreparable injury to the firm. Therefore, Gulf's request for stay was denied. However, the DOE found that the Office of Fuels Regulations had been provided an ample opportunity to issue an amended version of the November 5 order with respect to Gulf's request for withdrawal, and that continued delay was unnecessarily detrimental to Gulf's interest. Consequently the DOE determined that all necessary steps should be taken by the DOE Office of Fuels Regulations so that a final determination would be issued in this matter within 45 days.

REQUESTS FOR STAY

Gas del Oro, Inc.; Gas del Oro International, Inc.; El Dorado Marketing Co. of Laredo, Houston, Tex., FES-1478, Natural Gas Liquid Products

Gas del Oro, Inc., Gas del Oro International, Inc., and El Dorado Marketing Co. of Laredo (Gas del Oro) requested a stay of an order approving exception relief for the Ozona gas processing plant (Ozona) on May 27, 1977. If its request were aproved, the DOE Office of Administrative Review would stay the implementation of that order pending the determination of an appeal filed by Gas del Oro, rescind all price increases imposed upon Gas del Oro by Ozona pursuant to the provisions of the May 27 order, and direct Ozona to refund to Gas del Oro all revenues obtained by Ozona by virtue of those price increases. Gas del Oro contended that the financial data on which the FEA relied in issuing the May 27 order differed from data which Gas del Oro obtained from the Texas Railroad Commission, and that the data relied upon by FEA also overstated certain nonproduct costs associated with Ozona's production of natural gas liquids and natural gas liquid products. As a result, Gas del Oro claimed that the level of exception relief granted to Ozona in the May 27 order was excessive. In considering the stay request, the DOE found that Gas del Oro had failed to make a prima facie showing that there exists a substantial likelihood of success on the merits of its appeal because considerable controversy existed regarding the facts of the case. In addition, the DOE determined that the firm had failed to show that it would suffer an irreparable injury, since it had not submitted any financial data whatsoever in its application for stay to demonstrate that it would be damaged by the increased prices for natural gas liquids and natural gas liquid products which Ozona was permitted to charge Gas del Oro under the May 27 decision and order. The firm's application for stay was accordingly denied.

National Helium Corp., Liberal, Kans., DES-0010, Natural Gas Liquid Products

National Helium Corp. (NHC) requested that the provisions of 10 CFR, Part 212, Subpart K, be stayed in order to permit the firm to increase its prices for natural gas liquids and products to the extent specified in a proposed decision and order which the FEA issued to the firm on September 30, 1977. The stay, if granted, would have remained in effect during the period of time in which the DOE was considering a final determination with respect to NHC's statement of objections to the September 30, 1977, proposed decision. In considering NHC's application for stay, the DOE found that NHC had provided no financial data for any other information which demonstrated that the firm would experience an irreparable injury in the absence of a stay. The DOE also determined that NHC had failed to demonstrate that it satisfied any of the other criteria for the approval of a stay. Accordingly, NHC's application for stay was denied.

REQUEST FOR MODIFICATION OR RESCISSION

Univar Corp., Seattle, Wash., FMR-0117, Reporting Requirements

Univar Corp. filed an application for modification of an FEA notice which had been published in the FEDERAL REGISTER on December 16, 1976. That notice identified Univar as a corporation which had consumed at least 1 trillion BTUs of energy during 1975, and was therefore among the 50 most energy-consumptive firms in SIC Code 20 (41 FR 54977, December 16, 1976). As a result of that notice, Univar is required to participate in a reporting program under the provisions of section 375 of the Energy Policy and Conservation Act (EPCA). In considering Univar's request, the DOE found that as a result of the termination of certain production activities in SIC Code 20 for the 1978 fiscal year would be substantially less than the amount of energy consumed in 1975 by all reporting firms in SIC Code 20. In addition, the DOE found that Univar's sales revenues in SIC Code 20 for the 1978 fiscal year would be reduced by approximately 27 percent. Consequently, the DOE determined that Univar had experienced "significantly changed circumstances" and concluded that the firm should be relieved of the obligation to report energy consumption data to the DOE under the provisions of section 375 of the EPCA.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Administrative Review of the Department of Energy has issued decisions and orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exceptions granted permit the firms involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases:

Company	Case No.	Plant	Amount of price increase (dollars in gallons)
Continental Oil Co	FEE-4584	Edmond	$0.0092
	FEE-4585	Fruita	.0052
	FEE-4586	Gillis	.0129
	FEE-4587	Grand Chevier	Denied
	FEE-4588	Hennessey	Denied
	FEE-4589	Nueces River	Denied
	FEE-4590	O'Keene	.005

Company	Case No.	Plant	Amount of price increase (dollars in gallons)
Getty Oil Co	FEE-4419	Bay Springs	.0546
	FEE-4420	Cameron	.0475
	FEE-4421	Eunice	.0175
	FEE-4422	Fuller	.0054
	FEE-4423	Hollywood	.0131
	FEE-4424	Marlow	.1009
	FEE-4425	Medicine Lodge	Denied
	FEE-4426	Red Fish Bay	Denied
	FEE-4427	Schafer	.0346
	FEE-4428	Spearman	.0142
	FEE-4429	Velma	.0223
	FEE-4430	Venice	.0055
Monsanto Co	FEE-4322	Adena	.0451
	FEE-4323	Como	.0372
	FEE-4324	Diamond "M"	.0096
	FEE-4325	Dollarhide	.0162
	FEE-4326	Gillette	.0346
	FEE-4328	Pledger	.0246
	FEE-4329	Spivey	.0119
Standard Oil Co. (Indiana)	FXE-4550	Indian Basin	Denied
	FXE-4551	Levelland	.0082
	FXE-4552	Luby	.0308
	FXE-4553	North Cowden	.0114
	FXE-4554	Old Ocean	.0134
	FXE-4606	Burnell-North Pettus	.0235
	FXE-4607	South Gillock	.0503
	FXE-4608	South Manchester	.0271
	FXE-4609	South Pecan	.0209
	FXE-4610	Thibodoux	.0356
	FXE-4659	Beaver Creek	.0119
	FXE-4660	Kinsler	Denied
	FXE-4661	Midland Farms	.0189
	FXE-4662	Peoria	.0190
	FXE-4663	South Fullerton	.0126
	FXE-4795	Slaughter	.0084

SUMMARY DECISIONS

The following firms filed applications for stay of remedial orders which had been issued to them by the DOE. In considering the stay requests, the DOE referred to a recent Decision in *Rickelson Oil & Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which it held that a remedial order will generally be stayed pending the determination of an appeal unless it appeared that the public interest required immediate compliance with the remedial order. Since the record in these cases did not indicate that the public interest required immediate compliance with the remedial order, the DOE granted the requests for stay pending consideration of the appeals.

Har-Ken Oil Co., Inc., Owensberg, Ky., DRS-0028

Paul M. Terada, Palo Alto Calif., DRS-0012

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

"Stix" Gas Co., Inc., Denton, Tex., FEE-4658

Williams Energy Co., Tulsa, Okla., FEE-4408

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Administrative Review, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of Administrative Review.

JANUARY 25, 1978.

[FR Doc. 78-2742 Filed 1-31-78; 8:45 am]

[3128-01]

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with Section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of the following meeting:

A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on February 7 and 8, 1978, at the offices of Exxon Corp., 1251 Avenue of the Americas, New York, N.Y., beginning at 9 a.m. on February 7. The agenda is as follows:

1. Discussion of the status of the Standing Group on the Oil Market (SOM) and IWP activities.
2. Discussion of SOM proposal for addition of "Purchases From Other Companies" to Crude Oil Cost Reporting System.
3. Discussion of new SOM proposals for additions to historical financial information reporting system.
4. Preparation of documents for forwarding IWP advice to the SOM on the results of Items 2 and 3.
5. Arrangements for reporting to SOM and future meeting plans.
6. Discussion of future IWP procedures and Chairmanship.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., January 26, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration, Department of Energy.

[FR Doc. 78-2743 Filed 1-31-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

[ERA Docket No. WAPA 78-1]

CENTRAL VALLEY PROJECT, WESTERN AREA POWER ADMINISTRATION

Amendment to Notice of Intent To Act on Proposal for Interim Rates

On January 17, 1978, the Department of Energy issued a Notice of Intent to Act on Proposal for Interim Rates for the Central Valley Project, Western Area Power Administration, 43 FR 3158 (January 23, 1978). The Notice invited interested parties to submit written comments relevant to the proposed interim rates by February 22, 1978.

Section 501(c)(1) of the Department of Energy Organization Act, Pub. L. 95-91, requires that an opportunity for the oral presentation of views, data, and arguments be provided if the Secretary of energy "determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses * * *." While there has not been such a Secretarial determination, DOE wishes to afford interested parties the opportunity to make oral presentations relevant to the proposed interim rates.

The DOE, therefore, hereby amends the January 17, 1978, Notice, 43 FR 3158 (January 23, 1978), by advising the public that an opportunity for an oral presentation will be afforded upon request. Any person who has an interest in this matter or is a representative of a group or class of persons that has an interest in it, may make a written request for an opportunity to make an oral presentation at a public hearing. Such a request can be mailed or hand delivered to: Office of Regulations Management, Box RH, Department of Energy, 2000 M Street NW., Room 2214, Washington, D.C. 20461, and must be received before 4:30 p.m., e.s.t., February 15, 1978. The request shall state the name of the person making the request, identify the interest represented and if appropriate, state why he or she is a proper repre-

sentative of a group or class of persons that has such an interest, give a concise summary of the proposed oral presentation, and give a telephone number where the person may be contacted.

The public hearing will be held in Room 1140, Federal Building, 2800 Cottage Way, Sacramento, Calif., on February 27, 1978, at 9:30 a.m., and will be continued if necessary.

DOE reserves the right to select the persons to be heard and to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited based on the number of persons requesting to be heard.

It is not contemplated that the public hearing will be adjudicative in nature. A DOE official will be designated to preside at the hearing and any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding official. Each person selected to be heard will be notified by DOE before 4:30 p.m., e.s.t., on February 21, 1978.

Interested persons who wish to submit written comments are reminded that such comments are due on or before February 22, 1978, as provided in the original Notice published in the FEDERAL REGISTER on January 23, 1978 (43 FR 3158).

The hearing record will be available for inspection at the DOE 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.

Issued in Washington, D.C., January 26, 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-2740 Filed 1-31-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket Nos. G-6296, et al.]

APPLICATIONS FOR CERTIFICATES, ABANDONMENT OF SERVICE AND PETITIONS TO AMEND CERTIFICATES[1]

JANUARY 24, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 22, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-6296 C 12/15/77	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	El Paso Natural Gas Co. Certain acreage located in the NE¼SW¼ and SW¼SE¼ of sec. 11, T26S, R37E, Lea County, N. Mex. (limited to the Leonard Queen South and Penrose Formations).	(12)	14.65
G-11637 C 1/9/78	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	El Paso Natural Gas Co., Langlie Mattix Field, Lea County, N. Mex.	(12)	14.65
G-11637 C 1/9/78	Gulf Oil Corp.	do	(12)	14.65
G-13633 D 1/11/78	Pennzoil Producing Co., P.O. Box 2967, Houston, Tex. 77001.	Coastal States Gas Producing Co., Hidalgo Field, Hidalgo County, Tex.	Contract termination.	
CI74-528 C 1/9/78	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., J.B. Tubb Wells Nos. 131 and 138, Sand Hills Field, Crane County, Tex.	(1)	14.65
CI75-16 C 1/10/78	Exxon Corp.	Columbia Gas Transmission Corp., Grand Isle, Block 16 Field, offshore Louisiana.	(1)	15.025
CI75-25 C 1/13/78	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co., Sun Oil Co.'s Olinkraft "A" No. 1 Well, sec. 23, T21N R11W, Ivan Field, Bossier and Webster Parishes, La.	(1)	15.025
CI78-288 B 12/9/77	Maguire Oil Co., 4200 First National Bank Bldg., Dallas, Tex. 75202.	Aminoil USA, Alfalfa & Major Co., Oklahoma.	Selling direct to Panhandle Eastern to allow applicant to collect area rate for gas.	
CI78-290 A 12/30/77	Alminex U.S.A., Inc., P.O. Box 1521, Houston Tex. 77001.	Michigan Wisconsin Pipe Line Co., South Marsh Island Area, Blocks 243 and 244, offshore Louisiana.	(1)	15.025
CI78-291 B 1/6/78	B. R. Polk, Inc., Tom W. Klos, Land Department, First National Center, Oklahoma City, Okla. 73102.	Cities Service Gas Co., Eureka, Grant County, Okla.	Depleted.	
CI78-292 A 1/6/78	Dorchester Exploration, Inc., 1100 Midland National Bank Tower, Midland, Tex. 79701.	Northern Natural Gas Co., Horsecreek NW. (Morrow Lo) Field, Schoenhals No. 1 Well, Lipscomb County, Tex.	(1)	14.73
CI78-294 G-18671 B 1/9/78	Eugene Richardson, (successor in interest to Dorchester Gas Producing Co.), P.O. Box 367, White Deer, Tex. 79097.	Northern Natural Gas Co., sec. 26, Block 7, I. & G.N. Survey, Carson County, Tex.	Depleted.	
CI78-295 B 1/9/78	Edwin L. Cox, 3800 First National Bank Bldg., Dallas, Tex. 75202.	Northern Natural Gas Co., Kiowa Creek Field, Lipscomb County, Tex.	Depleted, plugged and abandoned.	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-296 CI70-226 B 1/9/78	Highland Resources, Inc., 800 San Jacinto Bldg., Houston, Tex. 77002.	Trunkline Gas Co., North Lake Misere Field, Cameron Parish, La.	Nonproduction and all leases expired.	
CI78-297 A 1/10/78	Bethlehem Steel Corp., Bethlehem, Pa. 18016.	Transcontinental Gas Pipe Line Corp., east one-half (E½) of Block 148 and the Southwest Quarter (SW¼) of Block 149, South Timbalier Area, Federal Domain, offshire Louisiana.	(1)	15.025
CI78-298 A1/10/78	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Tucker "H" No. 1 Well in the Panoma Council Grove Field, Grant County, Kans.	(1)	14.65
CI78-299 A 1/11/78	Pennzoil Producing Co., P.O. Box 2967, Houston, Tex. 77001.	United Gas Pipe Line Co., Hidalgo Field, Hidalgo County, Tex.	(1)	14.73
CI78-300 B 1/12/78	Sabine Oil Industries, Inc., 801 First National Bldg., Oklahoma City, Okla. 73102.	Northern Natural Gas Co., West Clearlake Field, Beaver County, Okla.	Applicant is filing because Casinghead gas production has ceased.	
CI78-301 B 1/12/78	F. J. Spaeth d.b.a. Spa Enterprises; Geological Exploration Co., a Texas corporation wholly owned by Mr. F. J. Spaeth, (successor in all Interest of F. J. Spaeth d.b.a. Spa Enterprises), 101 Bramlette Bldg., Longview, Tex. 75601.	Lone Star Gas Co., a division of Enserch Corp., Henderson Field, Rusk County, Tex.	(1)	
CI78-303 A 1/12/78	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., High Island A-368 Field, offshore Louisiana.	(1)	15.025
CI78-304 A 1/12/78	Shell Oil Co.	Natural Gas Pipeline Co. of America, Vermilion Area, Block 339, OCS-G-2090 and Block 340, OCS-G-2091, offshore Louisiana.	(1)	15.025
CI78-305 A 1/13/78	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Trunkline Gas Co., High Island Block A-350 and West Cameron Block 633, offshore Texas/Louisiana.	(1)	14.65 15.025
CI78-306 A 1/13/78	Kewanee Oil Co., P.O. Box 2239, Tulsa, Okla. 74101.	Columbia Gas Transmission Corp., Farnsworth "A" and Woofter leases located in Troy District, Gilmer County, W. Va.	(1)	14.65
CI78-307 A 1/16/78	Northern Natural Gas Producing Co., 3 Greenway Plaza East, suite 800, Houston, Tex. 77046.	Northwest Pipeline Corp. Certain acreage in the Baxter Pass, South Field, Garfield County, Colo.	(1)	14.73
CI78-308 A 1/16/78	Transocean Oil, Inc., 1700 First City East Bldg., Houston, Tex. 77002.	El Paso Natural Gas Co. Dakota formation underlying the Northeast Quarter (NE¼), sec. 31, T24N, R3W, Rio Arriba County, N. Mex.	(1)	14.73
CI78-309 A 1/16/78	Southland Royalty Co., 1600 First National Bldg., Forth Worth, Tex. 76102.	Panhandle Eastern Pipe Line Co., Tonkawa and Chester Formations from the Buckland No. 1-8 Well located in sec. 8, T25N, R15W and from the Buckland No. 7-81 Well located in sec. 9, T25N, R15W, Woods County, Okla.	(1)	14.65
CI78-310 A 1/17/78	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Southern Natural Gas Co., Casinghead gas in Block 288, main pass area, east addition, offshore Louisiana.	(1)	15.025
CI78-311 A 1/17/78	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Southern Natural Gas Co., Kerr-McGee, et al., State lease No. 1230, Well No. 1 (Phillips State lease 1230, Vell No. 8) located in Block 36, Breton Sound Area, Plaquemines Parish, La.	(1)	15.025
CI78-312 D 1/17/78	Hellar Drilling Co., Inc., 710 Petroleum Bldg., Wichita, Kans. 67202.	Kansas-Nebraska Natural Gas Co., Inc. Simpson Formation produced from performations of 4,058 ft to 4,065 ft in the Suiter No. 1 Well located in the Northwest Quarter (NW¼) of sec. 12, T24S, R15W, Stafford County, Kans.	Depleted.	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-313 A 1/18/78	Ashland Exploration, Inc., P.O. Box 1503, Houston, Tex. 77001.	Cities Service Gas Co., Eitzmann No. 1-6 Well, located in sec. 6, T28N, R3E, Kay County, Okla.	(1)	14.65
CI78-314 A 1/18/78	Enserch Exploration, Inc., 1817 Wood St., Dallas, Tex. 75201.	Natural Gas Pipeline Co. of America, Blocks A-327 and A-332, High Island Area, east addition, south extension, offshore Texas.	(1)	14.65
CI78-315 A 1/18/78	Enserch Exploration, Inc.....	Natural Gas Pipeline Co. of America, Block A-511, High Island Area, east addition, south extension, offshore Texas.	(1)	14.65

[1] Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[2] Applicant is filing under supplemental Casinghead Gas contract dated Oct. 5, 1977.
[3] Applicant is filing under supplemental Casinghead Gas contract dated Dec. 15, 1977.
[4] Applicant is filing under supplemental Casinghead Gas contract dated Oct. 17, 1977.
[5] Applicant is filing under gas purchase contract dated Dec. 15, 1977.
[6] Applicant filed to reflect its sale from interstate to intrastate due to Lone Star's realignment of its system from interstate to intrastate as authorized by Commission order of Dec. 18, 1972, in docket No. CP70-313.
[7] Applicant agrees to accept an initial rate determined in accordance with opinion No. 749.

Filing code.
A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[PF-88; FRL 850-3]

PESTICIDE PETITION

Filing

FMC Corp., Agricultural Chemical Division, 2000 Market Street, Philadelphia, Pa. 19103, has submitted a petition (PP 8F2034) to the Environmental Protection Agency (EPA) which proposes that 40 CFR 180 be amended be establishing a tolerance for residues of the insecticide permethrin (3-phenoxyphenyl) methyl (±) cis-trans-3-(2,2-dichloroethylenyl) - 2,2 - dimethyl-cyclopropanecarboxylate in or on the raw agricultural commodities cottonseed at 0.5 part per million and milk, fat, meat and meat by-products of cattle, horses and sheep at 0.05 part per million. The proposed analytical method for determining residues is by gas chromatographic procedure using electron capture and/or electrolytic conductivity. Notice of this submission is given pursuant to the provisions of Section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the FEDERAL REGISTER Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. Inquiries concerning this petition may be directed to Product Manager (PM) 17, Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at 202-426-9425. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice 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: January 26, 1978.

HERBERT S. HARRISON,
Acting Director,
Registration Division.

[FR Doc. 78-2793 Filed 1-31-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

PHILADELPHIA NATIONAL CORP.

Proposed Acquisition of Colonial Mortgage Service Co. Associates, Inc.

Philadelphia National Corp., Philadelphia, Pa., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire, through a wholly-owned subsidiary known as Colonial Mortgage Service, Inc., Philadelphia, Pa., all of the voting shares of Colonial Mortgage Service Co. Associates, Inc., Kensington, Md. Notice of the application was published on December 12, December 7, and December 6, 1977, in The Washington Post, The Baltimore Sun and the Virginia Pilot-Ledger Star, respectively, newspapers circulated in Washington, D.C., Baltimore, Md., and Virginia Beach, Va., respectively.

Applicant states that the proposed subsidiary would engage in the activi-

ties of originating FHA, VA and conventional residential mortgage loans. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competiton, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 20, 1978.

Board of Governors of the Federal Reserve System, January 24, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-2733 Filed 1-31-78; 8:45 am]

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

INDIAN EDUCATION

Acceptance of Nominations for Membership on the National Advisory Council on Indian Education; Closing Date

Introduction. In accordance with 20 U.S.C. 1221g, "National Advisory Council on Indian Education," announcement is hereby made that the Commissioner of Education will accept nominations for Indians and Alaska Natives, as defined below, in order to make recommendations of individuals to the President of the United States for membership on the National Advisory Council on Indian Education. The National Advisory Council on Indian Education consists of fifteen (15) members who are Indians and Alaska Natives appointed by the President. Such appointments shall be made by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations, and shall represent diverse geographic areas of the country.

(Pub. L. 92-318, section 442(a), 20 U.S.C. 1221g(a).)

Nominations submitted to the Commissioner of Education by Indian tribes and organizations must be received no later than March 31, 1978. Nominations are being requested in order to make recommendations for five (5) membership positions, which will be vacated in the fall of 1978. Each Presidential appointment will be for a term of three years ending September 29, 1981.

(20 U.S.C. 1233b(a)(1).)

2. *Functions of the Council.* The Council is directed to: (a) Submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of the Office of Indian Education;

(20 U.S.C. 1221f(a).)

(b) Advise the Commissioner of Education with respect to the administration (including the development of regulations and administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81-874) and section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (both as added by Title IV of Pub. L. 92-318), and with respect to adequate funding thereof;

(c) Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81-874), section 810 of Title VIII of the Elementary and Secondary Education Act of 1965, and section 314 of the Adult Education Act (all as added by Title IV of Pub. L. 92-318), and make recommendations to the Commissioner with respect to their approval;

(d) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(e) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(f) Assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) (as added by Title IV, Part A, of Pub. L. 92-318); and

(g) Submit to the Congress not later than June 30 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such programs.

(Pub. L. 92-318, section 442(b) 20 U.S.C. 1221g(b); 20 U.S.C. 1233b(a)(2).)

3. *Nomination review procedure.* The Deputy Commissioner for Indian Education will gather members of the Office of Indian Education staff to screen nominations received and address appropriate criteria including those set out below. Lists of primary and alternate recommended individuals will be compiled as a result of this session and will be forwarded to the Commissioner of Education for review. These lists will be accompanied by a listing of all individuals nominated.

The Commissioner of Education will make recommendations to the Secretary of Health, Education, and Welfare and forward primary and alternate lists of recommended nominees for the Secretary's review, which will be accompanied by the complete listing of all individuals nominated.

The Secretary of Health, Education, and Welfare will then forward his recommendations and the complete list of all nominations received to the President of the United States for necessary action.

4. *Definition.* "Indian" means any individual who (a) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (b) is considered by the Secretary of the Interior to be an Indian for any purpose, or (c) is an Eskimo or Aleut or other Alaska Native.

(Pub. L. 92-318, section 453, 20 U.S.C. 1221h.)

5. *Nominations.* Nominations submitted to the Commissioner of Education should be made according to the following categories: (a) Professional educators, (b) laypersons involved in education, (c) students, and (d) individuals with other than education experience.

Nominations from the category of professional educators, particularly those individuals with expertise in the areas of early childhood, elementary, vocational, special, and adult education, will be stressed for this year's recommendations by the Commissioner of Education, but nominations from all categories will be accepted. Also, nominations of women and Indians representing urban areas are encouraged this year in order to maintain a

balance with the remaining Council members. The categories are explained further below.

Nomination categories. (a) Individuals with active experience as professionals in the areas of early childhood, elementary, secondary, higher, special, vocational, and adult education, for example: teachers/professors, administrators, specialists (e.g., curriculum, language, math, etc.), counselors, researchers, or other education professionals.

(b) Individuals with active experience as laypersons involved with education, for example: school board members, Parent/Teacher Association members, parents of school-age children, or those with other lay involvement.

(c) An Indian student who is a college student or who has reached his or her junior year of high school at the time of nomination.

(d) Individuals who do not have education experience and preferably those individuals who have experience in a field involving Indian affairs.

6. *Recommendations.* Dependent upon the nominations received, it is anticipated that the five recommended nominees will all be from the category of professional educators, in order to maintain a balance with the remaining Council members. Attempts will be made to recommend individuals representing diverse geographic areas of the country, particularly from those areas with large Indian populations. Also dependent upon the nominations received, it is anticipated that four of the five recommended nominees will be from urban areas and that at least three of the five recommended nominees will be women. The Deputy Commissioner for Indian Education will consider the following factors in selecting individuals to be recommended for appointment: Indian education experience; general education experience; education expertise in the areas of early childhood, elementary, vocational, special, and adult education; education background; previous council or committee experience; honors and awards received; and organizational memberships. Nominees will also be considered on the basis of their knowledge of and experience with both local community and national issues.

7. *Nomination procedure.* Nominations submitted to the Commissioner of Education must be submitted on Office of Education Form OE-543, which may be obtained by writing or calling the Office of Indian Education, U.S. Office of Education, FOB-6, Room 2177, 400 Maryland Avenue SW., Washington, D.C. 20202, 202-245-8060.

A. Nominations sent by mail. A nomination sent by mail should be addressed as above. A nomination sent by mail will be considered to be received on time by the Office of Indian Education if:

(1) The nomination was sent by registered or certified mail not later than March 27, 1978, 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 nomination is received on or before the closing date by either the Department of Health, Education, and Welfare, or the Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner of Education 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 nominations. A nomination to be hand delivered must be taken to the Office of Indian Education, Room 2177, Federal Office Building Six, 400 Maryland Avenue SW., Washington, D.C. Hand-delivered nominations will be accepted daily between the hours of 8 a.m. and 4 p.m., Washington, D.C. time, except Saturdays, Sundays, and Federal holidays. Nominations will not be accepted after 4 p.m. on the closing date.

8. *Incomplete forms.* Incomplete forms will be returned to the nominating Indian tribe or organization accompanied by a checklist detailing information necessary for completion. Completed forms must be received by the Office of Indian Education no later than March 31, 1978 or not later than fifteen (15) days after the date on the checklist in order to be considered for recommendation by the Commissioner.

Dated: January 26, 1978.

ERNEST L. BOYER,

Commissioner, of Education.

[FR Doc. 78-2755 Filed 1-31-78; 8:45 am]

[4110-02]

STRENGTHENING DEVELOPING INSTITUTIONS PROGRAM—ADVANCED INSTITUTIONAL DEVELOPMENT PROGRAM

Extension of Closing Date for Receipt of Applications

Notice is given that the January 26, 1978, deadline for filing applications under the Strengthening Developing Institutions—Advanced Program as authorized by section 304 of Title III of the Higher Education Act of 1965, as amended (20 U.S.C. 1054), published in the FEDERAL REGISTER on November 28, 1977, is extended to February 8, 1978.

A. *Application forms and information:* Further information and application forms may be obtained from the Advanced Institutional Development Branch, Division of Institutional Development, Bureau of Higher and Continuing Education, Office of Education, 400 Maryland Avenue SW. (Regional Office Building 3, Room 3058), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

B. *Applications sent by mail:* An application sent by mail should be addressed to: U.S. Office of Education, Application Control Center, Attention: Advanced 13.454A, Washington, D.C. 20202. Applications must be received by the Application Control Center on or before the closing date. In an effort to prevent the late arrival of applications due to unforeseen circumstances, the Office of Education suggests that applicants consider the use of registered or certified mail as explained below.

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 February 3, 1978, 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.

C. *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 3, 7th and D Streets SW., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 8 a.m. and 4 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.

D. *Program information:* In formulating proposals, potential applicants should be aware of the amount of funds available for the Advanced Institutional Development Program for fiscal year 1978. A total of $68,000,000 is requested and will be distributed as follows:

The program will award approximately 20 to 26 new grants to four-year developing colleges and universities and approximately 9 to 12 new grants to two-year developing colleges.

The grants will range in size from $1,000,000 to $3,500,000 and will cover a period of three to five years. Applications for new grants will be accepted from (1) institutions not currently in the program and (2) grantees whose grants expire on or before December 31, 1978. All grants will be new awards; no funds are reserved for continuation awards.

The above statement with regard to the expected distribution of funds is basically for informational purposes and does not bind the Office of Education except as may be required by the applicable statute and regulation.

E. *For further information contact:* Dr. Anita F. Allen, Chief Advanced Institutional Development Branch, Division of Institutional Development, Bureau of Higher and Continuing Education, 7th and D Streets SW., Washington, D.C. 20202, Telephone 202-245-9754.

F. *Applicable regulations:* The regulations applicable to this program are the Strengthening Developing Institutions Program Regulations (45 CFR Part 169) and the Office of Education General Provisions Regulations (45 CFR Part 100a).

(20 U.S.C. 1054)

(Catalog of Federal Domestic Assistance No. 13,454A: Strengthening Developing Institutions)

Dated: January 30, 1978.

ERNEST L. BOYER,
Commissioner of Education.

[FR Doc. 78-2886 Filed 1-31-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14909-A]

ALASKA

Publication; Alaska Native Claims Selection

On January 13, 1964, pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)), the State of Alaska filed general purposes grant selection applications for the following lands:

Serial No.	Township Umiat Meridian, Alaska
F-031814	T. 10 N., R. 4 E., all, excluding any lands lying within Naval Petroleum, Reserve No. 4.
F-031823	T. 10 N., R. 5 E., all, excluding any land lying within Naval Petroleum Reserve No. 4.
F-031813	T. 11 N., R. 4 E., all, excluding any lands lying within Naval Petroleum Reserve No. 4.
F-031812	T. 12 N., R. 4 E., all, excluding any lands lying within Naval Petroleum Reserve No. 4.

The above then unsurveyed ands were tentatively approved to the State by decision dated November 23, 1964. By decisions dated February 7 and 19, and April 10, 1969, the tentative approvals were modified to conform the acreage to that shown on the official plats of survey.

On June 16, 1972, the State amended each of the above applications to include all unpatented lands in each township selected which included those lands withdrawn by Executive Order 3797-A, dated February 27, 1923, as amended, establishing what is now know as the National Petroleum Reserve in Alaska. Section 6(b) of the Alaska Statehood Act of July 7, 1958, provides that the State may selet vacant, unappropriated and unreserved public lands in Alaska.

Therefore, in view of the above, the following State selection applications must be and are hereby rejected as to those lands lying within the National Petroleum Reserve in Alaska as follows:

UMIAT MERIDIAN, ALASKA

Serial No.	Legal description	Acres
F-031814	T. 10 N., R. 4 E., tracts B and C, all.	21,768.06
F-031823	T. 10 N., R. 5 E., tracts B and C, all.	3,052.57
F-031813	T. 11 N., R. 4 E., tract B, all	14,079.50
F-031812	T. 12 N., R. 4 E., tract B, all	5,020.94
	Aggregating 43,921.17 acres.	

On November 15, 1973, Kuugpik Corp., Inc., for the Native village of Nooiksut (Nuiqsut, Nuiqsat), filed selection application F-014909-A under the provisions of section 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)) for the surface estate of certain lands in the Nooiksut area including lands within the subject State selections.

Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from lands withdrawn by section 11(a). Section 11(a)(2) further withdrew for possible selection by the Native corporation those lands within the townships described in section 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act. Section 12(a) further provided, however, that no village corporation may select more than 69,120 acres from lands withdrawn by section 11(a)(2).

The lands described below were properly selected by Kuugpik Corp., Inc. in village selection application F-14909-A pursuant to section 12(a)(1) of the act. Accordingly, the following State selection applications, filed on January 13, 1964, as amended, must be and are hereby rejected and tentative approvals granted November 23, 1964, as modified, are hereby rescinded as to the lands described below:

UMIAT MERIDIAN, ALASKA

Serial No.	Description
F-031814	T. 10 N., R. 4 E., all those portions of Tract "A" within (protracted) sections 2 and 11; All that portion of Tract "D" within (protracted) section 13. Containing approximately 195 acres.
F-031823	T. 10 N., R. 5 E., all those portions of Tract "A" within (protracted) sections 17, 18, 20, and 29. Containing approximately 1,433 acres.
F-031813	T. 11 N., R. 4 E., all those portions of Tract "A" within (protracted) sections 3, 10, 14, 15, 16, 22, 23, 26, 27, 34, and 35; Tract C, all. Containing approximately 3,642.43 acres.
F-031812	T. 12 N., R. 4 E., all those portions of Tract "A" within (protracted) sections 5 through 9, 16, 17, 20, and 21. Containing approximately 3,157 acres. Aggregating approximately 8,427.43 acres.

Further action on the above State selection applications as to those lands not rejected herein will be taken at a later date.

The total amount of State selected lands rejected to permit the conveyance hereinbelow approved totals approximately 8,427.43 acres, which is less than the 69,120 acres available for selection pursuant to section 12(a)(1) of the Alaska Native Claims Settlement Act.

As to the lands described below, the application submitted by Kuugpik Corp., Inc., as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to section 12(a), aggregating approximately 43,020 acres, is considered proper for acquisition by Kuugpik Corp., Inc., and is hereby approved for conveyance pursuant to section 14(a) of the Alaska Native Claims Settlement Act:

PARAGRAPH A

UMIAT MERIDIAN, ALASKA

T. 10 N., R. 4 E.,

All that portion of Tract "A" within (protracted) section 2, east of the highest high water mark on the western bank of the Nechelik Channel of the Colville River;

All that portion of Tract "A" within (protracted) section 11;

All that portion of Tract "D" within (protracted) section 13.

Containing approximately 52 acres.

T. 10 N., R. 5 E.,
All that portion of Tract "A" within the N½ of (protracted) section 17;
All that portion of Tract "A" within (protracted) section 18.
Containing approximately 679 acres.

T. 11 N., R. 4 E.,
That portion of Tract "A" more particularly described as (protracted):
Secs. 3, 10, 14, and 23, all those portions east of the highest high water mark on the western bank of the Nechelik Channel of the Colville River.
Containing approximately 87 acres.

T. 12 N., R. 4 E.,
That portion of Tract "A" more particularly described as (protracted):
Sec. 5, all that portion north of the highest high water mark on the southern bank of the Nechelik Channel of the Colville River.
Containing approximately 5 acres.
Aggregating approximately 823 acres.

PARAGRAPH B

UMIAT MERIDIAN, ALASKA

T. 10 N., R. 4 E.,
Tract "C", and those portions of Tracts "A" and "B" more particularly described as (protracted):
Sec. 2, all those portions lying west of the highest high water mark on the western bank of the Nechelik Channel of the Colville River.
Containing approximately 621 acres.

T. 10 N., R. 5 E.,
All that portion of Tract "A" within the S½ of (protracted) section 17;
All those portions of Tract "B" within (protracted) sections 17, 18, 20 and 29;
All those portions of Tract "A" within (protracted) sections 20 and 29.
Containing approximately 1,856 acres.

T. 11 N., R. 4 E.,
Those portions of Tracts "A" and "B" more particularly described as (protracted):
Sec. 3, all that portion west of the highest high water mark on the western bank of the Nechelik Channel of the Colville River;
Secs. 4 and 9, all;
Secs. 10 and 14, all that portion west of highest high water mark on the western bank of the Nechelik Channel of the Colville River;
Secs. 15 and 16, all;
Secs. 22 and 23, all;
Secs. 26 and 27, all;
Secs. 34 and 35, all;
Tract C, all.
Containing approximately 8,233 acres.

T. 12 N., R. 4 E.,
Those portions of Tracts "A" and "B" more particularly described as (protracted):
Sec. 5 (fractional), all that portion south of the highest water mark on the southern bank of the southernmost branch of the Nechelik Channel of the Colville River;
Secs. 6, 7 and 8 (fractional), all;
Secs. 9 and 16, all;
Secs. 17, 20, 21, 28, and 34 (fractional), all.
Containing approximately 4,049 acres.
Aggregating approximately 14,759 acres.

PARAGRAPH C

UMIAT MERIDIAN, ALASKA

T. 10 N., R. 4 E.,
All those portions of Tract "B" within (protracted) sections 11, 13, 14, and 24.
Containing approximately 2,527 acres.

T. 10 N., R. 5 E.,
All those portions of Tract "B" within (protracted) sections 19, 30, and 31.
Containing approximately 1,860 acres.

T. 12 N., R. 4 E.,
All those portions of Tract "B" within (protracted) sections 19, 29, 30, 31, 32, and 33.
Containing approximately 2,629 acres.

UMIAT MERIDIAN, ALASKA (UNSURVEYED)

T. 12 N., R. 2 E.,
Sec. 1 (fractional), all.
Containing approximately 615 acres.

T. 12 N., R. 2 E.,
Sec. 1 (fractional) all.
Containing approximately 615 acres.

T. 12 N., R. 3 E. (fractional),
All.
Containing approximately 18,232 acres.

T. 13 N., R. 2 E. (fractional),
All.
Containing approximately 1,575 acres.
Aggregating approximately 27,438 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, as prescribed and directed by the act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph, and telephone lines, as prescribed and directed by the act of March 12, 1914, 38 Stat. 305, 43 U.S.C. 975d;

3. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)); and

4. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file F-14909-EE, are reserved to the United States and subject to further regulation thereby:

(a) (EIN 1 C3, D1) An easement for an existing access trail fifty (50) feet in width from the coast in section 36, T. 13 N., R. 2 E., Umiat Meridian, southerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

(b) (EIN 4 C3, D1, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the Colville River from the south boundary of T. 10 N., R. 5 E., Umiat Meridian, to its mouth on the Nechelik Channel of the Colville River from its source to Harrison Bay. Purpose is to provide for public use of waters having highly significant present recreational use.

(c) (EIN 5 C3, C5, D1, D9) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the sevient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

(d) (EIN 10 C4) An easement for a secondary airstrip one thousand (1,000) feet in width and six thousand (6,000) feet in length on the site of the existing airstrip at Nooiksut located in section 18, T. 10 N., R. 5 E., Umiat Meridian. The site easement is minimum for public safety. Purpose is to provide access to public waters and to public lands and mineral resources in National Petroleum Reserve in Alaska.

(e) (EIN 11 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

(f) (EIN 12 C) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources, including those related facilities necessary during period of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easements shall require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

(g) In addition to the foregoing, the United States incorporates by reference the agreement of May 14, 1974, between the United States Department of the Navy, Arctic Slope Regional Corporation, Kuugpik Corp., Inc., and three other Native village corporations, and reserves those easements necessary to implement said agreement. A copy of the agreement is located in Bureau of Land Management file F-14909-EE.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

4. The terms and conditions of the agreement dated August 6, 1976 between the Secretary of the Interior, Arctic Slope Regional Corp., Kuugpik Corp., Inc. and the seven other Arctic Slope village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Kuugpik Corp., Inc., serialized F-14909-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

Kuugpik Corp., Inc., is entitled to conveyance of 115,200 acres of land selected pursuant to section 12(a) of the Alaska Native Claims Settlement Act. Upon this initial conveyance of the 43,020 acres described herein, a total of approximately 72,180 acres will remain to be conveyed to the corporation before the village reaches full 12(a) entitlement. The remaining entitlement will be conveyed at a later date.

Purusant to section 14(f) of the Alaska Native Claims Settlement Act conveyance of the subsurface estate of the lands described in paragraph A above shall be granted to the Arctic Slope Regional Corp. when conveyance is granted to Kuugpik Corp., Inc., for the surface estate, and shall be subject to the same conditions as the surface conveyance. The lands described in paragraph B above are considered to be involved in the National Petroleum Reserve in Alaska (NPR-A) boundary dispute; conveyance of the subsurface estate of the portion of these lands which actually lie outside NPR-A will be issued to the Arctic Slope Regional Corp., pursuant to section 14(f) of the Alaska Native Claims Settlement Act, when a final determination of the boundary has been made. It should be noted that no conveyance will be issued to the Arctic Slope Regional Corp. for the subsurface estate of the lands described in paragraph C, which lie within NPR-A. Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that when a village corporation selects the surface estate to lands within this reserve, the regional corporation may make in lieu selections of the subsurface estate, in an equal acreage, from other lands withdrawn by subsection 11(a) of the act; therefore, Arctic Slope Regional Corp. is entitled to approximately 27,438 acres in lieu subsurface estate, which equals the acreage in paragraph C to be conveyed to Kuugpik Corp., Inc. Additional in lieu lands equal in acreage to those in paragraph B, if any, which are determined to lie within NPR-A will also be conveyed to Arctic Slope Regional Corp. at a later date.

No determination of navigability or tidal influence affecting the inland water bodies within the lands herein described is necessary as the lands were withdrawn by Public Land Order No. 82 (43 FR 1796, February 3, 1943) when the Alaska Statehood Act of July 7, 1958 was passed (see 72 Stat. 339, 343; 48 U.S.C. Ch. 2, sec. 6(m) (1970)); therefore, the lands beneath tidal or navigable water bodies did not vest in the State pursuant to the Submerged Lands Act of May 22, 1953 (67 Stat. 29, 32, section 5; 43 U.S.C. Ch. 29, 1313(a) (1970)).

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until March 3, 1978, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alkaska Native Claim Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of, and the requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska 99501.

If an appeal is taken, the adverse parties to be served are:

Kuugpik Corp., Inc., Nooiksut (Nuiqsut), Alaska 99724.
Arctic Slope Regional Corp., P.O. Box 129, Barrow, Alaska 99723.
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

ROBERT E. SORENSON,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-2739 Filed 1-30-78; 8:45 am]

[4310-84]

[M 34079-A]

MONTANA

Application

JANUARY 24, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 185 (1970 Supplement V), Kansas-Nebraska Natural Gas Co., Inc., has applied for a natural gas pipeline right-of-way across Federal lands within the following sections:

PRINCIPAL MERIDIAN, MONTANA

T. 36 N., R. 30 E.,
Secs. 1, 10, 11, 14, 15, and 23.
T. 37 N., R. 30 E.,
Secs. 2, 3, 11, 12, 13, 14, 18, 19, 25, 26, 28, 30, 32, 33, and 35.
T. 32 N., R. 31 E.,
Secs. 1, 2, 11, 23, 25, 26, 35, and 36.
T. 33 N., R. 31 E.,
Secs. 2, 3, 11, 12, and 13.
T. 34 N., R. 31 E.,
Secs. 1, 2, 3, 12, 13, 22, 23, 24, 25, 26, and 35.
T. 35 N., R. 31 E.,
Secs. 10, 11, 14, 23, 24, and 26.
T. 36 N., R. 31 E.,
Secs. 2, 3, 5, 6, 7, 10, 11, 15, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, and 30.
T. 37 N., R. 31 E.,
Secs. 4, 5, 6, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, and 34.
T. 30 N., R. 32 E.,
Secs. 2, 10, 11, 12, and 15.
T. 31 N., R. 32 E.,
Secs. 5, 10, 15, and 24.
T. 32 N., R. 32 E.,
Sec. 6.
T. 33 N., R. 32 E.,
Secs. 3, 4, 7, 8, 9, 10, 14, 18, 19, 20, 23, and 26.
T. 34 N., R. 32 E.,
Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 21, 27, 28, 30, 33, and 34.

T. 35 N., R. 32 E.,
Secs. 17, 20, 31, and 32.
T. 31 N., R. 33 E.,
Secs. 3, 8, 10, 17, 18, and 19.
T. 31 N., R. 35 E.,
Secs. 30, 31, and 32.

The pipelines will convey natural gas across approximately 86 miles of Federal land in Phillips and Valley Counties, Mont. It will consist of 69 miles of 4-inch pipe, 15 miles of 6-inch line, and 2 miles of 8-inch line.

The purpose of this notice is to inform the public that the Bureau will proceed with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Drawer 1160, Lewistown, Mont. 59457.

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-2752 Filed 1-31-78; 8:45 am]

[4310-84]

[NM 32430 and 32431]

NEW MEXICO

Applications

JANUARY 24, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Co. of New Mexico has applied for four 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 27 N., R. 10 W.,
Sec. 1, lot 2.
T. 28 N., R. 10 W.,
Sec. 26, W½NW¼ and NW¼SW¼;
Sec. 28, NW¼NE¼ and E½NW¼;
Sec. 35, SW¼NE¼ and SE¼NW¼;
Sec. 36, E½SW¼ and SW¼SE¼.

These pipelines will convey natural gas across 1.898 miles of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

MARIE D. LARRAGOITE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-2753 Filed 1-31-78; 8:45 am]

[4310-84]

[NM 32513, 32603, 32604, 32605, and 32606]

NEW MEXICO

Applications

JANUARY 23, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for five 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 24 N., R. 3 W.,
Sec. 31, NE¼NE¼.
T. 29 N., R. 7 W.,
Sec. 4, SW¼SE¼.
T. 31 N., R. 10 W.,
Sec. 14, lots 3 and 4.
T. 31 N., R. 11 W.,
Sec. 4, lots 9, 10, and NW¼SE¼.

These pipelines will convey natural gas across 0.730 of a mile of public lands in Rio Arriba and San Juan Counties, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

MARIE D. LARRAGOITE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-2754 Filed 1-31-78; 8:45 am]

[4310-70]

National Park Service

CONSULTING COMMITTEE TO THE NATIONAL SURVEY OF HISTORIC SITES AND BUILDINGS

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Consulting Committee to the National Survey of Historic Sites and Buildings will be held at 9 a.m. e.s.t., on March 3, 1978, in Conference Room 7000-A in the Department of the Interior Building, Washington, D.C.

The purpose of the Consulting Committee is to review and evaluate studies of potential national historic landmarks prepared by the National Survey. The Committee's evaluation is the initial screening of potential historic landmarks. Its recommendations are forwarded to the National Park System Advisory board for a final review.

The members of the Consulting Committee are:

D. Richard H. Howland (Chairman), Washington, D.C.
Mr. James Biddle, Washington, D.C.
Dr. Walter L. Creese, Urbana, Ill.
Maj. Gen. John W. Huston, Washington, D.C.
Mr. Herbert E. Kahler, Alexandria, Va.
Mr. Charles E. Lee, Columbia, S.C.
Dr. Henry A. Millon, Cambridge, Mass.
Prof. Frederick D. Nichols, Charlottesville, Va.
Dr. Glenn Porter, Wilmington, Del.
Dr. Dorothy Porter, Washington, D.C.

The subjects that are to be evaluated are:

1. A partial revision of two subthemes on Alaska, "Alaska Aboriginal Culture," and "Alaska History."
2. A segment of the subtheme "Architecture."
3. Sepcial studies of the following properties:
(a) Kent State, May 4, 1970, site, Kent, Ohio.
(b) Central of Georgia Railroad Shops, Savannah, Ga.
(c) Falls of the Chattahoochee Hydroelectric Development, Columbus, Ga.
(d) Jackson Ward Historic District, Richmond, Va.

The meeting will be open to the public. However, facilities and space for accommodating the public are limited. It is expected that not more than 10 persons will be able to attend the sessions. Any member of the public may file with the Consulting Committee a written statement on the subjects to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Mr. George F. Emery, Chief, Historic Sites Survey Division, 202-523-5295. Minutes of the meeting will be available for public inspection six weeks after the meeting in the office of the Chief, Historic Sites Survey Division, National Park Service, Department of the Interior, Washington, D.C. 20240.

Dated: January 24, 1978.

WILLIAM J. MURTAGH,
Acting Chief, Office of Archeology and Historic Preservation.

[FR Doc. 78-2721 Filed 1-31-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-31]

CERTAIN STEEL TOY VEHICLES

Notice and Order Concerning Procedure for Commission Determination and Action

Notice is hereby given that—

1. The Commission will hold a hearing beginning at 10 a.m., e.s.t., Monday, March 20, 1978, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C., for the purposes of (1) hearing oral argument on the recommended determination of the presiding officer, concerning whether there is a violation of section 337 of the Tariff Act of 1930; (2) hearing oral argument concerning appropriate relief in the event the Commission determines that there is a violation of section 337 and determines that there should be relief; and (3) receiving information and hearing oral argument, as provided for in § 210.14(a) of the Commission's Rules of Practice and Procedure (19 CFR Part 210), concerning bonding and the public interest factors set forth in section 337 (d) and (f) of the Tariff Act, which the Commission is to consider in the event it determines that there is a violation of section 337 and determines that there should be relief. The latter two proceedings are legislative in character, and therefore the hearing on remedy, bonding, and the public interest will not be subject to the requirements of 5 U.S.C. 556, 557. These phases of the hearing will be conducted in accordance with § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11). All these matters are being heard all on the same day in order that this investigation may be completed within the time limits prescribed by section 337.

Parties and agencies wishing to make oral argument with respect to the recommended determination shall be limited in each oral argument to no more than 30 minutes, 10 minutes of which may be reserved by the staff and complainant for rebuttal.

For the purpose of the part of the hearing on relief, bonding, and the public interest factors, parties, interested persons, and agencies will be limited to no more than 15 minutes for making presentations. Participants will be permitted an additional 5 minutes for closing arguments after all the presentations have been concluded. Participants with similar interests may be required to share time. The Commission Investigative Staff will be separately allotted the full time available to a party.

Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than noon, February 3, 1978. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination; relief; bonding; or the public interest factors or any combination of them) in which the requesting person desires to participate. Issues of law or fact based on the record certified to the Commission may be filed with the Commission.

2. Briefs concerning exceptions to the recommended determination may be filed by any party or agency. Complainant's brief shall be filed not later than the close of business, Monday, February 13, 1978, respondent's brief and brief of the Commission invetigative staff, shall be filed not later than the close of business, Tuesday, February 28, 1978; and complainant's reply brief, if any, shall be filed not later than Thursday, March 9, 1978. The Commission Investigative Staff is here being required to brief at the same time as the Respondent because their views closely parallel each other. this order of briefing will enhance the adversary opportunities and thereby presumably produce the most useful briefing in this case. We do not suggest by this order that the staff has lost its independent status in this or any other case. Briefs shall be served on all parties of record on the date they are filed. The cover of complainant's brief shall be blue; respondent's brief, red; Commission investigative staff's brief, green; and any reply briefs, gray. Concerned Government agencies may file briefs on any issue related to the recommended decision in the same style and at the same time as the Commission investigative staff. Parties, persons and agencies are encouraged to consolidate their briefing where their positions are the same and to refer to the record.

3. Written comments and information are encouraged by any party, interested person, Government agency, or Government concerning relief, bonding, and the public interest factors set forth in section 337(d) and (f) of the Tariff Act of 1930, as amended (19 U.S.C. 1337), which the Commission is to consider in the event it determines that there should be relief. Such comments and information shall be filed with the Secretary in one original and ten copies on the dates set forth below, and the comments and information shall thereafter be available for inspection and copying by any person, except as respects in camera comments and information, which are to be treated as described below.

Comments and information on remedy, bonding and public interest will be as follows: Complainant shall file a detailed proposed Commission action, including a determination of bonding, on or before Monday, February 12, 1978. Complainant shall, at the same time, file such comment and information as it has respecting the effect of its proposed Commission actions upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States and U.S. consumers (the "public interest" factors). Thereafter, on or before February 28, 1978, any person, agency, or government may file written comments on and information pertaining to alternatives (if any) to the proposed Commission action and whether any Commission action ought or ought not to be taken after consideration of the effect of the action upon the public interest factors.

A request for in camera treatment of such comments and information must include a full statement of the reasons for granting in camera treatment. The Commission will then either accept such information in camera, or it will return the information.

Notice of the Commission's institution of the investigation was published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19933).

By order of the Commission.

Issued: January 27, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-2798 Filed 1-31-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

NIE AND NSF COLLABORATION IN RESEARCH ON COGNITIVE PROCESSES AND THE STRUCTURE OF KNOWLEDGE IN SCIENCE AND MATHEMATICS

Important Notice No. 70, dated January 5, 1978, announced that the National Science Foundation (NSF) and the National Institute of Education (NIE) are cooperating in a program of research to improve instruction in science and mathematics. The two agencies have established procedures for collaborative administration of this program, including the review of proposals seeking support for such research.

The program seeks to increase significantly the understanding of the cognitive processes, structures, or principles of importance in learning science or mathematics. Support will therefore be provided, on a competitive basis, for projects which combine all of the following:

—A focus upon learning-activities appropriate for students in the age range from elementary school to introductory college level. (Instruction at the advanced undergraduate and graduate level is excluded. However, instruction in settings outside the conventional school environment is included in the intent of this program.)

—The efforts of investigators who are experts in science or mathematics with the efforts of investigators who study human cognition. (It is expected that one or more of the investigators will have experience in instruction at the appropriate level or that an additional collaborator will bring that expertise to the project.)

—An emphasis upon cognitive processes or structures involved in learning a substantial segment of science or mathematics.

Proposals eligible for the new program might address any of a wide variety of research problems. The following list is meant to be illustrative only:

—Learning of important scientific or mathematical bodies of knowledge, including their use in problem solving;
—The cognitive representation of scientific or mathematical knowledge;
—Innovative approaches to the testing of such learning;
—The effects of instructional activities, especially the interaction of such activities with the underlying concepts and/or strategies used to acquire such knowledge;
—Studies investigating the similarities and differences among (1) scientific and mathematical knowledge as it is formally structured by experts in those fields, (2) cognitive representations of that knowledge in experts and novices, and (3) the structure of that knowledge as it is presented in instruction;
—Individual and group differences (including sex differences) in cognitive processing, interests, social and cultural backgrounds, and how these affect optimal instructional strategies for attaining and using scientific or mathematical knowledge;
—Instructional strategies, suitable for use in technologically assisted instruction in science or mathematics, based on cognitive and instructional theory;
—Effects of alternative modes of representation—writing, visual and kinesthetic imagery, etc.—upon the learning of scientific concepts.

A prospective applicant should submit a preliminary proposal for analysis and comment prior to submitting a formal proposal; however, a formal proposal may be submitted without a preliminary proposal. There are no fixed limits upon the cost or duration of a proposed project, but exceptional justification is required for support exceeding $150,000 or 24 months. Each preliminary proposal should provide a ten-page narrative which includes brief summaries of:

—The questions addressed.
—What is already known that is pertinent to the questions and to the proposed research.
—The importance of the proposed research to the learning of science and mathematics.
—The procedures that would be followed.
—The facilities and other resources available to the project.
—The qualifications of the proposed investigators, with respect to the specific subject matter, cognitive science, and instructional experience.
—Expected costs for personnel, equipment, materials and supplies, and other functions, including indirect costs.

The deadline for the receipt of preliminary proposals is March 1, 1978. Ten (10) copies of each such proposal must contain the following information:

—Descriptive Title of Project (maximum: 12 words):
—Name of Institution; City, State and Zip Code:
—Proposed Project Director (one only); Title, Department, address and telephone (include area code for Office and Home):
—Discipline(s) involved in project:
—Level of education (e.g. elementary, grade 4-6, introductory college):
—Proposed starting date of Project:
—Proposed duration of project: (number of months)
—Total $ support requested from NIE-NSF:
—Indicate if proposal has been or will be submitted in whole or in part to other possible sponsors, including NIE, NSF, or other Federal agencies. (Such information will not prejudice the review).
—Signature of Proposed Project Director and signature of Authorizing Official (Authorizing Official's signature is optional).
—Date of Submission:

These proposals should be mailed to:

Joint NIE-NSF Research Program, Science Education Directorate, National Science Foundation, Washington, D.C. 20550.

The signature of the official who is authorized to execute grant applications for the institution is not required for a preliminary proposal, at least insofar as NSF and NIE are concerned.

The program operates on a fiscal year which begins on October 1 and ends on September 30. Awards will be announced as early as possible, but probably not prior to late September in any given year. The results of the NIE-NSF review of a preliminary proposal will be provided to the proposer by April 15, and will include a recommendation for or against the preparation of a formal proposal, together with the requirements of a formal proposal and the criteria by which each will be reviewed.

Anyone who needs additional information concerning this program should address the inquiry to one of the two individuals listed below:

Susan F. Chipman, NIE Associate, Learning Division, National Institute of Education, Washington, D.C. 20208 (Telephone: 202-254-5766).

Erik D. McWilliams, Program Manager, Science Education Development and Research, National Science Foundation, Washington, D.C. 20550 (telephone: 202-282-7900).

M. REBECCA WINKLER,
Acting Committee Management Officer.

JANUARY 25, 1978.

[FR Doc. 78-2494 Filed 1-31-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS (ECCS)

Meeting

The ACRS Subcommittee on Emergency Core Cooling will hold a meeting on February 16, 1978 in Room 1046, 1717 H Street NW., Washington, D.C. 20555, to discuss the Westinghouse WRB-1 Critical Heat Transfer Correlation, the Westinghouse Improved Thermal Design Procedures, Transient Tests conducted at the Peach Bottom Nuclear Plant by General Electric, and a review of work being done on ECCS pump reliability and vortex control and sump design. Other matters of current interest to the ECCS Subcommittee and consultants may also be reported on by the NRC Staff.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

THURSDAY, FEBRUARY 16, 1978

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear

presentations by and hold discussions with representatives of the NRC Staff, the Westinghouse Electric Corp., and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates, telephone 202-634-1919, between 8:15 a.m. and 5 p.m., e.s.t.

Dated: January 27, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-2829 Filed 1-31-78; 8:45 am]

[7590-01]

CAMERA COVERAGE OF HEARINGS BEFORE ATOMIC SAFETY AND LICENSING BOARDS AND ATOMIC SAFETY AND LICENSING APPEAL BOARDS

General Statement of Policy

The Nuclear Regulatory Commission has considered requests from television stations and newspapers to permit the use of cameras during proceedings before Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards. In the past the NRC has permitted cameras to be used only before and after adjudicatory sessions and during recesses. The Commission has decided that, on a trial basis, it will permit the use of television and still cameras by accredited news media under certain conditions. Cameras may be used by news media during hearings and related public proceedings before Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards provided they do not require additional lighting beyond that required for the conduct of the proceeding and are stationed at a fixed position within the hearing room throughout the course of the proceeding. It will continue to be the practice of the hearing and appeal boards to use Federal or State court rooms when these facilities are available and in such cases the policy of those courts in regard to the use of cameras will be observed.

The Commission plans to reassess this policy in about six months after its hearing and appeal boards have had sufficient experience with camera coverage to determine whether it can be carried out without disruption to the proceeding or unacceptable distraction to the participants.

Dated at Washington, D.C., this 27th day of January 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHIL,
Secretary of the Commission.

[FR Doc. 78-2893 Filed 1-31-78; 8:45 am]

[3110-01]

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 January 25, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice 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

NATIONAL SCIENCE FOUNDATION

Exploratory Study of Scientific Activities of Science and Engineering Faculty at a Large, Public Nondoctoral College, single time, science faculty at a college, Laverne V. Collins, 395-3214.

DEPARTMENT OF AGRICULTURE

Departmental and other Meat Marketing Channel Pilot Study (St. Louis Area), single time, meat packers, processors and wholesalers, Ellett, C. A., 395-6132, Office of Federal Statistical Policy and Standard.

DEPARTMENT OF COMMERCE

Bureau of Census:

Supplementary Questionnaire for American Indians—1980 Census Dress Rehearsal (Part of the 1980 Decennial Census), D-15(X), single time, Indian households on reservations in conventional area, Reese, B. F., 395-3211, Office of Federal Statistical Policy and Standard.

Enumeration Status Reinterview—1980 Census Dress Rehearsal, D-160(X), single time, units classified "vacant," Laverne V. Collins, 395-3214, Office of Federal Statistical Policy and Standard.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Public Health Service, Application for National Health Service Corps Scholarship, on occasion, health professional students scholarship application, Richard Eisinger, 395-3214.

Office of Education, ESAA Human Relations Project Characteristics Questionnaire, OE-561-5, single time, school district ESAA project directors, Human Resources Division, Laverne V. Collins, 395-3532.

Public Health Service, Role of Artifical Sweeteners in Bladder Cancer, single time, individuals in five States and four metropolitan areas, Richard Eisinger, 395-3214.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Annual Report on Methods of Dealing with Questions of Recipient Fraud, SSA-4110, annually, State welfare agencies, Human Resources Division, 395-3532.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Request for Cancellation of Loan on Ground of Permanent and Total Disability and Medical Report, OE 1172, OE 1172-1, on occasion, students in IHE's and medical doctors, Laverne V. Collins, 395-3214.

Food and Drug Administration, Medical Responsibility Statement for Use of Methadone in a Treatment Program, FD 2633, on occasion, physicians employed by methadone clinics, Richard Eisinger, 395-3214.

Social Security Administration, Monthly Statistical Report on Recipients and Payments Under State Administered, State Assistance Programs for Aged, Blind, and Disabled, SSA 9741, monthly, 26 State welfare agencies, Lowry, R. L. 395-3772, Office of Federal Statistical Policy and Standard.

DEPARTMENT OF LABOR

Bureau of Labor Statistics:

Expenditures for Employee Compensation, 1976, BLS 2838, annually, private nonfarm establishments, Strasser, A. 395-6132, Office of Federal Statistical Policy and Standard.

Survey of Tax Officials; Property Tax Records Questionnaire (CP1), 2921.40

2921.43, annually, 350 taxing jurisdictions, Strasser, A. 395-6132, Ellett, C. A.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-2845 Filed 1-31-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-14358; File No. SR-Amex-77-30]

AMERICAN STOCK EXCHANGE, INC.

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 3, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The American Stock Exchange, Inc. (the "Amex"), proposes to rescind its rule 182. This provision currently requires Amex members who specialize in stocks, voting trust certificates or other securities admitted to dealings on the Amex pursuant to extensions of unlisted trading privileges to deposit with the Amex at least one share, certificate or receipt as to every such issue. Securities thus deposited are held in the name of a nominee designated by the Exchange and are deemed to be the absolute property of the Exchange so long as a member continues to act as specialist in the issue(s).

AMEX'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

Rule 182 was originally adopted to enable the Exchange to obtain current financial and operating information concerning issuers whose shares are admitted to unlisted trading privileges. However, since these issuers must now be registered with the Commission under section 12 of the Exchange Act and are therefore required to file periodic information under section 13 of the Act, the maintenance of the nominee account established under rule 182 is no longer necessary.

Rescission of rule 182 would remove a requirement which the Exchange has determined serves no regulatory purpose. As such the Amex cites section 6(b)(5) of the Act as statutory basis for the proposed rescission. Section 6(b)(5) provides, among other things, that the rules of a national securities exchange not be designed to regulate matters unrelated to the purposes of the Act or administration of a particular exchange.

The Amex states that no comments were solicited or received with respect to the proposed rule change.

Further, the Amex asserts that no burden on competition will be imposed by the proposed rescission of rule 182.

By March 8, 1978, or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by February 22, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 9, 1978.

[FR Doc. 78-2719 Filed 1-31-78; 8:45 am]

[8010-01]

[Sr-CBOE-77-18; Rel. No. 14404]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 23, 1978.

In the matter of Chicago Board Options Exchange, Inc., LaSalle at Jackson, Chicago, Ill. 60604.

On December 1, 1977, the Chicago Board Options Exchange, Inc., filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and rule 19b-4 thereunder, copies of a proposed rule change. This filing was amended on December 2, 1977. The purposes of the proposed rule change are to submit to the vote of the membership the terms and conditions of future membership offerings, and to withdraw an offering of Exchange memberships which commenced in April 1977 as to those which were unsold as of August 29, 1977. The proposed rule change is consistent with section 6(c)(7) of the Act which provides inter alia that the rules of the exchange should assure a fair representation of its members in the administration of its affairs. As to those memberships which by this proposal would be withdrawn, section 6(c)(4) of the Act permits an exchange to decrease the number of memberships in such exchange. However, an exchange is prohibited from decreasing the number of memberships below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later. The proposed rule change would not violate that statutory provision.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 14235, (December 8, 1977)) and by publication in the FEDERAL REGISTER (42 FR 63496 (December 16, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on December 1, 1977, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2710 Filed 1-31-78; 8:45 am]

[8010-01]

[Release No. 14411]

ESTABLISHMENT OF NATIONAL CLEARANCE AND SETTLEMENT SYSTEM

Hearing and Request for Comments

JANUARY 25, 1978.

The Securities and Exchange Commission announced today that it will hold public hearings beginning March 7, 1978 on the matters discussed herein. Persons who wish to submit written comments on these matters should do so by March 15, 1978.

BACKGROUND AND INTRODUCTION

In March 1976, National Securities Clearing Corp.-("NSCC") filed with the Commission an application for registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 (the "Act"), 15. U.S.C. 78q-1, as amended by the Securities Acts Amendments of 1975 (the "1975 Amendments"), and Rule 17Ab2-1 thereunder, 17 CFR 240.17Ab2-1. NSCC's application contemplated that NSCC would perform the clearing and settlement operations then performed by the American Stock Exchange Clearing Corp. ("ASECC"), National Clearing Corp. ("NCC") and Stock Clearing Corp. ("SCC").[1]

The Commission instituted proceedings pursuant to section 19(a)(1) of the Act to determine whether to grant or deny registration.[2] These proceedings included public hearings on June 16, 17, and 18, 1976.

Based upon the hearings, a review of comments from interested persons, and the analysis of economic and other data prepared by its staff, the Commission tentatively concluded that the registration of NSCC would be a positive and useful step in the development of a national system for the clearance and settlement of securities transactions ("National System"). The Commission announced on November 3, 1976, that it was considering the approval of the NSCC application subject to four conditions and requested public comments thereon.[3] After considering comments received, the Commission, on January 13, 1977, announced it had determined to permit provisional registration by NSCC based upon its conclusion that NSCC's registration, subject to certain conditions specified in its order,[4] would be "an essential step toward the establishment, at an early date, of a comprehensive network of linked clearance and settlement systems and branch facilities with the national scope, efficiencies and safeguards envisioned by Congress in enacting the 1975 Amendments."[5] NSCC was prohibited, however, from operating as an integrated system the clearing and settlement systems then operated by ASECC, SCC and NCC—referred to as Phase II—Until each of the conditions had been met.[6] NSCC indicated its belief that Phase II could be initiated within 120 days of the date NSCC's registration was granted. The Commission's Order also set forth the Commission's views on the minimum capabilities of a National System.[7]

In granting NSCC's registration on a provisional basis, the Commission indicated its intention "to monitor closely the effects" of its decision and "if necessary, substantially modify or reverse that decision."[8] The Commission also reserved the right to "modify any part of the conditions prior to the initiation of Phase II operations if the Commission determines that NSCC's satisfaction of the conditions is being delayed by other persons or that such action is necessary or appropriate to carry out the purposes of the Act."[9]

Subsequent to the issuance of the Order, Bradford National Clearing Corp. ("BNCC") and Bradford Securities Processing Services, Inc. ("BSPS") sought review of the Order in the United States Court of Appeals for the District of Columbia Circuit. NSCC, among others, intervened in the lawsuit, which is still pending.

During the one-year period since NSCC was granted registration, some but not all of the conditions have been satisfied. Specifically, interfaces for the clearance of OTC transactions have not been established with MCC or SCCP, the branch facilities operations have not begun, and an appropriate link has not been developed with TADDC.[10]

MATTERS TO BE EXAMINED DURING THE HEARINGS

In order to fulfill its responsibilities under the Act, the Commission has determined to receive, in a public forum, data, views and arguments on the events which have taken place during the past year in the clearance and settlement area and the problems which are impeding the development of an efficient, competitive National System. In particular, the Commission intends to examine the progress that has been made toward satisfaction of the conditions to NSCC's registration, whether the conditions to NSCC's registration are having their intended effect, and whether modifications to the Commission's Order and the conditions contained therein may be necessary. Data and views also will be solicited on whether there currently are geographic differences in the costs of engaging in business as a broker or dealer which make inappropriate geographic mutualization of charges for clearing and settlement services.

Finally, the Commission intends to receive testimony from persons who believe that the registration of NSCC has not furthered progress toward a National System and to what steps they perceive to be necessary or appropriate at this time to facilitate the establishment of a National System in a manner which furthers the objectives of the Act.

INFORMATION PERTAINING TO PUBLIC HEARINGS

Public hearings on the foregoing matters, pursuant to the provisions of Sections 2, 17A, 19, 21, 22, and 23 of the Act, will commence at 10 a.m.,

[1] ASECC, NCC and SCC were wholly-owned subsidiaries of the American Stock Exchange, Inc., the National Association of Securities Dealers, Inc., and the New York Stock Exchange, Inc., respectively.

[2] The Commission gave public notice of the institution of proceedings in Securities Exchange Act Release No. 12489 (May 28, 1976), 41 FR 23255 (June 9, 1976).

[3] Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976).

[4] Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916 (January 21, 1977) (hereinafter "the Order").

[5] Id., 5.

[6] The conditions to the Order provided that prior to the commencement of Phase II NSCC should have:

(i) Established full interfaces with each of the Midwest Clearing Corp. ("MCC"); Pacific Clearing Corp. ("PCC"); and Stock Clearing Corp. of Philadelphia ("SCCP") and appropriate links with Boston Stock Exchange Clearing Corp. ("BSECC") and TAD Depository Corp. ("TADDC") and offered to operate each interface and link under agreements which would provide that the parties to the interface or link would not charge each other for interface movements or charge their participants either an interface fee or any fee which would operate as an interface fee;

(ii) Provided, at cost, efficient facilities, and cooperated with brokers and dealers and other registered clearing agencies in the development of alternative means, through which brokers and dealers may compare, either directly or through an agent, transactions eligible for comparision at NSCC, and enabled its participants to effect comparison, clearance and settlement of New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex") and over-the-counter ("OTC") transactions through the NSCC branch network;

(iii) Begun operating existing NCC branch facilities so that those facilities, and any other branch facilities established by NSCC, provide, at a minimum, the same level of service provided through the facilities to NSCC participants to participants in any other registered clearing agency which agrees to use any of the facilities and to defray a portion of any such facility's operating costs equal to such clearing agency's proportionate use of the facility; and

(iv) Furnished without charge to any registered clearing agency which requested them computer programs for the performance of trade comparison for OTC transactions between the registered clearing agency's participants and made arrangements for any other registered clearing agency which is willing to do so to compare all OTC transactions between participants in different registered clearing agencies, without charge to such registered clearing agencies, or, if no other registered clearing agency is willing to do so, undertaken to compare all such transactions without charge to registered clearing agencies. Id., 117-118.

[7] Id., 21-30.

[8] Id., 111.

[9] Id., 112.

[10] The Commission does not intend to indicate any prejudgment as to the reasons these conditions have not been satisfied.

Tuesday, March 7, 1978, in Room 776 at the Headquarters Office of the Commission, 500 North Capitol Street, Washington, D.C. 20549 and continue thereafter at such times and places as the officers named herein may determine. Persons appearing at the hearings will be permitted to give a brief oral presentation addressing the issues of their choice pertaining to the establishment of a National System. The Commission intends to question persons appearing at the hearings concerning the above-mentioned issues, and, in order to allow sufficient time for the Commission's inquiries, initial oral presentations may not exceed fifteen minutes. Participants in the hearings, however, may submit more extensive written statements at least four days before their appearance. All oral statements from witnesses will be taken under oath or affirmation.

For the purpose of these hearings it is ordered that, Andrew M. Klein, Sheldon Rappaport, Roger D. Blanc, Harry F. Day, Robert J. Millstone, and Harry Melamed be, and hereby are, designated hearing officers to preside over such hearings, to administer oaths and affirmations, to subpoena witnesses, to compel their attendance, to take evidence, to require the production of any books, papers and other records deemed relevant or material to the inquiry and to perform such other duties in connection therewith as prescribed by law.

Any interested person who wishes to appear at the hearings should notify Robert J. Millstone at 202-755-8777 by Friday, February 24, 1978. Persons who plan to make a prepared statement should submit 25 copies of their statement not later than four business days in advance of their scheduled date of appearance.

Prior to or during the hearings, any person may submit written questions to be directed to a particular witness or group of witnesses; but the presiding hearing officer will determine in his sole discretion whether or to what extent to direct those questions to any witness.

A list of witnesses, setting forth the time of their scheduled appearances, will be published in the SEC News Digest.

REQUEST FOR COMMENTS

Interested persons are invited to submit written comments by March 15, 1978. Six copies of each comment letter should be submitted addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 600-15. All such communications will be placed in the file and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2718 Filed 1-31-78; 8:45 am]

[8010-01]

[File No. 81-280; Administrative Proceeding File No. 3-5367]

FORD INTERNATIONAL CAPITAL CORP.

Application and Opportunity for Hearing

JANUARY 24, 1978.

Notice is hereby given that Ford International Capital Corp. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order exempting the Applicant from the provisions of section 13 of that Act.

Section 13 of the 1934 Act provides that every issuer of a security registered pursuant to section 12 of that Act, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security, such information and documents as the Commission shall require to keep reasonably current the information included in the registration statement, and such annual and quarterly reports the Commission may prescribe.

Section 12(h) of the 1934 Act empowers the commission to exempt, in whole or in part, any issuer or class of issuers from the periodic reporting provisions of section 13 of the 1934 Act, if the Commission finds by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of trading interest in the securities, the nature and extent of the activities of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The Applicant states, in part:

1. The Applicant is a wholly-owned subsidiary of Ford Motor Co. ("Ford") and operates as an overseas financing vehicle for Ford and its subsidiaries.

2. The Applicant's 5 percent Convertible Guaranteed Debentures due 1983 (the "Debentures") are the only class of securities issued by ther Applicant which is registered under the 1934 Act. The debentures are listed on the New York Stock Exchange where no trading transactions have occurred since they were admitted to trading in 1968.

3. The Debentures were issued under conditions reasonably designed to prevent their distribution in the United States, its territories or possessions, or to citizens, nationals or residents thereof.

4. The Debentures are unconditionally guaranteed as to principal and interest by Ford.

5. The Debentureholders can be fully informed as to their investment by the reports required to be filed by Ford pursuant to section 13 of the 1934 Act.

In the absence of an exemption, Applicant is required to file annual and periodic reports with the Commission pursuant to section 13 of the 1934 Act. Applicant believes that its request for an order exempting it from the provisions of section 13 of the 1934 Act is appropriate in view of the fact that the Debentures are unconditionally guaranteed by Ford and it is the reports of that company in which investors will be primarily interested. Additionally, there has been no trading activity in the Debentures on the New York Stock Exchange since they were admitted to trading in 1968.

For a more detailed statement of the information presented, all persons are referred to the application which may be examined at the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C.

Notice is further given that any interested person, not later than February 20, 1978, may submit to the Commission in writing his view or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2711 Filed 1-31-78; 8:45 am]

[8010-01]

[Rel. No. 20396; 70-6108]

INDIANA & MICHIGAN ELECTRIC CO.

Mortgage Amendments Related to Proposed Issuance and Sale at Competitive Bidding of First Mortgage Bonds

JANUARY 26, 1978.

Notice is hereby given that Indiana & Michigan Electric Co. ("I&M"),

2101 Spy Run Avenue, Fort Wayne, Ind. 46801, an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, has filed with this Commission an amendment to its application-declaration previously filed in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12(c) of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amendment to the application-declaration, which is summarized below, for a complete statement of the new matter related to the proposed transactions.

By previous notice issued in this proceeding (HCAR No. 20377) it was stated that I&M proposed to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to $100,000,000 aggregate principal amount of its first mortgage bonds of a new series ("Bonds") and up to 1,600,000 shares of a new series of its cumulative preferred stock, par value $25 per share.

By amendment filed in this proceeding it is stated that I&M also proposes, in connection with the issuance and sale of the Bonds, to amend the provisions of Section 111 of its Mortgage and Deed of Trust, dated as of June 1, 1939, made by it to Irving Trust Co. and Frederick G. Herbst, as supplemented and amended, to facilitate the amendment of the Mortgage at a future date (i) to delete the third paragraph of Part II of Section 20 of the Mortgage (the requirement that I&M annually satisfy through the deposit of cash or bonds, or the certification of property additions, the amount by which expenditures for repairs, maintenance and replacements fails to equal 15% of base operating revenues, as defined), and/or (ii) to delete the fourth paragraph of Section 26 of the Mortgage, which provides that no bonds shall be authenticated, nor funded cash withdrawn, nor funded property released, nor credit be taken on the basis of any property additions subject to prior liens where the property additions so/used and related amounts, would exceed 15% of the total amount of bonds authenticated under the Mortgage.

I&M also proposes to change the amount of the Applicable Percentage specified in Part II(a) of Section 20 of the Mortgage from 2.25% to 2.95%, such change to become effective on the date when the Mortgage shall be amended to delete the provisions of the third paragraph of Part II of Section 20, and to continue at 2.95% until another change in such percentage shall be authorized or approved by this Commission under the Act.

Notice is further given that any interested person may, not later than February 17, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2744 Filed 1-31-78; 8:45 am]

[8010-01]

INDIANA & MICHIGAN POWER CO.

[Rel. No. 20397; 70-6088]

Proposed Issuance and Sale of First Mortgage Bonds to Institutional Investors; Request for Exception From Competitive Bidding

JANUARY 26, 1978.

Notice is hereby given that Indiana & Michigan Power Co. ("Power"), P.O. Box 458, Bridgman, Mich. 49106, an electric generating subsidiary company of Indiana & Michigan Electric Co. ("Electric"), an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designated sections 6(a), 7, and 12(c) of the Act and Rules 42(b)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Power, a Michigan corporation, was organized on April 20, 1941, to acquire, complete the construction of, and operate the Donald C. Cook Nuclear Plant ("Cook Plant"), a nuclear fueled steam electric generating station situated along the shore of Lake Michigan near Bridgmen, Mich. It was originally intended that these facilities be built and operated by Electric. By order issued August 23, 1971 (HCAR No. 17247), the Commission approved their transfer from Electric to Power. The Cook Plant is to consist of two 1,100,000 kilowatt generating units, the first of which was placed in commercial operation on August 23, 1975, and the second of which is scheduled to be placed in commerial operation during 1978 or later.

To finance the purchase and to complete construction, Power issued and had outstanding as of September 30, 1977, the following securities:

	In thousands of dollars	Percent
Long-term debt:		
First mortgage bonds	$70,271	7.7
Notes payable to banks	345,000	37.8
Subordinated notes payable to electric	69,000	7.6
Total	484,271	53.0
Common stock equity	429,444	47.0
Total capitalization	913,715	100.0

The proposed financing would refund the Bank Notes with the proceeds from the sale of up to $300,000,000 of Power's First Mortgage Bonds.

All the common stock is owned by Electric, which is Power's sole customer. Power has entered into a Capital Funds Agreement with Electric which requires Electric to maintain the equity capital portion of Power at no less than 35 percent of its capitalization. They have also entered a Power Agreement pursuant to which Power makes available to Electric all of the power (and the energy associated therewith) available at the Cook Plant and Electric pays to Power amounts at least sufficient to enable Power to pay its operating expenses and expenses related to payment of its indebtedness and taxes, regardless of the energy actually supplied.

$300,000,000 of the Bank Notes, issued under a Bank Loan Agreement, as amended, mature on September 30, 1980, and bear interest at a rate equal to one-half of one percent plus the prime commercial loan rate of Manufacturers Hanover Trust Co. ("Manufacturers") from time to time in effect. The remaining Bank Notes were issued pursuant to a further amendment of the Bank Loan Agreement, which provides that an additional $75,000,000 of Bank Notes may be sold. These Bank Notes mature on Septem-

ber 30, 1980, and bear interest a rate per annum equal to 115 percent of the prime commercial loan rate of Manufacturers in effect from time to time, and as to which Power does not plan to maintain any compensating balances.

The sale of the $75,000,000 of principal amount of first mortgage bonds, a 10⅞% Series due 1984, was authorized by Commission order of December 4, 1975 (HCAR No. 19282). They were sold at competitive bidding and are secured by a Mortgage and Deed of Trust ("Mortgage"), dated December 1, 1975, to Manufacturers, as Trustee.

Power now proposes to issue and sell up to $300,000,000 principal amount of First Mortgage Bonds (or "Bonds"), to be issued in one or more series, the terms of which will be determined by negotiation. It is expected that the Bonds will have maturities of not less than 20 years nor more than 30 years and will have cash sinking fund provisions designed to retire the Bonds by their maturities. It is stated that the issuance of the Bonds by Power will be effected in compliance with all applicable indenture, charter and other standards relating to such Bonds. The proceeds of the Bonds will be deposited in the construction fund under the Mortgage, and withdrawn by Power by application to the Trustee under the Mortgage and the certification of construction costs. Funds so withdrawn from the construction fund will be used or applied by Power to prepay, or to reimburse its treasury for funds expended to prepay, without penalty or premium, Notes under the Bank Loan Agreement, and for construction, it being anticipated that substantially all of the funds so withdrawn will be applied to the prepayment of Notes.

It is stated that because the Cook Plant is nuclear fueled, a series of inspections by governmental officials, occasional design changes, and licensing procedures create uncertainties which, in light of the amount of First Mortgage Bonds which will be necessary for Power to issue to refund all the Notes, make it economically advantageous for Power to arrange for refinancing the Notes on a basis that would minimize the impact on its financing program of unexpected developments in the nuclear licensing field or in the completion of the construction of Cook Plant Unit No. 2. Power states that although it has not approached any financial institution, Power believes that funds for investment in debt securities such as the Bonds are currently available from certain life insurance companies and other financial institutions, although there are some indications that this condition may be changing. Power believes that if funds from such sources are in fact available to Power on favorable terms in 1978, it would be desirable for Power to utilize such sources of capital for the refunding in 1978 of its Notes through the issuance and sale of First Mortgage Bonds. Such a step would enable Power to complete the construction of Unit No. 2 in the Cook Plant, and complete necessary licensing procedures, during the course of the sale of the First Mortgage Bonds, and would minimize the amount of the refunding which would otherwise be necessary in 1979 and the early part of 1980 at then prevailing interest rates. Power believes that it would not be practicable under existing market conditions to sell at competitive bidding a single series of First Mortgage Bonds in an amount as large as $300,000,000. It is reluctant to embark in a series of partial refundings. It fears that the intervention of adverse market conditions, or temporary difficulties in the nuclear licensing field during the course of such an effort might have an inordinate adverse effect on the entire financing program.

Under the foregoing circumstances, Power requests an exemption from the competitive bidding requirements of paragraph (b) of Rule 50 under the Act. Power proposes, if the authorization herein requested is granted, to request the assistance of Blyth Eastman Dillon & Co. Inc. and possibly one or more other investment banking firms, in identifying potential institutional purchasers of the refunding Bonds and with respect to the terms required to effect sales of such bonds to such purchasers. Any compensation to be paid by Power to any such investment banking firm for such service would be subject, prior to the payment thereof, to authorization by the Commission.

Fees and expenses to be incurred in connection with the proposed transaction, including any compensation to be paid to investment banking firms, will be supplied by amendment. It is stated that the proposed issuance and sale of the Bonds is possibly subject to the jurisdiction of the Michigan Public Service Commission and that no other state commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than February 17, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may reqest that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2745 Filed 1-31-78; 8:45 am]

[8010-01]

[811-2002; Rel. No. 10102]

NEWTON SELECT FUND, INC.

Filing of Application for an Order Declaring That Company Has Ceased To Be Investment Company

JANUARY 25, 1978.

In the matter of Newton Select Fund, Inc., 733 North Van Buren Street, Milwaukee, Wis., 53202.

Notice is hereby given that Newton Select Fund, Inc. ("Applicant"), a Maryland corporation registered as an open-end, diversified, management company under the Investment Company Act of 1940 ("Act"), filed an application on January 3, 1978, pursuant to Section 8(f) of the Act for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized under Maryland law on November 3, 1969, under the name Ziegler Select Fund, Inc., and adopted its present name on January 30, 1976. Applicant filed a Notification of Registration pursuant to Section 8(a) of the Act on January 14, 1970 and subsequently filed Registration Statements pursuant to Section 8(b) of the Act and Section 5 of the Securities Act of 1933 on September 24, 1970. Applicant further states that at a special meeting of shareholders of Applicant held on November 4, 1977, shareholders voted to exchange all of Applicant's assets for shares of common stock of Newton Income Fund, Inc. ("Income"), also an invest-

ment company registered under the Act, pursuant to an Agreement and Plan of Reorganization ("Agreement") whereunder such shares of Income would be distributed pro rata to Applicant's stockholders and Applicant would be liquidated and dissolved. Applicant states that such exchange and distribution occurred on November 16, 1977, at which time Applicant and Income filed Articles of Transfer with the State Department of Assessments and Taxation of Maryland as required by the Maryland General Corporation law. Applicant states that it intends to file Articles of Dissolution with the Maryland State Department of Assessments and Taxation in order to effect its dissolution.

Applicant states that as a result of the foregoing, it has no stockholders. Applicant further represents that it has no liabilities and no assets other than cash in the amount of approximately $74,000 which Applicant retained pursuant to the Agreement for the purposes of paying expenses incurred by Income in selling certain of Applicant's portfolio securities which did not conform to Income's investment objective, expenses incurred in consummating the Agreement, operating expenses through November 15, 1977, and a cash dividend payable to Applicant's stockholders of record as of November 14, 1977. Applicant states that all of the amounts so retained have been or will be applied for the purposes indicated and have not, and will not be, invested in any securities.

Section 8(f) of the Act provides, in part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is hereby given that any interested person may, not later than February 21, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2712 Filed 1-31-78; 8:45 am]

[8010-01]

[SR-NYSE-77-29; Rel. No. 14414]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 25, 1978.

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y. 10005.

On November 14, 1977, the New York Stock Exchange, Inc., filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change to conform its treatment of convertible or exchangeable securities with Regulation T for purposes of options margin requirements and to permit its members to establish non-purpose loan accounts to the extent allowed by Regulation T.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14267 (December 13, 1977)) and by publication in the FEDERAL REGISTER (42 FR 63982 (December 21, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2713 Filed 1-27-78; 8:45 am]

[8010-01]

[SR-NYSE-77-31; Rel. No. 14410]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 24, 1978.

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y. 10005.

On November 17, 1977, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change. The proposed rule change rescinds NYSE Rule 357, which required members and member organizations to keep on file for two weeks all communications sent and received over private wires. Rule 357 was determined to be superfluous since Securities Exchange Act Rule 17a-4(b)(4) requires all exchange members, brokers, and dealers to maintain originals of all communications received and copies of all communications sent relating to their business as exchange members, brokers, and dealers for three years.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14259 (December 12, 1977)) and by publication in the FEDERAL REGISTER (42 FR 63978 (December 21, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 6 and 17 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2714 Filed 1-31-78; 8:45 am]

[8010-01]

[Release No. 34-14412; File No. SR-NYSE-77-33]

NEW YORK STOCK EXCHANGE, INC.

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that the above-men-

tioned self-regulatory organization filed with the Securities and Exchange Commission a proposed new rule 129 on November 17, 1977, and a resolution implementing such rule on January 19, 1978.

TEXT OF PROPOSED RULE CHANGE AND RESOLUTION

The text of proposed new rule 129 is as follows:

The Board may from time to time impose such charge or charges on members and member organizations as it shall deem appropriate to reimburse the Exchange, in whole or in part, for regulatory oversight services provided the membership by the Exhange; *Provided, however,* that any such charge shall be measured as required by section 10 of article X of the constitution.

The text of the resolution implementing proposed new rule 129 is as follows:

Resolved, That pursuant to rule 129, a charge of 12 cents be imposed upon members and member organizations for each round-lot purchase and each round-lot sale in equity securities or in rights or warrants to purchase equity securities executed on the New York Stock Exchange; and it is

Further resolved, That payments of such charge to a qualified clearing agency which has entered into an agreement with the Exchange for the collection by such agency of such fees from its participants shall be recognized as constituting payment of the charge imposed by this resolution.

STATEMENT OF BASIS AND PURPOSE

The purpose of proposed new rule 129 is to authorize the Exchange to collect a fee for each round-lot buy and sell order executed on the floor, and to reimburse the Exchange, in whole or in part, for regulatory oversight services that the Exchange provides to its members. The proposed rule does not specify an amount or base for such charge, but leaves the matter to the Exchange's Board of Directors. The board has adopted by resolution a fee of $0.12 to implement proposed new rule 129.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE AND RESOLUTION

The proposed new rule relates to section 6(b)(5) of the Securities Exchange Act of 1934, as amended, in that it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The resolution is consistent with section 6(b)(4) of the Act in that the fee equitably allocates among the membership the cost of regulatory oversight services the Exchange provides to its membership. The $0.12 fee would be assessed for all transactions executed on the Exchange whether cleared and settled "over-the-window" or through any qualified clearing agency. The proposal would permit a qualified clearing agency, by prior agreement, to collect the fee from its participants and reimburse the Exchange.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

The Exchange has not solicited comments regarding the proposed new rule and has received none.

BURDEN ON COMPETITION

The Exchange does not believe that the new proposed rule will impose any burden on competition.

By March 8, 1978, or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such new proposed rule, or

(B) Institute proceedings to determine whether the new proposed rule should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by February 22, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 25, 1978.

[FR Doc. 78-2720 Filed 1-31-78; 8:45 am]

[8010-01]

[Release No. 34-14389; File No. SR-OCC-77-14]

OPTIONS CLEARING CORP.

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s(b) (1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 27, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The rule change effects technical amendments to the Clearing Corporation's by-laws and rules to establish the office of chairman as chief executive officer of the Corporation.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to provide for the office of chairman of the Corporation. The chairman will be the chief executive officer and management director of the Corporation.

The proposed rule change contributes to the public interest and the protection of investors by providing for more effective governance of the self-regulatory organization.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

OCC does not believe that the proposed rule change imposes any burden on competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file sixty copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 18, 1978.

[FR Doc. 78-2746 Filed 1-31-78; 8:45 am]

[8010-01]

[Release No. 34-14390; File No. SR-PCC-77-2]

PACIFIC CLEARING CORP.

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 23, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change establishes a new schedule of rates to be charged by Pacific Clearing Corp. ("PCC"). Under this new schedule of rates PCC would make separate charges, based on number of shares per trade submitted, for trade recording and comparison and for clearance and settlement. Charges for these services are, in general, reduced pursuant to the new rate schedule. The new rate schedule increases charges related to the physical handling of certificates and the manual processing of activity. Tables setting forth the new rate schedule and the existing rate schedule are attached hereto as Exhibit No. 1.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change is designed to simplify PCC's schedule of rates and to make PCC's schedule of rates more competitive with rates charged or proposed to be charged by other clearing agencies. In the proposed schedule of rates PCC would make separate, and readily calculable, charges for trade recording and comparison and for clearance and settlement. In situations where PCC performs only trade recording and comparison, or only clearance and settlement, and another clearing agency provides the other service, PCC would charge only for the service performed. The new schedule's principal charges (for trade recording and comparison and for clearance and settlement) are based on total number of shares submitted. Thus the firm submitting a large number of trades for trade recording and comparison and/or for clearance and settlement, would pay neither more nor less per share for these services than a firm submitting a relatively small number of trades for trade recording and comparison and/or clearance and settlement.

The new schedule of rates accomplishes the equitable allocation of reasonable dues, fees, and other charges among the participants in PCC. In addition, the new schedule of rates, by separating the charges for trade recording and comparison and the charges for clearance and settlement, facilitates interface between clearing agencies at reasonable cost and thus contributes to the removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

Comments have neither been solicited not received from members or participants regarding the proposed rule change.

PCC believes that the proposed rule change imposes no burden on competition. By making PCC's rates more easily understood and more competitive, the new schedule of rates may be expected to increase competition in the provision of clearance and settlement services.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted within twenty-one days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 18, 1978.

EXHIBIT NO. 1—CLEARING RATES—NEW SCHEDULE

DUES

Monthly dues, $100

TRANSACTION CHARGE

Recording and comparison, $0.05 per 100 shares (minimum $0.05, maximum $10).

Clearance and settlement, $0.12 per 100 shares (minimum $0.12, maximum $12).

Bond Transactions

Recording and comparison, $0.03 per $1,000 (minimum $0.03, maximum $3).

Clearance and settlement, $0.07 per $1,000 (minimum $0.07, maximum $7).

PHYSICAL ACTIVITY

Delivery by request to participant, $1.50 per item.

Receipt of securities from participant, $0.80 per item.

Transfer (from participant's position), $1.50 (postage and insurance included) (plus out of pocket).

Transfer (accommodation), $3 (plus out of pocket).

Transfer (legal), $10 (plus out of pocket).

OTHER

Data processing keypunch, $0.10 per item.

Dividends, $0.25 per entry.

Buy-ins, $5 per item submitted.

Advisories, $0.15 per item submitted.

Mail clearing, $0.15 per trade (minimum $50, maximum $1,500 per month).

Securities collection (SCD), $6 per item (plus out of pocket).

CLEARING RATES—EXISTING SCHEDULE

DUES

Monthly dues, $40.

TRANSACTION CHARGE

Trade recording and comparison, clearance and settlement, (A) 10 cents per PSE trade, 20 cents per other trade; +(B) 3 cents per $1,000 value (with a minimum of 10 cents and up to a maximum of $3); +(C) 14 cents per $1,000 value net settlement (with a minimum of 30 cents and up to a maximum of $7).

Trade recording and comparison clearance and settlement (bonds), 10 cents per $1,000 (with a minimum of 50 cents and up to a maximum of $5).

PHYSICAL ACTIVITY

Delivery by request to participant, $1.50 per item.

Receipt of securities from participant, no charge.

Transfer (from participant's position), $1.50 (postage and insurance included).

Transfer (accommodation), $2.50.

Transfer (legal), $6 (except legal deposits, for which no charge is made).

OTHER

Data processing keypunch, no charge.

Dividends, no charge.

Buy-ins, no charge.
Advisories, no charge.
Mail clearing, $0.15 per trade (minimum $50, maximum $1,500 per month).
Securities collection (SCD), $3 per item; $2 per each additional draft to same location (plus out of pocket expenses).

INSTITUTIONAL CLEARING PROGRAM CHANGES NEW SCHEDULE

DUES

Monthly dues, $100.

TRANSACTION CHARGE

Institutional clearing program activity, $1 per trade.

PHYSICAL ACTIVITY

Transfer (from participant's position), $1.50 (postage and insurance included) (plus out of pocket expenses).
Transfer (accommodation), $3 (plus out of pocket expenses).
Transfer (legal), $10 (plus out of pocket expenses).

OTHER

Dividends, $0.25 per entry.
Securities collection (SCD), $6 per item (plus out of pocket expenses).

INSTITUTIONAL CLEARING PROGRAM CHARGES EXISTING SCHEDULE

DUES

Monthly dues, $40.

TRANSACTION CHARGE

Intitutional clearing program activity, $1 per trade.

PHYSICAL ACTIVITY

Transfer (from participant's position), $1.50 (postage and insurance included).
Transfer (accommodation), $2.50.
Transfer (legal), $6.

OTHER

Dividends, no charge.
Securities collection (SCD), $3 per item; $2 per each additional draft to same location (plus out of pocket expenses).

SPECIALIST POST CHARGES NEW SCHEDULE

DUES

Monthly dues, $100 per post.

OTHER

Monthly post cashiering charge, $650 per post.

SPECIALIST POST CHARGES—EXISTING SCHEDULE

DUES

Monthly dues, $40 per post.

OTHER

Monthly post cashiering charge, $650 per post.

[FR Doc. 78-2747 Filed 1-31-78; 8:45 am]

[8010-01]

[Rel. No. 14409; File No. 1-6884]

PACIFIC RESOURCES, INC.

Order Amending Effective Date of Withdrawal From Listing and Registration and Extending Exemption of Certain Persons and Securities From the Provisions of Rule 17a-15

JANUARY 23, 1978.

On June 22, 1977, we approved the application of Pacific Resources, Inc. ("PRI"), to withdraw its securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").[1] We prescribed as a term of that delisting that it not become effective until the time of our determination with respect to the PSE's application for unlisted trading privileges in PRI common stock, but in no event later that 120 days after June 22, 1977.[2] On October 20, 1977, we amended the effective date of the delisting by extending it to November 21, 1977.[3] That date was extended again on November 21 until January 23, 1978.[4]

We found that the initial delay in the effective date of the delisting and the extension until January 23, 1978, were necessary for two reasons. First, a temporary disruption in trading in PRI stock on the PSE would result in a lessening of potential competition among dealers and between exchange markets and markets other than exchange markets during any interim period after delisting, but before unlisted trading privileges are (if at all) granted. Second, we initially had noted that if the delisting were effective immediately, PRI stock would not be marginable for a period of several months until it was included on the Federal Reserve Board's "List of OTC Margin Stocks."[5]

Our ultimate determination on the PSE application for unlisted trading privileges in PRI stock involves the consideration of several major policy issues including, among others, whether sufficient progress has been made toward the development of a national market system to satisfy the standards of section 12(f)(2), whether the progress comtemplated by Congress in adopting that section is met by PSE's rescission of its off-board trading rules as they apply to transactions in PRI common stock, whether that progress and the statutory goals of eliminating unnecessary burdens on competition are satisfied by existing communications facilities and provisions for access between the PSE and over the counter ("OTC") markets, and whether last sale reporting of all PRI stock transactions would be appropriate should unlisted trading privileges be granted.

We have not yet resolved these issues insofar as they arise with respect to our consideration of the PSE application for unlisted trading privileges and, accordingly, we have been unable to complete our deliberations concerning the hearing on that application. We believe, however, that the purposes of the Act, particularly those which encourage competition among dealers acting as market makers in a security and between markets in that security,[6] make it appropriate for us to permit the existing competition in PRI stock to continue during the interim period necessary for us to conclude our deliberations. Accordingly, for the reasons enunciated in the June 22 delisting order, and as stated above, we find it necessary to extend until March 24, 1978 the effective date of removal of PRI stock from listing and registration on the PSE.

PRI stock has been traded both on the PSE and OTC since issuance of our June 22 order.[7] At that time was also exempted, for a period of up to 120 days, the National Association of Securities Dealers, Inc. ("NASD"), and all brokers and dealers from the reporting requirements of rule 17a-15 under the Securities Exchange Act of 1934 relating to last sale reports of OTC transactions in the common stock of PRI. The duration of that exemption was amended in our October 20 and November 21, 1977, orders to extend to January 23, 1978. Until we make a determination on the PSE's application for unlisted trading privileges in PRI stock, we believe that

[1] See Securities Exchange Act Rel. No. 13657 (June 22, 1977); 42 FR 33398 (June 30, 1977).

[2] The PSE filed an application, pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934, for unlisted trading privileges in PRI stock on March 25, 1977, in response to PRI's application to withdraw that security from listing and registration on the PSE (filed March 23, 1977). Concurrently with our order withdrawing PRI stock from listing, we ordered a hearing on the PSE application. See, Securities Exchange Act Rel. No. 13658 (June 22, 1977); 42 FR 33402 (June 30, 1977).

[3] See Securities Exchange Act Rel. No. 14078 (October 20, 1977); 42 FR 56824 (October 28, 1977).

[4] See Securities Exchange Act Rel. No. 14195 (November 21, 1977); 42 FR 61100 (December 1, 1977).

[5] The maintenance of credit, extended before a security ceases to be marginable, would not be affected by the delisting of that security (section 220.7(b) of regulation T (12 CFR 220.7(b))). The extension of new credit, however, would be prohibited under those circumstances, until the security was included on the Federal Reserve Board's "List of OTC Margin Stocks."

[6] See, e.g., section 11A(a)(1)(C)(ii).

[7] The PSE has exempted from its off-board trading restrictions securities, such as PRI stock, which are both the subject of a delisting application and in which the PSE has applied for unlisted trading privileges. See, Securities Exchange Act Rel. No. 13656 (June 22, 1977); 42 FR 33400 (June 30, 1977).

there will be uncertainty as to whether real-time reporting in PRI stock will be required as a general matter and that a continued exemption from rule 17a-15 is appropriate.[8] We continue to believe it is not necessary in the public interest or for the protection of investors to require members of the PSE (who may trade PRI stock in the OTC market), and other brokers and dealers to develop and implement reporting procedures for transactions in this single security during the time before we make a determination as to the PSE's application. Accordingly, we have determined to, and hereby exempt, until March 24, 1978, the NASD and all brokers and dealers from the requirements of rule 17a-15 relating to last sale reports of OTC transactions in the common stock of PRI.[9]

Accordingly, *it is hereby ordered,* That our order of June 22, 1977 (as amended by our October 20 and November 21, 1977 orders), granting PRI's application to withdraw from listing and registration on the PSE be, and it hereby is, amended as set forth herein.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2715 Filed 1-31-78; 8:45 am]

[8010-01]

[70-5703; Rel. No. 20394]

SOUTHWESTERN ELECTRIC POWER CO.

Proposed Extension of Existing Authority To Engage in Fuel Exploration and Development Activities

JANUARY 24, 1978.

In the matter of Southwestern Electric Power Co., P.O. Box 21106, Shreveport La. 71156.

Notice is hereby given that Southwestern Electric Power Co. ("SWEPCO"), an electric utility subsidiary of Central and South West Corp. ("CSW"), a registered holding company, has filed post-effective amendments to its application-declaration, as amended, previously filed with this commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6(a), 7, 9, and 10 of the Act and rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as further amended by said post-effective amendments, which is summarized below, for a complete statement of the proposed transaction.

By order dated October 1, 1975 (HCAR No. 19194), SWEPCO was authorized to acquire interests in, and engage in, fuel exploration and development programs to the extent of a budgeted expenditure of $8,750,000. The programs involved the acquisition and development of interests relating to oil, gas, coal, and lignite. Through June 30, 1977, SWEPCO added 2,782 net acres of oil and gas leasehole interests. Through September 26, 1977, SWEPCO had participated in the drilling of 56 wells; 28 of these were producing, 13 were shut-in pending completion of a pipeline and gathering system, 13 had been plugged and abandoned as dry or uneconomical to produce, 1 was being drilled and 1 was judged to have no potential for development. The 13 shut-in wells are in the South Carthage prospect in Panola County, Tex., pending completion of a peipeline and gathering system which will take the gas from the prospect to SWEPCO's Knox Lee generating station in Gregg County, Tex. Five gas wells in the Bienville Townsite and East Ada-West-Bryceland prospects and the oil well in the North Whelan prospect are not connected to SWEPCO's generating plants; the production from these wells is sold to nonaffiliates under short-term contracts. Five gas wells in the Castor prospect have been tied into a gathering system for sale of gas to a nonaffiliate under a short-term contract because the reserves developed by these wells were not sufficient to allow SWEPCO to tie them into its pipeline system. SWEPCO has farmed out its interest in the remainder of the Castor prospect.

SWEPCO states that the lignite exploration program has resulted in the discovery of substantial lignite reserves in eastern Texas and northern Louisiana. At December 31, 1977, SWEPCO had a 100 percent interest in 49,139 acres of lignite lease in eastern Texas and northern Louisiana. Drilling through December 1977 shows that the eastern Texas prospect involves 89,300,000 recoverable tons of lignite to SWEPCO's interest and that the northern Louisiana prospect involves 98,100,000 recoverable tons of lignite to SWEPCO's interest. A plan has been proposed for a joint interest effort by SWEPCO and other large owners on the prospect. SWEPCO also has an undivided 30 percent interest as tenant-in-common with the other CSW system operating utility subsidiaries in joint ventures involving, at June 30, 1977, 78,444 acres of lignite leases on four prospects in eastern Texas.

SWEPCO states that it anticipates continuing oil, gas, and in the case of the 100 percent-owned east Texas and north Louisiana prospects, lignite exploration generally along the present lines, largely in or near its service territory. SWEPCO also proposes to participate in uranium exploration and development activities in conjunction with the other CSW operating companies. SWEPCO states that it hereby requests the Commission supplement and extend the authority granted it in HCAR No. 19194 to the extent of an additional budgeted amount not to exceed $11,103,853 to be expended in its authorized fuel exploration and development programs during the period beginning January 1, 1978, and ending December 31, 1978. SWEPCO states that during this period it has budgeted up to $3,067,500 to be expended on its wholly owned oil and gas interests, $2,776,353 to be expended on its wholly owned Texas and Louisiana lignite interests and up to $5,260,000 to be expended in lignite, coal, and uranium interests in which SWEPCO has a 30 percent interest as tenant-in-common with the other CSW operating subsidiaries. SWEPCO further states that of the amounts to be expended in concert with the other CSW operating subsidiaries, up to $952,500 is budgeted for uranium exploration and development. SWEPCO states that the form and scope of the activities to be engaged in will be identical to those previously authorized in HCAR No. 19194.

SWEPCO states that, during the period covered by the prior order, it expended more than the amount authorized. SWEPCO further states that it recognizes that the authorization sought herein is solely for expenditures to be made in connection with duly authorized fuel exploration and development programs during 1978 and that any authorization granted herein does not constitute ratification of the expenditures incurred in the prior period.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction with respect to the proposed transaction. It is stated that the fees and expenses to be incurred in connection with the proposed transaction are estimated at $1,750.

Notice is further given that any interested person may, not later than February 17, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration as further amended by said post-effective amendments, which he desires to controvert; or he may request that he be notified

[8] If the unlisted trading privileges application of the PSE is denied, PRI stock will be traded solely OTC and, therefore, will not be subject to current reporting under rule 17a-15.

[9] This exemption does not prohibit those persons individually from complying voluntarily with rule 17a-15 as long as such broker or dealer complies with the rule in a uniform and consistent manner.

if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendments or as it may be further amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-2716 Filed 1-31-78 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0207]

PRODUCERS CAPITAL CORP.

Issuance of a License To Operate as a Small Business Investment Company

On July 25, 1977, a Notice was published in the FEDERAL REGISTER (42 FR 37889) stating that an application had been filed with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing small business investment companies (SBIC) for a license to operate as an SBIC by Producers Capital Corporation, 9777 Wilshire Boulevard, Beverly Hills, Calif. 90212.

Notice is hereby given that pursuant to the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), after having considered the application and all other pertinent information and facts in regard thereto, SBA has issued License No. 09/09-0207 on January 19, 1978, to Producers Capital Corporation to operate as an SBIC.

(Catalog of Federal Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: January 24, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-2768 Filed 1-31-78; 8:45 am]

[8025-01]

[License No. 06/06-0175]

SMALL BUSINESS INVESTMENT CAPITAL, INC.

Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given, pursuant to section 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1977)), by the Small Business Administration (SBA) of a conflict of interest transaction between Small Business Investment Capital, Inc. (licensee), 10003 New Benton Highway, Little Rock, Ark. 72203, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and an associate.

The licensee was licensed by SBA on March 6, 1975. It is wholly owned by Shur-Valu Stamps, Inc., 10003 New Benton Highway, Little Rock, Ark. 72203, which in turn is owned approximately 45 percent by Affiliated Food Stores, Inc., a cooperative of retail grocers, and 55 percent by present and former members of the cooperative.

It is proposed that the licnesee loan $115,000 to Jim Huckaby for working captial and to purchase the inventory and equipment of a grocery store owned and operated by Huckaby's, Inc., a family corporation owned 70 percent by Will Huckaby and 10 percent each by his sons, Jim, Jess, and Donnie. Upon consummation of the purchase, Jim Huckaby will disassociate himself from Huckaby's, Inc., and surrender his 10-percent interest. The store to be purchased is one of seven owned by Huckaby's, Inc., and is located in Benton, Ark.

Jim Huckaby is a member of the board of directors of Affiliated Food Stores and Shur-Valu Stamps, Inc. Therefore, Mr. Huckaby is an associate of the licensee as defined by section 107.3(c) of the SBA rules and regulations. As such, the proposed financing would contravene the provisions of § 107.1004(b)(1) of the regulations. Except where a written exemption may be granted by SBA in special instances in furtherance of the purposes of the Act, a licensee shall not, directly or indirectly, provide financing to any of its associates. SBA is considering a request for such exemption.

In addition, the Licensee has provided previous financial assistance to Huckaby's, Inc. According to the provisions of § 121.3-2(a)(ii), Huckaby's, Inc., and the store owned by Jim Huckaby would be deemed affiliates. As such, the aggregate financial assistance would exceed the licensee's investment limit of $150,000 (20 percent of the licensee's private capital) by approximately $98,000. Since the business entities are to be independently owned and operated separate and apart from a family group, SBA is considering approval of the overline aspects of the proposed transaction.

Notice is further given that any person may, not later than February 16, 1978, submit to SBA, in writing, comments on the proposed transaction. Any such communication should be addressed to Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Benton and Little Rock, Ark.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 25, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-2769 Filed 1-31-78; 8:45 am]

[4910-62]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

PRIVACY ACT OF 1974

Systems of Records; Additions, Changes, and Deletions

The Department of Transportation herewith deletes nine systems of records, publishes two new proposed systems, and republishes one systems notice which has been substantially changed. In addition, editorial changes to five systems are published.

Any person or agency may submit written comments on the proposed systems to the Privacy Act Officer (TAD-20), Room 10319, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received by March 6, 1978, to be considered.

If no comments are received, the proposed systems will become effective on March 1, 1978. If comments are received, the comments will be considered and where adopted, the system will be republished with the changes.

Issued in Washington, D.C., on January 27, 1978.

BROCK ADAMS,
Secretary of Transportation.

DELETIONS OF NOTICES

The following Notices of Systems of Records should be deleted from the Notices previously published by the Department and compiled in the FEDERAL REGISTER publication "Privacy Act Issuances, Annual Publication" Part IV, Volume 42, No. 181, September 19, 1977 (pages 47036-47151). The

reason for deletion is shown with each system listed:

DOT/SLS 150—File no longer required.
DOT/CG 512—Covered by CSC/Govt 2.
DOT/CG 531—File no longer maintained.
DOT/CG 590—Personal identifiers eliminated.
DOT/CG 521—No longer in use.
DOT/NHTSA 414—Committee was abolished.
DOT/NHTSA 418—Committee was abolished.
DOT/NHTSA 449—Consolidated with another program.
DOT/NHTSA 450—Combined with another system.

CHANGES TO SYSTEM NOTICES

DOT/OST 050, in the fourth line under System Location—Change to read: "Regional Administrators, Directors and Commanders of the" * * * Also add the word "commands" in line six so that it reads "district commands, and other filed offices of the Department."

DOT/CG 535, under Categories of Records in the System, change "25" to "75 dollars" so line three reads "cost more than 75 dollars."

NOTE.—The dollar sign cannot be used because it is a symbol for the linatron to paragraph.

DOT/CG 625, under Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System: Replace the entire paragraph beginning "application records" and ending "7 years then destroyed." by the following paragraph:

"Application files for nonselected officer candidate applicants are destroyed after six months and nonselected applicants for direct commission are destroyed after one year. Files for all selected applicants are placed in the selectee's officer personnel folder."

DOT/UMTA 175 in System Location change Region V to read: Regional Director, UMTA, 300 South Wacker Driver; Suite 1740, Chicago 60606.

DOT/FHWA 204, under System Location: and under System Manager(s) and Address: Change by dropping the period and adding the phrase "except Region 15, where there is none."

DOT/CG 622 is republished in total because of substantial changes:

System Number:

DOT/CG 622.

System Name:

Military training and Education Records. DOT-CG.

System Location:

Department of Transportation (DOT), Unites States Coast Guard (CG), Commandant (G-PTE), 400 7th Street SW., Washington, D.C. 20590. Records are also located at District and Headquarters Units. See Appendix I for locations.

Categories of Individuals:

Coast Guard Military Personnel. (Commissioned Officers, Commissioned Warrant Officers, Cadets, and Enlisted Personnel.)

Categories of records:

General Service Correspondence Course. Off-Duty Education Records. Professional Training Records. Nontraditional Educational Support Records. Achievement and Aptitude Test Results. Academic Performance Records. Correspondence Course Rate Advancement Records. Military Performance Records. Admissions Processing Records. Grade Reporting Records. Cadet Academic Status Records. Transcript Maintenance Records. Cadet Discipline Status Records. Military Personnel Records. Military Training Schedules Records.

Routine uses:

Evaluation and measurement of training performance. Statistical summaries. Input to personnel records. Partial criteria for selection and admission to service/professional schools. Partial criteria for selection to postgraduate education programs. Criteria for admission to the Coast Guard. Criteria for retention in service Schools. Criteria for promotion. The above information is used by authorized Coast Guard personnel in the performance of Official duties. See Prefatory Statement of General Routine Uses.

Policies and practices:

Storage:

File folders stored in file cabinets. Portions are stored on ADP equipment.

Retrievability:

Retrieved by name, rate, class number, cadet code number, and Social Security Number.

Safeguards:

Records are kept in file cabinets in offices that are locked during off-duty hours. Those records stored in ADP equipment may only be accessed through use of a user access code.

Retention and disposal:

Personal History, Service History and School Conduct and Military Performance records are kept for one year. Academic and Correspondence Course records are kept for five years. Aptitude and Achievement Test results, as a part of Training and Education records, are kept for five years. Records are destroyed by mutilating, shredding, or burning.

System manager:

Chief, Office of Personnel, Department of Transportation, United States Coast Guard Headquarters, 400 7th Street SW., Washington, D.C. 20590.

Notification procedure:

Department of Transportation, United States Coast Guard Headquarters, Commandant (G-CMA) 400 7th Street SW., Washington, D.C. 20590. Written request must be signed by the individual.

Record access procedure:

Procedures may be obtained by writing to or visiting (G-CMA) at the address in "Notification Procedure", or by visiting the local activity where assigned for training. Prior written notification of personal visits is required to insure that the applicable record will be available. Proof of identity is required prior to release of records. A military identification card, driver's license, or similar document will be considered suitable identification.

Contesting record procedure:

Same as "Record Access Procedures."

Record source categories:

Official military personnel records, test results, instructors and supervisors.

Exemptions from certain provisions of the act:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(5), which provide, in part that investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence. Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(6), which provides, in part, that testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be withheld from disclosure to the extent that disclosure of these records would compromise the objectivity or fairness

of the testing or examination process. Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(7), which provide, in part, that evaluation material used to determine potential for promotion in the armed services may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of a source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NEW NOTICES OF SYSTEMS OF RECORDS

System number:

DOT/OST 061.

System name:

Records of Official Time Granted Employees for Performing Representational Functions.

System location:

All DOT locations.

Security classification:

None.

Categories of individuals covered by the system:

All employees representing other DOT employees, pursuant to such employees' right to representation under statute, regulation, executive order, or the terms of a collective bargaining agreement.

Categories of records in the system:

This system records the amount of official time granted to individuals to perform employee representational functions, and the purpose for which the official time was used.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in these records may be used:

1. By agency officials and officially recongized labor unions for review to assure that the use of official time is in accordance with applicable government/agency policy and regulations.
2. Preparation of analytical and statistical studies and reports.
3. See prefatory statement of general routine uses.

Policies and practices:

Storage:

Records are maintained in file folders, punch cards, magnetic tape, discs, or by other electronic means.

Retrievability:

These records are retrieved by name or by category of use.

Safeguards (access controls):

Access to and use of these records are limited to agency personnel whose official duties require such access, and to officially recognized labor unions with respect to employees within the units that they represent. Safeguards include locked buildings, guard service, and locked file cabinets. Statistical information from these records may be made available to other agencies or to the interested public.

Retention and disposal:

These records are destroyed after three years.

System manager and address:

The Personnel Officer of each DOT facility, or the Chief, Labor-Management Relations Division, Office of Personnel and Training, Office of the Assistant Secretary for Administration, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590.

Notification procedure:

Inquiries should be directed to the System Manager.

Record access procedure:

Contact or write to the System Manager for information on procedures for gaining access to records.

Contesting record procedures:

Contact or write the System Manager. Reasonably identify the record and specify the information to be contested.

Record source categories:

Federal employees and supervisors.

System number:

DOT/NHTSA 467.

System name:

Driver Programs Data System (DOT/NHTSA). Safe Performance Secondary School Driver Education Curriculum/Demonstration Project Analysis File.

System location:

Battelle-Columbus Laboratories (BCL), 505 King Avenue, Columbus, Ohio 43201.

Category of individuals covered by the system:

15-16 year old, non-licensed DeKalb County, Ga., High School student volunteers for Driver Education.

Categories of records in the system:

(a) *DeKalb County School System Records:*

(1) Student Entry Data consisting of name, DeKalb County student number, driver's license number, student project number (a unique number assigned to each student participating in the project), birthdate, sex, high school, site, socioeconomic status index, term of instruction, driver's education groups Safe Performance Curriculum (SPC), Pre-Driver Licensing Curriculum (PDL), and Control Group.

(2) DeKalb County Student Master Data consisting of grade point average, address, schedule information, driver education teacher, driver education class, changes in student status, transferring schools within DeKalb County, leaving the DeKalb County School District.

(3) Driver Education Project Information consisting of driver education test scores, pretest, unit tests, skill tests, post test, result of driving habit survey(s).

(b) Driver History File consisting of student project number, cumulative number of points, name/date/length of suspensions, restrictions on driving, issue date of driver's license/learner's permit, exam date of driver's test, habitual offender/date, currently licensed, record of each citation; type of violation(s), date of violation, number of points for each violation, accident involved, license suspended/revoked.

(c) Accident History File consisting of citation to project person, one vehicle or multi-vehicle accident, pedestrian/bicyclist accident, date of accident, violations for this accident, type of accident, property damage/injury/fatality, number of injuries, number of fatalities, position in car of injured/dead, severity of injuries.

Authority:

Highway Safety Act of 1966, Section 403.

Routine uses:

Battelle-Columbus Laboratories at six month intervals will evaluate the effectiveness of Safe Performance Curriculum as a driver education program and report results to NHTSA program manager.

Policies and practices:

Storage:

The records are stored at Battelle-Columbus Laboratories (BCL) on magnetic tape and disk.

Retrievability:

The manual records are indexed by student project number to preclude the use of names. However, the automated records can also be retrieved by name, address, birthday and Georgia drivers license number.

Safeguards:

The contents of the collected data will not be available to any public source. Records are maintained in a

secure area with controlled access. In addition, access to the computer system is through the use of account numbers.

Retention and disposal:

All client data will be retained until project termination, at that time de-identified (ID number, DL number, and name removed) copies of the analysis file will be submitted to the Office of Driver and Pedestrian Programs, NHTSA, Washington, D.C., and to other research organizations specifically requesting the de-identified data, as per NHTSA approval.

System manager:

Departure of Transportation, Chief, Program and Demonstration Management Division, National Highway Traffic Safety Administration, Room 5130, 400 7th Street SW., Washington, D.C. 20590.

Notification procedure:

Inquiries should be directed to the System Manager.

Record access procedure:

Contact or write to the System Manager.

Contesting record procedures:

Initiate requests for changes to records by writing to Systems Manager.

Record source categories:

DeKalb County, Ga., school system records Georgia Department of Public Safety Driving Records.

[FR Doc. 78-2819 Filed 1-31-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 35; Rev. 7]

ASSOCIATE CHIEF, APPELLATE BRANCH OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue NW., Room 2324, Washington, D.C. 20224, Telephone No. 202-566-6131, (Not a toll-free telephone number).

AGREEMENTS AS DETERMINATIONS UNDER SECTION 1313(a)(4) OF THE INTERNAL REVENUE CODE OF 1954

Date of isssue: January 25, 1978.

1. Pursuant to the authority granted to the Commissioner of Internal Revenue and District Directors by 26 CFR 301.7701-9 and 26 CFR 1.1313(a)-4, the authority to enter into agreements pursuant to section 1313(a)(4), Internal Revenue Code of 1954, relating to agreements treated as determinations, is hereby delegated to the following officials: (a) Assistant Regional Commissioners (Employee Plans and Exempt Organizations); (b) Assistant Regional Commissioners (Appellate); (c) Chiefs and Associate Chiefs of Appellate Branch Offices; (d) Director of International Operations; (e) Assistant District Directors; (f) Chiefs of Audit Divisions; and (g) Chiefs of Employee Plans and Exempt Organizations Divisions.

2. This authority may be redelegated only by District Directors and the Director of International Operations, who may redelegate to the Chief of Review Staff (or to the chief of Technical Branch where that position has been established); Chief of Conference Staff; to Revenue Agents and Tax Law Specialists (Reviewers or Conferees) not lower than GS-11 for field audit cases; and to Revenue Agents and Tax Technicians (Reviewers or Conferees) not lower than GS-9 for office audit cases.

3. This Order supersedes Delegation Order No. 35 (Rev. 6), issued January 13, 1975.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

[FR Doc. 78-2805 Filed 1-31-78; 8:45 am]

[4830-01]

[Delegation Order No. 66, Rev. 6; Chief Counsel's Order No. 1031.2, Rev. 1]

ASSOCIATE CHIEF, APPELLATE BRANCH OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue NW., Room 2324, Washington, D.C. 20224, Telephone No. 202-566-6131 (not a toll-free telephone number).

Date of issue: January 25, 1978.

AUTHORITIES OF REGIONAL APPELLATE DIVISION AND REGIONAL EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS DIVISION IN PROTESTED AND TAX COURT CASES

The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.6020-1, 26 CFR 301.6201-1, 26 CFR 301.7701-9 and Treasury Department Order No. 150-37, is hereby delegated as follows:

1. (a) In each region the Regional Commissioner is authorized to represent the Commissioner in determining liability or qualification for the following types of cases not docketed in the United States Tax Court when the taxpayer does not agree with the determination made by the office of a District Director or by the office of the Director of International Operations and requests consideration by the Regional Appellate Division or the Regional Employee Plans and Exempt Organizations Division, or both:

(1) Except as excluded under paragraph 5 of this Order, liability for excise, employment, income, profits, estate and gift taxes; and

(2) Initial or continuing qualification under Subchapter D of Chapter 1 of the Internal Revenue Code of 1954.

(b) Except as provided in subparagraph (c), in each region the Assistant Regional Commissioner (Appellate), is authorized and each Chief and Associate Chief, Appellate Branch Office, is authorized to represent the Regional Commissioner in the determination of tax liability in any such case.

(c) In each region the Assistant Regional Commissioner (Employee Plans and Exempt Organizations) is authorized and the Executive Assistant to such Assistant Regional Commissioner is authorized to represent the Regional Commissioner in each case under the Internal Revenue Code of 1954 (and related statutory provisions) not docketed in the Tax Court:

(1) In which a taxpayer does not agree to the determination of liability for Chapter 42 or Chapter 43 excise taxes and certain income taxes as applicable to taxable private foundations, and section 4947 trusts, and under Code sections 507(c), 511, 527(f), or 1381(a)(1), made by the office of a Key District Director of Internal Revenue for Employee Plans and Exempt Organizations matters and requests consideration by the Regional Employee Plans and Exempt Organizations Division.

(2) In which an applicant does not agree to the determination of initial or continuing qualification under Subchapter D of Chapter 1 made by the office of a Key District Director of Internal Revenue for Employee Plans

and Exempt Organizations matters and requests consideration by the Regional Employee Plans and Exempt Organizations Division.

(d) The authorities delegated in this paragraph are subject to the exceptions set forth in paragraph 3 of this Order and they may not be redelegated.

2. (a) In conformity with the provisions of Delegation Order No. 60 (as revised), except as provided in subparagraph (b) following, in each income, excise, profits, estate, and gift tax case docketed in the United States Tax Court, the Assistant Regional Commissioner (Appellate) is authorized and each Chief and Associate Chief, Appellate Branch Office, is authorized to perform those functions delegated to the Regional Commissioner in that joint Order.

(b) With respect to cases docketed in the Tax Court under the Internal Revenue Code of 1954 and related statutory provisions, in each Chapter 42 or Chapter 43 excise tax case and in certain income tax cases, as applicable to taxable private foundations, and to section 4947 trusts, Code sections 507(c), 511, 527(f), or 1381(a)(1), and in each retirement plan qualification case under Subchapter D of Chapter 1, in each region the Assistant Regional Commissioner (Employee Plans and Exempt Organizations), is authorized and the Executive Assistant to such Assistant Regional Commissioner is authorized to perform those functions vested in the Regional Commissioner by Commissioner's Delegation Order No. 60 (as revised).

(c) The authorities delegated in this paragraph are subject to the exceptions set forth in paragraph 3 of this Order and may not be redelegated.

3. The authorities delegated to the Regional Commissioner do not include authority to:

(a) Eliminate the ad valorem fraud penalty in any case in which the penalty has been determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attept to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(b) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

4. In any case not docketed in the Tax Court in which a statutory notice was issued by the office of a District Director or by the Director of International Operations, the Assistant Regional Commissioner (Appellate) or the Assistant Regional Commissioner (Employee Plans and Exempt Organizations), as appropriate, may relinquish the requested jurisdiction by waiver to the office of that Director. No such waiver shall be made in any case in which criminal prosecution has been recommended and not finally disposed of; nor in any case in which the determination in the statutory notice includes the ad valorem fraud penalty. Notwithstanding any such waiver, upon filing of a petition with the Tax Court, jurisdiction shall revest in the Appellate Division and/or the Employee Plans and Exempt Organizations Division, as appropriate.

5. The excise and employment taxes subject to the provisions of this Order include any Federal excise or employment tax under the Internal Revenue Code of 1954, except any tax imposed by the following provisions or corresponding provisions of the Internal Revenue Code of 1939:

(a) Subtitle E; or

(b) Subchapter D, Chapter 78 of Subtitle F, insofar as it relates to alcohol and tobacco.

6. The authority to make and subscribe to a return under provisions of Code section 6020 is delegated to Appellate Appeals Officers and/or Employee Plans and Exempt Organizations Conferees, as appropriate.

7. While certain officials are delegated authority under subparagraphs 1(c) and 2(b) broad enough to determine all matters affecting proposed liabilities arising from application of the Code provisions referred to in those subparagraphs, it is contemplated that such officials will not usually determine substantial unrelated matters affecting tax liability but arising independently of the application of the said Code provisions. If, pursuant to this Order, two officials of different functions have determined separate matters in the same or a related case, either official may sign notices required by statute giving effect to the determinations of both.

8. The authorities contained in this Order are intended to supplement the authorities contained in Delegation Order No. 60 (as revised).

9. The authority delegated under this Order to Employee Plans and Exempt Organizations officials will apply only to those cases where a preliminary notice (30-day letter), notice of intent to disqualify, or proposed notice of revocation or modification is issued on or after the effective date of this Order. Regional Appellate Division officials will continue to determine the disposition of cases in which such notices were issued before such effective date.

10. This Order supersedes Commissioner's Delegation Order No. 66 (Rev. 5), Chief Counsel's Order No. 1031.2, dated September 14, 1977.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

STUART E. SEIGEL,
Chief Counsel.

JANUARY 4, 1978.

[FR Doc. 78-2806 Filed 1-31-78; 8:45 am]

[4830-01]

[Delegation Order Nos. 75; Rev. 7]

ASSOCIATE CHIEF, APPELLATE BRANCH OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office. Delegation Order No. 75 is also revised to reflect authority of Appellate branch offices to consider offers in compromise involving wagering tax. The text of the delegation orders appears below.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue, NW., Room 2324, Washington, D.C. 20224, Telephone No. 202-566-6131 (Not a Toll-Free telephone number).

AUTHORITY OF REGIONAL APPELLATE DIVISION IN OFFERS IN COMPROMISE

Date of issue: January 25, 1978.

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-25, dated June 1, 1953, as amended by Order No. 180, dated November 17, 1953, and Order No. 150-36, dated August 17, 1954, 26 CFR 301.7122-1 and 26 CFR 301.7701-9, it is hereby ordered:

1. Each Assistant Regional Commissioner (Appellate), and each Chief, Associate Chief, and Conferee-Special Assistant, Appellate Branch Office, is authorized to determine the disposition to be made of any offer in compromise submitted under the provisions of section 7122 of the Internal Revenue Code of 1954, in which (a) the proponent does not agree with the rejection or proposed rejection of the offer in the district office, the Office of International Operations, or a Service Center and requests regional Appellate Division consideration or (b) the liability was previously determined by a regional Appellate Division and the offer is based on doubt as to liabil-

ity or doubt as to both liability and collectibility.

2. A determination by regional Appellate Division officials to accept an offer (other than one involving specific penalties only) based solely on doubt as to liability will be subject to approval by the Regional Commissioner if the unpaid amount of tax (including any interest, penalty, additional amount or addition to the tax) is $100,000 or more.

3. A determination by regional Appellate Division officials to accept an offer (other than one involving specific penalties only) based solely on doubt as to collectibility or on doubt as to collectibility and liability will be subject to approval by the Director, collection Division, if the unpaid amount of tax (including any interest, penalty, additional amount or addition to the tax) is $100,000 or more.

4. The authorities delegated herein may not be redelegated and are not applicable to offers in compromise coming within the jurisdication of the Chief Counsel under existing procedures, rules, or delegations. These authorities include any Federal excise or employment tax under the Internal Revenue Code of 1954, except any tax imposed by the following provisions or corresponding provisions of the Internal Revenue Code of 1939:

(a) Subtitle E; or

(b) Subchapter D, Chapter 78 of Subtitle F, insofar as it relates to alcohol and tobacco.

5. This Order supersedes Delegation Order No. 75 (Rev. 6) issued May 19, 1976.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

[FR Doc. 78-2807 Filed 1-31-78; 8:45 am]

[4830-01]

[Delegation Order No. 77; Rev. 9]

ASSOCIATE CHIEF, APPELLATE BRANCH OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue NW., Room 2324, Washington, D.C. 20224. Telephone: 202-566-6131 (not a toll-free telephone number).

AUTHORITY TO ISSUE STATUTORY NOTICES OF DEFICIENCY

DATE OF ISSUE: January 25, 1978.

1. The authority granted to the Commissioner of Internal Revenue, Assistant Regional Commissioners (Appellate) and District Directors by 26 CFR 301.7701-9, 26 CFR 301.6212-1 and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any statutory notice of deficiency is hereby delegated to the following officials:

(a) Assistant Regional Commissioners and Executive Assistants (Employee Plans and Exempt Organizations);

(b) Chiefs and Associate Chiefs of Appellate Branch Offices;

(c) Director of International Operations;

(d) Service Center Directors;

(e) Assistant District Directors;

(f) Assistant Service Center Directors;

(g) Chiefs of Audit Divisions;

(h) Chiefs of Correspondence Audit Branch; and

(i) Chiefs of Employee Plans and Exempt Organizations Divisions.

2. This authority may be redelegated only by District Directors, Service Center Directors, and the Director of International Operations, but not lower than to Reviewers or Conferees, Grade GS-9, in Audit Divisions, and Reviewers, Grade GS-12, in Employee Plans and Exempt Organizations Divisions.

3. This Order supersedes Delegation Order No. 77 (Rev. 8), issued May 29, 1975.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

[FR Doc. 78-2808 Filed 1-31-78; 8:45 am]

[4830-01]

[Delegation Order No. 97; Rev. 13]

ASSOCIATE CHIEF, APPELLATE BRAND OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue, NW., Room 2324, Washington, D.C. 20224. Telephone No. 202-566-6131 (not a toll-free telephone number).

CLOSING AGREEMENTS CONCERNING INTERNAL REVENUE TAX LIABILITY

DATE OF ISSUE: January 25, 1978.

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121-1(a); Treasury Department Order No. 150-32, dated November 18, 1953; Treasury Department Order No. 150-36, dated August 17, 1954 (C.B. 1954-2, 733); and Treasury Department Order No. 150-83, dated August 21, 1973, subject to the transfer of authority covered in Treasury Department Order No. 221 dated June 6, 1972, as modified by Treasury Department Order No. 221-3 (Rev. 2), dated January 14, 1977.

1. The Assistant Commissioner (Technical) is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in respect to any prospective transactions or completed transactions affecting returns to be filed.

2. The Assistant Commissioner (Compliance) is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Assistant Commissioner (Compliance) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) with respect to the performance of his/her functions as the competent authority in the administration of the operating provisions of the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations.

4. Regional Commissioners; Assistant Regional Commissioners (Appellate); Assistant Regional Commissioners (Audit); District Directors; Director of International Operations; Chiefs and Associate Chiefs of Apellate Branch Offices, are hereby authorized in cases under their jusrisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement

with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. Regional Commissioners; Assistant Regional Commissioners (Employee Plans and Exempt Organizations); and District Directors are hereby authorized in cases under their jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations, (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts).

6. Regional Commissioners; Assistant Regional Commissioners (Appellate) and (Employee Plans and Exempt Organizations); Chiefs and Associate Chiefs of Appellate Branch Offices, are hereby authorized in cases under their jurisdiction docketed in the United States Tax Court to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

7. The Director of International Operations is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64-54, C.B. 1964-2, 1008, under Revenue Procedure 72-22, C.B. 1972-1, 747, and under Revenue Procedure 69-13, C.B. 1969-1, 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65-17, C.B. 1965-1, 833.

8. The authority delegated herein does not include the authority to set aside any closing agreement.

9. Authority delegated in this Order may not be redelegated, except that the Assistant Commissioner (Technical) may redelegate the authority contained in paragraph 1 to the Deputy Assistant Commissioner (Technical) and to The Technical Advisors on the Staff of the Assistant Commissioner (Technical) for cases that do not involve precedent issues, the Assistant Commissioner (Compliance) may redelegate the authority contained in paragraph 2 of this Order to the Deputy Assistant Commissioner (Compliance), and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues.

10. Delegation Order No. 97 (Rev. 12) issued January 16, 1975, is hereby superseded.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

[FR Doc. 78-2809 Filed 1-31-78; 8:45 am]

[4830-01]

[Delegation Order No. 136; Rev. 2]

ASSOCIATE CHIEF, APPELLATE BRANCH OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue NW., Room 2324, Washington, D.C. 20224. Telephone No. 202-566-6131 (not a toll-free telephone number).

AUTHORITY TO SIGN AGREEMENTS UNDER REVENUE PROCEDURE 74-6 WITH RESPECT TO EXERCISE BY TRUSTEE OF ADMINISTRATIVE AND INVESTMENT POWERS

DATE OF ISSUE: January 25, 1978.

1. Pursuant to authority vested in the Commissioner of Internal Revenue, the authority to sign agreements entered into under the provisions of Revenue Procedure 74-6, is hereby delegated to the following officials: (a) Assistant Regional Commissioners (Appellate); (b) District Directors; (c) Director of International Operations; (d) Chiefs, Appellate Branch Offices; (e) Associate Chiefs, Appellate Branch Offices; and (f) Conferee-Special Assistants, Appellate Branch Offices.

2. The authority delegated herein may be redelegated by Assistant Regional Commissioners (Appellate), District Directors, and Director of International Operations, and may not be further redelegated.

3. Delegation Order No. 136 (Rev. 1), issued August 8, 1974, is superseded.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

[FR Doc. 78-2810 Filed 1-31-78; 8:45 am]

[4830-01]

[Delegation Order No. 160; Rev. 1]

ASSOCIATE CHIEF, APPELLATE BRANCH OFFICE

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The title of Assistant Chief, Appellate Branch Office, is changed to Associate Chief, Appellate Branch Office.

EFFECTIVE DATE: February 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Hall, CP:AP:PP, 1111 Constitution Avenue NW., Room 2324, Washington, D.C. 20224, telephone No. 202-566-6131 (not a toll-free telephone number).

AUTHORITY OF REGIONAL APPELLATE DIVISION IN TERMINATION ASSESSMENTS OF INCOME TAX AND JEOPARDY ASSESSMENTS

DATE OF ISSUE: January 25, 1978.

1. Pursuant to the authority vested in the Commissioner of Internal Revenue under 26 CFR 301.6020-1, 26 CFR 301.6201-1, 26 CFR 301.7701-9 and Treasury Department Order No. 150-37 dated March 17, 1955, authority is hereby delegated to each Assistant Regional Commissioner (Appellate), each Chief, and Associate Chief, Appellate Branch Office, to conduct conferences and determine final disposition of requests for administrative reviews in termination assessments of income tax and jeopardy assessment cases.

2. This authority may not be redelegated.

3. Delegation Order No. 160 issued October 14, 1976, is superseded.

WILLIAM E. WILLIAMS,
Acting Commissioner.

JANUARY 16, 1978.

[FR Doc. 78-2811 Filed 1-31-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[No. 36771]

ARCHER DANIELS MIDLAND CO.

Petition for Declaratory Order; Rates on Corn Meal for Human Consumption

JANUARY 20, 1978.

Pursuant to section 554(e) of the Administrative Procedure Act, 5 U.S.C. 554(e) in the exercise of the Commission's sound discretion, the I.C.C. plans to enter a declaratory order in the above entitled proceeding.

Archer Daniels Midland Co. (ADM) alleges that corn meal is a fungible commodity, stored in common bins, transported and handled identically whether its intended ultimate use is "For Human Consumption" or "Not For Human Consumption." However, items 1624 through 2848 in section 1 of Southwestern Lines Freight Tariff 182-K, I.C.C. 5278, provide for a lower level of rates on corn meal and flour under Column B when not prepared for human consumption than those that apply on the same products under Column A when the end use will be for human consumption.

ADM requests that the Commission "find this practice of two tier railroad rate pricing on identical commodities and dependent upon the ultimate and end use of the product to be an unjust and unreasonable and otherwise unlawful practice in violation of section 1(5)(b). An unjust discrimination and undue preference in violation of the National Transportation Policy. An unjust discrimination in violation of section 2 and 3(1), and in violation of Section 4."

The I.C.C. has granted ADM's petition for declaratory order and invites participation by interested parties on the tariff in question as it applies to the transportation of corn meal for or not for human consumption.

The proceeding will be handled under modified procedure in accordance with Rules 43 to 52, inclusive, of the Commission's General Rules of Practice. Statements of intent to participate are due within 10 days of this publication in the FEDERAL REGISTER and are to be sent to:

Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423.

As soon as practicable after that date, the Commission will serve a list of names and addresses of all persons upon whom service of an opening and reply statement shall be made.

DIRECTING MODIFIED PROCEDURE AND ALLOWING INTERVENTION

On December 5, 1977, Archer Daniels Midland Co., filed a petition on behalf of its subsidiary Tabor Milling Co., seeking a declaratory order pursuant to an order of the Circuit Court for the County of Clay, State of Missouri, Seventh Judicial Circuit in Case No. 52562, *Missouri-Kansas-Texas Railroad Co.* v. *Tabor Milling Co.*, dated November 23, 1977. The central issue in the suit for damages before that Court is the question of the lawfulness of the railroad involved maintaining lower rates on corn meal and flour under Column B of Items 1624 through 2848 in section 1 of Southwestern Lines Freight Tariff 182-K, I.C.C. 5278, when not for human consumption than those under Column A when for human consumption. Treatment under either rate is said to be identical.

The petition discloses a controversy warranting entry of a declaratory order by the Commission, pursuant to section 554(e) of the A.P.A.

Lincoln Grain, Inc., filed a petition to intervene December 5, 1977, alleging it is directly interested because it uses the tariff in controversy. There were no replies.

It is ordered: The petitions for declaratory order and intervention are granted.

The proceeding will be handled under modified procedure in accordance with Rules 43 to 52, inclusive, of the Commission's General Rules of Practice. Due dates for the filing and service of pleadings will be set after the service list is prepared.

A copy of this order and a notice for publication in the FEDERAL REGISTER attached hereto are to be served on petitioner, intervenor, and on Missouri-Kansas-Texas Railroad Co.

A copy of the notice is also be be delivered to the Director, Office of the Federal Register for publication.

Dated on January 20, 1978.

By the Commission, Rober J. Brooks, Director, Office of Proceedings.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-2782 Filed 1-31-78; 8:45 am]

[7035-01]

[No. 36792]

COAL-BELLE AYR, WYOMING TO COUNCIL BLUFFS, IOWA

Incentive Rate

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Intention to File a Schedule Stating a Capital Incentive Rate on Coal from Belle Ayr, Wyo. to Council Bluffs, Iowa pursuant to Ex Parte No. 327.

SUMMARY: The filing of the notice of intention initiates the 180-day period during which the Commission must determine the lawfulness of a proposed capital incentive rate schedule, as provided by Ex Parte No. 327, decided May 23, 1977. Any interested person seeking a hearing on the proposed rate must notify the Commission on or before February 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Deputy Director, or Harvey Gobetz, Assistant Deputy Director, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7656.

SUPPLEMENTARY INFORMATION: Burlington Northern Inc. proposes to establish a new rate for the transportation of coal in unit trains from Belle Ayr, Wyo., to Council Bluffs, Iowa.

The establishment of the new rate would require a total capital investment in excess of $2 million by Burlington Northern Inc.

The railroad facilities to be augmented by such capital investment would consist of equipment for the proposed unit trains and necessary improvements in track structure.

The proposed duration of the proposed rate is a minimum of 5 years.

The name and address of the responsible carrier representative to whom inquiries and requests for documents relating to the proposal should be addressed is:

A. E. Michon, Assistant Vice President-Energy Division, Burlington Northern Inc., 176 East Fifth Street, St. Paul, Minn. 55101.

Copies of the proposed tariffs are available for public inspection in the Public Tariff File, Room 6217, of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-2778 Filed 1-31-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 27, 1978.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. by February 16, 1978.

FSA No. 43495, The Atchison, Topeka and Santa Fe Railway Co.'s No. 111-A, export rates on wheat, from stations in Oklahoma, to Lake Charles, La., in Sup. 119 to its tariff 5655-J, I.C.C. 15193, to become effective February 25, 1978. Grounds for relief—motor truck and truck-barge competition.

FSA No. 43496, Traffic Executive Association-Eastern Railroads, Agent's E.R. No. 3063, rates filed pursuant to sections 15(8)(b) and 15(8)(c) of the Act on salt, be-

tween points in official territory, also, from Ojibway and Sarnia, Ont., Can., to points in official territory, in Sup. 149 to its tariff E-2009-I, I.C.C. C-1008, to become effective February 25, 1978. Grounds for relief—revised rates structure.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-2779 Filed 1-31-78; 8:45 am]

[7035-01]

[I.C.C. Order No. 46, under Revised Service Order No. 1252]

REROUTING TRAFFIC

To all Railroads: In the the opinion of Joel E. Burns, Agent, the Grand Trunk Western Railroad Company is unable to transport traffic over its car ferry between Milwaukee, Wisconsin, and Muskegon, Michigan, because of defective boilers.

It is ordered, That: (a) The Grand Trunk Western Railroad Company, being unable to transport traffic over its car ferry between Milwaukee, Wisconsin, and Muskegon, Michigan, because of defective boilers, that line is hereby authorized to reroute and divert such traffic, via any available route, to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving road to be obtained.* The railroad diverting the traffic shall receive the concurrence of the lines over which the traffic is rerouted or diverted before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 9:40 a.m., January 23, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 3, 1978, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 23, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-2781 Filed 1-31-78; 8:45 am]

[7035-01]

[I.C.C. Order No. 45; Under Revised Service Order No. 1252]

REROUTING TRAFFIC

To: The Chesapeake and Ohio Railway Co.: In the opinion of Joel E. Burns, Agent, The Chesapeake and Ohio Railway Co., is unable to transport traffic over its line between Lexington, Ky., and Louisville, Ky., because of a derailment and damage to a bridge at Louisville.

It is ordered, That: (a) *Rerouting traffic.* The Chesapeake and Ohio Railway Co., being unable to transport traffic over its line between Lexington, Ky., and Louisville, Ky., because of a derailment and damage to a bridge at Louisville, Ky., is authorized to divert or reroute such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained.* The Chesapeake and Ohio Railway Co., in rerouting cars in accordance with this order shall recieve the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* The Chesapeake and Ohio Railway Co., when rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 9:00 a.m., January 23, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 26, 1978, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads, subscribing to the car service and car hire agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 23, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-2780 Filed 1-31-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to Part 542 of Title 46 CFR and Section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/Operator and Vessels
01015	A/S Rederiet Odfjell: *Bow Oak, Cypress, Bow Sailor, Bow Alecto.*
01077	H. M. Wrangell & Co. A/S: *Lars Meling.*
01106	N.V. Stoomvaart-Maatschappij Oostzee: *Leersum.*
01185	Aksjeselskapet Kosmos: *Jaraconda, Jasankoa.*
01207	Interessentskapet Norbella: *Norbella.*
01262	Interessentskapet Bagru: *Bargu.*
01275	Overseas Freighters Corp.: *Seaview.*
01323	Manchester Liners Ltd.: *Manchester Vanguard.*

Certificate No.	Owner/Operator and Vessels
01336	Aktieselskabet Borgestad: *Breim.*
01485	Horizon Shipping Co., Ltd.: *Atlantic Horizon.*
01574	Fearnley & Eger: *Fernbank.*
01598	Sincerity Compania Naviera S.A.: *Sincerity.*
01796	Compania de Navegacion Gaviota S.A.: *Swan.*
01830	Cardon Tankers Corp.: *Fairfield Jason.*
01880	Victoria Shipping Co., Inc.: *Van Fort.*
01961	Marvenusto Cia. Nav. S.A.: *Conqueror Colocotronis.*
01963	Mundo Maritimo S.A. of Panama: *Defiant Colocotronis.*
02986	Aktiebolaget Transmarin: Madeleine.
01198	Peninsular & Oriental Steam Navigation Co.: *Strathnewton, Strathloyal, Strathinch, Strathnairn, Strathnaver.*
02209	Flota Mercante Grancolobiana S.A.: *Ciudad de Armenia.*
02341	Koninklijke Nederlandsche Stoomboot Maatschappij B.V.: *Archimedes, Ares, Ceres, Socrates.*
02458	The China Navigation Co., Ltd.: *Erisort.*
02551	Ellerman Lines Ltd.: *City of Athens.*
02657	Partenreederei MS Britta Kruger Korrespondentreeder Hans Kruger G.m.b.H.: *Britta Kruger.*
02721	Healy Tibbitts Construction Co.: *Mohawk.*
02859	Cosmos Marine Development Corp., Liberia: *Cosmos Eltanin.*
02861	Naviera Bilbaina S.A.: *Eolo.*
02893	Schellen Scheepvaart en Bevrachting N.V.: *Tell.*
03192	N.V. Zeerederij Holland-Drente: *Inca.*
03289	Det Forenede Dampskibsselskab A/S: *Dana Hafnia.*
03399	Audun Reksten Rederi A/S: *Arabonne.*
03641	Hendy International Co.: *Atlantic Trader, Alaskan, Puerto Rican.*
03893	Skaarup Shipping Corp.: *Lake Nipigon.*
04171	Young Bros., Ltd.: *YB-24, YB-19.*
04173	Foss Launch & Tug Co.: *Foss 90.*
04196	Otto Candies, Inc.: *ACH-13, OC-182.*
04357	Nedlloyd Lijnen B.V.: *Batu, Nedlloyd Laarderkerk.*
04571	Cia Naviera Vascongada S.A.: *Adriana.*
04803	Brent Towing Co., Inc.: *Arcadian 88.*
04840	Agis Maritime Corp.: *Buena Suerte.*
04943	Academy Tankers, Inc.: *Thomas M.*
05036	Companhia Nacional de Navegacao: *Belas.*
05574	Williams Drilling Co., Inc.: *Williams Rig No. 2, Williams Rig No. 3, Williams Rig No. 5, Williams Rig No. 6, Williams Rig No. 7, Williams Rig No. 8, Williams Rig No. 9, Williams Rig No. 11.*
05749	Delta Fishing Co.: *Diana Ysabel.*
05767	Neptune Orient Lines Ltd.: *Neptune Jade, Neptune Amber.*
06038	Suomen Hoyrylaiva Osakeyhtio—Finska Angeartygs Aktiebolaget: *Taurus.*
06221	Seafares Co., Ltd.: *Zografunia Y.*
06422	A/S Finn Johnsens Rederi: *Alk.*
06775	Whitco (Marine Services) Ltd.: *Temple Arch.*
06957	Crystal Kobus Inc.: *Crystal Kobus.*
07091	Atlastor Navigation Ltd.: *Aepos.*
07276	Anglo-Pacific Line Ltd.: *Palau.*
07304	Yhtyneet Paperitehtaat Osakeyhtio: *Valkeakoski.*
07366	Compagnie Maritime des Chargeurs Reunis: *Capraia, Cypria, Taboa, Tobago, Forbin.*
07417	Soberano Delmar S.A.: *Rosaria.*
07432	Inversiones y finanzas barberena S.A.: *Fucsia.*
07493	Ithaca Shipping Inc.: *Stolt Argo.*
07550	Erato Shipping Inc.: *Golden Pine, Amanda, World Commander, Eastern Mary, Pacific Jasmin, World Atlas.*
07577	Atlantic-Mediterranean Shipping Corp.: *Medi-Sea.*
07623	Hawaiian Tug & Barge Co., Ltd.: *HTB-18.*
07743	Yangming Marine Transport Corp.: *Jing Ming, Ji Ming, Chii Ming.*
07855	Seahorse Navigation Co. Ltd.: *Navi Champion.*
08123	Vall Tankships Ltd.: *Vall Star.*
08175	Gunther Schulz Schulauer Schiffahrtskontor, Hamburg: *Aland.*
08458	Kommanditselskapet A/S Goodwill & Co.: *Royal Viking Sea.*
08465	Myrto Shipping Co. S.A.: *Myrto.*
08480	Marmercante Armadora S.A.: *Glorious Colocotronis.*
08617	Fairmont Enterprises Ltd.: *Trophy.*
08627	Terminales Maracaibo, C.A.: *Turquoise Bay.*
08888	Itel Hercules, Inc.: *Itel Hercules.*
08966	Baring Shipping Co. S.A.: *Baring.*
09337	Reefer Express Co. N.V.: *Iglo Express.*
09424	Armadora Maritima Guatemalteca, S.A.: *Peten II.*
09611	Bruce Bay Shipping Co. Ltd.: *Ocean Trader.*
09637	B. E. Williamson, Allen Thomas, George Pine, a partnership: *CC-212.*
09655	International Tanker, Ltd.: *Ocean Gentian.*
09792	United Fair Agencies Ltd.: *Union Reefer, Katharina.*
10061	Viavella Armadora S.A. (Panama): *Ioannis Colocotronis.*
10096	Ruys Bulk Transport N.V.: *Maaskade, Maaskant, Maaskerk, Maaskroon.*
10200	Universal Steamship Co., Ltd.: *Euroasia Monarch.*
10419	Armonikos Shipping Corp.: *Arinonikos.*
10425	Tamarans Tankers Ltd.: *Electra E.*
10772	Flota Global S. A.: *Duke Albatross.*
10806	Djiring Fret S.A.: *Port Man.*
10874	Paloma Primera Shipping Co., S.A.: *Gasikara*
10895	Akropolis Shipping Corp. S.A.: *Captain George.*
10961	Reading & Bates Exploration Co.: *W. D. Kent.*
10995	J. Damhof, Mr.: *Geziena.*
11002	Partenreederei MS Wera Jacob Korrespondentreeder Ernest Jacob: *Wera Jacob.*
11034	Tithis Shipping Co. S.A.: *Scaptrust.*
11060	Yellowstar Shipping & Trading Corp.: *Petrola XXX.*
11239	Partenreederei Nordic: *Nordic.*
11280	Ricky James, Inc.: *Ricky James.*
11724	Pentland Management Services Ltd.: *Pentland Moor, Pentland Glen.*
11756	Clio Shipping & Trading Corp. S.A.: *Petrola 60*
12099	Sword Shipping Co., S.A.: *Green Ray.*
12131	Parimar S.A.: *Chaparral.*
12145	Chevron U.S.A. Inc.: *J. L. Hanna.*
12285	Shioyama Kohatsu K.K.: *Aden Maru.*
12632	Chelone Maritime Inc.: *Attican Unity.*
12693	Naviera Marfrigo, S.A.: *Arenal.*
12851	Mie Kaiun Kabushiki Kaisha: *Unique, Mie Maru No. 7.*
12863	Oil Transport Company (Saudi Arabia) Ltd.: *Esso Geneva*
13058	Gulf Brownsville Shipping Ltd.: *Gas Pesten.*
13095	Kingston Shipping Co. Inc.: *Bunker.*
13096	Amherst Shipping Co. Inc.: *Trader.*
13117	Iyo Kosan (Panama) S.A.: *Hillstar, Ryujin Maru.*
13173	Transocean Maritime Transport Inc.: *Oriental Endeavour.*
13227	Universal Bulk Carriers Ltd.: *Tzaneen.*
13334	Global Gas Transport Inc.: *Global Gas.*
13335	Reliance Gas Transport Corp.: *Reliance Gas.*
13469	Capitol Maritime Inc., Monrovia: *Neni.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-2783 Filed 1-31-78; 8:45 am]

[6730-01]

U.S. GULF/NORTH EUROPE DISCUSSION AGREEMENT

Agreements Filed

The Federal Maritime Commission hereby gives notice 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 each of the agreements and the justifications offered therefor 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, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 11, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

AGREEMENT NO. 10178-1.

FILING PARTY:

Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, N.Y. 10004.

SUMMARY: Agreement No. 10178-1 is an agreement among the parties to the U.S. Gulf/North Europe Discussion Agreement to extend the duration of that agreement through March 1, 1980.

Dated: January 27, 1978.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-2784 Filed 1-31-78; 8:45 am]

[6730-01]

[Docket No. 78-2]

ORGANIC CHEMICALS (GLIDDEN-DURKEE) DIVISION OF SCM CORP. v. ATLANTTRAFIK EXPRESS SERVICE

Filing of Complaint

Notice is hereby given that a complaint filed by Organic Chemicals (Glidden-Durkee) Division of SCM Corp. against Atlanttrafik Express

Service was served January 26, 1978. The complaint alleges that respondent assessed rates on ocean freight which are unjust and unreasonable and are in violation of Section 18(b)(3) of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before June 26, 1978. The hearing shall include oral testimony and cross examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statement, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-2785 Filed 1-31-78; 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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[6320-01]

1

[M-97 Amdt. 1; January 27, 1978]

CIVIL AERONAUTICS BOARD.

ADDITION OF ITEMS TO THE FEBRUARY 1, 1978 MEETING AGENDA

TIME AND DATE: 10 a.m., February 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 7a. BPDA Capacity for Handling Deferred Route Cases, February/March, 1978 (Memo No. 5971-J, BOR). 7b. Docket 31236, Austin, Texas' Motion for Hearing on San Antonio-Austin-Atlanta Authority (Memo No. 7633, BOR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Because the meeting notice for Wednesday, February 1, 1978 has already issued and the items which are being added relate to items 2 thru 7 it is necessary to vote to add item 7a and 7b to the agenda. Accordingly, the following Members have voted that agency business requires the addition of BPDA Capacity for Handling Deferred Route Cases and Docket 31236, Austin, Texas' Motion for Hearing on San Antonio-Austin-Atlanta Authority on the February 1, 1978 meeting agenda and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-240-78 Filed 1-30-78; 3:28 pm]

2

[6320-01]

[M-97 amdt. 2; January 27, 1978]

CIVIL AERONAUTICS BOARD.

ADDITION OF ITEM TO THE FEBRUARY 1, 1978 MEETING AGENDA

TIME AND DATE: 10 a.m., February 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 29. Docket 32021, complaint filed by Mexicana against a tariff filed by Western.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The complaint was timely filed and received on January 24, 1978. The fares are scheduled to become effective on February 17, 1978. If the Board decides to suspend the proposal, such action must be submitted to the President at the latest on February 6, 1978. The staff work was not received by the Office of the Secretary for placement on a Board meeting agenda in time for the February 1, 1978 meeting announcement. So that the Board can consider this matter in a timely fashion, the following Members have voted that agency business requires the addition of this item to the February 1, 1978 meeting agenda and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-241-78 Filed 1-30-78; 3:28 pm]

[6210-01]

3

FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 3472, January 25, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEEETING: 10 a.m., Monday, January 30, 1978.

CHANGES IN THE MEETING: Deletion of the following open item from the agenda.

Proposed guide to conduct for directors of Federal Reserve Banks and regulation to be issued, pursuant to 18 U.S.C. 208, regarding specific actions by such directors. This matter will be rescheduled at a later time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: January 27, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-234-78 Filed 1-30-78; 8:45 am]

[7030-01]

4

INDIAN CLAIMS COMMISSION.

TIME AND DATE: 10:15 am., February 8, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open to the Public.

Docket 182, Fort Sill Apache
Docket 229, Navajo

FOR MORE INFORMATION:

David H. Bigelow, Executive Director, Room 640, 1730 K Street NW., Washington, D.C. 20006, Telephone 202-653-6174.

[S-236-78 Filed 1-30-78; 10:40 am]

[7527-01]

5

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

TIME AND DATE: 9 a.m. to 5 p.m., and 8:30 a.m. to 4:30 p.m., respectively, February 9 and 10, 1978.

PLACE: University Inn, Orlando, Fla.

STATUS: Open.

MATTERS TO BE DISCUSSED: Review of Pennsylvania Pre-Conference Status Reports. Subcommittee Activities, Committee Work Sessions, Committee Meetings, Committee Reports. National White House Conference Program—Initial Considerations.

CONTACT PERSON FOR MORE INFORMATION:

Alphonse F. Trezza, Executive Director, 653-6252.

ALPHONSE F. TREZZA.

[S-235-78 Filed 1-30-78; 10:40 am]

[7590-01]

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Monday, January 30, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Monday, January 30, 10:30 a.m.—Discussion of Proposed Letter to Congress on International Safeguards Matters. Approximately 1 hour. Closed—Exemption 1.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

JANUARY 30, 1978.

[S-237-78 Filed 1-30-78; 10:40 am]

[7600-01]

7

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., February 2, 1978.

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 PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson, 202-634-7970.

Dated: January 27, 1978.

[S-233-78 Filed 1-30-78; 8:45 am]

[4410-01]

8

PAROLE COMMISSION: National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: Thursday, February 9, 1978; 9:30 a.m.

PLACE: Room 338, Federal Home Loan Bank Board Building, 320 First Street NW., Washington, D.C. 20537.

MATTERS TO BE CONSIDERED: Referrals from regional commissioners of approximately 10 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-239-78 Filed 1-30-78; 2:07 pm]

[7910-01]

9

RENEGOTIATION BOARD.

DATE AND TIME: Friday, February 10, 1978, 10 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street, NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Special Board Meeting concerning: Review of Organizational and Operational Developments at the Regional Boards.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street, NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 27, 1978.

GOODWIN CHASE,
Chairman.

[S-238-78 Filed 1-30-78; 2:07 pm]

Federal Register

WEDNESDAY, FEBRUARY 1, 1978
PART II

SECURITIES AND EXCHANGE COMMISSION

■

DISSEMINATION OF QUOTATIONS FOR REPORTED SECURITIES

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-14415; File No. S7-643]

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

Dissemination of Quotations for Reported Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The rule requires all national securities exchanges and associations to establish procedures for collecting from their members bids, offers and quotation sizes with respect to reported securities, and for making such bids, offers, and sizes available to quotation vendors. It also requires that quotation information made available to vendors be "firm," subject to certain exceptions. The rule is intended to facilitate the prompt development of a composite quotation system, an integral component of a national market system.

EFFECTIVE DATE: May 1, 1978.

FOR FURTHER INFORMATION CONTACT:

John W. Osborn, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8961.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission has announced the adoption of Rule 11Ac1-1 (17 CFR § 240.11Ac1-1) under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)), governing dissemination of quotation information with respect to equity securities as to which last sale information is reported in the consolidated transaction reporting system (the "consolidated system") contemplated by Rule 17a-15 under the Act (17 CFR § 240.17a-15) ("reported securities"). The Rule is designed to facilitate the prompt development of a composite quotation system by improving the quality and reliability of quotation information made available by national securities exchanges ("exchanges") and third market makers.

The Rule, which will become effective on May 1, 1978, will require each exchange and third market maker (a "market center") to make available quotations (including size) in all reported securities in which that market center is making a market. In addition, quotations made available pursuant to the Rule will be required to be "firm," subject to certain exceptions.

I. BACKGROUND

In February 1972, in its Statement on the Future Structure of the Securities Markets, the Commission first identified a composite quotation system as an integral component of a national market system when it stated that:

> * * * an essential step toward formation of a central market system is to make information on prices, volume and quotes for securities in all markets available to all investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell nor sell for less than the highest price at which a buyer is prepared to offer. Such a communications system would thus serve to link the now scattered markets for listed securities.[1]

Following the publication of the Future Structure Statement, the Commission proposed Rule 17a-14 under the Act, which would have required each exchange and national securities association ("association") to make quotations of their members available to vendors.[2] Since that time, the Commission has pursued several alternative courses of action designed to establish a composite quotation system, including a proposal to require plans to be filed under Section 17(a) of the Act and an attempt to free competitive forces to bring about the development of such a system by removing barriers to the voluntary dissemination of quotation information.[3]

As noted by the Commission when it first proposed Rule 11Ac1-1 in 1976,[4] private efforts at developing a composite quotation system have proven largely unsuccessful. Exchange markets continue to disseminate bid and asked price data which do not represent "firm" quotations and no self-regulatory organization makes available data as to quotation sizes. These and other deficiencies, which are more fully discussed in the 1976 Release, have convinced the Commission that it should take affirmative steps to improve the quality of quotation information disseminated by the various market centers by adopting Rule 11Ac1-1 which will require exchanges and third market makers to make available "firm" quotations while allowing the private sector, without regulatory compulsion, to develop the means of consolidating those quotations.

The initial version of Rule 11Ac1-1, proposed in July 1976 (the "1976 Proposal"),[5] would have required every exchange and association to establish and maintain procedures and mechanisms for collecting quotations in eligible securities[6] from its specialists and third market makers and for making such quotations (and, if the specialist or third market maker desired, his quotation sizes) available to quotation vendors.[7] Each specialist and third market maker would have been required to communicate his quotations promptly to his exchange or association in accordance with the exchange's or association's procedures.[8]

The 1976 Proposal would also have required that, subject to certain exceptions, all quotations made available pursuant to the Rule be "firm". In particular, the Rule would have provided that any specialist or third market maker presented with an order for the purchase or sale of an eligible security (other than the purchase and sale of an odd-lot) stand ready to execute a transaction in that security in any amount up to such specialist's or third market maker's published quotation size (i.e., his most recently communicated quotation size displayed by vendors or, in the event he had disseminated no quotation size, a normal unit of trading)[9] at a price at least as favorable to the buyer or seller as the bid price or asked price comprising part of that specialist's or market maker's published quotation (i.e., his most recently communicated quota-

[1] Securities and Exchange Commission, Statement on the Future Structure of the Securities Markets (February 2, 1972) at 9, 37 FR 5286, 5287 ("Future Structure Statement").

[2] Securities Exchange Act Release No. 9529 (March 8, 1972), 37 FR 5760.

[3] In 1974, the Commission republished Rule 17a-14 in a substantially revised form, which would have permitted exchanges and associations to file plans (similar to the type of plan called for by Rule 17a-15 under the Act with respect to last sale reports), to govern the development and implementation of a composite quotation system. Securities Exchange Act Release No. 10969 (August 14, 1974), 39 FR 31920. However, in 1975, the Commission decided to defer consideration of that proposal and determined, as an alternative course of action, to take steps to remove restrictions imposed by exchanges on the dissemination of quotation information, while leaving the development of a system consolidating quotation information from the various market centers to private enterprise. See Securities Exchange Act Release Nos. 11288 (March 11, 1975), 40 FR 15015, and 11406 (May 7, 1975), 40 FR 25645.

[4] Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 ("1976 Release").

[5] See id.

[6] The 1976 Proposal used the term "eligible security," which was defined as any security as to which last sale information is reported in the consolidated system. In the subsequent proposal and the Rule as adopted, the term "reported security" has been utilized and defined to limit the application of the Rule to equity securities reported in the consolidated system.

[7] 1976 Proposal, paragraph (b)(1).

[8] 1976 Proposal, paragraph (c)(1).

[9] See 1976 Proposal, paragraph (a)(8).

tion displayed by vendors at the time the order is presented).[10]

Two exceptions to "firmness" were provided in the 1976 Proposal. First, a specialist or third market maker would have been relieved of his obligation to effect transactions at his published quotation if, after dissemination of a published quotation and before presentation of an order, that specialist or third market maker had communicated a quotation to his exchange or association superseding his published quotation.[11] Second, quotations of specialists and third market makers would not have been required to be "firm" for a period of three minutes following the execution of a transaction in the particular security involved on the floor of the specialist's exchange or by the third market maker (as the case may be) or following the report of a transaction in the security in the consolidated system (the "Three Minute Exception").[12]

Commentators responding to the 1976 Proposal felt that the Rule as then proposed would cause certain operational difficulties with respect to the collection and dissemination of exchange quotations. These commentators argued that, under the collection procedures then proposed, exchange quotations either would not accurately reflect all buying and selling interest on an exchange floor (by only disseminating the specialists' quotation) or would subject the specialist to firmness obligations for bids or offers which were not made by him. Additionally, some commentators suggested that, during periods of unusual or active trading, an exchange's procedures for quotation collection might be inadequate. In response to these comments, the Commission republished the Rule, in June 1977, in substantially revised form (the "1977 Proposal").[13]

The 1977 Proposal, rather than limiting the collection of exchange quotations to specialists' bids and offers, would have required each exchange to collect, process and make available to quotation vendors the highest bid and lowest offer[14] communicated at the location (or locations) designated for trading on the floor of that exchange by any "responsible broker or dealer" with respect to each reported security[15] listed or admitted to unlisted trading privileges on that exchange. The term "responsible broker or dealer" was defined to include any member of an exchange who communicated to another member on the floor of that exchange a bid or offer for a reported security at the location (or locations) designated by the exchange for trading in that security. In the event two or more members had communicated a bid or offer at the same price, both such members would be deemed responsible brokers or dealers, subject to the rules of priority and precedence then in effect on that exchange.[16] Thus, an exchange would have been responsible for making available a single quotation, not necessarily of any individual market participant such as a specialist, but rather reflecting the highest bid and lowest offer of any broker or dealer at the post.[17]

Under the 1977 Proposal, each bid or offer made available by an exchange to quotation vendors would have been accompanied by a quotation size, which would be either: (i) The number of shares or units of trading which the broker or dealer responsible for that bid or offer had specified for purposes of communication to quotation vendors that he would be willing to buy at the bid price or sell at the offer price comprising his bid or offer, or (ii) in the event no such number had been specified, a normal unit of trading.[18] If the bid or offer made available by an exchange represented the bids or offers of more than one responsible broker or dealer, the exchange would have been required to make available an aggregate quotation size with respect to such bid or offer (i.e., the sum of the quotation sizes of all responsible brokers or dealers with respect to such bid or offer.[19]

The firmness requirements and exceptions thereto for revised quotations and for intervening transactions and trade reports contained in the 1976 Proposal were retained in the 1977 Proposal. However, the exceptions to firmness were modified to allow an exchange member, seeking to execute a transaction in a security when the published bid or published offer for that security represented the bids or offers of two or more members, to effect transactions with all of such responsible brokers or dealers up to the published aggregate quotation size. Specifically, if an order to purchase or sell a reported security was presented for execution to a responsible broker or dealer on the floor of an exchange at a time when the published bid or published offer of such exchange represented bids or offers (as the case may be) of more than one responsible broker or dealer on that exchange, no such responsible broker or dealer would have been relieved of his execution responsibility under the Rule until the member seeking to execute the order had either completed his order (if the order was in size equal to or less than the published aggregate quotations size) or (if the order was in size greater than the published aggregate quotation size) the member had purchased or sold an amount of the security equal to such published quotation size regardless of any revised quotation or any intervening transaction or trade report.[20]

In addition, the 1977 Proposal would have provided a further exception to firmness during periods of unusual or active trading when an exchange's quotation collection procedures would not be adequate to monitor the flow of quotation information or a specialist would not be able to update his quotations on a timely basis (the "Unusual Market Exception"). Under this exception, if an exchange, pursuant to rules and regulations approved by the Commission under section 19(b)(2) of the Act, determined that the level of trading activity or the existence of unusual market conditions was such that the exchange was incapable of accurately collecting, processing and making

[10] 1976 Proposal, paragraph (c)(2). See id., paragraph (a)(10).

[11] 1976 Proposal, paragraph (c)(3)(ii).

[12] 1976 Proposal, paragraphs (c)(3)(i) and (c)(5).

[13] Securities Exchange Act Release No. 13626 (June 14, 1977), 42 FR 32418 ("1977 Release"). In addition, the 1977 Proposal contained a number of technical changes in response to comments by interested parties. See 1977 Release 19-21, 42 FR 32418, 32420.

[14] This requirement was limited to permit an exchange to exclude any bid or offer which was executed immediately after communication and any such bid or offer communicated by a responsible broker or dealer other than an exchange market maker which was cancelled or withdrawn if not executed immediately after communication. 1977 Proposal, paragraph (b)(2).

[15] See note 6 supra.

[16] 1977 Proposal, paragraph (a)(3)(i). The 1977 Proposal would also have provided that, with respect to a bid or offer representing an order which had been transmitted from one member of that exchange to another member who undertook to act as agent with respect to the order, only the last member undertaking to act as agent with respect to the order would have been considered as the "responsible broker or dealer" for the bid or offer. Thus, for example, if an order had been given to a $2 broker for execution or left with a specialist, only the $2 broker or the specialist (and not the originating broker) would have been subject to the Rule's firmness obligations.

[17] Under the 1977 Proposal, each exchange would also have been responsible for establishing and maintaining procedures and mechanisms for ascertaining the identity of responsible brokers and dealers with respect to each bid and offer and would have been required, upon request of any member seeking to execute a transaction in reliance on the firmness requirements of the Rule, to disclose the identity of such responsible brokers and dealers to that member. 1977 Proposal, paragraph (b)(2).

[18] 1977 Proposal, paragraph (a)(10).

[19] 1977 Proposal, paragraph (a)(12). The exchange would also have been responsible for keeping track of the quotation sizes of each broker or dealer and making that information available to a member seeking to effect a transaction in reliance on the firmness requirements of the Rule. 1977 Proposal, paragraph (b)(2).

[20] 1977 Proposal, paragraph (c)(4).

available to vendors the data required by the Rule, upon such exchange's notification to certain specified persons (including the Commission and each quotation vendor),[21] the firmness obligations of responsible brokers and dealers of such exchange, as well as the obligation of the exchange to ascertain the identity and quotation size of each responsible broker and dealer and to make such information available to members, would be suspended. The suspension would continue until the exchange had determined that the unusual market activity or conditions had terminated and renotified those specified persons. During the pendency of the suspension, the exchange involved would still be required to continue, to the maximum extent practicable under the circumstances, to collect, process and make available to vendors bids, offers and quotation sizes of its members.[22]

The 1977 Proposal did not significantly change the collection procedures and firmness requirements of the Rule for third market makers. Under the 1977 Proposal, each third market maker[23] would have been defined as a "responsible broker or dealer"[24] and would have been obligated to communicate his bids, offers, and quotation sizes to the association of which he was a member pursuant to collection procedures established by that association.[25] Such bids, offers, and quotations sizes would have been firm, subject to the same exceptions for revised quotations and intervening trade reports as contained in the 1976 Proposal.[26] Each association, in turn, would have been required, at all times last sale information with respect to reported securities was reported in the consolidated system, to collect, process, and make available to vendors the highest bid and lowest offer and quotation size of each responsible broker or dealer who was a member of that association and who was acting in the capacity of a third market maker.[27].

In response to the publication of the 1977 Proposal, the Commission received comment letters from three vendors of market information, six exchanges, the National Association of Securities Dealers, Inc. ("NASD"), the Securities Industry Association, two broker-dealer firms, and the Council on Wage and Price Stability. The Commission has also considered comments and statements concerning quotation systems generally and Rule 11Ac1-1 specifically which were received in connection with the Commission's current proceeding under section 19(c) of the Act, considering amendment of exchange rules which limit or condition the ability of their members to effect transaction over-the-counter in listed securities and to consider the adoption of certain Commission rules to accompany any such action (the "Off-Board Proceeding").[28] Finally, the Commission has considered the views of the National Market Advisory Board ("NMAB") regarding a composite quotation system.[29] All of the comments and views received in response to the 1977 Proposal indicate that most of the mechanical and operational difficulties of the Rule had been resolved but that there was still some disagreement as to the basic regulatory approach of the Rule. After carefully considering these views and comments, the Commission has determined to retain the basic approach of the proposal and has adopted Rule 11Ac1-1 in substantially the same form as the 1977 Proposal, with the elimination, however, of the Three Minute Exception.

II. The Revised Proposal

A. Three Minute Exception

A number of commentators responding to both the 1977 and 1976 Proposals argued that the Three Minute Exception was both unnecessary, in light of actual trading conditions and recent technological developments permitting computer-generated quotations, and counterproductive because it would emasculate the firmness provisions of the Rule. Therefore, these commentators suggested that the quotation information disseminated pursuant to the Rule would be less useful for order routing decisions. One commentator also asserted that the Three Minute Exception would permit exchanges or third market makers to suspend making quotations available for lengthy periods of time during active markets.

The Three Minute Exception was originally included in the 1976 Proposal as a mechanism to assure that market makers were given sufficient time to update their quotations following completion of a transaction or after receiving a trade report from another market center. The Commission recognized that the Exception would result in the disseminaton of quotations which were less useful for order routing decisions than quotations which were firm unless altered prior to the receipt of an order; however, because the Commission was concerned that the Rule might cause operational difficulties, especially in active markets, the Three Minute Exception was included to ensure the efficient operation of the Rule. As a further mechanism for accommodating active exchange markets, the Commission also added the Unusual Market Exception in the 1977 Proposal. However, because the Commission believed that quotation information would be more useful if these exceptions were not provided, it specifically requested comment in the 1977 Release on the "feasibility of requiring bids and offers made available pursuant to the Rule to be firm under all circumstances (unless a revised bid or offer had been communicated to the relevant exchange or association prior to the receipt of an order)."[30]

The Commission has concluded that the Three Minute Exception is not necessary to assure effective operation of the Rule because the exceptions for revised quotations and unusual market conditions should be adequate to accommodate even very active exchange markets.[31] Accordingly, since quotation information not subject to such an exception will, in our view, be more reliable and may therefore be of greater benefit to brokers and dealers in their order routing decisions, the Commission has adopted Rule 11Ac1-1 without the Three Minute Exception.[32]

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[21] 1977 Proposal, paragraph (a)(15).

[22] 1977 Proposal, paragraph (b)(3).

[23] The 1977 Proposal changed the definition of "third market maker" to make clear that: (i) a market maker may also represent a customer's order as agent as part of a bid or offer disseminated pursuant to the Rule, and (ii) a market maker would not include any person acting solely in the capacity of a block positioner. See id., paragraph (a)(1).

[24] 1977 Proposal, paragraph (a)(3)(ii).

[25] 1977 Proposal, paragraph (c)(1).

[26] 1977 Proposal, paragraphs (c)(2), (3), and (5).

[27] 1977 Proposal, paragraph (b)(1)(ii). However, this requirement was limited to permit an association to exclude any bid or offer which was executed immediately after communication or cancelled or withdrawn if not executed immediately after communication.

[28] See Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510.

[29] NMAB, "Next Steps to be Taken to Facilitate the Establishment of a National Market System," December 6, 1977, ("NMAB Report") 15-18.

[30] 1977 Release, supra note 13, at 25, 42 FR 32418, 32421.

[31] The comment letters of the Boston and Philadelphia Stock Exchanges and the NASD favored elimination of the Three Minute Exception. Additionally, two New York Stock Exchange, Inc. ("NYSE") specialists stated at the public hearings held in connection with the Off-Board Proceeding that the Three Minute Exception was not necessary to permit them to comply with the Rule. See Official Transcript of Proceedings Before the Securities and Exchange Commission, File No. 4-180, In the Matter of Off-Board Trading Rules at 397-398 and 599. Furthermore, officials of the NYSE and Pacific Stock Exchange, Inc. ("PSE"), which had initially advocated the Exception, have informally confirmed that those exchanges no longer felt the Exception was necessary. See Memorandum of Telephone Conversations in File S7-648.

[32] The Rule has also been revised to delete those provisions limiting the Three Minute Exception when two or more responsible brokers or dealers on an exchange had published bids or published offers at the same price. See 1977 Proposal, paragraph (c)(4).

Under the Rule as adopted, bids, offers, and quotation sizes are required to be firm subject only to exceptions for revised quotations and unusual or active market conditions. The exception for revised quotations has been altered slightly to prevent a responsible broker or dealer from being required to execute more than one order on the basis of his published bid or published offer, a possibility which would have been precluded by the Three Minute Exception. Thus, under the Rule as adopted, a responsible broker or dealer would be relieved of his obligation to effect transactions at his published bid or published offer if, (i) before an order is presented for execution, he has communicated to his exchange or association a revised bid or offer superseding his published bid or offer (a "revised bid or offer") or, (ii) at the time an order is presented, he is in the process of effecting a transaction in that security,[33] and, immediately after the completion of such transaction, he communicates a revised bid or offer to his exchange or association.[34] In these circumstances, the responsible broker or dealer will be obliged to effect a transaction at his revised bid or offer if the broker or dealer presenting the order so requests. A responsible broker or dealer will also be permitted to revise his published quotation size at any time prior to the presentation of an order or, if he is in the process of effecting a transaction in that reported security at the time an order is presented, immediately after completion of the transaction.[35] In that event, the responsible broker or dealer will be obliged to execute a transaction in any amount requested by the broker or dealer presenting the order up to the responsible broker or dealer's revised quotation size.

B. TECHNICAL CHANGES

In addition to the changes discussed above, the Commission has made several drafting and technical changes in the Rule:

1. The 1977 Proposal provided an exception from the collection and dissemination requirements imposed on exchanges and associations for any bid or offer which was executed immediately after communication and any bid or offer communicated by a responsible broker or dealer (other than an exchange specialist) which was cancelled or withdrawn if not executed immediately after communication.[36] Commentators argued that the 1977 Proposal treated exchange market makers differently from third market makers (by requiring an exchange to collect an exchange market maker's bid or offer which was cancelled or withdrawn if not executed immediately after communication) and urged that the Commission extend this exception to exchange market makers. Because the bids and offers of any market maker may be characterized as cancelled or withdrawn if not accepted immediately after communication, the Commission has concluded that, to avoid possible circumvention of the Rule and to provide uniformity of treatment between exchange specialists and third market makers, the part of the exception which would have permitted an exchange or association to exclude from collection bids or offers which were cancelled or withdrawn if not executed immediately after communication should not be available either to third market makers or exchange specialists.[37] This determination is consistent with the Commission's intent in providing this exception for "ephemeral" quotations in the 1977 Proposal; that is, that the Rule as adopted reflects the fact that certain non-specialist participants in exchange "crowds" make bids and offers which, while narrowing the exchange quotation for an instant in time, never in fact become part of the quoted market on the exchange because they are withdrawn immediately if not accepted.

2. The Rule has been revised to explicitly state that an association is required to make available to vendors the identity of each responsible broker or dealer whose quotations are being made available by that association.[38] This change in the Rule is necessary to assure that vendors receive sufficient information to enable their subscribers to respond to third market quotations in appropriate circumstances.

3. Under the 1977 Proposal, the Unusual Market Exception would have provided an exception to the firmness provisions of the Rule upon notification of certain "specified persons," including the Commission. In order to expedite notification procedures, the Rule has been revised to omit notification to the Commission although notice must still be provided to each quotation vendor, the processor of the consolidated system and, in the case of a security underlying exchange traded options, the processor for the Options Price Reporting Authority.[39]

4. The Rule will become effective on May 1, 1978.[40] This effective date should provide sufficient time for exchanges and associations to file the necessary rule proposals with the Commission and to modify their quotation collection and dissemination procedures in accordance with the Rule. Furthermore, it will provide additional time to vendors to modify their information systems to accommodate the display of quotation information (including sizes) from the various market centers.

III. ADDITIONAL ISSUES

The Commission has also considered a number of other issues raised by commentators.

A. MANDATORY PARTICIPATION

Both the 1976 and 1977 Proposals contemplated that each exchange would be required to collect and disseminate quotations in every reported security listed or admitted to unlisted trading privileges on the exchange and that each association would be required to collect and disseminate quotations in every reported security in which one of its members was acting as a third market maker. In turn, each exchange specialist[41] and third market maker would have been required to promptly communicate to his exchange or association quotations representing a continuous two-sided market. In response to both Proposals, the Commission received comments which questioned whether the Rule should mandate participation by each exchange and third market maker (as opposed to permitting such participation on a voluntary basis), particularly in an environment in which (i) brokers could not automatically execute against published bids or offers, (ii) there was no Commission rule requiring brokers to route orders to the market displaying the best published bid or offer, and (iii) there was no requirement that vendors display quotations from every market center.

Some commentators argued that competitive forces should be the sole factor motivating brokers or dealers to make available firm quotations to vendors. These commentators cited the NASD's experience with NASDAQ, which provides for voluntary participation by over-the-counter market makers, as an example of a successful quotation system deriving exclusively from competitive forces. Other commentators asserted that, in the current market environment, there would be no economic benefit to be derived from communication of quotations in accordance with the Rule because orders would not be routed on the basis of displayed quotations. Therefore, according to one commentator,

[33] A responsible broker or dealer should be deemed to be in the process of effecting a transaction from the moment an order is presented to him for execution until the completion of communication of all information necessary to complete the transaction.

[34] Rule 11Ac1-1(c)(3)(ii).

[35] Rule 11Ac1-1(c)(3)(i).

[36] 1977 Proposal, paragraph (b)(2).

[37] See Rule 11AC1-1(b)(2).

[38] Rule 11Ac1-1(b)(1)(ii).

[39] Rule 11Ac1-1(a)(15).

[40] Rule 11Ac1-1(e).

[41] Additionally, the 1977 Proposal would have required an exchange under certain circumstances to collect bids and offers of other brokers and dealers in the "crowd".

the adoption of a rule which required participation by all third market makers would be "anti-competitive" because it would impose greater burdens on smaller market centers which cannot spread the costs of providing quotations over a large order flow and cannot charge vendors or subscribers for quotation information as is done by certain larger self-regulatory organization.[42] Thus, it was argued, particularly in the absence of increased order flow which might be derived from communication of quotations, a mandatory rule would act as a "barrier to new market makers" and would be a disincentive to existing third market makers. Finally, it was suggested that, if the Commission adopted a rule mandating the dissemination of quotations, the information made available pursuant to the Rule would not be as accurate (and hence as useful) as the information which would be disseminated pursuant to a voluntary rule.

The NMAB supported the view that the Rule should not require participation by all market centers:

Contrary to the requirement contained in proposed Rule 11Ac1-1, the Board is of the view that requiring market makers to include their quotations in the [composite quotation system] might impose equipment and personnel costs that would discourage many broker-dealers from making markets. The Board believes it likely that broker-dealers which make markets in a significant number of securities would enter quotations into the system for at least some of the securities in which they make markets, and that the degree to which market makers entered quotations into the system would depend on the degree to which the system was used in directing order flow. If the system did not influence the direction of order flow, it would seem unfair to require market makers to make expenditures that were unlikely to have any business purpose.[43]

In reaching its decision to adopt Rule 11Ac1-1 in a form requiring dissemination of quotations for reported securities from all market centers, the Commission has carefully reviewed both the views of commentators who favor modification of the Rule to permit voluntary dissemination of quotations and the legislative history of Section 11A of the Act (particularly with respect to, among other things, Congressional expectations concerning a composite quotation system).[44]

The Commission recognizes the legitimate concerns of some commentators concerning the costs of compliance with Rule 11Ac1-1 and the possibility that a composite quotation system may not exert a controlling influence on brokers' order routing decisions under current circumstances. Although the Commission cannot predict with certainty the effect quotation information disseminated pursuant to the Rule will have on brokers' decisions as to which of the several markets should be selected for execution of their customers' orders, the Commission's expectations are that implementation of Rule 11Ac1-1, and the resultant general availability of relatively "firm" quotations and quotation sizes for reported securities, will have a favorable impact on brokers' order routing decisions and upon the changing nature of brokers' agency obligations to their customers. These expectations, however, do not constitute the sole basis for the Commission's decision to adopt Rule 11Ac1-1 in a form requiring participation by all market centers. Rather, the Commission considers the adoption of Rule 11Ac1-1 in this form as an appropriate step in facilitating the integration of all markets into a national market system, including assuring "the availability to brokers, dealers and investors of information with respect to quotations for * * * securities" and "the practicability of brokers executing investors' orders in the best market."[45]

Thus, the Commission is convinced that the availability of "firm" quotations for reported securities, with size, from all market centers, is of considerable value to the markets generally and to participants in those markets, especially in the context of an evolving national market system.[46] Moreover, quite apart from the general importance of quotation information to be disseminated pursuant to the Rule, the Commission believes that the adoption of the Rule in a form requiring participation by all market centers should spur brokers to make greater

[42]For example, both the NYSE and American Stock Exchange currently impose direct charges on vendor subscribers for receipt of quotation information from their exchanges.

[43]NMAB Report, supra note 29, at 17.

[44]Section 11A(a) of the Act [15 U.S.C. 78k-1(a)] derives from S. 249, the Senate version of the bill which was ultimately enacted as the Securities Acts Amendments of 1975 (the "1975 Amendments"). See Comm. of Conference, Report to Accompany S. 249, H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 92 (1975). The Senate report accompanying S. 249 indicates that the bill consolidates five prior bills (including S. 2519, a bill containing provisions relating to the development of a national market system which was approved by the Senate in the 93rd Congress) and that the genesis of the legislation was the Securities Industry Study Report of the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs. Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 1 (1975) (the "Senate Report"). See Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, Securities Industry Study, S. Doc. No. 93-13, 93d Cong., 1st Sess. (1973) (the "Senate Securities Industry Study"). The Senate report accompanying S. 2519 and the Senate Securities Industry Study indicate a clear Congressional understanding that the Commission would use its powers to establish a comprehensive composite quotation system, including quotations from all market centers. The report accompanying S. 2519 indicates that one of the communications facilities which was not then in existence and which the bill was designed to give the Commission authority to mandate was a "system through which *all* current quotes for listed securities can be seen on any single unit on a comparable basis." Senate Comm. on Banking, Housing and Urban Affairs, Report to Accompany S. 2519, S. Rep. No. 93-865, 93d Cong., 2d Sess., 5-6 (1974) (emphasis added). The Senate Securities Industry Study also indicates that there was "no system through which *all* current quotes can be seen on a comparable basis. * * *" Senate Securities Industry Study at 97 (emphasis added).

In addition, the Senate Subcommittee was aware and noted in the Senate Securities Industry Study that the Commission had recently proposed Rule 17a-14 under the Act which would have required all exchanges and the NASD to make available quotations to vendors on a current and continuing basis. Id. at 101; see note 2 supra. In addition to its recognition of proposed Rule 17a-14, the Senate also cited in its Securities Industry Study the Commission's Policy Statement on the Structure of a Central Market System, Securities Exchange Act Release No. 10076 (March 29, 1973) (the "Policy Statement"). In the Policy Statement and earlier in the Future Structure Statement, the Commission specifically described the emerging "central market system" as envisioning the "disclosure of quotations from *all* markets." Future Stucture Statement, supra note 1, at 8-9, 37 FR 5286, 5287 (emphasis added). See Policy Statement at 11, 15, 26, and 48.

[45]See Section 11A(a)(1)(C)(iii) and (iv) of the Act [15 U.S.C. 78k-1(a)(1)(C)(iii) and (iv)]. The language and legislative history of the 1975 Amendments indicate a clear Congressional determination that a comprehensive composite quotation system is an essential element of the emerging national market system and that Congress contemplated an active Commission role in its development. For example, the Senate Subcommittee on Securities stated in the Senate Report as follows: "In the securities markets, as in most other active markets, it is critical for those who trade to have access to accurate, up-to-the-second information as to the prices at which transactions in particular securities are taking place (i.e., last sale reports) and the prices at which other traders have expressed their willingness to buy and sell (i.e., quotations). For this reason, communications systems designed to provide automated dissemination of last sale and quotation information will form the heart of the national market system." Senate Report, supra note 44, at 9. See Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, Securities Industry Study, H.R. Rep. No. 92-1519, 92nd Cong., 2d Sess. 123-25 (1972); Senate Securities Industry Study, supra note 44, at 101-104.

[46]Similarly, in adopting Rule 17a-15 under the Act, the Commission was convinced of the value of providing comprehensive last sale information from all market centers. The Commission believes that quotation information will prove to be of at least equal value.

efforts to achieve best execution of their customers' orders and should foster increased competition in market making. Finally, the Commission is concerned that the failure to ensure the availability of quotation information from all market centers could jeopardize efforts to perfect the functioning of a composite quotation system. Such a failure also could distort the Commission's and the securities industry's perception of that system's impact on the behavior of market professionals and of the precise nature of those additional steps which must be taken, building upon experience with use of a composite quotation system, to perfect the mechanism of a national market system.

Although the Commission is aware that the cost burdens associated with compliance with the Rule (particularly the expenses associated with providing quotation information on a continuous basis) may be greater for some persons subject to the Rule than for others, these differences are, in large part, a direct function of the differing ways in which persons subject to the Rule have elected to conduct their businesses. In any event, the Commission has determined that those costs must be borne in order to advance the important purposes of the Act to be served by collecting and disseminating "firm" quotation information from all market centers.

The Commission believes that, until there has been some experience with a comprehensive composite quotation system, it is not possible to determine the precise impact which that system will have on order flow or upon the competitive opportunities and burdens which will be encountered by various market centers. The Commission is satisfied that the important purposes of the Act will be served by collecting and disseminating "firm" quotation information from all market centers and, accordingly, it is reluctant to sacrifice that opportunity because of a concern that some market centers might suffer a cost or competitive disadvantage. The Commission recognizes, however, that this concern is a real one and that some markets and market makers, particularly third market makers, may be subjected to cost burdens which are substantially disproportionate to the competitive benefits which they will obtain. Therefore, upon an appropriate showing, the Commission will be prepared to consider granting an exemption from the provisions of the Rule requiring the dissemination of quotation information so as to relieve unjustified burdens in a manner consistent with the purposes of the Act.[47]

The Commission is aware that some persons required to provide quotations for dissemination pursuant to the Rule may be tempted to avoid the Rule's requirements by disseminating bid and asked prices which are a minimal increment "away" from, for example, the best published bid or offer, or from the published bid or published offer of the "primary" market, while quoting a more competitive market orally in response to inquiry. In this regard, it should be understood that the definitions of the terms "bid" and "offer" in the Rule require that the actual bid and asked prices at which a responsible broker or dealer is willing to effect transactions in reported securities from time to time be communicated to its exchange or association. The Commission believes that if a market maker continuously communicates quotations which do not reflect its actual market, that activity would constitute a violation of Rule 11Ac1-1 and the issuance of fictitious quotations within the meaning of Section 15(c)(2) of the Act.

B. BEST EXECUTION

A number of commentators stated that, in their opinion, the adoption of Rule 11Ac1-1 would not significantly change brokers' order routing decisions unless the Commission also adopted a "best execution" rule. One commentator felt that such a rule should be general in nature, merely clarifying a broker's responsibilities as they exist today, and would exist after the adoption of Rule 11Ac1-1, while others appeared to be advocating a more specific rule which would require brokers to route orders to the market center displaying the best quotation.

The Commission does not believe it is appropriate, at this time, to promulgate a "best execution" rule. It has reached this conclusion because it does not believe it is reasonable, given the present structure of the securities markets, and presently available trading mechanisms, to require brokers under all circumstances to route their customers' orders to the market displaying the best quotation. However, since the Commission believes that adoption of Rule 11Ac1-1 will significantly improve the quality of quotation information available from all markets and market makers, the Commission expects brokers to give careful consideration to that information in making their order routing decisions. Because the Commission believes that a broker's existing fiduciary duty to his customer requires that he take cognizance of quotation information available through a composite quotation system in seeking best execution of his customer's order, it is not clear it at this time that a more definitive Commission rule prescribing best execution standards is necessary to ensure adherence to appropriate principles of agency conduct by brokers.

C. VENDOR REQUIREMENTS

Several commentators suggested that the Commission impose specific obligations on quotation vendors to display quotations from all market centers. The Commission agrees with these commentators that the general availability of quotation information from all markets and market makers by such vendors is a necessary prerequisite to the use of that information and is essential to the successful operation of the Rule. However, the Commission believes that adequate dissemination of quotation information will be achieved without specific vendor requirements formulated by the Commission. For example, it appears that prior to the effective date of the Rule at least one securities information system will be providing a montage of quotations (including sizes) from all market centers in all multiple-traded reported securities. Additionally, the Commission believes that competitive pressures will assure that each of the other vendors will eventually implement similar services or, at least, a best bid and asked display. The Commission will continue to monitor vendor progress in providing quotation information in a comprehensive and non-discriminatory manner and will reconsider its decision not to impose specific obligations on vendors if competitive pressures do not assure adequate dissemination and display of this information.[48]

D. MULTIPLE MARKET MAKERS

Although most commentators expressed agreement with the firmness provisions of the Rule, two commentators suggested that this aspect of the Rule had certain anticompetitive effects. These commentators argued that the competing market maker system, as employed on the Chicago Board Options Exchange, Inc. and the options trading floors of the Midwest Stock Exchange, Inc. and PSE, may be a prototype of the enhanced competitive environment envisioned by Congress in the passage of the 1975

[47] Rule 11Ac1-1(d). See discussion infra.

[48] In this regard, the Commission notes that it expects that quotations will be displayed on a non-discriminatory basis (i.e., from all market centers) and that access to composite quotations will be provided in a manner which will allow recall of these quotations as readily as quotations from a single market. For example, if the consolidated system stock symbol and a single request key are utilized to obtain quotations from a particular market center, consolidated quotations must be available by use of the consolidated symbol and a single request key. In addition to the display of quotations and quotation sizes based upon information from all market centers, the Commission expects that vendors will also indicate to users when these quotations are not firm due to the Unusual Market Exception.

Amendments[49] and that a firm quotation rule would be unworkable in such an environment. Therefore, they argued that the adoption of Rule 11Ac1-1 would become an obstacle to other exchanges adopting such a competitive market maker system, and, in any event, that the Commission would have to exempt exchanges using this system from the operation of the Rule.

The Commission recognizes that compliance with Rule 11Ac1-1 may be more difficult in a multiple market maker exchange environment; however, no exchange currently utilizes such a system generally for trading in reported securities. Accordingly, it is not necessary at this time to consider modifying Rule 11Ac1-1 or altering its basic approach to collection of quotation information to take into account multiple market making in reported securities. However, the Commission wishes to clearly state its intent that the adoption of Rule 11Ac1-1 should not discourage competition among market makers and its commitment to give further consideration to the kinds of theoretical problems mentioned above should circumstances require further action to accommodate a large number of market makers on a single exchange floor.

E. SUITABILITY

Several commentators responded to an express request for comment made in a footnote to the 1977 Release regarding the applicability of standards of suitability and diligence.[50] The Commission confirmed in the footnote that the firmness provisions of the Rule (which would require a responsible broker or dealer to deal directly with any person belonging to a category of persons with which such broker or dealer customarily deals) were not intended to supersede or contravene rules governing suitability and diligence as to customer accounts.[51] One commentator felt that this qualification of the firmness requirement would be more appropriately contained in the Rule, not in a footnote in a release. Another commentator questioned the applicability of suitability and customer diligence rules to several hypothetical situations and also expressed its view that the Rule should not require a responsible broker or dealer to transact business with another broker or dealer regardless of such responsible broker or dealer's judgment as to the financial integrity of the other broker or dealer and his ability to deal in the size of the transaction in question.

The Commission continues to believe that the asserted concern that Rule 11Ac1-1 will force responsible brokers and dealers to transact business with financially unsound brokers or dealers has not been demonstrated to be a sufficient reason to amend the Rule. If such loss occurs, it would generally be limited to a risk of market loss for a short period of time. The infrequency and limited nature of such losses does not warrant the inclusion of a general exception to the firmness requirement of the Rule.

With respect to other persons who belong to a category of persons with whom a responsible broker or dealer customarily deals (and, therefore, who are entitled to require a responsible broker or dealer to effect a transaction at his published bid or published offer), the Commission notes that the phrase "customarily deals" connotes, among other things, that a responsible broker or dealer should not engage in a transaction with a customer when the broker's fiduciary responsibility, including principles of suitability and other obligations imposed on such brokers by law, would otherwise prohibit such a transaction.

F. ERRORS

One commentator noted that the 1977 Proposal would relieve a responsible broker or dealer from his firmness obligations if his published bid or offer as displayed by vendors was not the same as the bid or offer communicated by the responsible broker or dealer to his exchange or association due to some error in collection, transmission or display. This commentator stated that a responsible broker or dealer should also be relieved of firmness obligations when he has communicated an erroneous quotation to his exchange or association.

The Commission believes that responsible brokers and dealers should be held accountable for their own errors in order (i) to create incentive on the part of responsible brokers and dealers to accurately communicate their quotations and (ii) to avoid "backing away" by responsible brokers and dealers under the guise of erroneous quotations. Accordingly, the Rule has not been altered to provide a firmness exception for responsible brokers or dealers communicating erroneous quotations.

G. FEES

The Commission has again[52] received comments concerning the rights of exchanges and associations to charge vendors directly for receipt of quotation information and to impose certain contractual obligations on vendors. Rule 11Ac1-1 is not intended to define or recognize the right of an exchange or association to charge vendors for the receipt of quotation information; the Commission has not to date addressed that issue. The Commission notes that, under Section 11A(c)(1)(C) of the Act (15 U.S.C. 78k-1(c)(1)(C)), it continues to have authority to adopt rules and regulations designed to assure that all securities information processors may obtain quotation information from any exchange or association (or any executive processor) on fair and reasonable terms. The Commission expects that the vendors and self-regulatory organizations will resolve these matters satisfactorily without Commission intervention prior to the effective date of the Rule. However, the Commission will monitor the progress of these discussions to assure that compliance with the Rule and the other provisions of the Act are achieved and will take appropriate action if necessary.

H. UNUSUAL MARKET EXCEPTION

Only one commentator addressed the operation of the Unusual Market Exception and suggested that this exception commence upon a determination that unusual conditions exist, not at the time specified persons are notified. In addition, this commentator felt the Rule's requirement that such determination be made pursuant to rules approved by the Commission would not allow exchange officials sufficient discretion in utilizing the exception. Although the circumstances which justify the determination that unusual conditions exist would appear to impose burdens on responsible brokers and dealers from the moment these circumstances arise and, therefore, responsible brokers and dealers would be required to satisfy orders based upon quotations which may not be accurate or up to date from that time until completion of the notification procedure, the Commission believes that such a limited burden is necessary to assure prompt notification to the specified persons. The Commission has also revised the Rule to omit notification to the Commission, thereby expediting the notification process.[53] Moreover, during the period prior to notification it is unlikely that responsible brokers or dealers will be required to satisfy orders on the basis of their published bids or offers because the exception for revised quotations should assure that a

[49] Both commentators noted, however, that Rule 11Ac1-1 as proposed would not be applicable to options trading. Rule 11Ac1-1 as adopted is not applicable to quotations in exchange-traded options.

[50] 1977 Release, supra note 13, at 14 n. 16, 42 FR 32418, 32419.

[51] See, *e.g.*, Article III, Sec. 2 of the Rules of Fair Practice of the NASD and Rule 405 of the NYSE.

[52] The Commission received similar comments in response to the 1976 Proposal and deleted a paragraph in that Proposal which would have permitted the imposition of fair and reasonable fees for use of quotation information. 1976 Proposal, paragraph (b)(3). See 1977 Release, supra note 13, at 21, 42 FR 32418, 32420.

[53] See Rule 11Ac1-1(a)(15) and discussion supra.

responsible broker or dealer is not obliged to effect a transaction at a price which does not reflect the current market. In addition, if the Unusual Market Exception were to become operative prior to notification to vendors, displayed quotations would be misleading during such interim period.[54]

The Commission believes it is necessary that exchange procedures utilized in making a determination that unusual market conditions exist be filed with the Commission under Section 19(b) of the Act to assure some uniformity between the various exchanges and to assure that the factors to be considered in reaching these determinations are consistent with the Commission's intent in providing the exception.

I. COST/BENEFIT ANALYSIS

In response to the 1976 Proposal, the Council on Wage and Price Stability (the "Council") submitted a lengthy comment questioning the cost/benefit of a rule such as Rule 11Ac1-1 and urging the Commission not to adopt such a rule in the absence of an analysis demonstrating that the benefits of the proposal would outweigh the costs associated with its implementation.[55] In the 1977 Release, the Commission stated its conclusion that the projected benefits of the Rule, although difficult to quantify, outweighed the anticipated costs to exchanges, associations and market professionals.[56] In addition, the Commission noted that affirmative Commission action in implementing a composite quotation system was justified by the overriding public interest in the widespread dissemination of quotation information and by the provisions of the Act directing the Commission to take action to facilitate the development of a national market system.[57]

In response to the 1977 Proposal, the Council has requested the Commission to consider its comments submitted in response to the 1976 Proposal as applicable to the 1977 Proposal. The Commission has again considered the comments of the Council and continues to believe that the benefits provided by the Rule, particularly its role in facilitating the establishment of a national market system, outweigh the costs associated with implementation of the Rule. As an integral step in accomplishing the statutory goal of the "linking of all markets * * * [to] foster efficiency, enhance competition, * * * and contribute to best execution"[58] of customers' orders, the Rule is justified even in the absence of inherently speculative efforts to quantify the cost and value of certain improvements in the quality of information which will result.

J. MISCELLANEOUS TECHNICAL COMMENTS

1. One commentator felt that the Rule should contain further standards refining the definition of "third market maker." The definition in the 1977 Proposal would have applied to any person who held himself out as willing to deal on a regular and continuous basis in amounts of less than block size. This commentator requested that the Commission provide standards for identifying those persons who are willing to deal on a regular and continuous basis and for determining "block size." The definition of third market maker contained in the Rule is similar to the definition of "market maker" contained in Section 3(a)(38) of the Act (15 U.S.C. 78c(a)(38)), and should be sufficiently clear to identify persons acting in that capacity. Since the amount of securities which constitutes a "block" will vary from issue to issue, depending in part upon the trading characteristics of the issue (e.g., price, volume and liquidity), a specific definition of that term would appear to be unduly rigid.

2. One commentator requested that the Commission further define the standards under which it would grant exemptions from the Rule. The exemptive provisions of the Rule are designed to exempt market centers which do not account for any significant trading in a reported securities or which would suffer economic burdens which are not justified by the purposes of the Act,[59] and to deal with other market structure developments.[60] The Commission believes that a broad exemptive provision is necessary to provide flexibility in those instances when application of the Rule would be inappropriate.

3. Another commentator has made a number of technical suggestions, most of which the Commission feels are beyond the intended scope of the Rule. In essence, this commentator suggested that the Commission mandate the specifications of communication linkages between self-regulatory organizations and vendors and that the Commission require exchanges and associations to name an exclusive processor of quotations and make available quotations in a manner which will reduce stress on vendor computer hardware.

When the Commission deferred further action on proposed Rule 17a-14 under the Act,[61] which would have permitted exchanges and associations to file plans for the collection and dissemination of quotations, similar to the plan required to be filed under Rule 17a-15 under the Act with respect to last sale reports, it determined that industry forces should be allowed to create the means of collection, dissemination and display of quotations without direct Commission action. The implication of this decision to defer action on Rule 17a-14 was that, if the industry, after sufficient time, had not taken reasonable steps in creating appropriate procedures and facilities, the Commission would once again consider direct intervention. However, steps taken to date indicate that the exchanges, associations and vendors are responding to this challenge. The Commission believes that any arrangement between all of the various exchanges and associations leading to centralized processing, sequencing and validation of quotation information would be beneficial and it encourages the exchanges and associations to pursue such arrangements. With respect to technical specifications governing the method of transmitting quotation information, the Commission believes that these matters should be addressed, at least initially, by the self-regulatory organizations and the vendors in keeping with the Commission's prior determination to rely upon the private sector to implement mechanisms for collection, dissemination and display of quotation information. The Commission sees no apparent utility in mandating these specifications and is confident that the vendors and self-regulatory organizations will satisfactorily resolve any problems which might impede the successful development of a composite quotation system.

IV. STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

The Securities and Exchange Commission hereby adopts Rule 11Ac1-1 [17 CFR § 240.11Ac1-1] pursuant to its authority under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)], and particularly Sections 2, 3, 6, 9, 10, 11A, 15, 15A, 17 and

[54] See note 49 supra, in which the Commission has indicated that it expects that information furnished by quotation vendors will indicate when this exception is in effect.

[55] 1977 Release, supra note 13, at 27, 42 FR 32418, 32421.

[56] Id. at 27-30, 42 FR 32418, 32421-22.

[57] Comments of the Council on Wage and Price Stability on Eligible Securities, Dissemination of Quotations, October 6, 1976, in File No. S7-648.

[58] Section 11A(a)(1)(D) of the Act [15 U.S.C. 78k-1(a)(1)(D)].

[59] See note 47 supra.

[60] For example, it may be necessary to use the exemptive provisions of the Rule to accommodate the Regional Market System employed on a pilot basis by the Boston, Cincinnati, Midwest and Pacific Stock Exchanges in the event this system eventually reflects all buying and selling interest in those securities traded in the system at all participating exchanges.

[61] See Securities Exchange Act Release No. 11288 (March 11, 1975) at 2, 40 FR 15015, 15016.

23 thereof (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78k-1, 78o, 78o-3, 78q and 78w).

For the reasons expressed in this release, the Commission finds that the Rule does not impose any burden on competition which is neither necessary nor appropriate in furtherance of the purposes of the Act.

The text of Rule 11Ac1-1 is as follows:

§ 240.11Ac1-1 Dissemination of quotations for reported securities.

(a) *Definitions.* For purposes of this section, (1) The term "third market maker" shall mean any broker or dealer who holds himself out as being willing to buy and sell a reported security for his own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size (including any such broker or dealer who also represents, as agent, orders to buy or sell reported securities on behalf of any other person and communicates bids and offers to a national securities association ("association") pursuant to this section on behalf of such other persons as well as for his own account).

(2) The term "exchange market maker" shall mean any member of a national securities exchange ("exchange") who is registered as a specialist or market maker pursuant to the rules and regulations of such exchange.

(3) The term "responsible broker or dealer" shall mean (i) When used with respect to bids or offers communicated on the floor of an exchange, any member of such exchange who communicates to another member on the floor of such exchange, at the location (or locations) designated by such exchange for trading in a reported security, a bid or offer for such reported security, as either principal or agent; *Provided, however,* That, in the event two or more members of an exchange have communicated on the floor of such exchange bids or offers for a reported security at the same price, each such member shall be considered a "responsible broker or dealer" with respect to that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and *further provided,* That with respect to a bid or offer which is transmitted from one member of an exchange to another such member who undertakes to represent such bid or offer on the floor of such exchange as agent, only the last such member who undertakes to represent such bid or offer as agent shall be considered the "responsible broker or dealer" with respect to that bid or offer; and

(ii) When used with respect to bids and offers communicated by a third market maker to another broker or dealer or to a customer otherwise than on an exchange, the third market maker communicating the bid or offer (regardless of whether such bid or offer is for his own account or on behalf of another person).

(4) The term "quotation vendor" shall mean any securities information processor engaged in the business of disseminating to brokers and dealers, on a real-time or current and continuing basis, bids and offers made available pursuant to this section, whether distributed through an electronic communications network or displayed on a terminal or other display device.

(5) The term "consolidated system" shall mean the consolidated transaction reporting system contemplated by § 240.17a-15 (Rule 17a-15 under the Act).

(6) The term "reported security" shall mean any equity security as to which last sale information is reported in the consolidated system.

(7) The term "make available," when used with respect to bids, offers, quotation sizes and aggregate quotation sizes supplied to quotation vendors by an exchange or association, shall mean to provide circuit connections at the premises of the exchange or association supplying such data, or at a common location determined by mutual agreement of the exchanges and associations, for the delivery of such data to quotation vendors.

(8) The terms "bid" and "offer" shall mean the bid price or the offer price most recently communicated by an exchange member or third market maker to any broker or dealer, or to any customer, at which he is willing to buy or sell a particular amount of a reported security, as either principal or agent, but shall not include indications of interest.

(9) The terms "published bid" and "published offer" shall mean the bid or offer (as the case may be) of a responsible broker or dealer for a reported security communicated by him to his exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(10) The term "quotation size," when used with respect to a responsible broker's or dealer's bid or offer for a reported security, shall mean (i) the number of shares (or units of trading) of that reported security which such responsible broker or dealer has specified, for purposes of dissemination to quotation vendors, that he is willing to buy at the bid price or sell at the offer price comprising his bid or offer, as either principal or agent, or (ii) in the event such responsible broker or dealer has not so specified, a normal unit of trading for that reported security.

(11) The term "published quotation size" shall mean the quotation size of a responsible broker or dealer communicated by him to his exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(12) The term "aggregate quotation size" shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on the floor of an exchange bids or offers for a reported security at the same price.

(13) The term "published aggregate quotation size" shall mean the aggregate quotation size calculated by an exchange and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(14) The term "odd-lot" shall mean an order for the purchase or sale of a reported security in an amount less than a normal unit of trading.

(15) The term "specified persons," when used in connection with any notification required to be provided pursuant to paragraphs (b)(3)(i) and (b)(3)(ii) of this section, shall mean: (i) Each quotation vendor; (ii) The processor for the consolidated system; and (iii) The processor for the Options Price Reporting Authority (in the case of a notification with respect to a reported security which is a class of securities underlying options admitted to trading on any exchange).

(b) *Dissemination requirements for exchanges and associations.* (1) Every exchange and association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association (as the case may be), processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors, as follows:

(i) Every exchange shall, at all times such exchange is open for trading, collect, process and make available to quotation vendors the highest bid and the lowest offer communicated on the floor of that exchange (or, in the event such exchange maintains more than one trading floor, communicated on any of such floors) by any responsible broker or dealer (excluding any such bid or offer which is executed immediately after communication and any such bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication) for each reported security listed or admitted to unlisted trading privileges on that exchange except during any period when trading in

that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange;

(ii) Every association shall, at all times last sale information with respect to reported securities is reported in the consolidated system, collect, process and make available to quotation vendors the highest bid and lowest offer communicated otherwise than on the floor of an exchange by each member of such association acting in the capacity of a third market maker for a reported security and the identity of that member (excluding any such bid or offer which is executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended; and

(iii) Every bid and offer made available to quotation vendors by an exchange or association pursuant to this section shall be accompanied by the quotation size or the aggregate quotation size (as the case may be) associated with it.

(2) Each exchange shall, with respect to each published bid and published offer representing a bid or offer of a member, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (c)(2) of this section, the identity of each responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3)(i) If, at any time an exchange is open for trading, such exchange determines, pursuant to rules and regulations approved by the Securities and Exchange Commission pursuant to Section 19(b)(2) of the Act, that the level of trading activity or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing and making available to quotation vendors the data with respect to a reported security required to be made available pursuant to paragraph (b)(1) of this section in a manner which accurately reflects the current state of the market on the floor of such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers who are members of that exchange shall be relieved of their obligation under paragraph (c)(2) of this section and such exchange shall be relieved of its obligations under paragraphs (b)(1) and (2) of this section with respect to that security; *provided, however,* That such exchange shall continue, to the maximum extent practicable under the circumstances, to collect, process and make available to quotation vendors such data for that security in accordance with paragraph (b)(1) of this section.

(ii) During any period an exchange, or any responsible broker or dealer who is a member of that exchange, is relieved of any obligation imposed by this section with respect to any reported security by virtue of a notification made pursuant to paragraph (b)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing and making available to quotation vendors the data with respect to that security required to be made available pursuant to paragraph (b)(1) of this section in a manner which accurately reflects the current state of the market on the floor of such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any exchange or association from making available to quotation vendors indications of interest at any time or bids and offers with respect to a reported security at any time such exchange or association is not required to do so pursuant to paragraph (b)(1) of this section.

(c) *Obligations of responsible brokers and dealers.* (1) Every responsible broker or dealer shall promptly communicate to his exchange or association (as the case may be), pursuant to procedures established by that exchange or association, his bids, offers and quotation sizes.

(2) Subject to the provisions of paragraph (c)(3) of this section, every responsible broker or dealer shall be obligated to execute any order to buy or sell a reported security, other than an odd-lot order, presented to him by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the bid price or offer price comprising such responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to his published quotation size.

(3)(i) If, (A) prior to the presentation of an order for the purchase or sale of a reported security, a responsible broker or dealer has communicated to his exchange or association (as the case may be), pursuant to paragraph (c)(1) of this section, a quotation size superseding his published quotation size (a "revised quotation size"), or, (B) at the time an order for the purchase or sale of a reported security is presented, a responsible broker or dealer is in the process of effecting a transaction in such reported security, and, immediately after the completion of such transaction, he communicates to his exchange or association (as the case may be) a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(2) of this section to purchase or sell a reported security in an amount greater than such revised quotation size.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any reported security as provided in paragraph (c)(2) of this section if, (A) before the order sought to be executed is presented, such responsible broker or dealer has communicated to his exchange or association (as the case may be) pursuant to paragraph (c)(1) of this section, a bid or offer superseding his published bid or published offer (a "revised bid or offer"); or (B) at the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such reported security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to his exchange or association (as the case may be) pursuant to paragraph (c)(1) of this section, a revised bid or offer; *provided, however,* That such responsible broker or dealer shall nonetheless be obligated to execute any such order in such reported security as provided in paragraph (c)(2) of this section at his revised bid or offer in any amount up to his published quotation size or revised quotation size (as the case may be).

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

(e) *Effective Date.* The effective date of this section shall be May 1, 1978.

(Secs., 2, 3, 6, 9, 10, 15, 17, 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, 901, as amended by Secs. 2, 3, 4, 11, 14, 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 121, 137, 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, 78w, as amended by Pub. L. No. 94-29 (June

4, 1975)); Sec. 1, Pub. L. No. 75-719, 52 Stat. 1070, as amended by Sec. 12, Pub. L. No. 94-29, 89 Stat. 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. No. 94-29 (June 4, 1975)); Sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 26, 1978.

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WEDNESDAY, FEBRUARY 1, 1978
PART III

SECURITIES AND EXCHANGE COMMISSION

■

DEVELOPMENT OF NATIONAL MARKET SYSTEM

Intent To Engage in Rulemaking

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-14416; File No. S7-735]

DEVELOPMENT OF A NATIONAL MARKET SYSTEM

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to engage in rulemaking.

SUMMARY: The Commission sets forth its views as to those initiatives which it believes must be taken over the next year to facilitate the establishment of a national market system. In addition, the Commission gives notice of its intent to commence rulemaking, if necessary, to implement those initiatives.

DATE: Not applicable.

ADDRESSES: Persons wishing to submit written views, data and arguments should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-735 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

John W. Osborn, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8961.

SUPPLEMENTARY INFORMATION: The purpose of this statement is to reiterate the Commission's continuing commitment to achievement of a national market system for securities in accordance with the goals directed to be achieved by the Congress in the Securities Exchange Act of 1934 (the "Act"),[1] as amended by the Securities Acts Amendments of 1975 (the "1975 Amendments").[2] The 1975 Amendments establish as a purpose of the Act the need "to remove impediments to and perfect the mechanism of a national market system for securities,"[3] and direct the Commission to "facilitate the establishment" of that system.[4] Specifically, Section 11A of the Act states that:

> The Commission is directed . . . having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under [the Act] to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of [Section 11A(a)].[5]

Section 11A(a)(1) of the Act states the Congressional findings that;

> (A) The securities markets are an important national asset which must be preserved and strengthened.
>
> (B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.
>
> (C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—
>
> (i) economically efficient execution of securities transaction;
>
> (ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;
>
> (iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;
>
> (iv) the practicability of brokers executing investors' orders in the best market; and
>
> (v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.
>
> (D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.[6]

This statement sets forth, in summary form, the Commission's views as to particular initiatives the Commission considers necessary to accelerate implementation of a national market system meeting the Congressional findings and objectives stated above. It is intended to apprise the securities industry, the Congress and the public of those elements of a national market system which the Commission believes must be put in place in the immediate future if the idea of a national market system is to progress beyond the theoretical stage and become a functioning reality. During the next year, to the extent required, the Commission plans to issue further statements more fully analyzing the issues presented by each of those elements in connection with commencement of such rule-making as the Commission may find necessary in order to assure that development of those elements proceeds in an orderly fashion.

BACKGROUND

The following abbreviated history of the development of the concept of a national market system is provided to place in perspective the particular initiatives announced in this statement.[7]

The concept of a national market system was first articulated in the Commission's letter of transmittal accompanying its Institutional Investor Study, submitted to Congress on March 10, 1971.[7a] There the Commission stated that:

> [a] Major goal and ideal of the securities market and the securities industry has been the creation of a strong central market system for securities of national importance, in which all buying and selling interest in these securities could participate and be represented under a competitive regime.[8]

Following that statement, in October 1971, the Commission conducted hearings focused on the existing structure of the securities markets and ways of improving it.[10] These hearings culminated in the issuance of the Commission's Statement on the Future Structure of the Securities Markets ("Future Structure Statement") on February 2, 1972.[11]

In the Future Structure Statement, the Commission elaborated on the goals of a national market system and defined a central (national) market system as:

> A system of communications by which the various elements of the marketplace, be they exchanges or over-the-counter markets, are tied together. It also includes a set of rules governing the relationships which will prevail among market participants.[12]

The Future Structure Statement outlined a number of structural problems adversely affecting the securities markets and the Commission's views as to appropriate resolution of those

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[1] 15 U.S.C. 78a et seq.

[2] Pub. L. No. 94-29 (June 4, 1975).

[3] Section 2 of the Act [15 U.S.C. 78b].

[4] Section 11A(a)(2) of the Act [15 U.S.C. 78k-1(a)(2)].

[5] Id.

[6] Section 11A(a)(1) of the Act [15 U.S.C. 78k-1(a)(1)].

[7] The particular references to and quotations from prior Commission documents concerning a national market system and various Congressional documents forming part of the legislative history of the 1975 Amendments cited in the following text do not, of course, exhaust all source materials relevant to the issues discussed.

[7a] Institutuional Investor Study Report, H.R. Doc. No. 92-64, 92d. Cong., 1st Sess., pt. 1, at xxiv-xxv (March 10, 1971) ("Transmittal Letter").

[8] *Id.* at xxiv.

[10] In the Matter of the Structure, Operation and Regulation of the Securities Markets, File No, 4-147.

[11] SEC, Statement of the securities and Exchange Commission on the future Structure of the Securities Markets (1972), 37 FR 5286.

[12] Id. at 8, 37 FR at 5287. See also SEC, Policy Statement of the Securities and Exchange Comission on the Structure of a Central Market System 11 (1973) ("Policy Statement").

problems. The broad parameters of the market structure reforms the Commission proposed as remedies to those problems included: (i) implementation of a nationwide system for disclosure of market information designed to make price and volume information in all markets universally available; (ii) elimination of artificial impediments to dealing in the best available markets created by exchange rules or otherwise; (iii) establishment of terms and conditions upon which any qualified broker-dealer could negotiate access to all exchanges; and (iv) integration of third market firms and exchanges into a national market system, subjecting them to appropriate market responsibilities and other regulatory requirements comensurate with the benefits they would realize in such a system.

The Commission did not in the Future Structure Statement set forth a detailed plan for achievement of its market structure goals; rather, the Commission announced that it would establish three advisory committees to study and report to the Commission their views as to the optimum means of implementing the Commission's policy objectives. Upon the completion of the work of the three advisory committees,[13] the Commission issued a Policy Statement on the Structure of a Central Market System on March 29, 1973,[14] in which it provided a more detailed statement of its policy objectives and a possible plan for implementing those objectives.

The Policy Statement described how a consolidated transaction reporting system would operate and what rules would be necessary to ensure that information disseminated through that system would not be misleading. The Policy Statement also elaborated on the need for a system disclosing all quotations in national market system securities on a comprehensive basis, describing the manner in which such a system might function. Finally, the Policy Statement concluded that off-board trading rules of the various exchanges, particularly New York Stock Exchange, Inc. ("NYSE") Rule 394 (now Rule 390), were incompatible with a national market system and would have to be rescinded at an appropriate time.[15]

In addition to elaborating on the principles set forth in the Future Structure Statement, the Commission's Policy Statement articulated two new proposals to govern trading within a national market system: an auction trading rule, which would provide price priority protection for all public orders entered in a proposed central electronic repository, and a public preference rule, which would accord preferential treatment to public orders entered in the central electronic repository by preventing securities professionals acting as principal from competing for execution with such orders unless such professionals bettered public bids or offers entered in that system.

THE SECURITIES ACTS AMENDMENTS OF 1975

Concurrent with the Commission's initial formulation of policies concerning development and implementation of a national market system, the Congress initiated its own study of the competitive, legal and economic issues facing the securities markets, the securities industry and public investors in the 1970's and beyond. Subcommittees of both Houses of Congress held extensive hearings on market structure questions and issued comprehensive reports setting forth their conclusions and recommendations.[16] These conclusions and recommendations formed the basis of legislative proposals which, after extensive hearings and comment, were enacted into law as the 1975 Amendments.

As noted above, the 1975 Amendments contain an explicit statutory commitment to the establishment of a national market system. The legislative history of the 1975 Amendments indicates a clear Congressional belief that development of a national market system is not only desirable but necessary. For example, the Senate Committee on Banking, Housing and Urban Affairs (the "Senate Committee") stated that:

> [t]he rapid attainment of a national market system . . . is important . . . to assure that the country maintains a strong, effective and efficient capital raising and capital allocating system in the years ahead.[17]

Similarly, the House Committee on Interstate and Foreign Commerce declared that:

> The purpose of this title is to insure that our nation's capital markets continue to be the best in existence. It does this by establishing a framework for a national market system, in which all qualified persons throughout our country may be linked together electronically so that they may compete and may bring to the marketplace their capital so as to make for broader, deeper and more liquid capital markets.[18]

For this reason, the 1975 Amendments clarified and strengthened the Commission's authority to advance the achievement of such a system.

In view of the Congressional belief that it was "best to allow maximum flexibility in working out specific details" of what should be elements of a national market system, the 1975 Amendments neither defined the term "national market system" nor mandated specified minimum components of such a system.[19] In this regard, the Senate Committee stated in its report on S. 249 regarding the national market system provisions of that bill (which were incorporated in the 1975 Amendments) that:

> The Committee considered mandating certain minimum components of the national market system but rejected this approach. The nation's securities markets are in dynamic change and in some respects are delicate mechanisms; the sounder approach appeared to the Committee, therefore, to be to establish a statutory scheme clearly granting the Commission broad authority to oversee the implementation, operation and regulation of the national market system and at the same time charging [the Commission] with the clear responsibility to assure that the system develops and operates in accordance with Congressionally determined goals and objectives.[20]

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[13] The three advisory committees were the Advisory Committee on Market Disclosure ("Disclosure Committee"), the Advisory Committee on a Central Market System ("CMS Committee"), and the Advisory Committee on Block Transactions ("Block Committee"). Reports were received from the Disclosure Committee on July 17 and November 21, 1972, from the CMS Committee on October 11, 1972, and March 6, 1973, and from the Block Committee on August 7, 1972.

[14] *See Policy Statement, supra* note 12.

[15] Id. at 61-64, 67. Of course, a primary goal of a national market system is to capture and reflect all buying and selling interest in the securities traded in that system from moment to moment (thus exposing all buying interest to all selling interest) to the maximum extent possible so that all orders within the system can be satisfied in a manner consonant with the principles articulated by the Congress in Section 11A of the Act. Depending upon the ultimate configuration of the national market system, that result could be sought by imposition of a rule specifically confining trading in national market system securities to that system. The Commission believes that such a result could ensue in any event, however, as the aggregate consequence of industry use of the various communications and other technological components of a national market system and adherence to a common body of trading rules and principles governing the transaction of business in securities included in that system.

[16] Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, Securities Industry Study, 92nd Cong., 2d Sess. 117-130 (Comm. Print, 1972); Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, Securities Industry Study, 93rd Cong., 1st Sess. 89-135 (Comm. Print, 1973) ("Senate Study").

[17] Senate Committee on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rept. No. 94-75, 94th Cong., 1st Sess. 3 (1975) ("Senate Report").

[18] House Committee on Interstate and Foreign Commerce, Report to Accompany H.R. 4111, H.R. Rept. No. 94-123, 94th Cong., 1st Sess. 90 (1975) ("House Report").

[19] Senate Report, supra note 17, at 7.

[20] Id. at 8-9; see also House Report, supra note 18, at 50-51.

Congressional reluctance to specify minimum components of a national market system did not extend, however, to specification of the basic underlying principles which should govern the establishment of that system. First, a clear preference was expressed for auction trading principles. For example, the Senate Committee in its report on S. 249 stated that:

[W]ith respect to securities which are suitable for auction trading, the Committee believes every effort should be made to design the national market system in such a way that public investors in these securities receive the benefits and protections associated with auction-type trading.[21]

The Senate Committee found that public investors could enjoy two important benefits when trading in an ideal auction-type market as opposed to a purely dealer market.[22] First, limited price orders of investors would have to be satisfied before any transaction could be effected (i) at the same price by a specialist or other market maker for his own account or by the customer's broker for his proprietary account, or (ii) by any participant in that market at a price less favorable to the other party to the trade than the limit order price. Second, customers' market orders could, at least potentially, be executed against another public limit or market order at a better price than that currently being quoted by any dealer for his own account. The Senate Committee noted, however, that auction trading principles could not be perfected under existing circumstances because of fragmentation of the markets, particularly "the lack of a mechanism by which all buying and selling interest in a given security can be centralized and thus assure public investors best execution".[23] Thus, the concept of implementing a nationwide system according price and time priority to all limit orders of public investors over all professional orders, regardless of where such limit orders originate or in what market center professional orders may be executed, received considerable support from the draftsmen of the 1975 Amendments.

The second major national market system principle supported by the Congress was that the types of securities qualified to be included in the national market system ("qualified securities") should depend primarily on their characteristics (e.g., trading volume, price and numbers of shareholders) rather than where they happen to be traded (i.e., on an exchange or over-the-counter). The Senate Committee, for example, stated that "the national market system has as its fundamental goal the elimination of fragmented markets for securities suitable for auction trading."[24] Similarly, the Committee of Conference of both Houses of Congress (the "Conference Committee"), in explaining the final language of the 1975 Amendments, stated that "it is the intention of both Houses that all securities, other than exempted securities, be eligible to be qualified for trading in the national market system."[25]

A third principle articulated by Congress as underlying the national market system concept was a refusal to achieve a nationwide centralized auction-type market for qualified securities involving abolition of over-the-counter trading in listed securities, unless the Commission found that "the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means" under the Act.[26] Thus the Senate Committee stated:

The Committee has carefully evaluated all arguments that have been presented in support of abolishing the third market and found them unpersuasive * * * [T]he Committee found that the dealers operating in the third market provide valuable competition to the specialists operating on the exchanges and that this competition enhances the total market making capacity for listed securities.[27]

The Senate Committee further stated that:

The establishment of a national market system should end all concern over the possible inimical consequences of the third market to the fairness and orderliness of the markets for listed securities. Once trading in listed securities is centralized and subject to uniform trading principles, the distinction between trading on an exchange and trading off an exchange will lose much of its significance.[28]

The Congress intended competitive forces, to the extent feasible, to shape the structure of the markets. The Senate Committee noted, however, that a major responsibility of the Commission had been, and continued to be, the creation of "a fair field of competition." The impact of the 1975 Amendments, according to the Senate Committee, was to

more clearly identify this responsibility and clarify and strengthen the SEC's authority to carry it out. The objective would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services. It would obviously be contrary to this purpose to compel elimination of differences between types of markets or types of firms that might be competition-enhancing.[29]

The Conference Committee described the Commission's intended role as follows:

It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed. The conferees expect, however, in those situations where competition may not be sufficient, such as the creation of a composite quotation system or a consolidated transaction reporting system, the Commission will use the powers granted to it in [the 1975 Amendments] to act promptly and effectively to ensure that the essential mechanisms of an integrated secondary trading system are put into place as rapidly as possible.[30]

More recently, a joint report of the Subcommittee on Oversight and Investigations and the Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce stated that "the evolutionary process [of developing a national market system] must be shepherded by the SEC which must step in when the pace of progress slackens and use the considerable authority Congress granted it."[31]

PROGRESS TO DATE

The major problems to which the idea of a national market system is addressed are those arising from "market fragmentation," or the existence of multiple, geographically separated forums in which trading in the same security occurs, and from the institutionalization of the markets. These problems include, among others: (i) the need to perfect existing mechanisms for the disclosure of information concerning all completed transactions in multiply-traded securities; (ii) the absence of a comprehensive, composite quotation system displaying buying and selling interest in

[21] Senate Report at 16.

[22] Id.

[23] Id. at 17.

[24] Id.

[25] Committee of Conference, Report to Accompany S. 249, H.R. Rept. No. 94-249, 94th Cong., 1st Sess. 92 (1975) (emphasis added) ("Conference Report").

[26] Section 11A(c)(3) of the Act [15 U.S.C. 78k-1(c)(3)]. Such a finding would be required to be made "on the record after notice and opportunity for hearing." Id.

[27] Senate Report, supra note 17, at 20. See also House Report, supra note 18, at 91. See generally Senate Study, supra note 16, at 126.

[28] Senate Report at 22.

[29] Id. at 8.

[30] Conference Report, supra note 25, at 92.

[31] Subcommittee on Oversight and Investigations and Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce, Report on Oversight of the Functioning and Administration of the Securities Acts Amendments of 1975, Committee Print No. 95-27, 95th Cong., 1st Sess. 4 (1977) ("Oversight Report").

those securities from all markets (whether on an exchange or over-the-counter); (iii) the inadequacy of existing means available to brokers for routing orders to and among markets in pursuit of the most favorable execution opportunities; (iv) the lack of a mechanism to provide nationwide agency limit order protection, affording time and price priority to such orders regardless of geographical location; (v) impediments to effective market-maker competition for orders of relatively small size; and (vi) the need to integrate block transactions more effectively into the normal course of securities trading.

Several important steps have already been taken to further the goals enunciated by the Commission and the objectives established by the Congress regarding a national market system. The Commission's short sale rules have been amended to extend their application to "third market" transactions.[32] A uniform net capital rule, applicable to a broad segment of the securities industry, has been adopted,[33] and anti-manipulative rules for all market centers are now in place.[34] The exchanges and the National Association of Securities Dealers, Inc. ("NASD") have completed implementation of a consolidated transaction reporting system ("consolidated system") for certain exchange-traded securities, pursuant to Rule 17a-15 under the Act, designed to enable investors to make more informed judgments regarding which market centers offer the most advantageous prices at a particular time.[35] With respect to quotation information, all exchange restrictions on the dissemination of such information have been eliminated,[36] and the Commission has adopted a rule governing the dissemination of quotations from exchanges and third market makers.[37]

The adoption of Rule 19b-3 under the Act, abolishing fixed rates of commission for transactions on exchanges, has permitted brokers to negotiate the cost of access to the various exchanges,[38] and the exchanges themselves have moved toward expanding access to their market places.[39] The NYSE and the Amex have rescinded their "New York City" rules (which, in substance, prohibited members of each exchange from trading listed securities of that exchange on the other exchange), and today those exchanges compete directly in several issues.[40] In addition, the adoption of Rule 19c-1, and the Commission's recent action to amend that rule to expand its scope, assures that a member of an exchange will be permitted to effect over-the-counter agency transactions in securities listed or admitted to unlisted trading privileges on an exchange with any person not also represented as agent by that member (i.e., precluding only "in-house" agency cross transactions), thereby permitting brokers greater flexibility in seeking the best market in which to effect agency transactions.[41]

Finally, the securities industry has started to move forward in the development of market linkage systems. Under the sponsorship of the NYSE, work is proceeding on the implementation of an intermarket trading system ("ITS") linking the principal exchange markets.[42] The ITS, scheduled to commence operation in a pilot phase in April 1978, is an electronic intermarket order routing facility which would permit orders for the purchase and sale of multiply-traded securities to be sent directly from one market center to another. A second market linkage initiative is the recently commenced pilot program for a regional market sysem ("RMS"). The RMS is an electronic trading system in which agency and principal limit orders may be entered and executed directly through the system by brokers and dealers participating in that system (currently members of the BSE, the PSE, and the Midwest ("MSE") and Cincinnati ("CSE") Stock Exchanges). The RMS provides a mechanism through which absolute price and time priority for orders entered in that system can be secured.[43] The RMS began pilot operations in November 1977 and now includes 36 issues.

The Commission's Future Plans for Facilitating Establishment of a National Market System

Although the developments discussed above represent movement toward a national market system, the Commission is not satisfied with the rate at which concrete steps are being taken to link the markets, integrate order flow and enhance competition in the manner envisioned by the Congress when it enacted the 1975 Amendments. While the Commission believes that development of a national market system should remain essentially an evolutionary process, free of the rigidities inherent in any Commission attempt to dictate the ultimate configuration of that system, that development has been impeded by the inability of the several discrete segments of the securities industry to surmount the problems presented by the diversity of their interests and to settle upon a common course of action to implement the Congressional policy.

The adverse consequences of failing to achieve more rapid progress toward a national market system have become particularly apparent in the context of the Commission's pending proceeding concerning removal of exchange off-board trading restrictions.[44] During the course of that proceeding, many elements of the securities industry, Members of Congress and representatives of American business have urged the Commission to assume a leadership role in developing a national market system in order to overcome the impediments to development of that system inherent in the diversity of the securities industry, so that the benefits to the markets, the professional trading community and the public which the Congress and the Commission have long believed would inure from that system might finally be secured. Commentators in that proceeding, for example, were virtually unanimous in the view that the risks which many believe would attend "re-

[32] Securities Exchange Act Release Nos. 11030 (September 27, 1974), 39 FR 35570, and 11468 (June 12, 1975), 40 FR 25442.

[33] Securities Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29795.

[34] See Securities Exchange Act Release No. 11942 (December 19, 1975) at 48, n. 155, 41 FR 4507, at 4519, n. 160.

[35] Securities Exchange Act Release No. 12138 (February 25, 1976).

[36] See Securities Exchange Act Release Nos. 11288 (March 11, 1975), 40 FR 15015, and 11406 (May 7, 1975), 40 FR 25645.

[37] Securities Exchange Act Release No. 14415 (January 26, 1978), — FR —.

[38] Securities Exchange Act Release No. 11203 (January 23, 1975), 40 FR 7394. Section 6(e) of the Act [15 U.S.C. 78e(e)], added by the 1975 Amendments, prohibits any exchange from imposing any schedule or fixing rates of commissions, allowances, discounts or other fees to be charged by its members unless the Commission makes certain specified findings in accordance with the procedures specified in that section.

[39] For example, the Commission recently approved proposals by the NYSE and the American Stock Exchange, Inc. ("Amex") to permit leasing of seats. See Securities Exchange Act Release Nos. 14255 (December 12, 1977), 42 FR 63971, and 14256 (December 12, 1977), 42 FR 63974.

[40] See Securities Exchange Act Release Nos. 12717 (SR-Amex-76-17, August 19, 1976), 41 FR 36094, and 12859 (SR-NYSE-76-47, October 4, 1976), 41 FR 47121.

[41] Securities Exchange Act Release Nos. 11942 (December 19, 1975), 41 FR 4507, and 14325 (December 30, 1977), 43 FR 1327.

[42] To date, the NYSE, the Amex and the Boston ("BSE"), Philadelphia ("Phlx") and Pacific ("PSE") Stock Exchanges have agreed to participate in the linkage.

[43] As currently utilized, the RMS merely stores and displays orders based on price and time priorities; the self-regulatory organizations which make the RMS available to their members have not elected, at this time, to grant priority to orders in the RMS over other transactions occuring in their markets.

[44] See Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510, proposing amendments to Rule 19c-1 (adopted on December 30, 1977) and proposing Rules 19c-2, 15c5-1(A), 15c5-1(B), 15c5-1(C) and 15c5-1(D) under the Act; see also File No. 4-180.

moval of the remaining off-board trading restrictions could be minimized by assuring more effective integration of the markets for securities presently covered by those restrictions by means of national market system mechanisms.

Continued uncertainty as to the mechanisms and principles upon which a national market system must be based, and the role the Commission will assume in shaping that system, is not in the best interests of the securities industry or the investing public. The Commission therefore has determined to set forth with some particularity its views as to those steps which it believes must be taken over the next year to facilitate development of the kind of national market system envisioned by the Congress and mandated by the 1975 Amendments.

1. *Composite Quotation System.* The Commission today announced adoption of Rule 11Ac1-1 under the Act, which is designed to facilitate the prompt development of a composite quotation system by improving the quality and reliability of quotation information made available to securities information vendors ("vendors") by exchanges and third market makers.[45] Pursuant to the rule, beginning May 1, 1978, each self-regulatory organization will be obliged to collect and disseminate to vendors quotations and quotation sizes for all reported securities, i.e., those equity securities as to which last sale information is included in the consolidated system. Vendors, in turn, will be able to disseminate comprehensive quotation information from all market centers to the professional community and the public by means of their information retrieval devices. Prompt action by the self-regulatory organizations and securities information processors is necessary to implement Rule 11Ac1-1 by its effective date.

Quotations and quotation sizes will be required by the rule to be firm at the prices and in the amounts displayed, subject only to exceptions for revised quotations or quotation sizes and for unusual market conditions precluding dissemination of accurate quotation information. Thus, for the first time, relatively reliable and comprehensive information as to prices and sizes of quotations for all reported securities from all markets, whether on exchanges or over-the-counter, will be made available to market professionals and the public.

The Commission believes that the availability of comprehensive quotation information, a fundamental building block of the national market system, will improve both brokers' and public investors' knowledge of current prices at which reported securities can be bought or sold throughout the country. In turn, availability of this information should (i) lead to increased efforts by brokers to make informed order routing decisions from among the various competing market centers (in order to choose that particular market affording, at a particular point in time, the most favorable execution opportunities to their customers); (ii) foster improvements in existing methods of routing orders to all market centers; (iii) enhance fair competition among markets; and (iv) otherwise advance the objectives of a national market system specified by the Congress in Section 11A(a) of the Act.

2. *Market Linkage and Order Routing Systems.* The Commission intends to encourage and, if necessary, mandate the prompt development of comprehensive market linkage and order routing systems to permit the efficient transmission of orders (i) among the various markets for qualified securities, whether on an exchange or over-the-counter ("qualified markets"), and (ii) from brokers and dealers to all qualified markets. The Commission believes that communications and data processing facilities which link all qualified markets and permit orders in qualified securities to be transmitted promptly and efficiently from brokers or dealers to any qualified market, and from one such market to another, are necessary to increase the opportunities for brokers to secure best execution of their customers' orders, to ensure effective competition among qualified markets and to achieve the purposes of a national market system established by the Congress in Section 11A(a) of the Act.

Two types of facilities are needed, at a minimum, as mechanisms to link qualified markets effectively. The first is an intermarket order routing system, affording the kind of order and message transmittal capacity characteristic of the ITS. Such a system would permit orders for the purchase and sale of multiple-traded securities to be sent directly from any qualified market to another such market promptly and efficiently. The second type of facility needed is a universally available message switch, permitting any broker or dealer to route orders for the purchase or sale of qualified securities from its offices to any qualified market trading in that security. The Commission believes that the self-regulatory organizations should combine their efforts and take joint action forthwith in order to (i) make available to their members a single system for the prompt and efficient routing of orders for qualified securities directly from brokers' and dealers' offices to any qualified market, and (ii) achieve a comprehensive linkage of all qualified markets in an efficient intermarket order routing system. The Commission, on the basis of its present knowledge, is not aware of any reason why both these facilities should not be implemented by September 30, 1978.[46]

The need to develop and implement a new intermarket order routing system to link all qualified markets could be obviated if participation in the ITS market linkage currently under development were made available on a reasonable basis to all qualified markets and if all such markets joined that linkage.[47] Similarly, there would be no need to develop a new message switch facility for the routing of orders from brokers' and dealers' offices to any qualified market if the existing order routing facility operated by the Securities Industry Automation Corporation ("SIAC") (and offered to members of the NYSE and the Amex to enable them to transmit their orders to the floors of those exchanges) were expanded to permit all qualified markets to receive orders in qualified securities and access to that facility were made generally available, on appropriate terms, to all brokers and dealers.[48]

[45] Securities Exchange Act Release No. 14415 (January 26, 1978), —— FR ——.

[46] The Commission is requesting each self-regulatory organization to inform the Commission, in writing, of their willingness to undertake this effort voluntarily and to commit to achievement of these systems by September 30, 1978. The Commission is also requesting those organizations to submit to the Commission, by April 15, 1978, a timetable of steps which they will take by specified dates to assure that these systems are implemented by September 30, 1978. Finally, the Commission will request that, if any self-regulatory organization believes that the implementation date which the Commission has proposed is unrealistic, that organization specify the reasons why that date cannot be met and suggest the earliest realistic alternative date.

[47] The Commission recognizes that inclusion in the ITS of over-the-counter market makers in qualified securities may pose special technical and regulatory problems but believes that, with the active involvement and assistance of the NASD, those problems can be overcome. The Commission is prepared to offer its assistance in resolving any issues which may prove to be obstacles to such an effort.

[48] The Commission recognizes that other persons may wish to develop and offer order routing systems similiar (or perhaps superior) to the message switch currently operated by SIAC and the ITS. The reference to the ITS and the SIAC-operated message switch is intended only to illustrate the type of systems which can be developed without formal action by the Commission, not as an endorsement of those particular systems over others which might be developed by, for example, another self-regulatory organization and found more suitable for market linkage purposes by all self-regulatory organizations.

The Commission believes that all systems used to route orders to and among qualified markets should operate in a "neutral" fashion (i.e., they should permit brokers and dealers utilizing those systems to route orders to and among all such markets on a nondiscriminatory basis).[49] Order routing systems which are not "neutral" appear inconsistent with development of a national market system since, among other things, they may impede fair competition among qualified markets and function in a manner incompatible with broker adherence to principles of "best execution."

Should development of comprehensive, "neutral" order routing systems, linking all qualified markets and permitting brokers and dealers to route orders to any such market directly from their offices, not be undertaken voluntarily by the self-regulatory organizations, the Commission is prepared to initiate rulemaking to consider appropriate means of ensuring that result. Among the actions available to the Commission would be consideration of rules to (i) require brokers to demonstrate that they have given appropriate consideration to execution opportunities in all qualified markets in directing their customers' orders to any particular market; (ii) preclude brokers from using any automated means of directing orders in qualified securities to a particular qualified market unless those means afford the capacity for orders to be directed, on a nondiscriminatory basis, to any such market; and (iii) preclude any self-regulatory organization or any securities information processor from offering or providing to any broker or dealer any service or system by means of which orders in qualified securities may be routed electronically to one or more qualified markets unless that service or system permits users to route such orders to any qualified market and unless that service or system is made generally available, on appropriate terms, to any broker or dealer.[50]

3. *Nationwide Limit Order Protection.* The Commission continues to believe that one of the basic principles upon which a national market system must be based is the assurance that all agency orders in qualified securites, regardless of location, receive the benefits of auction-type trading protections. To this end, the Commission believes the several self-regulatory organizations should take joint action promptly to develop and implement a central limit order file (the "Central File") for public agency orders to buy and sell qualified securities in specified amounts at specified prices ("public limit orders").[51]

The objectives of a Central File are relatively simple: to make available a mechanism in which public limit orders[52] can be entered and queued for execution in accordance with the auction trading principles of price and time priority and by means of which such orders can be assured of receiving an execution prior to the execution of any other order by a broker or dealer in any market at the same or an inferior price (determining that price by reference to the price required to be reported in the consolidated system pursuant to Rule 17a-15, in the event of a completed transaction.)[53] Public limit orders would assume their place in, and have an equal opportunity to achieve an execution throughout, that system without regard to the market or geographical location from which those orders were entered or in which other transactions required to yield priority to orders in the Central File were effected. Execution priority for orders entered in the Central File over all other orders would be required by rule. It currently appears that, for technological among other reasons, it may be appropriate to confine the capacity to execute against public limit orders in the Central File to persons performing market making functions in a qualified market. It does not seem necessary, however, to restrict the ability of brokers to enter, alter or withdraw public limit orders in or from the Central File. Finally, the Commission is not now aware of any compelling reason why information as to all public limit orders in the Central File should not be made publicly available on a current and continuous basis, at least in summarized form.

The Commission urges the self-regulatory organizations to prepare and submit to the Commission, preferably jointly, a plan or plans no later than September 30, 1978, contemplating the design, construction and operation of a Central File.[54] However, should voluntary cooperation among such organizations to that end prove difficult, or involve undue delay, the Commission intends to commence rulemaking to consider the manner and timing of compulsory development of a Central File (including the question of whether that task should be assigned principally to a single self-regulatory organization).

The Commission is aware that there has been widespread controversy over the merits and implications of an electronic limit order book, and does not intend its determination to proceed with development of a Central File for public limit orders to be interpreted as a decision to force all auction trading into an electronic system with automatic execution capabilities.[55]

4. *Off-Board Trading Restrictions.* The Commission has recently adopted amendments to Rule 19c-1 under the Act to expand the scope of that rule to require that members of exchanges be permitted to effect over-the-counter agency transactions in securities listed or admitted to unlisted trading privileges on an exchange with any other person not also represented as agent by that member (i.e., precluding only "in-house" agency cross transactions).[56] In adopting those amendments, the Commission determined that expanding the scope of Rule 19c-1 in this manner would further the

[49] See Senate Report, supra note 17, at 104-105.

[50] Section 11A(a)(3)(B) of the Act [15 U.S.C. 78k-1(a)(3)(B)] also authorizes the Commission, in furtherance of the statutory directive to facilitate the establishment of a national market system, by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof * * *.

[51] The Commission has received considerable comment in response to Securities Exchange Act Release No. 12159 (March 2, 1976), 41 FR 19274, concerning the concept of a composite limit order book. See File No. S7-619. It has also received the views of the National Market Advisory Board in this regard. See letter from the National Market Advisory Board to the Chairman and the Commissioners of the Securities and Exchange Commission, dated January 28, 1977.

[52] The Commission currently believes that, for purposes of the Central File, a "public limit order" should be defined as any limit order not for the proprietary account of a broker or dealer. It does not necessarily follow that all such orders, regardless of size, will be appropriate for inclusion in the Central File.

[53] It may be necessary, in this context, to revisit questions concerning "net trading" and "net printing" of principal transactions involving commission equivalents or similar transaction charges, mark-up or mark-downs. See Securities Exchange Act Release Nos. 12432 (May 12, 1976), and 12433 (May 12, 1976).

[54] The Commission is requesting each self-regulatory organization to inform the Commission, in writing, by May 30, 1978, of its willingness to undertake joint development of a Central File in accordance with the principles indicated in the text, and steps which each has taken or will take towards that end.

[55] At the same time, the Commission notes that, with respect to the technology employed, the RMS linkage presently operated in a pilot phase by the MSE, PSE, CSE and BSE offers considerable promise as a basis for a comprehensive system establishing a national auction for qualified securities based on price and time priorities. It may be that the technology employed in the RMS, with appropriate modifications, could provide a basis on which a Central File could be developed.

[56] Securities Exchange Act Release No. 14325 (December 30, 1977), 43 FR 1327.

purposes of the Act by enhancing the practicability of brokers executing investors' orders in the best market and improving customers' ability to achieve the most economically efficient executions of their securities transactions.[57]

The Commission has determined to defer further consideration of proposed Rule 19c-2 under the Act (which would eliminate remaining exchange restrictions on off-board principal and "in-house" agency cross transactions by exchange members in certain securities listed or admitted to unlisted trading on an exchange), and of the companion series of rule proposals concerning overreaching, until the Commission has had an opportunity to evaluate industry and self-regulatory organizations responses to the national market system initiatives announced in this statement. The Commission plans to review progress made toward the various objectives of those initiatives in the context of further consideration of proposed Rule 19c-2 no later than September 30, 1978, with a view to ascertaining whether, among other things, the continued presence of restrictions on off-board principal transactions and "in-house" agency crosses is operating in any way as a disincentive to, or is otherwise impeding achievement of, those goals.

While the Commission has not yet concluded whether adoption of proposed Rule 19c-2 at this time must be deemed necessary or appropriate to conform exchange rules to the requirements of the Act or otherwise in furtherance of the Act's purposes, the Commission does not wish its determination to defer consideration of proposed Rule 19c-2 at this time to be perceived as indicating that the Commission is willing to postpone removal of off-board trading restrictions indefinitely or until further progress has been made toward implementation of any particular additional element of a national market system. To the contrary, the Commission has repeatedly expressed the view that the present restrictions must ultimately be eliminated, and remains concerned that retention of those restrictions, in addition to impeding competition, may retard achievement of a national market system.

Nevertheless, as noted above, many commentators in the Commission's proceedings with respect to off-board trading restrictions have made clear their belief that the risks they perceive as being associated with removal of those restrictions would diminish to the extent of meaningful progress toward implementation of a national market system. Therefore, prior to concluding its deliberations concerning proposed Rule 19c-2, and establishing a definitive effective date for that rule, the Commission wishes to consider the responses to the national market system initiatives announced in this statement. Those responses also will clarify the need for collateral action to ensure an appropriate pattern of regulation for an environment in which exchange members are permitted to engage in off-board market making and other principal transactions in securities subject to proposed Rule 19c-2.

5. *Consolidated Transaction Reporting System.* Despite the success of the consolidated system as a mechanism for the collection and disclosure of last sale information from all markets for securities included in that system, the Commission believes that further refinements in the way last sale information is distributed and recalled for display are necessary to ensure that use and operation of the consolidated system are fully consistent with the purposes and objectives of a national market system.

Of particular concern to the Commission is the manner in which vendors currently provide for the recall of last sale data on information retrieval display devices. These vendors now permit information from the primary market by input of the letter (or combination of letters) used to identify the particular security involved in the consolidated system (the "consolidated system symbol") followed by depression of an information request key. In most cases, entry of additional letters or symbols (plus depression of the information request key) is required in order to recall consolidated last sale information or last sale data from any particular market other than the primary market.

To date, this practice has been permitted under a Commission interpretation of Rule 17a-15 issued in March 1975.[58] In that release the Commission stated:

> Vendors may use the consolidated tape ticker symbol (the old NYSE symbol in the case of an NYSE listed security) interrogate for last sale information from the NYSE and some other symbol to interrogate for consolidated data. However, any symbol which differs from the consolidated tape symbol which is used to interrogate for consolidated data must be simple and easy for brokers and dealers to use.[59]

The Commission has reconsidered that interpretative statement in light of its experience with the consolidatd system and no longer believes that vendors should be permitted to program their information retrieval devices for the recall of consolidatd data by use of any combination of letters or symbols other than the consolidated system symbol. Current practice, with each vendor using a different combination for the recall of consolidated data (generally a more complicated routine than that used for the retrieval of data from the primary market), discourages use of consolidated information, has anticompetitive consequences for markets as to which last sale data may be recalled only by relatively more difficult and time consuming interrogation routines, and impedes progress toward a national market system. Consequently, the Commission believes vendors should modify their systems promptly to confine use of consolidated system symbols in their interrogation and display devices to the recall of consolidated last sale data.[60]

The Commission intends to take formal action with respect to its prior interpretive position regarding use of the consolidated system security symbols by market information vendors for interrogation purposes by April 30, 1978. At the same time, the Commission plans to consider further action with respect to (i) permitting, on an appropriate basis, retransmission of the entire stream of last sale information contained in Networks A and B of the consolidated system[61] on a continuous basis by securities information processors other than SIAC, the current processor for the consolidated system; (ii) eliminating certain exceptions from the reporting obligations imposed by Rule 17a-15 under the Act now contained in the joint industry plan governing the consolidated system (the "joint plan"), particularly the exception for transactions effected in connection with special offerings; (iii) reforming the voting arrangements among the joint plan participants; and (iv) the propriety of allowing self-regulatory organizations to impose charges on securities information processors and subscribers to their services with respect to market information required to be disclosed by Commission rules.

6. *Qualified Securities.* The Commission intends to initiate a rulemaking proceeding not later than June 30, 1978, for the purpose of designating certain categories of securities as

[57] Id. at 7, 43 FR at 1328.

[58] Securities Exchange Act Release No. 11317 (March 28, 1975), 40 FR 15461.

[59] Id. at 5, 40 FR at 15462.

[60] Of course, vendors who provide last sale information from individual market centers may use the consolidated system symbol as part of interrogation codes (adding whatever additional letters and symbols are necessary, on a non-discriminatory basis) for retrieving that information.

[61] Network A disseminates last sale reports of transactions executed in all reporting markets for securities listed on the NYSE, while Network B disseminates reports of transactions in securities listed on the Amex plus selected listings from other exchanges.

qualified for trading in a national market system.[62] The Commission believes that listed equity securities included in the consolidated system and a number of equity securities currently traded exclusively in the over-the-counter market generally possess characteristics (including, in most cases, national investor interest and substantial assets and earnings histories) which justify their inclusion in the "qualified" category. The inclusion of securities now traded exclusively over-the-counter in the qualified category is contingent, however, upon the implementation of those technical elements of a national market system necessary to assure that trading in those securities occurs under competitively fair circumstances and in a manner consonant with the principles of a national market system.[63]

Upon completion of its rulemaking with respect to designation of those securities qualified for trading in a national market system, it is the Commission's intention to require last sale information with respect to completed transactions in all qualified securities traded exclusively over-the-counter to be included in the consolidated system, to require quotations in those securities to be collected and disseminated in accordance with Rule 11Ac1-1 under the Act, and otherwise to ensure that trading in such securities can be effected by means of, and subject to the requirements of, the order routing and other systems which must be developed to realize national market system objectives.[64]

ADDITIONAL ISSUES

The program of Commission action on national market system matters outlined above is not intended to represent a comprehensive list of all matters requiring resolution bearing upon the evolution of the markets into a national market system. Indeed, certain of the Commission's contemplated actions will engender, or accelerate the need to resolve, a number of collateral problems. The following is a list of certain additional policy areas which the Commission anticipates will require consideration in conjunction with the program outlined above.

1. *Institutional trading prohibitions.* The Commission anticipates that, in the context of developing a national market system, and particularly in an environment permitting off-board principal activity by exchange members, it will be necessary to consider proposed rule changes by the NYSE and the Amex contemplating elimination of the prohibitions contained in NYSE Rule 113 and Amex Rule 190 regarding direct dealings with institutional customers. In addition, the Commission intends to consider the extent to which all market makers (whether exchange specialists or third market makers) should be limited in their ability to deal directly with companies for which they act as market makers, and with indsiders of such companies.[65] Finally, it may be necessary to review other regulations governing persons performing market making functions generally to determine whether changes are necessary in a national market system environment.

2. *Options.* The Commission is not yet prepared to determine what role standardized put and call option contracts should play in a national market system or the appropriate relationship which should exist between trading in equity securities underlying such options and trading in the options themselves.[66] Organized trading in standardized options contracts is currently under review by the staff as part of a comprehensive study,[67] and the Commission intends to await completion of that study before announcing any conclusions in this area.

Among the issues which will be considered by the staff as part of the options study are the extent to which the market makers in all qualified markets should be permitted to effect at least certain types of transactions in options relating to underlying stocks for which they act as market makers. Conversely, the study will examine whether options and underlying stocks related to such options may be traded side-by-side at the same location, and whether persons should be permitted to act as a market maker in both an underlying stock and the related option under any circumstances.

3. *Governance and surveillance.* The need for changes in the functioning of the self-regulatory organizations to provide centralized governance of national market facilities and participants, as well as comprehensive and nationwide surveillance of market professionals, will have to be examined further. The Commission believes, however, that such questions can be deferred, at least for the time being, until greater progress has been made in achieving effective market linkages among the various market centers.

4. *Section 11(a).* The Commission is presently engaged in consideration of the issues raised by Section 11(a) of the Act [15 U.S.C. 78k(a)]. As amended by the 1975 Amendments, Section 11(a)(1) [15 U.S.C. 78k(a)(1)] prohibits, with certain specified exceptions (such as market making activities and transactions for the accounts of natural persons), any member of a national securities exchange from effecting any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which the member or any of its associated persons exercises investment discretion.[68] It has been asserted that if Section 11(a) were to be permitted to become effective on May 1, 1978, it would cause a significant and adverse restructuring of the securities industry, a result which it is asserted was unintended at the time of the passage of the 1975 Amendments. Moreover, with the elimination of fixed rates of commissions, many persons have questioned the need for such a provision.

Under Section 11(a), the Commission has broad authority to fashion either more flexible or more restrictive standards in light of changing conditions. The Commission has addressed certain interpretative issues under Section 11(a) and has pending

[62] Section 11A(a)(2) of the Act (15 U.S.C. 78k-1(a)(2)) provides that "[t]he Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempt securities."

[63] In connection with designating certain securities now traded exclusively over-the-counter as "qualified securities" for purposes of Section 11A of the Act, the Commission wishes to emphasize that, if those securities are traded on exchanges in a national market system context (e.g., as a consequence of the extension of unlisted trading privileges on an exchange to these securities pursuant to Section 12(f) of the Act), the Commission does not intend to permit trading in those securities to become subject to restrictions on transactions in the over-the-counter market such as those imposed by existing exchange off-board trading rules.

[64] It is important for self-regulatory organizations and others in the securities industry to recognize that the communications and computer systems which will form the technological core of a national market system, affording the means for all qualified securities to be traded in accordance with national market system principles, will not be confined in their application solely to securities listed or admitted to unlisted trading privileges on one or more exchanges. It is clear that, at some point in the future, those systems must be made available for trading in qualified securities which remain traded exclusively in the over-the-counter market.

[65] NYSE and Amex specialists are prohibited by NYSE Rule 113 and Amex Rule 190 from accepting orders for the purchase or sale of any securities in which they are registered as specialists directly from the issuer or any officer, director or 10 percent shareholder of the issuer.

[66] Currently, specialists on the regional exchanges and third market makers are permitted to effect such transactions, while specialists on the NYSE are not.

[67] Securities Exchange Act Release No. 14056 (October 17, 1977), 42 FR 56706.

[68] Section 11(a)(3) [15 U.S.C. 78k(a)(3)] of the Act provides that the prohibitions in Section 11(a)(1) do not apply before May 1, 1978, to transactions effected on an exchange by those who were members on May 1, 1975.

several rule proposals in this area.[69] The interpretations and proposals have generated considerable public comment, and the Commission is currently considering whether further Commission action with respect to Section 11(a) is necessary or appropriate in the public interest and the protection of investors and, if so, what form that action should take.

5. *Clearance and settlement.* The prompt development of a national system for clearance and settlement is necessary not only to reduce costs for members of the securities industry, but also because of the impact of the clearance and settlement process on investors. Investors are affected in a significant way by the absence of a national clearance and settlement system. The cost of securities transaction processing is generally passed on to investors in commission rates charged in connection with securities transactions. The levels of commission rates, particularly with respect to small public investors, may play a part in determining their participation in the securities markets.

Although considerable progress has been made in the effort to create a national system for clearance and settlement, still more remains to be accomplished. For example, the Commission's approval of the registration of the National Securities Clearing Corporation ("NSCC") as a clearing agency in January 1977 was subject to the satisfaction of certain specified conditions contained in the order.[70] During the past year, some, but not all, of these conditions have been satisfied. The Commission remains concerned with the rate of progress being made toward the development of a national system for clearance and settlement. The Commission has therefore determined, consistent with its responsibilities under the Act, to hold public hearings commencing March 7, 1978, to review the events which have occurred since the Commission's conditional approval of NSCC's registration[71] and the problems which are impeding the prompt development of an efficient, competitive national system for clearance and settlement.[72]

* * * * *

The Commission views expressed herein are based upon the Commission's analysis of the materials and comments filed with the Commission in conjunction with the various requests for public comment issued to date on national market system questions and as part of the Commission's current proceedings on off-board trading rules and related matters, as well as its consideration of the views of the Advisory Committee on the Implementation of a National Market System (the Yearly Committee) and the National Market Advisory Board ("NMAB").[73]

The initiatives discussed in this statement contemplate achieving the objectives articulated by the Congress in the 1975 Amendments essentially by establishing mechanisms for the linking of existing market centers, and other market centers which may come into being, in an increasingly close and effective manner so as to avoid fragmentation of the markets and to coordinate the various market centers so that they will constitute, in combination, a national market system.

The Commission is aware, however, that proposals have been advanced to create a national market system on quite different assumptions and having quite different characteristics, and that there has been considerable discussion with respect to these possible altenatives. The first such concept would create a national market system essentially by modifying the existing "primary" markets, particularly the NYSE, so that substantially all orders would interact through the mechanisms of, or on the floor of, the "primary" market and all qualified broker-dealers, perhaps together with certain other organizations, would have access to that market on a non-discriminatory basis. The Commission has not sought to pursue this alternative because it is inconsistent with the concept of the national market system contemplated by the Congress in the 1975 Amendments. Moreover, there is a serious question as to whether such a national market system could operate satisfactorily in a country having the size and diversity of the United States.

A second alternative would be the creation of an electronic market system in which all orders, whether from public investors or from market makers, would be entered into a computer-based system and would be executed automatically in that system on the basis of strict time and price priority. This type of proposal has been advanced with considerable conviction by responsible persons and, if perfected, would appear to have the potential for significant efficiencies in securities trading. Such a system, however, would have an impact upon existing market institutions which could properly be viewed as a fundamental change in the manner in which securities trading is now conducted, and it is difficult to foresee, and to provide against, the problems and difficulties which might arise. Consequently, the Commission has not espoused these proposals. In addition, the Commission believes that if a change of this magnitude is to be made, it probably should occur as a result of evolutionary forces in the markets rather than by Commission mandate.

This does not mean, however, that significant progress in the use of modern technology will not be important in meeting the goals of a national market system. To the contrary, as the initiatives discussed in this statement demonstrate, the effective linking of the markets in a national market system necessarily involves the increased use of such technology to achieve the benefits of that system envisioned by both the Commission and the Congress.

This statement represents the current views of the Commission on the steps which must be taken to facilitate the development of a national market system. The Commission recognizes that the nation's securities markets are constantly evolving, and that alternative means of achieving the goals of a national market system may be developed. The Commission also recognizes that each step in the process of creating a national market system may not further each of the purposes of the Act.

While the steps described in this statement represent the course of action the Commission has selected as the appropriate one for fulfillment of the national market system role assigned to it by the Congress in the 1975 Amendments, the Commission realizes that, as each step of the process of fusing the existing markets into a national market system is completed, and as the effects of each such step become realities (rather than prognostications), refinements and adjustments in succeeding steps will suggest themselves and become part of the Commission's program to achieve that system. The Commission therefore remains receptive to new steps designed to meet the statutory goals of a national market system (regardless of whether they are perfectly congruent with the particular means described in this release).

The Commission welcomes comments on any of the views expressed

[69] See Securities Exchange Act Release Nos. 12055 (January 27, 1976, 41 FR 8036, and 13388 (March 18, 1977), 42 FR 16746.

[70] See Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916.

[71] The recent report of the House Oversight Committees suggested that the Commission, in part because of the failure of NSCC to meet the timetable contained in its conditional registration, should "contemplate revoking the conditional registration [of NSCC] and pursuing other means of achieving the national clearance and settlement system." Oversight Report, supra note 31, at 7-8.

[72] Securities Exchange Act Release No. 14411 (January 25, 1978), ——FR——.

[73] See, e.g., NMAB, Next Steps to be Taken to Facilitate the Establishment of a National Market System, December 6, 1977.

herein from all interested persons. Comments should be addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All comments should refer to File No. S7-735 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 26, 1978.

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WEDNESDAY, FEBRUARY 1, 1978
PART IV

ENVIRONMENTAL PROTECTION AGENCY

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STATE HAZARDOUS WASTE PROGRAMS

Proposed Guidelines

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 250]

[FRL 820-8]

STATE HAZARDOUS WASTE PROGRAMS

Proposed Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Proposed Guidelines.

SUMMARY: This rule sets out Guidelines for State hazardous waste management programs, including the substantive and procedural requirements for authorization of such State programs under the authority of Section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580) ("the Act"). These Guidelines also prescribe the procedures by which States may apply for authorization, the procedures by which such authorization may be withdrawn, and the procedures by which EPA proposes to exercise oversight of such State programs as may be authorized under Section 3006.

DATES: All comments received on or before April 3, 1978 will be considered by the Agency before taking action on the proposed guidelines.

HEARING: Oral or written comments may be submitted at the public hearings on these proposed guidelines. Registration for each hearing will be held between 8:30 and 9 a.m. The hearings are scheduled for: March 9, 1978 at the Bourbon Orleans Ramada Inn, 717 Orleans St., New Orleans, La.; March 14 at the Marriott Motor Hotel, 2345 Commonwealth Ave., Newton, (Suburb of Boston) Mass.; and March 16 at the Seattle Convention Center (Nisqually Room), 305 Harrison St., Seattle, Wash. Requests to participate in the public hearings should be directed to: Mrs. Gerri Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9157.

ADDRESSES: Comments should be submitted to: Deputy Assistant Administrator for Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket or notice number, which is 3006 for these proposed guidelines.

The official record for this rulemaking is located in room 2111D U.S. Environmental Protection Agency, 401 "M" St. SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Derkics, Hazardous Waste Management Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.

SUPPLEMENTARY INFORMATION: Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 (Pub. L. 94-580), creates a regulatory framework to control hazardous waste. Congress has found that such waste presents "special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste" (Section 1002(b)(5)). Because of the seriousness of this waste problem, Congress intended that States develop programs to control it. In the event that a State does not choose to operate such a program, EPA is required to do so.

This rule is one of a series of seven being developed and proposed under Subtitle C to implement the hazardous waste management program. It is important to note the broad definition of solid waste (Section 1004(27)) which encompasses (with a few exceptions) garbage, refuse, sludges, and other discarded materials, including liquids, semisolids, and contained gases from both municipal and industrial sources. Hazardous wastes, which are a sub-set of all solid waste and will be defined by section 3001 regulations, have a particularly significant impact on public health and the environment.

Subtitle C creates a management control system which, for those wastes defined as hazardous, required "cradle-to-grave" cognizance, including appropriate monitoring, recordkeeping, and reporting throughout the system. Section 3001 requires EPA to define the criteria and methods for identifying and listing hazardous wastes. Those wastes which are identified as hazardous by these means are then included in the management control system constructed under Sections 3002-3006 and 3010. Those that are excluded will be subject to the requirements for non-hazardous solid waste being carried out by States under Subtitle D, under which open dumping is prohibited and environmentally acceptable practices are required. It is important that appropriate interconnections be established between Subtitle C and Subtitle D efforts.

Section 3002 addresses the standards applicable to generators. EPA's regulations under this section describe the classes of generators for whom some requirements may vary; for example, the Agency does not interpret the intent of Congress to include regulation of individual homeowners due to the small quantities of hazardous wastes which they may generate. Section 3002 also requires the creation of a manifest system which will track wastes from the point of generation to their ultimate disposition.

Section 3003 addresses standards affecting transporters of hazardous wastes to assure that wastes are carefully managed during the transport phase. The Agency is exploring opportunities for meshing closely with proposed and current DOT regulations to avoid duplication in this area.

Section 3004 addresses standards affecting owners and operators of hazardous waste storage, treatment, and disposal facilities. These standards define the levels of environmental protection to be achieved by these facilities and provide the criteria against which EPA (or State) officials will measure applications for permits. Facilities on a generator's property as well as off-site facilities are covered by these regulations and will require permits—generators and transporters who do not treat, store, or dispose of hazardous wastes do not need permits.

Section 3005 regulations describe the scope and coverage of the actual permit granting process for facility owners and operators. Requirements for the permit application as well as for the issuance and revocation process are defined by these regulations. Section 3005(c) provides for interim permits during the time period that the Agency or a State is reviewing the pending permit applications.

Section 3006 requires EPA to issue guidelines for State programs and procedures by which States may seek both full and interim authorization to carry out the hazardous waste program in lieu of the EPA-administered program.

Section 3010 regulations define procedures by which any person generating, transporting, owning or operating a facility for storage, treatment, and disposal of hazardous wastes must notify EPA of this activity within 90 days of promulgation of regulations defining a hazardous waste (Section 3001). EPA intends to make provision for States to be delegated this function upon application to the Administrator. It is significant to note that no hazardous waste subject to Subtitle C regulation may be legally transported, treated, stored, or disposed, nor may interim permits be issued, unless this timely notification is given to EPA or a designated State.

The Act calls for the Agency to promulgate final regulations by no later than April 1978 under all sections of Subtitle C. However, it is important for the regulated communities to understand that the regulations (Section 3001-3005) do not take effect until 6 months after promulgation (October 1978). Thus, there will be a time period after final promulgation during which public understanding of the regulations can be increased and those covered by the regulations can prepare to comply. During this same period, notifications required under Section

3010 may be submitted, and facility permit applications required under Section 3005 may be distributed for completion by applicants.

BACKGROUND OF THIS REGULATION

Section 3006(a) of the Solid Waste Disposal Act (42 U.S.C. 6926), as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580) directs the Agency to "* * * promulgate guidelines to assist States in the development of State hazardous waste programs." The proposed Guidelines have been developed in the course of considerable consultation with the States. Between March 22, 1977, and April 6, 1977, a series of six meetings was held throughout the United States at which EPA and the States discussed issues relevant to the Guidelines to be developed under Section 3006(a). Representatives from a total of 48 States participated in those meetings. A second series of meetings was held between June 23, 1977, and August 10, 1977, at which the first draft of these Guidelines was discussed with the States; a total of 47 States were represented at this second series. The proposed guidelines thus reflect the experience, comments, and opinions of State hazardous waste management people to the greatest extent possible.

Section 3006 describes two types of authorization: Section 3006(b) describes an authorization without fixed beginning dates, and of unlimited duration; while Section 3006(c) describes an "Interim" authorization "* * * for a 24-month period beginning on the date 6 months after the date required for promulgation of regulations under Sections 3002 through 3005" (April 21, 1978). These Guidelines distinguish the two by referring to the former as "full" authorization and to the latter as "interim" authorization.

The Act directs or authorizes "the Administrator" of EPA to discharge certain responsibilities and conduct certain activities with respect to hazardous waste management. The Administrator has delegated to each Regional Administrator those authorities and responsibilities related to Section 3006 in order to allow States to work with the appropriate Regional Administrator throughout the application and authorization process. The Guidelines therefore refer to the Regional Administrator in most cases; where the Guidelines refer to "the Administrator" the authority or decision referenced has not been delegated to the Regional Administrator.

MAJOR ISSUES CONSIDERED

The following discussion is presented to assist the reader in understanding the reasoning behind the development of the proposed guidelines. Only those portions of the guidelines which generated significant discussion in the public meetings and in response to the Advance Notice of Proposed Rulemaking are discussed here.

I. Authorization (3006b).

A. Full authorization.

(1) *Equivalency.*

(a) LEGISLATIVE AUTHORITY

Several States have enacted, or are now considering, hazardous waste management legislation. The Agency does not believe that every State must necessarily do so in order to receive authorization. Where the State has other statutory authority (i.e., water pollution legislation, public health legislation, etc.) which, in the opinion of the State and of the Agency, is sufficient to allow the administration and enforcement of a State hazardous waste program "equivalent" to that of EPA, the Agency will consider this element to be satisfied.

(b) PERMIT MECHANISM

Section 3005 of the act requires anyone who owns or operates a facility which stores, treats, or disposes of hazardous wastes to have a permit. The Agency considers this requirement to be central to the administration and enforcement of the Act, and consequently believes that no State program can be "equivalent" to that of EPA without such an element. A few commenters felt that any control mechanism through which the State could achieve "equivalency in effect" should be allowed. However, EPA feels strongly that use of a document (e.g., permit or license) authorizing facility operation is necessary to achieve adequate control. The Federal legislation specifically requires that "permits" will be issued to those facilities that treat, store and dispose of hazardous waste where the Federal EPA is operating the program. Therefore, other control mechanisms, such as control by surveillance and penalty will not be acceptable for the purpose of authorizing the State program. Before these guidelines for State hazardous waste programs are promulgated, EPA will describe and resolve, or attempt to minimize, any possible overlaps between: (1) The State's issuance of permits to hazardous waste injection wells under the Underground Injection Control (UIC) program, which is administered under Part C of the Safe Drinking Water Act of 1974 (Pub. L. 93-532, 42 U.S.C. 300f, et seq.) and (2) the issuance of hazardous waste permits under the State's hazardous waste program.

(c) MANIFEST SYSTEM

Section 3002(5) of the Act requires the use of a manifest to ensure that hazardous wastes which leave the site of generation are taken only to storage, treatment, or disposal facilities to which a permit has been issued. This requirement is reflected in the experience or expectations of several States which believe a manifest system to be an essential element in managing hazardous wastes, a belief which the Agency shares. The State will not be able to effectively control hazardous wastes by regulating only the treatment and disposal sites. The "cradle-to-grave" management concept, on which Subtitle C is based, includes the requirement that the regulatory agency know of the existence and movement of hazardous wastes throughout the life cycle of those wastes. This concept is intended to discourage clandestine and environmentally unsound practices. In addition, due to the substantial transportation of waste across State lines, a large majority of commenters considered a consistent or uniform manifest format to be necessary to make the entire waste tracking and control process work. This requirement may cause the few States which already have a manifest system to change their system, thus presenting some initial problems. However, the long-range benefits (i.e., simpler manifest data management) from this change will far outweigh these initial problems. Also, EPA expects to provide software and other "tools" to assist States in setting up such systems.

(d) IDENTIFICATION OF RESOURCES

In developing and implementing a State hazardous waste program, the States will need to estimate the resources needed in order to conduct a comprehensive hazardous waste management program. The Agency considers the requirement of adequate resources to be a necessity in defining an "equivalent State program" in order to properly administer and enforce the requirements of the Act. However, there was some uncertainty raised as to the way the phrase "adequate resources" should be defined in the guidelines (i.e., citing specific resources estimates or using a broad description of adequacy).

EPA believes that the guidelines should be written so as to allow the Regional Administrator the latitude necessary to assure himself that the State has the "adequate resources" to conduct the program. In this way, the individual characteristics of each State's bureaucracies and problems may be considered in evaluating its resource needs.

(2) *Consistency.* The second criterion for authorization of State programs under Section 3006(b) is that they be "* * * consistent with the Federal or State programs applicable in other States * * *" Impartiality and equity dictate that the requirements and obligations imposed upon those

who manage hazardous wastes in one State not differ significantly from those imposed in other States, to avoid a condition which could give the regulated community in any State a competitive advantage. This issue is of special concern to those who conduct their activities in more than one State, and who should not be held to differing standards in different States.

The Agency believes that States which inhibit the movement of wastes into or through their jurisdictions vitiate the hazardous waste management programs of EPA and of other States. Effective hazardous waste management requires regional solutions, often involving treatment or disposal in a State other than the one in which the waste was generated. Bans on the importation of waste into one State may spur the establishment of similar bans in other States, leading to needless duplication of treatment and disposal capacity in many States, or to a shortfall of adequate facilities in other States. Artificially high standards could discriminate against or limit the movement of hazardous waste into the State and, concurrently, artificially cause wastes to move out of the State.

In the course of developing these guidelines, six options were identified which addressed the issue of free movement of hazardous wastes with respect to authorizing States to operate and enforce a hazardous waste management program in accordance with the provisions of section 3006(b) of the Act:

(1) Authorize only those States which allow the importation of hazardous wastes to permitted treatment, storage and disposal facilities. Legislative bans or artificially high standards would disqualify States from authorization.

(2) Same as Option 1, except that States with legislative bans or artificially high standards for disposal of hazardous wastes would still be authorized, as long as hazardous wastes are allowed to be imported to permitted treatment and storage facilities.

(3) Same as Option 1, except that the imposition of artificially high standards would not disqualify States from authorization.

(4) Petition Congress for a legislative amendment to abolish State hazardous wastes importation bans altogether or at least pre-empt them in those States where EPA administers the regulatory program. (This, of course, is not an exclusive alternative.)

(5) Take no action on the hazardous waste importation ban issue.

(6) Same as Option 1, except that States with existing legislative hazardous waste importation bans or artificially high standards would be authorized for a limited number of years beyond the 2-year "interim authorization". (The termination date of the allowed phase-out period is to be July 1, 1984.)

It should be emphasized that EPA is convinced that importation bans can not be permitted to multiply and that such bans must sooner or later be eliminated one way or another. EPA strongly believes that the adequate management of hazardous wastes demands the free movement of wastes to whatever facility, or site can best treat or dispose of them. Restricting the movement of hazardous wastes goes directly against this philosophy and poses a real threat to the expansion of an environmentally sound industry as well as hampers the regionalization of waste management. In addition, if EPA fails to take the position in the Guidelines to preclude a State from assuming the Federal hazardous waste program if the State has a legislative hazardous waste importation ban, it may well result in the proliferation of such bans. Depending on the approach finally taken, this may result in the disqualification from full authorization of some States, a few of which may already have some form of a hazardous waste management program.

EPA has chosen to include option number six in the text of the proposed guidelines, but recognizes the possibility of using any one of the six options or a variant of one of these options in the final promulgation of these regulations. Comments and suggestions on the six options or any other possible courses of action are especially invited. The implications involved in the final choice of an option include tradeoffs between authorizing a maximum number of States and discouraging impediments to free movement of wastes. Comments on these tradeoffs are welcome.

ADEQUATE ENFORCEMENT

The third and final criterion to be evaluated by EPA in determining which States will be fully authorized is whether such programs provide adequate enforcement. This particular criterion was considered by all commenters to be one of the most important components of the hazardous waste program, a belief which the Agency shares. However, there were some major questions raised concerning the degree of specificity that the guidelines should take (i.e., guidelines citing specific enforcement requirements as compared with guidelines providing the Agency with discretion).

As was indicated earlier, under "Identification of Resources", EPA believes that the guidelines should be written so as to allow the Regional Administrator the flexibility necessary to assure himself that the State is proposing a surveillance and enforcement program which is adequate to conduct an effective hazardous waste program. Each State has its own characteristics and problems, which should be evaluated on a State-by-State basis, necessitating individual evaluation of the surveillance and enforcement program.

B. PARTIAL AUTHORIZATION

In some cases, States which wish to take over the full hazardous waste program will have been unable to bring all components of the State program into compliance with 3006(b). These States may have been unable to obtain passage of needed legislation, or may lack adequate resources to carry out all program responsibilities. A number of States have indicated to EPA that, under these circumstances, they would wish to obtain at least the authorization to carry out those program responsibilities for which they have authority and resources, with EPA carrying out the remaining responsibilities.

Under Section 3006(b), EPA could allow States to receive partial authorization for selected major components of a full hazardous waste program, but only if the State meets the requirements of equivalency, consistency and enforceability for each such major component. For example, a State could perform permitting, surveillance, and enforcement for off-site disposal, treatment, and storage, while EPA carried out permitting, surveillance and enforcement for on-site operations; or States could run a permit program for all treatment, storage, and disposal facilities, both off-site and on-site, while EPA conducted the manifest system, etc.

However, there are problems with partial authorization. First, the regulated community has strenuously contended that a single entity should carry out the entire program in a given State, arguing that a sharing of responsibility would result in confusion and duplication of effort for the agencies, and greatly increased complexity for regulated firms. Second, the availability of partial authorization could encourage some States, although capable of qualifying for full authorization, to take over only selected program elements, leaving EPA with the most "controversial" and expensive segments and actually increasing the burden on the resources of the Regional Offices. Third, the delineation of responsibilities between the Region and the State would undoubtedly be a lengthy and difficult process. Finally, the existence of partial authorization could remove some of the incentive for strenuous State efforts toward full authorization.

Although these arguments against allowing States to apply for partial authorization are strong, EPA proposes to allow States to apply for partial authorization to allow as many States as possible to participate in the implementation of the hazardous waste pro-

gram. However, the availability of partial authorization will be limited. States will be permitted to apply for partial authorization only if State legislative authority does not exist for certain program components. The decision on granting partial authorization will rest with the Regional Office, in the course of its examination of the State's eligibility for full authorization under 3006(b). In all cases, the State and EPA hazardous waste programs, when taken together, must meet the substantive and procedural requirements of a fully authorized hazardous waste program.

II. INTERIM AUTHORIZATION 3006(C)

The Agency shall, if evidence submitted indicates that the State has a hazardous waste program "in existence" pursuant to State law by July 20, 1978 and the State program is substantially equivalent to the Federal program under Subtitle C, grant an interim authorization to the State to carry out such program in lieu of the Federal program for a 24-month period beginning on October 21, 1978. However, a State may only apply for interim authorization over a specified time period (July 20, 1978, to October 20, 1978) and may only operate the hazardous waste program, under interim authority, during the definite calendar period between October 21, 1978, through October 20, 1980.

(1) *Substantially equivalent.* In defining the interim program, the various elements and assoicated alternatives that were proposed as criteria for "substantially equivalent" are the same as those being considered by EPA in defining an "equivalent" State program. Since it is clear that Congress intended this interim period to provide a "grace" period to the States to develop a program suitable for full authorization, the major difference between "equivalent" and "substantially equivalent" is that the latter program may be limited in statutory and regulatory authority. Similarly, the degree of stringency of a given regulation within any element may, during this interim period, be less stringent than the Federal standards.

This temporary relaxation from strict "equivalence" to "substantial equivalence" and the corresponding latitude in degree of stringency for the interim period, EPA believes to be consistent with the intent of Congress to facilitate the entry by the maximum number of States into the interim hazardous waste management program, and ulitmately, into a fully authorized program. EPA supports this viewpoint by structuring its policy so that the greater resources available to the States within each Region (some EPA Regions encompass 6 to 8 States) will be brought to bear on the implementation and enforcement of a hazardous waste management program without straining the already limited resources of EPA. This approach should result in a greater degree of protection of public health and the environment than if EPA had to conduct the hazardous waste program in a large majority of States.

(2) *Authorization plan.* The Guidelines include a requirement that each State prepare an "authorization plan" as a condition of receiving interim authorization. The Agency considers the interim authorization step to be an opportunity for States which cannot yet qualify for full authorization to nevertheless establish their stewardship of the hazardous waste regulatory program during the period in which they are developing their programs. The Agency further believes that the intent of Congress was to have States which qualify for and accept interim authorization progress to full authorization in the two years allotted by Section 3006(c), and that by their doing so, the best interests of public health and the environment, EPA, the State and the regulated community will be served. The authorization plan is intended to assist this progress.

The authorization plan should be comparable to a "compliance schedule" under which the State and the Regional Administrator agree on what deficiencies exist in the State program (as compared with the requirements for full authorization); what corrective or perfecting measures are necessary; and, the proposed schedule for accomplishing the corrections.

RECOMMENDED ELEMENTS

The Agency believes that the three elements discussed below will contribute to an effective State hazardous waste management regulatory program, and are in keeping with the intent of the Act. They will not be required, however, for authorization under Section 3006(b) or Section 3006(c). These elements are: (1) Technical Assistance; (2) Inventory of Hazardous Wastes; and (3) Safeguarding of Confidential Information.

TECHNICAL ASSISTANCE

The experience of EPA and of those States which have begun developing hazardous waste management programs has strengthened the Agency's conviction that State Technical Assistance to the regulated community is useful and desirable. The State program should include assistance as well as deterrence aspects, and should offer the regulated community information on acceptable management options at the same time it discourages those which are unacceptable.

A Technical Assistance program should include the State's role of assisting the regulated community in complying with applicable requirements and regulations. The Agency will not require either of these types of Technical Assistance in assessing the equivalency of proposed State programs under Sections 3006(b) or 3006(c). The State however, should especially seek to provide the latter type of assistance since its failure to do so may increase the potential for incomplete or inadequate compliance by segments of the regulated community.

INVENTORY

Many States have conducted hazardous waste surveys over the past few years, gathering information on the types, quantities, locations, and dispositions of hazardous wastes within the State. The manifest system required under Section 3002 of the Act will allow the State to verify or upgrade this information or to begin to compile it. This information is an important and useful tool for the State, both for planning purposes and for use in administering and enforcing the hazardous waste regulatory program.

The Agency will not require this element in assessing the equivalency of a proposed State program for the purposes of Sections 3006(b) or 3006(c). The States are urged, nevertheless, to compile such data for use in developing their programs over both the short- and long-term.

SAFEGUARDING OF CONFIDENTIAL INFORMATION

The Freedom of Information Act (5 U.S.C. 552 *et seq.*) includes a provision under which trade secrets and certain other information may be exempted from public disclosure. The Agency believes that similar provisions in State "Privacy Acts" or "Public Records Acts" make a significant contribution to securing the confidence of the regulated community since this legislation assures that information submitted to the State regulatory agency will be adequately safeguarded. State legislation of this type will not be required for authorization under Section 3006(b) or 3006(c). States should be aware, nevertheless, that provisions for the safeguarding of confidential information are an important part of an effective State regulatory program, and that the protection of a "Privacy Act" or of similar legislation is essential to winning the confidence of the regulated community.

REPORTING REQUIREMENTS

Two types of reporting will take place under the proposed guidelines: (1) Hazardous waste management facilities will report to the State and (2) as a part of the oversight process, States will report quarterly to EPA. In either case, reporting requirements are of a small or negligible impact. In the first case, the impact of facilities

reporting to the States will be the same as reporting to EPA since the subject State programs must be equivalent to the Federal program. In the second case, the impact of States reporting quarterly to EPA is further minimized by allowing the States to combine the quarterly report with the grant review process where applicable.

ECONOMIC AND ENVIRONMENTAL IMPACTS

In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107 and EPA Policy as stipulated in 39 FR 37419, October 21, 1974 respectively, analyses of the economic and environmental impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management, and are not completed as yet. Any additional economic impact on the public resulting from Section 3006 implementation can be expected to be negligible, since the subject State programs must be equivalent to the Federal program. These impacts can thus be assumed to be equivalent.

Dated: January 24, 1978.

DOUGLAS M. COSTLE,
Administrator

It is proposed to amend Title 40 by adding Part 250 consisting of new Subpart F to read as set forth below. Subparts A through E are reserved.

Subparts A-E [Reserved]

Subpart F—Guidelines for State Hazardous Waste Programs

Sec.
250.70 Scope and purpose.
250.71 Definitions.
250.72 Authorization (3006b).
250.73 Interim Authorization (3006c).
250.74 Federal oversight of authorized programs.
250.75 Application procedure.
250.76 Withdrawal of authorization.

AUTHORITY.—Sec. 3006, Pub. L. 94-580, 90 Stat. 2809 (42 U.S.C. 6926). Secs. 250.70, 250.72 (a)(1) and (a)(2) also issued under sec. 3009, Pub. L. 94-580, 90 Stat. 2812 (42 U.S.C. 6929).

§ 250.70 Scope and purpose.

(a) Section 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6926), requires the Administrator, after consultation with State authorities, to promulgate guidelines to assist States in the development of State hazardous waste programs.

(b) These guidelines describe the various provisions and capabilities a State hazardous waste program must have in order to qualify for authorization under section 3006(b) or section 3006(c), which provide that the State, in lieu of the Federal EPA, may administer and enforce the hazardous waste management regulatory program established pursuant to Subtitle C of the Act. The guidelines also describe the substantive and procedural requirements for States applying for authorization, EPA's oversight of the State's hazardous waste program, and for the withdrawal of authorization pursuant to section 3006(e).

(c) In addition, section 3009 of the Act prohibits States from imposing any requirement which is "less stringent" than EPA's regulations under sections 3001 through 3005 of the Act, a prohibition which applies whether or not the State is authorized under section 3006.

§ 250.71 Definitions.

For the purposes of this part:

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "authorization" or "authorized" refers to a State which has an approved hazardous waste program under section 3006(b) or 3006(c) of the Act and §§ 250.72 and 250.73.

(c) The term "element" means a function of the State program which EPA considers necessary for a State hazardous waste program to be equivalent to that of EPA.

(d) The term "full authorization" refers to authorization of a State program which has met the substantive and procedural requirements of section 3006(b) of the Act and § 250.72(a).

(e) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(f) The term "interim authorization" refers to authorization by EPA of a State program which has met the substantive and procedural requirements of section 3006(c) of the Act and § 250.73.

(g) The term "oversight" refers to a continuing program of surveillance and review carried out by EPA to insure that each authorized State's hazardous waste management program remains in compliance with the requirements for authorization stated in this Part.

(h) The term "partial authorization" refers to authorization by EPA of a State program to administer and enforce selected program components of a fully authorized hazardous waste program while EPA carries out the remaining parts. In all cases, the combination of the State and EPA hazardous waste program shall meet the substantive and procedural requirements of section 3006(b) of the Act and § 250.72(a).

(i) The term "withdrawal" refers to the termination of authorization for a State hazardous waste program under section 3006(e) of the Act and § 250.76.

(j) The term "State" means any of the several States, and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

§ 250.72 Authorization (3006b).

(a) *Full authorization.* This section describes the various provisions to be met and capabilities to be demonstrated by States seeking to apply to the Regional Administrator for full authorization. The Regional Administrator shall apply the criteria identified in § 250.72(a)(1) through § 250.72(a)(3) in determining whether the program of any State is "equivalent to" the Federal program, "consistent with" the Federal program and with those applicable in other States, and whether the State's program provides "adequate enforcement of compliance," as required by section 3006(b) of the Act. A negotiated Memorandum of Understanding, as described in § 250.74(a), is required for full authorization.

(1) *Equivalency.* The Regional Administrator shall measure the "equivalency" of a State program to the Federal program by determining whether the State program encompasses all of the following elements, and by assessing the adequacy of each for the administration and enforcement of a hazardous waste program: Legislative Authority; Published Regulations; Permit Mechanism; Manifest System; Identification of Resources; Interagency Delineation of Responsibilities (if appropriate to the applicant State); and Public Participation.

(i) *Legislative authority.* (A) A State seeking full authorization shall demonstrate legislative authority to provide the following program components: regulations governing hazardous waste generators, transporters and owners and operators of hazardous waste treatment, storage and disposal facilities, including the keeping of records and submittal of reports, and the establishment of monitoring practices; control of the treatment, storage and disposal of hazardous waste through a permit system or its equivalent; a waste tracking system (manifest system); the power to conduct inspections and take samples; and the power to institute enforcement proceedings against violators.

(B) The State legislative authority and regulatory program shall be applicable both to those hazardous wastes stored, treated or disposed of at the site of generation (so-called "on-site" management), and to those hazardous wastes shipped elsewhere for storage, treatment, or disposal.

(ii) *Published regulations.* The State may choose to publish its own regulations with respect to hazardous waste management, adopt the regulations promulgated by EPA under sections 3001 through 3005 of RCRA unchanged, or adapt EPA's regulations

to unique or unusual circumstances or conditions within the State. Where a State has existing regulations or proposes new regulations which are different from those of EPA, the Regional Administrator shall evaluate the published regulations of the State's Agencies for their equivalency to those of EPA. The State's regulation shall address the identification of hazardous waste and shall contain standards applicable to generators of hazardous waste, transporters of hazardous waste, and the owners and operators of hazardous waste treatment, storage and disposal facilities. State regulations may not impose any requirement which is "less stringent" than EPA's regulations under sections 3001 through 3005 of the Act.

(iii) *Permit mechanism.* A State seeking full authorization shall provide for a permit system applicable to facilities which treat, store, or dispose of hazardous wastes, which consists of an administrative and legal framework together with resources sufficient to: accept, process and review applications for permits; issue permits (with appropriate special conditions); monitor renewals and expirations of permits; monitor compliance with the terms and conditions of permits; enforce compliance with the terms and conditions of permits; and enforce against owners and operators who have not acquired permits. The Regional Administrator shall evaluate the systems of those applicant States where the term "permit," is not used in order to determine whether mechanisms such as "license", "letters of approval", "waste discharge requirements", or other control devices, regardless of terminology, satisfy the intent of the Act.

(iv) *Manifest system.* A State seeking full authorization shall demonstrate the administrative capability to oversee the waste transportation manifest system established under section 3002(5) of the Act. Such capability shall include the management of manifests involving both intrastate and interstate transortation of hazardous wastes. States seeking full authorization under these Guidelines shall agree to use the manifest format published by the Administrator in the FEDERAL REGISTER pursuant to Section 3002 in administering and enforcing their hazardous waste management programs, but may supplement that format as appropriate to meet specific requriements or needs.

(v) *Identification of resources.* The Regional Administrator shall evaluate the resources proposed by an applicant State to be applied to its hazardous waste management program in order to ascertain that the State is able to administer and enforce the program successfully. The Regional Administrator shall consider the following factors in evaluating the adequacy of the State's proposed resources: (A) A comparison with levels of resources known to have been applied in other States of commensurate size, hazardous waste generation and disposal frequency; and (B) the adequacy of those resources in relation to the level of success of those other State programs. Consequently, State applications for full authorization under Section 3006(b) shall clearly identify the personnel and the monetary resources to be used to carry out each responsibility necessary to conduct a comprehensive hazardous waste management program.

(vi) *Interagency delineation.* A State seeking full authorization in which more than one agency is involved in the administration and enforcement of the State hazardous waste program shall explicitly delineate the responsibilities of each such agency which relate to hazardous waste management, and shall designate a "lead agency", for the purposes of these Guidelines, to facilitate communications between EPA and the agencies responsible for the State program, and to receive such grant funds as may be made available under section 3011 of the Act. This "lead agency" may be the same agency designated under 40 CFR Part 255, "Identification of Regions and Agencies for Solid Waste Management (Interim Guidelines)." The "lead agency" should provide for coordination with the State agency responsible for the regulation of injection wells under the Underground Injection Control (UIC) program administered under Part C of the Safe Drinking Water Act of 1974 (Pub. L. 93-532, 42 U.S.C. 300f, et seq.) unless the agency responsible for the UIC program is the same as the "lead agency" described above.

(vii) *Public participation.* A State seeking full authorization shall submit a public participation plan as part of the application which complies with the guidelines EPA has promulgated pursuant to section 7004(b) of the Act (40 CFR Part 249).

(2) *Consistency.* A State seeking full authorization shall demonstrate the "consistency" of its program with the Federal program or State programs applicable in other States in order for the State program to be authorized. Such States shall satisfy the requirements of both the free movement of hazardous wastes across State boundaries and the degree to which State standards may vary from those of EPA or of other States, except that States which violate these requirements on the date of promulgation of these guidelines may request a temporary suspension of this requirement. The Regional Administrator may grant a temporary suspension of this requirement for a period not to exceed July 1, 1984, upon a showing that the State is working towards elimination of this violation. For purposes of this subpart, the phrase "* * * State programs applicable in other States * * *" refers only to those programs which have received full authorization under section 3006(b) of the Act.

(i) *Free Movement of Hazardous Wastes.* (A) Any State program which includes a ban on the importation of hazardous wastes from other States which are destined for treatment, storage, or disposal facilities having hazardous waste permits under the State program will be deemed inconsistent for the purposes of section 3006(b). Therefore, the Regional Administrator shall not grant full authorization to a State program including such a ban.

(B) Any State program which applies one standard to hazardous wastes originating within its borders, and a different standard to hazardous wastes originating elsewhere, will be deemed inconsistent with the Federal program and with those programs applicable in other States. Therefore, the Regional Administrator shall not grant full authorization to such a State program.

(ii) *Dissimilar standards.* Where the proposed State program includes standards which are significantly different from the Federal standards, the Regional Administrator shall determine whether such State standards substantially impede the movement of hazardous wastes into or out of the State; and whether such State standards protect public health and the environment to substantially the same degree as do the Federal standards. If the Regional Administrator determines that such State standards do substantially impede the movement of hazardous wastes into or out of the State, then the State program is inconsistent for the purposes of section 3006(b), unless such standards protect public health and the environment to substantially the same degree as do the Federal standards. If the Regional Administrator does not authorize a State program due to this determination of inconsistency, the State may continue to operate its hazardous waste program in parallel with the Federal program.

(3) *Adequacy of enforcement.* A State seeking full authorization shall demonstrate that the enforcement provisions of the proposed State program are adequate, and that the State is able to administer and enforce its program successfully. The Regional Administrator shall consider the proposed State enforcement procedures, practices, and penalties, comparing them with those contained in the Act, and with those implemented by the Environmental Protection Agency for the Federal program in evaluating the adequacy of the State's proposed enforcement program. The Regional Administrator should employ the follow-

ing criteria in regard to penalty assessment in evaluating the adequacy of enforcement of a State Program that legislation exists authorizing civil and criminal penalties with a deterrent value adequate to handle almost all enforcement actions and that the legislation provides that such penalties be sought in appropriate circumstances.

(b) *Partial authorization.* The Regional Administrator may authorize a State to administer and enforce selected components of a hazardous waste regulatory program as described in § 250.72(a)(1)(i) while retaining responsibility for such part or parts for which State legislative authority is absent. A negotiated Memorandum of Understanding as described in § 250.74(a) is required for partial authorization.

(1) *Application.* States may apply for partial authorization only if State legislative authority does not exist for certain program components. Partial authorization of the hazardous waste program may only be granted if such components meet the three criteria of equivalency, consistency, and enforceability. In all cases, the combination of the State and EPA hazardous waste program shall meet the substantive and procedural requirements of a full hazardous waste program described in § 250.72(a).

(2) *Duration.* Partial authorization shall be effective for a fixed duration, agreed upon mutually by the State and the Regional Administrator and not to exceed 5 years, and shall apply to complete and discrete components of the program from among those identified in § 250.72(a)(1)(i) of these Guidelines. At the end of the fixed period, the Regional Administrator shall determine whether to renew the partial authorization on the basis of a continued lack of State legislative authority; a good faith effort by the State to procure needed legislation; and a determination by the Regional Administrator that the program can be carried out more effectively by the EPA-State partnership than by EPA alone.

§ 250.73 Interim authorization (3006c).

Any State which has in existence a hazardous waste program pursuant to State law prior to July 20, 1978, may request interim authorization to carry out a hazardous waste management program which will be granted if such program is "substantially equivalent" to the Federal program. A negotiated Memorandum of Understanding as described in § 250.74(a) is required for interim authorization. The phrase "* * * in existence" requires that States seeking interim authorization have the legislative authority, effective as of July 20, 1978, to conduct their hazardous waste programs as described in § 250.73(b)(2) of these Guidelines.

(a) *Duration.* Interim authorization is only effective for the period from October 21, 1978, through October 21, 1980.

(b) *Substantial equivalency.* A State seeking interim authorization shall submit copies of the relevant legislation to the Regional Administrator together with evidence to demonstrate that the State is willing and able to conduct a successful hazardous waste program, which, at a minimum, complies with § 250.73 (b)(1) through (b)(5).

(1) *Authorization plan.* A State seeking interim authorization shall submit an "authorization plan" as part of its application. The authorization plan shall describe the additions or modifications necessary to qualify the State program for full authorization under Section 3006(b) by October 21, 1980, together with the schedule which the State proposes to achieve those additions or modifications. Failure to meet the schedule may be cause for withdrawal of interim authorization.

(2) *Legislative authority.* A State seeking interim authorization shall demonstrate legislative authority to control at least either on-site or off-site hazardous waste disposal facilities, including the authority to conduct inspections and institute enforcement proceedings. Legislative authority to control hazardous waste treatment or storage facilities is not required for interim authorization. The State Authorization Plan shall describe any changes which will be sought in State legislation in order to prepare the State for full authorization as described in § 250.72(a)(1)(i).

(3) *Identification of resources.* A State seeking interim authorization shall identify and commit adequate resources to carry out the minimal program described in § 250.73 (b)(4) and (b)(5). Evaluation of the resources proposed by the State will be at the discretion of the Regional Administrator. A level of resources which is necessary for the purposes of full authorization will not necessarily be required for interim authorization. The State Authorization Plan shall identify the resource levels which will be applied to hazardous waste management at both the beginning and end of the interim authorization period.

(4) *Permit mechanism.* A State seeking interim authorization shall demonstrate at a minimum the institutional and administrative capability to issue permits, licenses, letters of approval, or other control devices to those facilities for which State legislative authority exists. The State Authorization Plan shall describe any changes in the permit system which will be made during the 24-month period for which the interim authorization is effective, to enable the State to become eligible for full authorization.

(5) *Surveillance and enforcement.* (i) A State seeking interim authorization shall demonstrate a surveillance and enforcement program sufficient to carry out a minimal program as described in § 250.73(b)(5). Evaluation of the surveillance and enforcement program will be at the discretion of the Regional Administrator.

(ii) A surveillance and enforcement effort which is insufficient for full authorization may be sufficient for interim authorization. Where the State proposal provides for a surveillance and enforcement program which does not satisfy the requirements for full authorization, the State Authorization Plan must describe the activities, including those criteria described in § 250.72(a)(3) regarding penalty assessment, through which the State expects to become eligible for full authorization during the twenty-four month period for which the interim authorization is effective.

§ 250.74 Federal oversight of authorized programs.

After all other requirements have been satisfied and before receiving authorization under Section 3006(b) or Section 3006(c) of the Act, the State shall agree with the Regional Administrator on an oversight procedure which will allow EPA to monitor the State's hazardous waste program to ascertain that the program is being administered and enforced successfully in accordance with the Act. The oversight procedures shall become part of the Memorandum of Understanding required under § 250.74(a) of these Guidelines.

(a) *Memorandum of Understanding.* In order to receive authorization under Section 3006(b) or Section 3006(c) of the Act, a Memorandum of Understanding shall be negotiated between the State and the Regional Administrator. The Memorandum of Understanding shall describe in detail the oversight procedures to which the State and the Regional Administrator have agreed, and may include such other terms, conditions, or agreements as are relevant to the administration and enforcement of the State's hazardous waste regulatory program. At a minimum, the Memorandum of Understanding shall include the items described in § 250.74 (a)(1)-(a)(4).

(1) *Program evaluation.* The State shall allow EPA to review such State records, reports, or files as are relevant to the administration and enforcement of the State hazardous waste regulatory program no less than once in each fiscal year for which the State has received authorization under Section 3006(b) or 3006(c) of the Act. The program review may be scheduled so as to coincide with the annual grant mid-year review.

(2) *Review of permit applications.* The Memorandum of Understanding

shall specify the basis on which the Regional Administrator may select permit applications of the State for review. The Regional Administrator may review and comment to the State on up to ten (10) percent of the permit applications received by the State in each fiscal year for which the State has received authorization under Section 3006(b) or Section 3006(c) of the Act; the Regional Administrator and the State may agree to a lower percentage limitation where the Regional Administrator believes such an agreement to be useful.

(3) *Inspections.* The Memorandum of Understanding shall specify the basis on which the Regional Administrator may select facilities within the State where hazardous waste is generated, transported, stored, treated, or disposed for federal inspection. The Regional Administrator or his designee may conduct inspections of up to ten (10) percent of the generators, transporters, treaters, storers, and disposers in a State in each fiscal year for which the State has received authorization under Section 3006(b) or Section 3006(c) of the Act. The Regional Administrator and the State may agree to a lower percentage limitation where the Regional Administrator believes such an agreement to be useful. Except in the case of an imminent hazard within the meaning of Section 7003 of the Act, the Regional Administrator shall notify the State at least seven (7) calendar days before each such inspection and allow the State the opportunity to make the initial contact with the facility or site owners or operators. EPA shall give the State the opportunity to lead any inspection or visit conducted by EPA pursuant to this Subpart.

(4) *Reports.* The Memorandum of Understanding shall specify the frequency and content of such reports as are required to be submitted by the State to EPA, but in no event shall the frequency of such reports be less than once in each quarter of any fiscal year for which the State has received authorization under Section 3006(b) or Section 3006(c) of the Act. The content of such reports shall be specified in the Memorandum of Understanding and may be combined with grant reports where applicable.

(b) *Change in oversight requirements.* The oversight mechanism outlined above and agreed upon by a State and Region shall be binding on both parties except when the Regional Administrator has reason to believe that the State program is not in compliance with requirements of § 250.72 (a) and (b) or § 250.73 and all Subparts thereunder. In such a case, and after notice to the State, the Regional Administrator may institute such oversight procedures as he deems necessary to investigate the situation and, where warranted, to insure a return to compliance.

§ 250.75 Application Procedure.

The State application shall include a narrative description of the State hazardous waste regulatory program. The State application shall provide information sufficient for the Regional Administrator to make a determination on the adequacy of the State's program. At a minumum, the following information shall be submitted: Application describing hazardous waste program as it relates to guidelines (full, partial, and interim authorization); Memorandum of Understanding describing oversight provisions (full, partial, and interim authorization); authorization plan describing deficiencies and planned milestones to achieve full authorization (interim authorization).

(a) *Public hearing.* After preparation of the draft application, the State shall give notice to all interested parties of the State's intention to seek authorization. Public notice shall be such that all interested parties will be given reasonable opportunity to comment on the draft application. Copies of the draft application shall be made available to the public for comment. Upon request, the State shall hold a public hearing to discuss the State's application to conduct the hazardous waste program. All interested parties will be given reasonable opportunity to present written or oral testimony on the State's application at the public hearing.

(b) *Submission of application to EPA.* After consideration of comments received from the public notice and public hearing, the State shall prepare a completed application, signed by the appropriate State official in charge of the designated lead agency, for submission to the Regional Administrator. (Three (3) copies of the final application shall be submitted.)

(c) *Notice and determination of findings.* Within 90 days following submission of a completed application for program authorization, the Regional Administrator shall issue a notice as to whether or not he expects such program to be authorized. Within 90 days following such notice and after opportunity for public hearing, the Regional Administrator shall publish his findings as to whether or not the State will be given authorization to operate the hazardous waste regulatory program. Public notice of the hearing, if held, will be such that all interested parties will be given reasonable opportunity to present written and oral testimony on the State's application at the public hearing.

§ 250.76 Withdrawal of authorization.

Section 3006(e) of the Act requires the Administrator to withdraw authorization of such State program and establish a Federal program where the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of § 250.72 (a) and (b) or § 250.73. A Regional Administrator having reason to believe that a State is not administering or enforcing an authorized program in accordance with the Act, shall follow the procedure described in § 250.76 (a) through (d)

(a) *Notice to State of public hearing.* A Regional Administrator having reason to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of Section 3006 and this Subpart, shall inform the State by registered mail of the specific areas of alleged noncompliance, and that a public hearing will be held to discuss withdrawal of the State's program as required under Section 3006(e) of the Act. If the State demonstrates to the Regional Administrator within 30 days of such notification that the State program is in compliance, the Regional Administrator shall take no further action toward withdrawal.

(b) *Public hearing.* Where the Regional Administrator still has reason to believe that the State is not in compliance 30 days after notification, a public hearing shall be scheduled not less than 60 days or more than 75 days following the initial notification date. All interested parties shall be given opportunity to present written and oral testimony on the withdrawal of the State's program at the public hearing.

(c) *Notice to State of findings.* Where the Regional Administrator determines the State program to be in compliance as a result of written or oral testimony presented at such public hearing, he shall take no further action toward withdrawal. Where he finds the State not to be in compliance, he shall notify the State by registered mail of specific deficiencies in the State program and of necessary remedial activities. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial actions or the Regional Administrator shall withdraw authorization. If the State carries out the remedial actions, the Regional Administrator shall take no further action toward withdrawal.

(d) *Transfer plan.* Whenever any State chooses to relinquish authorization under Section 3006(b) or Section 3006(c), or whenever any State is required to relinquish such authorization through the withdrawal procedures under this Part, the State shall submit to EPA a plan for the orderly transfer of all information to EPA. Such plan shall be submitted not less than 30 days before the date such transfer is to be effected.

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WEDNESDAY, FEBRUARY 1, 1978
PART V

THE PRESIDENT

■

RADIATION PROTECTION GUIDANCE TO FEDERAL AGENCIES FOR DIAGNOSTIC X RAYS

Approval of Recommendations

presidential documents

[3195-01]

Title 3—The President

Recommendations approved by the President January 26, 1978

Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays

Recommendations 1 through 12 contained in the above[1] memorandum are approved for the guidance of Federal agencies; the Administrator and the Assistant Secretary for Health are directed to conduct programs, in accordance with their respective authorities and their Memorandum of Understanding (42 FR 5123), to interpret and clarify, as necessary, each of these recommendations in cooperation with affected Federal agencies; the Administrator is authorized to issue these interpretations and clarifications in the FEDERAL REGISTER; and this memorandum shall be published in the FEDERAL REGISTER.

Jimmy Carter

Recommendations have been developed and are hereby transmitted for the guidance of Federal agencies in providing radiation protection for patients in the application of diagnostic x rays.

Executive Order 10831 and Public Law 86-373 (42 U.S.C. 2021(h)) charge the Administrator of the Environmental Protection Agency (EPA) to ". . . advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States." In addition, the Assistant Secretary for Health in the Department of Health, Education, and Welfare (HEW) has a variety of responsibilities under the Public Health Service Act (Sections 301, 310, 311, and 354-360(f)) and the Federal Food, Drug, and Cosmetic Act bearing on the setting of health care policy and the use of radiation in the healing arts. These responsibilities, which have been delegated to the Food and Drug Administration (FDA), include research and training concerning radiation hazards, the development and promulgation of recommendations for radiation users, advise to the States, information for the public, performance standards for electronic products that emit radiation, and regulations for the sale, distribution, and use of medical devices.

Because of the special responsibilities of HEW involving national health care policy, which Federal radiation guidance for diagnostic x rays may impact directly, the Administrator and the Assistant Secretary join in requesting your approval of these recommendations. In this regard, on January 18, 1977, the two Agencies entered into a Memorandum of Understanding (42 FR 5123), which provides for the future development, within each Agency's respective authorities, of radiation protection guidance and, when necessary, updating of such guidance for uses of radiation in the healing arts.

BACKGROUND

Information on the diagnostic use of x rays in medicine and potential controls that could be applied without compromising benefits have been reviewed, and scientists and professionals within and outside the Government have been consulted in developing these recommendations. In this regard, we have benefited from the effort begun by the National Academy of Sciences—National Research Council for the former Federal Radiation Council to evaluate, interpret, and advise with respect to new knowledge on radiation effects and sources of population exposure. The report of the NAS-NRC Committee on Biological Effects of Ionizing Radiation was issued in 1972. One of its significant findings was that "[m]edical diagnostic radiology accounts for at least 90% of the total man-made radiation dose to which the U.S. population is exposed." More importantly, the Committee recommended that "[m]edical radiation exposure can and should be reduced considerably by limiting its use to clinically indicated procedures utilizing efficient exposure techniques and optimal operation of radiation equipment."

It is widely recognized by medical practitioners, medical physicists, and other scientists concerned with radiation protection that exposure due to medical uses of ionizing radiation represents a significant and growing source of exposure for the U.S. population and is also one that can be reduced by good practice. The National Council on Radiation Protection and Measurements

[1] In the original document Recommendations 1-12 preceded the statement of Presidential approval.

has concluded that whereas ". . . there can be no rational means . . . to limit radiation exposure prescribed for patients for necessary and proper diagnostic or therapeutic purposes[,] . . . steps can be taken to minimize unnecessary or medically unproductive radiation exposure. . . . Advantage should be taken of any new technology or procedure that will significantly reduce unnecessary diagnostic or medical exposure, both in individual examinations and treatments, and in the adoption of group screening practices."

An Interagency Working Group on Medical Radiation was formed by the Administrator on July 5, 1974, to assist in developing proposed guidance for diagnostic x rays. The Interagency Working Group determined that it is desirable and possible to reduce exposure from the diagnostic use of x rays in Federal facilities by: (1) eliminating clinically unproductive examinations, (2) assuring the use of optimal technique when examinations are performed, and (3) requiring appropriate equipment to be used. As a result of this consensus a subcommittee on prescription was established to examine factors to eliminate clinically unproductive examinations. Another subcommittee on technique was formed to examine the second and to some extent the third subject area where it might not be regulated by FDA's x-ray equipment performance standards, which became effective August 1, 1974. The reports of these subcommittees were made available for comment (41 FR 10705 and 27998) prior to completion of the Interagency Working Group report.

Proposed recommendations based upon the report of the Interagency Working Group were published for public comment (42 FR 4884) on January 26, 1977. In addition, there has been extensive commentary and discussion between EPA and HEW, as well as formal review by Public Health Service and other affected Federal agencies. The comments received have been carefully considered and a complete record, including a response to comments, is available to the public from the Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

These recommendations were developed and reviewed in accordance with standard EPA procedures. Development of new or revised recommendations will be carried out under the Memorandum of Understanding referred to above, which provides also, when applicable, for the use of HEW procedures.

DISCUSSION

The most important factor in reducing radiation exposure is to avoid the prescription of clinically unproductive examinations. Appropriate prescription of x-ray examinations involves two major considerations: (1) the clinical decision to order a particular examination, and (2) the minimization of the number of radiographic views required in an examination. In particular, attention should be given to the qualifications of those who order examinations, the elimination of unproductive screening programs, and the use of appropriate clinical procedures to assure that unproductive views are not performed.

Although the largest savings in radiation exposure may be realized from avoiding the prescription of an unproductive x-ray examination, patient exposure can also be reduced by assuring that the examination is performed with good technique. The fundamental objective in performing an x-ray examination is to obtain optimum diagnostic information with minimum patient exposure. Achievement of this objective requires assurance that: (1) equipment is calibrated and properly functioning, (2) equipment is operated only by adequately qualified personnel, (3) the patient is appropriately prepared, and (4) technique factors that will minimize exposure are selected.

It has been demonstrated that the same technique factors used with different x-ray generators may produce widely varying patient exposures. Thus, the performance of x-ray equipment utilized for diagnostic x-ray procedures is an important factor in limiting patient and operator exposure. The Federal Diagnostic X-Ray Equipment Performance Standard (21 CFR Part 1020) requires that x-ray equipment manufactured after August 1, 1974, be certified by manufacturers to comply with radiation safety requirements issued by the FDA pursuant to the Radiation Control for Health and Safety Act of 1968 (PL 90-602). Utilization of medical and dental x-ray equipment that performs in accordance with the requirements of this performance standard by Federal health care facilities would provide a significant contribution to the minimization of patient exposure.

Without question the use of x rays in the healing arts provides large benefits to society through improved health care; thus, in developing guidance for radiation protection for diagnostic x rays it is essential to assure that benefits to patients from the use of medical and dental x rays are maintained. Medical personnel in both the Federal and the private sectors have been consulted and we are confident that these recommendations will neither interfere with the doctor-patient relationship nor impair the ability of Federal agencies to provide necessary radiologic services.

Appropriate follow-up and coordination with Federal agencies is also important to assure that these recommendations are implemented so as to maximize their effectiveness in reducing unnecessary radiation exposure, but at the same time to avoid any deleterious impact on the delivery of health care. The Memorandum of Understanding between EPA and HEW referred to above is designed to assure that the dual objectives of radiation protection and health care delivery are achieved in the implementation of this or any future radiation protection guidance applicable to the healing arts.

RECOMMENDATIONS

In view of the considerations presented above, the following recommendations are made for the guidance of Federal agencies in their conduct of radiation protection for diagnostic uses of x rays in the healing arts:

1. General radiographic or fluoroscopic examinations should be prescribed only by licensable Doctors of Medicine or Osteopathy or, for specified limited procedures, postgraduate physician trainees and qualified allied medical professionals under their direct supervision; specialized studies should be prescribed only by those physicians with expertise to evaluate examinations in the particular specialty. Exception for specified procedures may be made for dentists and podiatrists.

2. Prescription of x-ray studies should be for the purpose of obtaining diagnostic information, should be based on clinical evaluation of symptomatic patients, and should state the diagnostic objective and detail relevant medical history.

3. Routine or screening examinations, in which no prior clinical evaluation of the patient is made, should not be performed unless exception has been made for specified groups of people on

the basis of a careful consideration of the magnitude and medical benefit of the diagnostic yield, radiation risk, and economic and social factors. Examples of examinations that should not be routinely performed unless such exception is made are:

a. chest and lower back x-ray examinations in routine physical examinations or as a routine requirement for employment,

b. tuberculosis screening by chest radiography,

c. chest x rays for routine hospital admission of patients under age 20 or lateral chest x-rays for patients under age 40 unless a clinical indication of chest disease exists,

d. chest radiography in routine prenatal care, and

e. mammography examinations of women under age 50 who neither exhibit symptoms nor have a personal or strong family history of breast cancer.

4. Prescription of x-ray examinations of pregnant or possibly pregnant patients should assure that medical consideration has been given to possible fetal exposure and appropriate protective measures are applied.

5. The number, sequence, and types of standard views for an examination should be clinically-oriented and kept to a minimum. Diagnosticians should closely monitor the performance of x-ray examinations and, where practicable, direct examinations to obtain the diagnostic objectives stated by clinicians through appropriate deletion, substitution, or addition of prescribed views. Technique protocols for performing medical and dental x-ray examinations should detail the operational procedures for all standard radiographic projections, patient preparation requirements, use of technique charts, and image receptor specifications.

6. X-ray equipment used in Federal facilities should meet the Federal Diagnostic X-Ray Equipment Performance Standard, or as a minimum for equipment manufactured prior to August 1, 1974, the Suggested State Regulations for Control of Radiation (40 FR 29749). General purpose fluoroscopy units should provide image-intensification; fluoroscopy units for nonradiology specialty use should have electronic image-holding features unless such use is demonstrated to be impracticable for the clinical use involved. Photofluorographic x-ray equipment should not be used for chest radiography.

7. X-ray facilities should have quality assurance programs designed to produce radiographs that satisfy diagnostic requirements with minimal patient exposure; such programs should contain material and equipment specifications, equipment calibration and preventive maintenance requirements, quality control of image processing, and operational procedures to reduce retake and duplicate examinations.

8. Operation of medical or dental x-ray equipment should be by individuals who have demonstrated proficiency to produce diagnostic quality radiographs with the minimum of exposure required; such proficiency should be assessed through national performance-oriented evaluation procedures or by didactic training and practical experience identical to, equivalent to, or greater than training programs and examination requirements of recognized credentialing organizations.

9. Proper collimation should be used to restrict the x-ray beam as much as practicable to the clinical area of interest and within the dimensions of the image receptor; shielding should be used to further limit the exposure of the fetus and the gonads of patients with reproductive potential (21 CFR Part 1000.50) when such exclusion does not interfere with the examination being conducted.

10. Technique appropriate to the equipment and materials available should be used to maintain exposure as low as is reasonably achievable without loss of requisite diagnostic information; measures should be undertaken to evaluate and reduce, where practicable, exposures for routine nonspecialty examinations which exceed the following Entrance Skin Exposure Guides (ESEG):

Examination (Projection)	ESEG (milliroentgens)*
Chest (P/A)	30
Skull (Lateral)	300
Abdomen (A/P)	750
Cervical Spine (A/P)	250
Thoracic Spine (A/P)	900
Full Spine (A/P)	300
Lumbo-Sacral Spine (A/P)	1000
Retrograde Pyelogram (A/P)	900
Feet (D/P)	270
Dental (Bitewing or Periapical)	700

*Entrance skin exposure determined by the Nationwide Evaluation of X-Ray Trends program for a patient having the following body part/thickness: head/15 cm, neck/13 cm, thorax/23 cm, abdomen/23 cm, and foot/8 cm.

11. X-ray examinations for dental purposes should be prescribed only by licensable Doctors of Dental Surgery or Dental Medicine or properly supervised postgraduate dentists on the basis of prior clinical evaluation or pertinent history; neither a full-mouth series nor bitewing radiographs should be used as a routine screening tool in the absence of clinical evaluation in preventive dental care. Exception may be made for justifiable forensic purposes.

12. Open-ended shielded position-indicating devices should be used with the paralleling technique to perform routine intra-oral radiography and should restrict the x-ray beam to as near the size of the image receptor as practicable.

It is expected that each Federal agency will use these recommendations as a basis upon which to develop detailed standards tailored to meet its particular requirements. In order to assure appropriate implementation of these recommendations, the Administrator and the Assistant Secretary for Health will cooperate in carrying out their respective functions in accordance with the Memorandum of Understanding (42 FR 5123). The necessary coordination will be conducted to achieve an effective Federal program, including periodic interpretation and clarification of each of

the recommendations as required to reflect new information and changing technology. By so doing, it is expected that an achievable and reasonable reduction in x-ray exposure will be accomplished commensurate with a continuation of the vital benefits realized by the utilization of this important technology.

If the foregoing recommendations are approved by you as guidance for Federal agencies in providing radiation protection for patients in the application of diagnostic x-rays, it is further recommended that this memorandum be published in the FEDERAL REGISTER.

DOUGLAS M. COSTLE,
Administrator,
Environmental Protection Agency.

JULIUS B. RICHMOND, M.D.,
Assistant Secretary for Health,
Department of Health, Education, and Welfare.

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Federal Register

WEDNESDAY, FEBRUARY 1, 1978
PART VI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

General Provisions, Allocation and Distribution of Funds

[4210-01]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-500]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

General Provisions, and Allocation and Distribution of Funds

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: This rule revises Subparts A and B of the regulations, governing the community development block grant program under Title I of the Housing and Community Development Act of 1974, as amended. Subpart A, which covers general provisions under which the program operates, and Subpart B, which covers the allocation and distribution of funds, are revised primarily to incorporate new or revised statutory language included in the Housing and Community Development Act of 1977.

EFFECTIVE DATE: February 1, 1978.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 3, 1978.

COMMENTS SHOULD BE ADDRESSED TO: Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION ON THE FOLLOWING SUBPARTS CONTACT:

Subpart A: David J. Pollack, Program Standards Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6306.

Subpart B: James Broughman, Director, Data Systems and Statistics Division, Office of Management, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6182.

SUPPLEMENTARY INFORMATION:

SUBPART A—GENERAL PROVISIONS

This Subpart has been revised primarily to incorporate changes in program objectives and definitions included in the Housing and Community Development Act of 1977 and to add a general waiver provision. In addition, certain technical and clarifying changes have been made. All changes to Subpart A are discussed in the following paragraphs.

APPLICABILITY AND SCOPE

In § 570.1, the listing of programs replaced by the community development block grant program has been revised to delete reference to rehabilitation loans under section 312 of the Housing Act of 1964, since the 312 program has continued to receive funding authorizations. Also, former subsections (a) and (b) have been combined to improve readability, with no change in meaning intended.

OBJECTIVE AND PURPOSE OF PROGRAM

Two changes in § 570.2 have been made to reflect statutory amendments. A new specific objective of the program has been added at paragraph (a)(8), which is the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or stagnating or declining tax base. Also, one of the program purposes, namely, fostering the undertaking of housing and community development activities in a coordinated and mutually supportive manner, has been expanded to show that it is intended to apply to Federal agencies and programs, as well as to communities.

DEFINITIONS

Changes have been made in the following current definitions to reflect statutory amendments: applicant; basic grant amount; city; discretionary grant; metropolitan city; unit of general local government; and urban county. The following new terms defined by the Housing and Community Development Act of 1977 have been added: age of housing; extent of growth lag; Indian tribe; and urban development action grant.

Beyond the changes and additions to definitions resulting from statutory amendments, other changes and additions have been made to clarify the meanings of certain key terms.

The definition of "low- and moderate-income families," which previously was identical to the definition of that term under the Section 8 housing assistance payments program, has been revised. This has been done to facilitate the identification of low- and moderate-income areas. The Section 8 definition, which provides for adjustments for smaller and larger families, is based on the assumption that the size of the family to be assisted is known. In cases where block grant funds are to be used to directly benefit specific families, for example, in a home rehabilitation program, the Section 8 definition is appropriate. However, where a project is designed to benefit a particular geographic area, for example, a neighborhood park project, family size adjustments are impracticable because data are not generally available on the income characteristics and size of each family residing in the area that will benefit from the project.

The definition of "low- and moderate-income persons" or "lower-income persons" has been revised to include unrelated individuals with lower-incomes, in addition to members of lower-income families.

The term "low-income persons" has been added in order to help ensure that low- as well as moderate-income persons benefit from the use of block grant funds. The threshold of 50 percent of median income is the same as that for "very low-income families" used in the Section 8 housing assistance payments program.

The current definition of "population" has been revised to show that the total resident population will be based on U.S Census Bureau data which has been updated since 1970. Editorial changes have also been made in the current definitions of "Community Development Program," "hold-harmless amount," and "identifiable segment of the total group of lower-income persons in the community," which are not intended to alter the effect of these definitions.

WAIVERS

New § 570.4 has been added to permit more flexibility in the administration of the program by allowing the Secretary to waive any program requirement which is not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

SUBPART B—ALLOCATION AND DISTRIBUTION OF FUNDS

This Subpart is revised primarily to implement changes in the fund allocation provisions that are a part of the reauthorization of the community development block grant program. The changes involve the criteria to be used to determine eligibility for grant entitlement, the timing associated with the allocation process, and the manner in which the distribution of funds is made. A summary of these changes and the section in which the changes is contained is outlined in the following.

BOUNDARY CHANGES

Section 570.100 is modified to clarify the timing limitations on the recognition of boundary changes among units of government for purposes of fund allocations. A change is also made to allow recognition of boundary changes creating less than five percent impact on population where such changes are recognized by the Office of Revenue Sharing.

ALLOCATION BETWEEN METROPOLITAN AND NON-METROPOLITAN AREAS

Section 570.101 is changed to make clear how the determination is to be made of the amounts to be used inside metropolitan areas versus nonmetropolitan areas.

BASIC GRANT AMOUNTS

Section 570.102 contains a number of changes:

(a) The introduction of a dual formula, and how it is used to determine the basic grant amounts for metropolitan cities and urban counties;

(b) The calculation of city and county ratios against the total of all metropolitan areas, (eliminating the step of an initial allocation to the sum of all metropolitan cities, or metropolitan cities and urban counties, as previously required); and

(c) The elimination of the "phase-in" provisions after Fiscal Year 1977.

HOLD-HARMLESS GRANTS

Section 570.103 continues to reflect the phasedown of hold-harmless beginning in Fiscal Year 1978 and being completed in 1980. The timing requirements for notification of waiver of hold-harmless entitlement are modified and clarified to show that waiver can be made only for one year at a time. Also, for Fiscal Year 1978 and 1979, when it appears likely there will be a shortfall of funds needed for hold-harmless inside metropolitan areas, provision is made to absorb such shortfalls through a pro rata reduction among individual entitlement amounts and the discretionary balance funds.

DISCRETIONARY GRANTS

Section 570.104 is modified to reflect a change in the determination of the size of the Secretary's Fund (three percent in lieu of two percent) as a result of adding two new purposes for which the fund is to be used (Indians and Technical Assistance). Note: Since Indians are to be given grants only from the Secretary's Fund beginning in Fiscal Year 1978, reference is made in other sections to the deletion of data for eligible Indian Tribes, where applicable, in allocating funds to urban counties and in allocating discretionary balance funds.) Changes are also made in the methods used to allocate discretionary balances:

(a) Metropolitan area balance funds are allocated by State in lieu of by metropolitan area; and

(b) A dual formula is used for allocating funds for both metropolitan area and nonmetropolitan area balances.

A further change is incorporated to require the exclusion of data for hold harmless communities on the basis of their entitlement for, rather than on their receipt of, funds. (This is also reflected in § 570.102 concerning urban county formula computation.)

URBAN COUNTIES

Section 570.105 is modified to include a new criterion for determining urban county entitlement (population density, for certain counties).

REALLOCATION OF FUNDS

Section 570.107 is changed only to the extent of showing that reallocation also occurs for funds which, after they have been granted to a unit of government, are recaptured by the Department.

Section 570.108 is specifically deleted, as it is no longer applicable.

This revision is being published as an interim rule in order to implement statutory amendments in time to affect applications submitted early in Fiscal Year 1978. Interested persons are invited, however, to participate in the making of the final rule by submitting written comments or views on the amendments. Comments should be filed with the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant comments received on or before the date specified above will be considered before adoption of the final rule. Copies of comments will be available for examination during business hours at the above address.

A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1. In addition, a Finding of Inapplicability with respect to Economic Impact has also been prepared in accordance with Executive Order 11821. Copies of the findings are available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

In consideration of the foregoing the Department revises 24 CFR Part 570 by revising Subparts A and B as follows:

I. The index to Subparts A and B is revised to read as follows:

Subpart A—General Provisions

Sec.
570.1 Applicability and scope.
570.2 Objective and purpose of program.
570.3 Definitions.
570.4 Waivers.

Subpart B—Allocation and Distribution of Funds

570.100 General.
570.101 Allocation between metropolitan and nonmetropolitn areas.
570.102 Basic grant amounts.
570.103 Hold-harmless grants.
570.104 Funds for discretionary grants.
570.105 Qualification as urban county.
570.106 Qualification and submission dates.
570.107 Reallocation of funds.

II. Subpart A is revised to read as follows:

Subpart A—General Provisions

§ 570.1 Applicability and scope.

(a) This Part covers policies and procedures applicable to community development block grants and loan guarantees on behalf of urban communities, authorized under Title I of the Housing and Community Development Act of 1974, as amended. Included are provisions relating to the roles and responsibilities of HUD and general local government with regard to the allocation and distribution of funds; eligible activities; application requirements; review criteria; and administrative and other program requirements.

(b) The community development block grant program replaces the following programs consolidated by the Act:

(1) Urban renewal (and neighborhood development programs) under Title I of the Housing Act of 1949;

(2) Model Cities under Title I of the Demonstration Cities and Metropolitan Development Act of 1966;

(3) Water and sewer facilities under section 702 of the Housing and Urban Development Act of 1965;

(4) Neighborhood facilities under section 703 of the Housing and Urban Development Act of 1965;

(5) Public facilities loans under Title II of the Housing Amendments of 1955; and

(6) Open space land under Title VII of the Housing Act of 1961.

§ 570.2 Objective and purpose of program.

(a) The primary objective of the Community Development Program is the development of viable urban communities, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this Part is for the support of community development activities which are directed toward the following specific objectives:

(1) The elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) The elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) The conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) The expansion and improvement of the quantity and quality of commu-

nity services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) A more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) The reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income;

(7) The restoration and preservation of properties of special value for historic, architectural or esthestic reasons; and

(8) The alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or stagnating or declining tax base.

(b) It is also the purpose of this part to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which:

(1) Provides assistance on an annual basis, with maximum certainly and minimum delay, upon which communities can rely in their planning;

(2) Encourages community development activities which are consistent with comprehensive local and areawide development planning;

(3) Furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) Fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities.

(c) It is intended that the Federal assistance made available hereunder not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

§ 570.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383, as amended.

(b) "Applicant" means the State, unit of general local government, or Indian tribe which makes application pursuant to the provisions of this Part.

(c) "Basic grant amount" means the amount of funds which a metropolitan city or urban county is entitled to receive under this Part as determined by a dual formula, set forth in Subpart B, based on factors pertaining to population, extent of poverty, extent of housing overcrowding, extent of growth lag, and age of housing.

(d) "Chief executive officer" of a unit of general local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of general local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

(e) "City" means for purposes of basic grant and urban development action grant eligibility, (1) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (2) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to those associated with municipalities, (ii) is closely settled and (iii) contains within its boundaries no incorporated places, as defined by the United States Bureau of the Census, which have not entered into cooperation agreements with such town or township for a period covering at least 3 years to undertake or to assist in the undertaking of essential community development and housing assistance activities, except that in fiscal year 1978 only such cooperation agreements may cover 1 or more years.

(f) "Community Development Program" means the annual program of projects and activities to be carried out by the applicant with funds provided under this Part and other resources, as described in Subpart D.

(g) "Discretionary grant" means a grant made from the Secretary's fund, from the transition and categorical program settlement fund, from the urban development action grant fund, or from the general purposes funds for metropolitan and nonmetropolitan areas as described more fully in § 570.104 (a), (b), (e), (c)(1), and (c)(2), respectively.

(h) "Entitlement amount" means the amount to be received by a unit of general local government consisting of its basic grant amount and/or hold-harmless grant under § 570.102 and § 570.103.

(i) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled and published by the United States Bureau of the Census for 1970.

(j) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census for 1970 and the latest reports of the Office of Management and Budget. For the purposes of this Part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

(k) "Hold-Harmless amount" means the amount which represents the average past level of funds received by a unit of general local government under the consolidated programs cited in § 570.1(b) and under section 312 of the Housing Act of 1964 and which is used to determine the amount of the Hold-Harmless grant.

(l) "Hold-Harmless grant" means that amount of funds which a unit of general local government is entitled to receive in excess of its basic grant amount under § 570.103.

(m) "HUD" means the Department of Housing and Urban Development.

(n) "Identifiable segment of the total group of lower-income persons in the community" means female-headed households, and members of a minority group such as Negroes, Spanish-Americans, Orientals, American Indians and other groups normally identified by race, color, or national origin.

(o) "Low- and moderate-income families" or "lower-income families" means families whose incomes do not exceed 80 percent of the median family income of the metropolitan area, or in the case of families residing in nonmetropolitan areas, of all nonmetropolitan areas of the State. (In determining the income eligibility of individual low- and moderate-income or lower-income families to receive assistance through direct benefit activities under the block grant program, applicant may use the applicable income limits published by HUD for lower-income housing assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).)

(p) "Low- and moderate-income persons" or "lower-income persons" means members of families whose incomes are within the income limits of lower-income families as defined in § 570.3(o). This term may, where appropriate, also include unrelated individuals, as defined by the U.S. Census Bureau, whose incomes do not exceed 80 percent of the median income of all unrelated individuals residing in the metropolitan area, or in the case of

unrelated individuals residing in nonmetropolitan areas, of all nonmetropolitan areas of the State.

(q) "Metropolitan area" means a standard metropolitan statistical area, as established by the Office of Management and Budget.

(r) "Metropolitan city" means (1) a city, within a metropolitan area, which is a central city of such area, as defined and used by the Office of Management and Budget, or (2) any other city, within a metropolitan area, which has a population of fifty thousand or more. Any city which has been classified as a metropolitan city because it has a population of at least fifty thousand will continue to be so classified until the next ensuing decennial census indicates that the population of such city is below fifty thousand.

(s) "Population" means the total resident population based on data compiled and published by the United States Bureau of the Census for 1970, which has been upgraded by the Bureau to reflect the changes resulting from Boundary and Annexation Survey, new incorporations, and consolidations of governments, pursuant to § 570.100, and which reflects changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

(t) "Secretary" means the Secretary of Housing and Urban Development.

(u) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(v) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approve by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of Section 712 of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968.

(w) "Urban county" means any county within a metropolitan area which, pursuant to § 570.105, is authorized under State law to undertake essential community and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and (1) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities and Indian tribes therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities, or (2) has a population in excess of one hundred thousand, a population density of five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of the Census.

(x) "Age of housing" means the number of existing year-round housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census and referable to the same point or period of time.

(y) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate, between 1960 and the date of the most recent population count referable to the same point of period in time, equal to the population growth rate for such period of all metropolitan cities.

(z) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512).

(aa) "Urban development action grant" (UDAG) means a grant made from those funds specifically appropriated under § 570.104(f) for the support of severely distressed cities and urban counties, to help alleviate physical and economic deterioration through reclamation and through revitalization of communities, where such cities and urban counties require increased public and private assistance in addition to assistance otherwise made available under this title and other Federal assistance.

(bb) "Low-income persons" means members of families whose incomes do not exceed 50 percent of the median family income of the metropolitan area, or in the case of families residing in nonmetropolitan areas, of all nonmetropolitan areas of the State. This term may, where appropriate, also include unrelated individuals, as defined by the U.S. Census Bureau, whose incomes do not exceed 50 percent of the median income of all unrelated individuals residing in the metropolitan area, or in the case of unrelated individuals residing in nonmetropolitan areas, of all nonmetropolitan areas of the State.

§ 570.4 Waivers.

The Secretary may waive any requirement of this Part not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

III. Subpart B is revised to read as follows:

Subpart B—Allocation and Distribution of Funds

§ 570.100 General.

(a) This subpart describes the policies and procedures governing the determination of entitlement for eligible units of general local government to receive grants, the entitlement amounts, and the allocation of appropriated funds among the several distribution categories provided under Title I of the Housing and Community Development Act of 1974, as amended.

(b) In determining eligibility for a Basic Grant and in allocating funds under this subpart, current corporate status and geographic boundaries will be considered, in accordance with the following, to the extent such information was certified and available to the Bureau of the Census 90 days prior to the beginning of such fiscal year, and has been processed by Census at the time the allocation of funds is to be made each year:

(1) Incorporation of a community having a population of at least 50,000 based on the latest national census;

(2) Change in boundaries or annexations resulting in the population of the unit of general local government reaching or exceeding 50,000 based on the latest national census count;

(3) All changes in boundaries or annexations that have been accepted at such point in time for use by the Office of Revenue Sharing; and

(4) Designation or redesignation of Standard Metropolitan Statistical Areas by the Office of Management and Budget occurring not later than 90 days prior to the beginning of such fiscal year.

(c) The referenced population or national census count to be used in the determination of entitlements shall be the most recent decennial or mid-decade census; or the most recent updating of such censuses as represented

by the Bureau of the Census national population estimates, and shall use the latest geographic base resulting from Boundary and Annexation Surveys, new incorporations, and consolidations of governments available as previously specified.

§ 570.101 Allocation between metropolitan and nonmetropolitan areas.

Eighty percent of the funds appropriated each fiscal year for the purposes of this part, excluding the amounts specified below, will be allocated to metropolitan areas, with the balance of twenty percent allocated to nonmetropolitan areas, for community development block grants in metropolitan and nonmetropolitan areas, respectively. Funds to be excluded for this purpose are:

(a) *Metropolitan area "set-aside" fund.* $50,000,000 for each of fiscal years 1975 and 1976, $200,000,000 fiscal year 1977 (not more than 50 percent of which to be used for hold-harmless needs in metropolitan areas), $350,000,000 fiscal year 1978 (not more than 50 percent for hold-harmless needs in metropolitan areas), $265,000,000 for fiscal year 1979 (not more than $25,000,000 for hold-harmless needs in metropolitan areas), and $250,000,000 for fiscal year 1980 (none to be used for hold-harmless needs);

(b) *Transition/ categorical program settlement fund.* $50,000,000 for each of fiscal years 1975 and 1976, and $100,000,000 for each of fiscal years 1977, 1978, 1979, and 1980 to facilitate transition and categorical program settlements, pursuant to Section 103(b) of the Act;

(c) *Urban development action grants.* Funds authorized and appropriated for making Urban Development Action Grants under Subpart G; and

(d) *Secretary's fund.* An amount equal to two percent for fiscal years 1975, 1976, and 1977, and three percent for fiscal years 1978, 1979, and 1980 of the total funds authorized and appropriated for each fiscal year that remain after excluding those funds under paragraphs (a), (b), and (c) for that fiscal year.

§ 570.102 Basic grant amounts.

(a) *Metropolitan cities.* (1) Of the amount allocated to metropolitan areas pursuant to § 570.101, the Secretary will allocate to each metropolitan city an amount of funds which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either:

(i) The average of the ratios between:

(A) The population of that metropolitan city and the population of all metropolitan areas;

(B) The extent of poverty in that metropolitan city and the extent of poverty in all metropolitan areas; and

(C) The extent of housing overcrowding by units in that metropolitan city and the extent of housing overcrowding by units in all metropolitan areas; or

(ii) The average of the ratios between:

(A) The extent of growth lag in that metropolitan city and the extent of growth lag in all metropolitan cities;

(B) The extent of poverty in that metropolitan city and the extent of poverty in all metropolitan areas; and

(C) The age of housing in that metropolitan city and the age of housing in all metropolitan areas.

(2) In determining the average of ratios under paragraphs (a)(1)(i) of this section, the ratio involving the extent of poverty shall be counted twice, and each of the other ratios shall be counted once (.50+.25+.25=1.00); and in determining the average of ratios under paragraph (a)(1)(ii), the ratio involving the extent of growth lag shall be counted once, the ratio involving extent of poverty shall be counted one and one-half times, and the ratio involving the age of housing shall be counted two and one-half times (.20+.30+.50=1.00).

(3) The Secretary shall determine eligibility of towns or townships to be cities on the basis of information available from the U.S. Bureau of the Census with respect to population level, closeness of settlement, and presence of incorporated places within the boundaries of town or township, and on the basis of information provided by the town or township and its included units of government. In computing amounts for a metropolitan city that is a town or township containing incorporated places, there shall be excluded any such incorporated place which is entitled to receive a hold-harmless grant for that year pursuant to § 570.103 and has not waived such entitlement under § 570.103(e).

(b) *Urban counties.* (1) Of the amount allocated to metropolitan areas pursuant to § 570.101, the Secretary will allocate to each urban county an amount of funds which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either:

(i) The average of the ratios between:

(A) The population of the urban county and the population of all metropolitan areas;

(B) The extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(C) The extent of housing overcrowding in the urban county and the extent of housing overcrowding in all metropolitan areas; or

(ii) The average of the ratios between:

(A) The extent of growth lag in that urban county and the extent of growth lag in all metropolitan cities and urban counties;

(B) The extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(C) The age of housing in that urban county and the age of housing in all metropolitan areas.

(2) In determining the average of ratios under paragraph (b)(1)(i) of this section, the ratio involving the extent of poverty shall be counted twice, and each of the other ratios will be counted once (.50+.25+.25=1.00); and in determining the average of ratios under paragraph (b)(1)(ii), the ratio involving the extent of growth lag shall be counted once, the ratio involving extent of poverty shall be counted one and one-half times, and the ratio involving the age of housing shall be counted two and one-half times (.20+.30+.50=1.00).

(3) In computing amounts or exclusions with respect to an urban county in any fiscal year there will be excluded any metropolitan city, any other unit of general local government located within the county which is entitled to receive a hold-harmless grant for that fiscal year pursuant to § 570.103 and has not waived such entitlement under § 570.103(e), any other unit of general local government the population of which has been excluded from the county's population as part of the urban county qualification process, pursuant to § 570.105, and any Indian tribes located within the county.

(4) In excluding the population, poverty, housing overcrowding, and age of housing data for units of general local government which are entitled to receive a hold-harmless grant from the computations in this paragraph, as required by paragraphs (a)(3) and (b)(3) of this section, the Secretary will exclude only two-thirds of such data for fiscal year 1978 and one-third of such data for fiscal year 1979. In fiscal year 1980 and in subsequent years, no such exclusion is to be made.

(c) *Phase-in provision.* With respect to funds approved for distribution to a metropolitan city or urban county during fiscal years 1975, 1976 and 1977, the basic grant amount of any such city or county as computed under paragraphs (a) and (b) will be adjusted only for such funds approved for distribution in fiscal years 1975, 1976 and 1977 if the amount so computed for the first year such funds are approved for distribution exceeds the city's or county's hold-harmless amount for that year as determined under § 570.103. The adjustments are made so that:

(1) The amount for the city's or county's first year does not exceed one-third of its full basic grant amount, or its hold-harmless amount, whichever is the greater;

(2) The amount for its second year does not exceed two-thirds of its full basic amount, or its hold-harmless amount, or the amount allowed under paragraph (c)(1) of this section, whichever is the greatest; and

(3) The amount for its third year does not exceed its full basic grant amount. The full basic grant amount as determined under § 570.102(a) and § 570.102(b) will be allocated to each metropolitan city and each urban county respectively for each of the fiscal years 1978, 1979, and 1980 regardless of their eligibility for or receipt of entitlement in preceding years and without regard to the application of the phase-in provision.

§ 570.103 Hold-Harmless grants.

(a) *Metropolitan cities and urban counties.* Any metropolitan city or urban county having a hold-harmless amount, as calculated under paragraph (c) of this section, in any fiscal year which exceeds its basic grant amount for that year as computed under § 570.102 will be entitled to receive a hold-harmless grant, in addition to its basic grant. Except as provided in paragraph (d) of this section, the amount of the hold-harmless grant will be equal to the difference between the basic grant amount and the hold-harmless amount.

(b) *Other units of general local government.* Any other unit of general local government will be entitled to receive a hold-harmless grant if, during the five fiscal year period ending June 30, 1972 (or June 30, 1973, in the case of a locality which first received a grant for a neighborhood development program in that fiscal year), it had been carrying out one or more urban renewal projects, code enforcement programs, or neighborhood development programs under Title I of the Housing Act of 1949, or model cities programs under Title I of the Demonstration Cities and Metropolitan Development Act of 1966, under commitments for assistance entered into with HUD during that period. Except as provided in paragraph (d) of this section, such hold-harmless grant will equal the hold-harmless amount as computed under paragraph (c) of this section.

(c) *Calculation of hold-harmless amount.* (1) For each unit of general local government having entitlement for either a basic grant amount or a hold-harmless grant, the Secretary will calculate a hold-harmless amount for each of the first five fiscal years beginning with fiscal year 1975.

(2) The hold-harmless amount will be sum of:

(i) The annual average during the five fiscal years ending June 30, 1972, of:

(A) Commitments for grants for urban renewal (excluding neighborhood development programs) under Part A of Title I of the Housing Act of 1949. For the purposes of this calculation, "commitments for grants" means any of the following conditions occurring during the five year base period:

(*1*) Funds reserved and not either cancelled or allocated;

(*2*) Funds reserved and allocated; and funds allocated which had not previously been reserved.

(B) Loans made for the purpose of rehabilitation of property under Section 312 of the Housing Act of 1964;

(C) Grants for open space land projects, including urban beautification and historic preservation, under Title VII of the Housing Act of 1961;

(D) Grants for water and sewer projects under Section 702 of the Housing and Urban Development Act of 1965;

(E) Grants for neighborhood facilities under Section 703 of the Housing and Urban Development Act of 1965; and

(F) Loans for public facilities under Title II of the Housing Amendments of 1955; and

(ii) The average annual grant for a neighborhood development program under Part B of Title I of the Housing Act of 1949 made during the five fiscal years ending June 30, 1972, or during Fiscal Year 1973 in the case where the initial grant for this purpose was made in that fiscal year; and

(iii) In the case of a unit of general local government having a model cities program which was funded or extended in Fiscal Year 1973 for a period ending after June 30, 1973, amounts based on the following percentages of the average annual grant made for the model cities program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 during fiscal years ending June 30, 1972:

(A) One hundred percent for each of a number of years, which, when combined with the number of funding years for which the unit of general local government has received grants prior to Fiscal Year 1975, equals five;

(B) Eighty percent for the year immediately following year five as determined in paragraph (c)(2)(iii)(A) of this section;

(C) Sixty percent for the year immediately following the year provided in paragraph (c)(2)(iii)(B) of this section; and

(D) Forty percent for the year immediately following the year provided in paragraph (c)(2)(iii)(C) of this section. For the purpose of calculating hold-harmless amounts, the average annual grant under paragraphs (c)(2)(ii) and (iii) of this section will be established by dividing the total amount of grants made to the unit of general local government by the number of months of program activity for which such grants were made and multiplying the result by twelve. In calculating the hold-harmless amount, any portion of grants which were made as one-time payments for relocation costs under the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 (42 U.S.C. 4601) will be excluded. In calculating the average annual grant under paragraph (c)(2)(iii) of this section, the Secretary will exclude Planned Variations grants and grants for such other special purposes as relocation costs for Project Rehab in model cities programs. In attributing credit to metropolitan cities for grants or loans for the purpose of calculating the hold-harmless amount, the Secretary will be guided primarily by the location of the project, and, in addition, the identity of the local government which contracted for such grants or loans. Thus, where a county park authority received a grant to provide recreational facilities in a metropolitan city, the city would be credited with the grant in the hold-harmless calculation, and not the county.

(d) *Phase-out of hold-harmless.* (1) In determining the hold-harmless grant for fiscal years 1975, 1976, and 1977, the full hold-harmless amount calculated under paragraph (c) of this section will be used in accordance with paragraphs (a) and (b) of this section. In fiscal years 1978 and 1979, if the hold-harmless amount exceeds the basic grant amount for a locality in any such year, as computed under § 570.102, it will be reduced so that:

(i) In fiscal year 1978, the excess of the hold-harmless amount over the basic grant amount for that year will equal two-thirds of the difference between such hold-harmless and basic grant amounts; and

(ii) In fiscal year 1979, the excess of the hold-harmless amount over the basic grant amount for that year will equal one-third of the difference between such hold-harmless and basic grant amounts.

(2) In fiscal year 1980, no hold-harmless grants will be made.

(3) In determining the adjustments under paragraph (d)(1) of this section for units of general local government not qualifying for a basic grant, the provisions of paragraph (d)(1)(i) and (ii) of this section will be applied as though such units had entitlement to a basic grant amount of zero.

(e) *Waiver of hold-harmless.* Any unit of general local government qualifying for a hold-harmless grant in any fiscal year under the conditions contained in paragraph (b) of this section may, by November 15, of any such year, irrevocably waive its eligibility for a hold-harmless grant for a single year. Any such waiver under this subsection must be submitted to the Secretary in writing. In the case of such a waiver, the unit of general local gov-

ernment shall not be excluded in that year from the computations as otherwise required in § 570.102(b)(3) and § 570.104(c) (1) and (2) for such units of government having eligibility for hold-harmless grants.

(f) *Pro rate reduction.* In the event that the total amount of funds availble for distribution in metropolitan areas under this Part in fiscal year 1978 and fiscal year 1979 is insufficient to meet all basic grant and hold-harmless entitlement needs in such metropolitan areas as provided pursuant to § 570.102(a) and (b), and § 570.103, and that funds are not otherwise appropriated to meet such deficiency, the Secretary shall meet the deficiency through a pro rata reduction of: All basic grant and hold-harmless entitlement amounts; General purpose funds for metropolitan areas under § 570.104(c)(1) (including metropolitan area "set aside" funds under § 570.101(a)); and General purpose funds for nonmetropolitan areas under § 570.104(c)(2). The amount of any such reduction shall be determined as follows for each such fiscal year:

(1) The amount allocated for use in meeting basic grant and hold-harmless entitlement amounts in metropolitan areas shall be determined as provided in § 570.101;

(2) The basic grant and hold-harmless entitlement amounts in metropolitan areas shall be determined as provided in § 570.102 and § 570.103;

(3) If the sum of all entitlement amounts, determined in paragraph (f)(2) of this section, exceeds the total amount available for meeting such entitlements, determined in paragraph (f)(1), of this section, the difference between such amounts shall be computed;

(4) The ratio of any such difference, determined in paragraph (f)(3) of this section, to the sum of all funds allocated for use in metropolitan and nonmetropolitan areas, including any metropolitan area "set-aside" funds but excluding the Secretary's fund, and funds for either the transition and categorical settlements or Urban Development Action Grants, shall be determined;

(5) The entitlement amount determined for each individual unit of government, in both metropolitan and nonmetropolitan areas, the amount determined to be available for general purpose discretionary grants in metropolitan areas (including any metropolitan area "set-aside" funds), and the amount determined to be available for general purpose discretionary grants in nonmetropolitan areas shall each be reduced by an amount bearing the same ratio to such total amount prior to reduction as the ratio determined in paragraph (f)(4) of this section; and

(6) In the case of general purpose discretionary funds for either metropolitan or nonmetropolitan areas, any such reduction shall be made prior to the allocation of such funds among the States as provided in § 570.104 (c)(1) and (c)(2).

§ 570.104 Funds for discretionary grants.

(a) *Secretary's fund.* From the amount appropriated for community development block grants each fiscal year, excluding funds described in § 570.101 (a), (b), and (c), HUD will determine an amount for each of the fiscal years 1975, 1976, and 1977 which is two percent (2%) and an amount for each of the fiscal years 1978, 1979, and 1980 which is three percent (3%) of such appropriated funds for use in making grants:

(1) In behalf of new communities approved under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968, or in behalf of new community projects assisted under Title X of the National Housing Act which meet eligibility, standards set forth in Title VII of the Housing and Urban Development Act of 1970 and which were the subject of an application or preapplication under such title prior to January 14, 1975.

(2) To States and units of general local government which jointly apply for such funds for addressing problems that are areawide in scope;

(3) In Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands;

(4) To States and units of general local government for use in demonstrating innovative community development projects;

(5) To States, units of general local government, and Indian tribes for use in meeting emergency community development needs caused by federally recognized disasters as defined in § 570.407(a) (but not more than 25 percent for each of fiscal years 1975, 1976, and 1977, and 15 percent for each of fiscal years 1978, 1979, and 1980, of the total amount reserved and set aside in the Secretary's fund under this section for each such year will be used for this purpose);

(6) To States and units of general local government where HUD finds it necessary to correct inequities resulting from the allocation provisions of this subpart;

(7) To Indian tribes (all community development block grant assistance for Indian programs will come from the Secretary's fund); and

(8) To States, units of general local government, Indian tribes, or areawide planning organizations for the purpose of providing technical assistance in planning, developing, and administering assistance under this title. The Secretary may also provide such technical assistance under this paragraph directly or through contracts. Grants from the Secretary's fund may be made in addition to any other community development block grants which may be made to the same recipient under this subpart.

(b) *Transition/categorical program settlement fund.* Using funds appropriated for each of the fiscal years 1975 through 1980 for this purpose as described in § 570.101(b), grants may be made to facilitate an orderly transition to the community development block grant program, and for financial settlement of projects and programs that were terminated and consolidated by this Act, primarily urban renewal projects, to units of general local government which require assistance that cannot be provided through the operation of the allocation provisions described in this subpart.

(c) *General purpose funds.*—(1) *Metropolitan areas.* Any portion of the amount allocated to metropolitan areas under § 570.101, which remains after the allocation of: Basic grant amounts to metropolitan cities and urban counties under § 570.102; Hold-harmless grants to which units of general local governments in metropolitan areas are entitled under § 570.103, and "set-aside" funds for that fiscal year as described under § 570.101(a) for each fiscal year 1975 through 1980 that are not used for hold-harmless, except as such remaining amount may be modified by pro rata reduction in § 570.103(b), will be allocated for grants to units of general local government, other than metropolitan cities and urban counties, and to States for use in metropolitan areas, allocating for the metropolitan area of each State the greater of an amount that bears the same ratio to the total amount for such areas of all States as either:

(i) The average of ratios between: (A) The population of the metropolitan area in that State and the population of the metropolitan areas of all States;

(B) The extent of poverty in the metropolitan area in that State and the extent of poverty in the metropolitan areas of all States; and

(C) The extent of housing overcrowding in the metropolitan area in that State and the extent of housing overcrowding in the metropolitan areas of all States; or

(ii) The average of the ratios between: (A) The age of housing in the metropolitan area in that State and the age of housing in the metropolitan areas of all States;

(B) The extent of poverty in the metropolitan area of that State and the extent of poverty in the metropolitan areas of all States; and

(C) The population of the metropolitan area in that State and the population of the metropolitan areas of all States. In determining the average of

ratios under paragraph (c)(1)(i) of this section, the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once (0.50+ 0.25+0.25=1.00); and in determining the average of ratios under paragraph (c)(1)(ii), the ratios involving the age of housing shall be counted two and one-half times, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving population will be counted once (0.50+0.30+0.20=1.00). In computing these ratios for metropolitan areas, there will be excluded the demo- graphic values for any metropolitan cities, any urban counties, any units of general local government which are entitled to hold-harmless grants under § 570.103(b), and any Indian tribes.

In order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total amount of funds available for such purpose, the Secretary shall make a further pro rata reduction of each amount allocated to the metropolitan area in each State under this paragraph so that each State will be allocated an amount representing the same percentage of the total amount of funds available for such allocation as the percentage such State would have been allocated under this paragraph if the total amount of funds available for this purpose had equaled the total amount allocated to all States under this paragraph.

(2) *Nonmetropolitan areas.* Any portion of the amount allocated to nonmetropolitan areas under § 570.101 which remains after providing the allocation of hold-harmless grants to which units of general local government in nonmetropolitan areas are entitled under § 570.103(b), and except as such remaining amount may be modified by pro rata reduction in § 570.103(f), will be allocated for grants to units of general local government in nonmetropolitan areas or to States for use in nonmetropolitan areas, allocating for the nonmetropolitan areas of each State the greater of an amount which bears the same ratio to the total of that remaining amount as either:

(i) The average of ratios between: (A) The population of the nonmetropolitan area in that State and the population of the nonmetropolitan areas in all States;

(B) The extent of poverty in the nonmetropolitan area in that State and the extent of poverty in the nonmetropolitan areas in all States;

(C) The extent of housing overcrowding by units in the nonmetropolitan areas in that State and the extent of housing overcrowding by units in the nonmetropolitan areas in all States; or

(ii) The average ratios between: (A) The age of housing in the nonmetropolitan area in that State and the age of housing in the nonmetropolitan areas of all States;

(B) The extent of poverty in the nonmetropolitan area of that State and the extent of poverty in the nonmetropolitan areas of all States; and

(C) The population of the nonmetropolitan area of that State and the population of the nonmetropolitan areas of all States.

In determining the average of ratios under paragraph (c)(2)(i) of this section, the ratios involving the extent of poverty shall be counted twice, and each other ratio shall be counted once (0.50+0.25+0.25=1.00); and in determining the average of ratios under paragraph (c)(2)(ii), the ratio involving the age of housing shall be counted two and one-half times, the ratios involving the extent of poverty shall be counted one and one-half times, and the ratio involving population shall be counted once (0.50+0.30+0.20=1.00). In computing these ratios for nonmetropolitan areas, there will be excluded the demographic values for any units of general local government which are entitled to hold-harmless grants under § 570.103(b), and any Indian tribes. In order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amount of funds available for such purpose, the Secretary shall make a further pro rata reduction of each amount allocated to the nonmetropolitan areas in each State under this paragraph so that each State will be allocated an amount representing the same percentage of the total amount of funds available for such allocation as the percentage such State would have been allocated under this paragraph if the total amount of funds available for this purpose had equalled the total amount allocated to all States under this paragraph.

(d) *Exclusions of demographic values.* (1) in excluding the demographic values of population, poverty, housing overcrowding, and age of housing for units of general local government which are entitled to hold-harmless grants as required under paragraphs (c) (1) and (2) of this section, only two-thirds of such data will be excluded for fiscal year 1978 and one-third of such data for fiscal year 1979. In 1980 and subsequent years, no such exclusion is to be made.

(2) The demographic values of population, poverty, housing overcrowding, and age of housing of all Indian tribes shall be excluded as part of any computations required by paragraphs (c) (1) and (2) of this section, whether or not they are entitled to hold-harmless grants. It is recognized that all such data on Indian tribes is not generally available from the Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time, and shall use the best judgment possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deductions shall not create an imbalance with that overall data.

(e) *Urban Development Actions Grants fund.* Using funds appropriated for each of the fiscal years 1978, 1979, and 1980 for such purpose, grants may be made to assist severely distressed cities and urban counties to provide supplemental assistance in alleviating excessive physical and economic deterioration. Such funds allotted shall not exceed $400,000,000 for each of these fiscal years.

§ 570.105 Qualification as urban county.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties pursuant to § 570.102(b) upon receipt of applications from counties in a form and manner prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under § 570.102(b) on the basis of information available from the U.S. Bureau of Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* A county will qualify as an urban county if such county:

(1) (i) Is in a metropolitan area;

(ii) Is authorized under State law to undertake essential coummunity development and housing assistance activities ("essential activities") in its unincorporated areas, if any, which are not units of general local government; and

(iii) Has either a combined population of 200,000 or more (excluding the population of metropolitan cities and Indian tribes therein) consisting of persons residing:

(A) In such unincorporated areas;

(B) In its included units of general local government in which it is authorized under State law to undertake essential activities (without the consent of the governing body of the locality, or upon the consent of the governing body of the locality and the county has received such consent) and which do not elect to be excluded from the county for purposes of participation in the block grant program; and

(C) In its included units of general local government with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential activities. Such cooperation agreements may consist of the provision by the county of funds or services or both in pursuit of such essential activities; or

(2) Has a population in excess of 100,000, a population density of 5,000 persons per square mile, and contains within its boundaries no incorporated place as defined by the United States Bureau of Census.

(c) *Essential activities.* For purposes of this section, the term "essential activities" means community renewal and lower-income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Opinion as to authority.* A county wishing to qualify as an urban county shall, at a time designated by HUD and in a form prescribed by HUD, describe its authority for undertaking essential activities. Such description shall include an opinion with respect to such authority by the appropriate legal officer of the county.

§ 570.106 Qualification and submission dates.

The Secretary will fix qualification and submission dates necessary to permit the computations and determinations required under this Subpart to be made in a timely manner and all such computations and determinations will be final and conclusive.

§ 570.107 Reallocation of funds.

(a) *Metropolitan areas.* Any amounts allocated to a metropolitan city, urban county, or other unit of general local government for basic grants or hold-harmless grants in metropolitan areas in any fiscal year which are not applied for by the date fixed by the Secretary for that purpose, or which are disapproved by the Secretary as part of the application review or program monitoring processes, will be reallocated for use by the Secretary in making grants to States, metropolitan cities, urban counties, or other units of general local government; first, in any metropolitan area in the same State, and second, in any other metropolitan area. Any other amounts allocated to a State for use in its metropolitan areas for any fiscal year under § 570.104(c)(1) which the Secretary determines, on the basis of applications and other evidence available, are not likely to be fully obligated by the Secretary within a reasonable time, will be reallocated by the Secretary within such time period as to allow a reasonable expectation that such funds may be used for making grants to States, metropolitan cities, urban counties, and other units of general local government, in metropolitan areas in any State prior to the allocation of discretionary balance funds from the next ensuing fiscal year's appropriation.

(b) *Nonmetropolitan areas.* Any amounts allocated to a unit of general local government for any fiscal year for hold-harmless grants in a nonmetropolitan area which are not applied for by the date fixed by the Secretary for that purpose, or which are disapproved by the Secretary as part of the application review or program monitoring processes, will be reallocated by the Secretary for use in making grants to units of general local government in nonmetropolitan areas in any State or to any State for use outside of metropolitan areas. Any other amounts allocated to nonmetropolitan areas of a State for any fiscal year under § 570.104(c)(2) which the Secretary determines, on the basis of application and other evidence available, are not likely to be fully obligated within a reasonable time, will be reallocated by the Secretary to allow a reasonable expectation that the funds may be used for making grants to units of general local government in nonmetropolitan areas of other States and to other States for use in nonmetropolitan areas prior to the allocation of discretionary balance funds from the next ensuing fiscal year's appropriation.

(c) *Policies governing reallocation.* Each fiscal year, HUD will publish the policies to be employed in the reallocation of funds for that year.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., January 24, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-2765 Filed 1-31-78; 8:45 am]

FEDERAL REGISTER

WEDNESDAY, FEBRUARY 1, 1978
PART VII

OFFICE OF MANAGEMENT AND BUDGET

BUDGET RESCISSIONS AND DEFERRALS

Cumulative Report

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

BUDGET RESCISSIONS AND DEFERRALS

Cumulative Report

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report three proposals to rescind a total of $55.3 million in budget authority previously provided by the Congress. In addition, I am reporting six new deferrals of budget authority totalling $1,517.1 million and seven revisions to previously transmitted deferrals increasing the amount deferred by $2.2 million in budget authority.

The rescission proposals affect the military assistance program, the Department of State's appropriation for contributions for international peacekeeping activities, and the revolving fund of the Federal Home Loan Bank Board.

The new deferrals and revisions to existing deferrals involve programs of the Departments of Agriculture, Commerce, Health, Education, and Welfare, Justice, Labor, Transportation, the Treasury, and the Panama Canal Zone Government, the National Science Foundation, and the United States Information Agency.

The details of each rescission proposal and deferral are contained in the attached reports.

Jimmy Carter

THE WHITE HOUSE,
January 27, 1978.

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission No.	Item	Budget Authority
	Funds Appropriated to the President:	
	International Security Assistance	
R78-2	Military assistance	40,200
	Department of State:	
	International Organizations and Conferences	
R78-3	Contributions for international peace-keeping activities	5,000
	Federal Home Loan Bank Board:	
R78-4	Revolving fund	10,055
	Subtotal, rescission proposals	55,255

Deferral No.	Item	Budget Authority
	Department of Agriculture:	
	Foreign Agricultural Service	
D78-1A	Salaries and expenses (special foreign currency program)	1,040
	Department of Commerce:	
	Economic Development Administration	
D78-51	Economic development revolving fund	123,647
	National Oceanic and Atmospheric Administration	
D78-8A	Promote and develop fishery products and research pertaining to American fisheries	6,068
	Department of Defense-Civil:	
	Canal Zone Government	
D78-52	Capital outlay	309
	Department of Health, Education, and Welfare:	
	Office of the Assistant Secretary for Health	
D78-53	Scientific activities overseas (special foreign currency program)	3,497
	Social Security Administration	
D78-14A	Limitation on salaries and expenses	13,865
	Department of Justice:	
	Law Enforcement Assistance Administration	
D78-54	Salaries and expenses	2,668
	Department of Labor:	
	Employment and Training Administration	
D78-55	Advances to the unemployment trust fund and other funds	1,380,114
	Department of Transportation:	
	Federal Aviation Administration	
D78-23A	Civil supersonic aircraft development termination	148

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	Item	Budget Authority
	Department of the Treasury:	
	Office of Revenue Sharing	
D78-26C	Antirecession financial assistance fund	11,148
D78-27C	State and local government fiscal assistance trust fund	82,461
	Other Independent Agencies:	
	National Science Foundation	
D78-56	Research and related activities	6,900
	United States Information Agency	
D78-41A	Salaries and expenses	1,653
	Subtotal, deferrals	1,633,518
	Total, rescission proposals and deferrals	1,688,773

SUMMARY OF SPECIAL MESSAGES FOR FY 1978
(amounts in thousands of dollars)

	Rescissions	Deferrals
Fifth special message:		
New items	55,255	1,517,135
Changes to amounts previously submitted	---	2,183
Effect of the fifth special message	55,255	1,519,318
Previous special messages	2,668	3,245,274
Total amount proposed in special messages	57,923 (in 4 rescission proposals)	4,764,592 (in 56 deferrals)

NOTE: All amounts listed represent budget authority except for $5,117,000 consisting of two Department of the Treasury deferrals of outlays only (D78-50 and D78-28A).

Rescission Proposal No: R78-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Funds Appropriated to the President	New budget authority (P.L. 95-148) $ 220,000,000
Bureau: International Security Assistance	Other budgetary resources 135,900,000
Appropriation title & symbol: Military Assistance 1/ 117/81080 and 1181080	Total budgetary resources 355,900,000
	Amount proposed for rescission $ 40,200,000 2/
OMB identification code: 11-1080-0-1-152	Legal authority (in addition to sec. 1012): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [X] Annual; [X] Multiple-year September 30, 1978 (expiration date); [ ] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Justification:

Pursuant to the Foreign Assistance Act of 1961, as amended, the President is authorized to furnish military assistance "...to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the U.S. and promote world peace..." The Foreign Assistance and Related Programs Appropriation Act, 1978 (Public Law 95-148, approved October 31, 1977) appropriated $220,000,000 for this purpose. Additional budgetary resources of $135,900,000 are also expected to be available in FY 1978 for this program.

In 1974, the Congress enacted Section 620(x) of the Foreign Assistance Act of 1961, as amended, which suspends all military assistance to the Government of Turkey "...until the President determines and certifies to the Congress that substantial progress toward agreement has been made regarding military forces in Cyprus..." Consequently, the amount previously planned for Turkey in FY 1978, $48 million, was deferred pending a Presidential certification regarding Cyprus or enactment of legislation by Congress removing the Presidential certification requirements. An additional $43 million for first-year levels in the Defense Cooperation Agreements with Greece and Turkey was deferred pending enactment by Congress of legislation approving these agreements. At the same time, an additional $40.2 million was deferred while consideration was given to a proposal to rescind these funds.

Since the planned FY 1978 military assistance program of $315.7 million authorized by law can be conducted without using the $40.2 million portion of the deferral, it has now been determined that these funds will not be required to carry out the full objectives and scope of the program as authorized by law. Therefore, a rescission of this amount is proposed.

Estimated Effects:

There is no programmatic or budgetary effect of this rescission proposal since the planned FY 1978 program authorized by law can be accomplished without these funds.

Outlay Effect:

There is no outlay effect of this rescission because the funds could not be used if made available.

1/ This account is the subject of a deferral, D78-47.
2/ This amount was included in a deferral (D78-47) transmitted to the Congress on December 15, 1977.

TITLE I - FOREIGN ASSISTANCE ACT ACTIVITIES

FUNDS APPROPRIATED TO THE PRESIDENT

Military Assistance

Of the funds appropriated under this head in the Foreign Assistance and Related Programs Appropriations Act, 1978, $40,200,000 are rescinded.

Rescission Proposal No: R78-3

R78-3

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P L 93-344

Agency Department of State	New budget authority (P.L. 95-86) $32,000,000
Bureau International Organizations and Conferences	Other budgetary resources
Appropriation title & symbol Contributions for International Peacekeeping Activities 1981124 1/	Total budgetary resources 32,000,000
	Amount proposed for rescission $ 5,000,000
OMB identification code: 19-1124-0-1-153	Legal authority (in addition to sec. 1012): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification:

Public Law 94-37, approved June 19, 1975, "authorized to be appropriated to the Department of State such sums as may be necessary from time to time for payment by the United States of its share of the expenses of the United Nations peacekeeping forces in the Middle East, as apportioned by the United Nations in accordance with article 17 of the United Nations Charter, notwithstanding the limitation on contributions to international organizations contained in Public Law 92-544 (86 Stat. 1109, 1110)." The 1978 Budget contained an estimate of $32,000,000 for the U.S. share of those expenses to be paid from funds appropriated for fiscal year 1978. The Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105, approved August 17, 1977) authorized to be appropriated to the Department of State for fiscal year 1978 for "International Organizations and Conferences", $389,412,000. This amount was considered to be sufficient to authorize $32,000,000 for "Contributions for international peacekeeping activities."

The Department of State Appropriation Act, 1978 (Title I, Public Law 95-86, approved August 2, 1977) appropriated $32,000,000 for fiscal year 1978 "for payments not otherwise provided for, by the United States for expenses of United Nations peacekeeping forces in the Middle East". From these funds the State Department will pay the U.S. assessed share (approximately 29%) of the expenses of the United Nations Emergency Force (UNEF) in the Sinai and the United Nations Disengagement Observer Force (UNDOF) on the Golan Heights through October 24, 1978. The amount of the appropriation was based on the best estimate, at the time of congressional action, of the U.S. assessed share of the expenses of both peacekeeping forces for the twelve month period ending as indicated above.

1/ This account was the subject of a similar rescission during FY 1977.

On December 2, 1977, the United Nations General Assembly approved a resolution which definitely established these peacekeeping budgets at substantially lower levels than anticipated, resulting in a U.S. assessment of $27,000,000 rather than the $32,000,000 appropriated. Accordingly, the President has determined that $5,000,000 in budget authority will not be required to carry out the full objectives or scope of the program for which it is provided, and is proposing this amount for rescission.

Estimated Effects:

The proposed rescission will have no programmatic effects.

Outlay Effect:

There is no outlay effect from this rescission since the funds would not be used if made available.

R78-3

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

Contributions for International Peacekeeping Activities

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1978, $5,000,000 are rescinded.

Rescission Proposal No: R78-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Federal Home Loan Bank Board Bureau	New budget authority (P.L. ____) $ ____ Other budgetary resources 4,010,055,000 Total budgetary resources 4,010,055,000
Appropriation title & symbol 82X4035 Federal Home Loan Bank Board Revolving Fund	Amount proposed for rescission $ 10,055,000
OMB identification code: 82-4035-0-3-371 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1012) ☒ Antideficiency Act ☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other Authority to borrow (P.L.89-754, P.L.91-126)

Justification:

Public Law 89-754, approved November 3, 1966, authorized the construction of a new headquarters building for the Federal Home Loan Bank Board with a limitation of $13,200,000 on borrowing authority to finance the construction of the building. Public Law 91-126, approved November 26, 1969, increased the borrowing authority to $21,600,000. Of this authorization, borrowing authority equal to $11,545,000 was utilized along with assessments against the 12 Federal Home Loan Banks to finance construction. Major construction was completed and the building occupied by the Federal Home Loan Bank Board in December, 1977. Therefore, there is no longer any need for the unused borrowing authority, and a rescission of the remaining $10,055,000 is proposed.

Estimated Effect:

The proposed rescission will have no programmatic or budgetary effects.

Outlay Effect:

There is no outlay effect from this rescission proposal since the borrowing authority could not be used if made available.

R78-4

FEDERAL HOME LOAN BANK BOARD

Of the borrowing authority authorized for use by the Federal Home Loan Bank Board pursuant to Sec. 1016 of Public Law 89-754, 80 Stat. 1293, and Public Law 91-126, 83 Stat. 240, for the purposes set forth in Public Law 89-754, 12 U.S.C. 1438(c), $10,055,000 are rescinded.

D78-1A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D78-1 transmitted to the Congress on October 3, 1977, and printed as House Document 95-235.

The amount deferred for the Foreign Agricultural Service's Special foreign currency program is now $1,040,178, an increase of $52,250 over the amount previously deferred. This change reflects an adjustment in unobligated balances brought forward on October 1, 1977, from an estimated to an actual basis.

Deferral No: D78-1A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: U.S. Department of Agriculture	New budget authority (P.L. ____) $ ____
Bureau: Foreign Agricultural Service	Other budgetary resources 1,795,178*
Appropriation title & symbol: Salaries and expenses (Special Foreign Currency Program) 1/ 12X2901	Total budgetary resources 1,795,178*
	Amount to be deferred: Part of year $ ____
	Entire year 1,040,178*
OMB identification code: 12-2901-0-1-352	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification:
Title 1, Sec. 104 of P.L. 480, the Agricultural Trade Development and Assistance Act of 1954 authorizes the use of foreign currencies (acquired from the sale of U.S. farm products under Title I) to carry out programs for developing new markets for U.S. agricultural commodities. The funds appropriated are used to purchase excess foreign currencies necessary to carry out the program. The funds are available until expended, and the unused balance is carried over into the next year. The amount of funds used each year is dependent upon the availability of the U.S.-owned currencies and the availability of worthwhile market development projects in the foreign countries. Current indications are that no more than $755,000 of the unobligated balances brought forward can be utilized effectively in FY 1978. This deferral action is taken under provisions of the Antideficiency Act (31 U.S.C. 665) that authorize the establishment of reserves for contingencies.

Estimated Effects:
No programmatic or budgetary impact results from this deferral action. Since the funds are used to purchase currencies already owned by the U.S., any outlays shown under this account would be offset by the receipt of a like amount in another account.

Outlay Effects:
There is no outlay effect of this deferral because the funds would not be used if made available.

1/ This account was the subject of a similar deferral during FY 1977.
* Revised from previous report.

Deferral No: D78-51

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (P.L. ____) $ ____
Bureau: Economic Development Administration	Other budgetary resources 251,126,769
Appropriation title & symbol: Economic Development Revolving Fund 13x4406	Total budgetary resources 251,126,769
	Amount to be deferred: Part of year $ ____
	Entire year 123,646,769
OMB identification code: 13-4406-0-3-452	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other Fund balances

Justification

Title II, Sec. 203 of P.L. 89-136, the Public Works and Economic Development Act of 1965, as amended, establishes an Economic Development Revolving Fund in the Treasury of the United States, the contents of which are to be made available to the Secretary of Commerce for the purpose of extending financial assistance under Sec. 201 (public works and development facilities), 202 (business development loans and guarantees), and 403 (economic development districts) of the Act and for the payment of all obligations and expenditures arising in connection therewith.

The unobligated balance in the Economic Development Revolving Fund was $199,626,769 on September 30, 1977 and is expected to be $251,126,769 by the end of FY 1978. The balance accrues from principal and interest repayments from loans made under the Area Redevelopment Act and the Public Works and Economic Development Act. The Fund has not been utilized to date except for the payment of interest to the Treasury on the outstanding loan balance. This payment is estimated to be $27,480,000 for this fiscal year.

EDA plans to utilize $100 million of the unobligated balance in FY 1978 to guarantee loans made by the private sector primarily to steel firms, thereby enabling these firms to continue full scale operations and to modernize plants in areas of high or rising unemployment or where massive layoffs are threatened. The $100 million represents a 20 percent reserve against possible future defaults; the total value of loans guaranteed will be $500 million.

The remaining $123,646,769 of the estimated September 30, 1978 unobligated balance is proposed for deferral because there are currently no plans that have been approved for the effective use of this balance.

Estimated Effects

This deferral would have no programmatic effect since no plan exists for the use of these funds.

Outlay Effect

The approval of this deferral would have no effect on outlays in 1978 and 1979 assuming the funds would be used for loan guarantees, since funds would be dispersed only to cover defaults.

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D78-8, transmitted to the Congress on October 3, 1977, and printed as House Document No. 95-235.

This revision reflects a net increase of $639,094 in the amount to be deferred in fiscal year 1978 for the program to promote and develop fishery products and research pertaining to American Fisheries. The increase in the deferral is a result of an identical increase in the unobligated balance carried into fiscal year 1978 for this program. The actual unobligated balance that developed was $2,328,932 rather than $1,689,838.

Deferral No: D78-8A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Commerce	New budget authority (est.) (7 U.S.C. 612c) $ 12,984,035
Bureau: National Oceanic and Atmospheric Administration	Other budgetary resources 2,328,932*
Appropriation title & symbol: Promote and Develop Fishery Products and Research Pertaining to American Fisheries 1/ 13X5139	Total budgetary resources 15,312,967*
	Amount to be deferred: Part of year $ ____
	Entire year 6,067,967*
OMB identification code: 13-5139-0-2-403	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [ ] Appropriation [ ] Contract authority [X] Other 7 U.S.C. 612c

*Justification:

An amount equal to 30% of the gross receipts from custom duties on fishery products is appropriated for fishery products resources research and assessment and American fisheries resource management and development. These funds supplement funds appropriated to National Oceanic and Atmospheric Administration for the same purposes under the Operations, research, and facilities appropriation.

The amount being deferred, $6,067,967 represents the excess amount of receipts over the cost of currently planned program activities in FY 1978. Because no plans have been developed for use of these funds, they are requested for deferral at this time. The deferred funds are being reserved in accordance with the Antideficiency Act (31 U.S.C. 665). These funds could not be used effectively even if made available for obligation.

Estimated effects:

This deferral has no effect on the program as currently planned for FY 1978.

Outlay Effect:

There is no outlay effect of this deferral because the funds would not be used if made available.

1/ This account was the subject of a similar deferral during FY 1977.

*Revised from previous report.

Deferral No: D78-52

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Panama Canal	New budget authority (P.L. 95-85) $ 2,130,000
Bureau: Canal Zone Government	Other budgetary resources 1,747,160
Appropriation title & symbol: Capital Outlay 38X0118	Total budgetary resources 3,877,160
	Amount to be deferred: Part of year $ ____
	Entire year 309,000
OMB identification code: 38-0118-0-1-806	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification:

The capital outlay program of the Canal Zone Government is funded by appropriations made in the Department of Transportation and Related Agencies Appropriation Act of 1978 (Public Law 95-85) and similar Acts of previous years. These appropriations are available until expended. The $309,000 proposed for deferral is intended to finance project inspections and other services by the Panama Canal Company which will not be completed in FY 1978. This deferral action is taken under provisions of the Antideficiency Act (31 USC 665) that authorize the establishment of reserves for contingencies. The deferral will insure that adequate funds are available for project inspection and other services in the next fiscal year.

Estimated Effects:

The amount deferred results from the current scheduling of the planned capital program and could not be used if made available in FY 1978. Thus, the deferral action has no programmatic or budgetary effect.

Outlay Effect:

There is no outlay effect from this deferral action since the funds could not be used if made available.

Deferral No: D78-53

D78-53

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare Bureau Office of the Assistant Secretary of Health Appropriation title & symbol 75X1102--Scientific Activities Overseas (Special Foreign Currency Program)1/	New budget authority (P.L. 95-205) $ 11,387,000 Other budgetary resources 8,716,315 Total budgetary resources 20,103,315 Amount to be deferred: Part of year $ ____ Entire year 3,497,000
OMB identification code: 75-1102-0-1-552 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

JUSTIFICATION:

The Scientific Activities Overseas program of the Department of Health, Education, and Welfare is funded with appropriations which consist of excess foreign currencies owned by the United States. The currencies of Egypt, Burma, Guinea, India, and Pakistan held by the Treasury have been designated as in excess of normal U.S. needs. Funds for this program, which remain available until expended, are used for scientific research projects in those countries.

The amount of funds to be obligated during FY 1978 and the amount to be deferred to FY 1979 was determined after a careful review of the scientific merit of project proposals in the countries for which excess currency is available. The research projects in those countries that will contribute toward meeting U.S. scientific needs have been selected for funding in FY 1978 by HEW. The amount being deferred is excess to current program requirements and is being reserved for contingencies under provisions of the Antideficiency Act (31 U.S.C. 665).

1/ This account was the subject of a similar deferral in FY 1977.

Estimated Effects:

No programmatic or budgetary impact results from this action. This deferral reflects the budgetary resources that will remain available after meritorious scientific projects have been funded in FY 1978.

Outlay Effect:

There is no outlay effect of this deferral.

D78-14A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral No. D78-14 transmitted to the Congress on October 3, 1977, and printed as House Document No. 95-235.

This supplementary report contains the revisions necessary to change the budget account under which this Social Security Administration deferral has been reported from the Limitation on Construction account to the Limitation on Salaries and expenses account. These revisions include changes to the appropriation title and symbol, the identification code, and the total budgetary resources for the account.

Deferral No: D78-14A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Health, Education and Welfare	New budget authority (P.L. 95-205) $2,051,649,000*
Bureau: Social Security Administration	Other budgetary resources 22,065,828*
Appropriation title & symbol: Limitation on Salaries and expenses 1/*	Total budgetary resources 2,073,714,828*
75X8704*	Amount to be deferred: Part of year $ ____
	Entire year 13,865,200
OMB identification code: 20-8007-0-7-601 *	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: *

Funds provided for the construction activity (formerly the Limitation on Construction account) in the Limitation on Salaries and expenses of the Social Security Administration (SSA) remain available until expended in recognition of the long lead time between the provision of funds and their use in carrying out authorized construction projects. A total of $13,865,200 is to be deferred for FY 1978. The amounts involved fall into two categories as discussed below.

District Office Projects

A balance of $19,100,000 remains from funds appropriated since 1965 for district office construction projects. Of this amount, $5,750,000 is planned for obligation in FY 1978 and $13,350,000 is being deferred for obligation in subsequent years.

SSA has developed, with GSA and HEW, a new program for construction of district offices which will shorten the time required to construct by using pre-designed buildings. GSA has almost completed the prototype designs and site selection activities will begin for five offices in 1978. SSA will obligate about $750,000 in 1978 for these offices. The remaining 1978 funds will be used to expand previously constructed district offices. The deferred funds will be needed in subsequent years to construct the five offices started in 1978, complete expansion of offices, and select sites and construct additional offices.

1/ These projects, then included in the "Limitation on Construction" account, were subject to a similar deferral during FY 1977.

* Revised from previous report.

D78-14A

Funds for Headquarters Construction

In 1977, the Congress approved the use of $2.1 million previously authorized for district office construction for use in the headquarters construction activity. This amount was to cover General Services Administration (GSA) project management costs through completion in 1979 of the two headquarters buildings--the computer building in Woodlawn and the Metro-West building in downtown Baltimore. These buildings are being constructed under the purchase contract method, but purchase contract funds do not cover project management. Normally such costs are paid from GSA's Federal Buildings Fund and recovered by GSA through the Standard Level User Charges (SLUC). Since the Congress has indicated that SSA should pay only actual costs--not SLUC, SSA is billed directly for these charges. In FY 1978, $606,800 will be obligated. The $515,200 deferred will be obligated in FY 1979 as construction of the buildings continues.

Estimated Effects:

The funds intended to be apportioned for obligation in FY 1978 will permit SSA to carry out its authorized construction program in an orderly manner. No currently planned construction would be delayed by this deferral.

Outlay Effect:

There is no outlay effect of this deferral because the funds could not be used if made available.

Deferral No: D78-54

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Justice	New budget authority (P.L. 95-86) $647,250,000
Bureau: Law Enforcement Assistance Administration	Other budgetary resources 165,614,240
Appropriation title & symbol: Salaries and expenses 15X0400	Total budgetary resources 812,864,240
	Amount to be deferred: Part of year $ 2,668,000
	Entire year
OMB identification code: 15-0400-0-1-754	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Funds totalling $2,668,000 of budget authority available until expended in the Law Enforcement Assistance Administration's (LEAA) Salaries and expenses account are being deferred pending Congressional approval and enactment of a transfer of these funds to other activities in the Department of Justice. Both Houses of Congress have approved the transfer which is included in the conference version of the pending Supplemental Appropriations Act, 1978 (H.R. 9375). This deferral reports an extension in the withholding of these funds pending final Congressional action on the transfer.

These funds have been considered as candidates for transfer since they had been allocated to State and local governments but were not used by them. In these cases, such unused funds revert to LEAA for general application. The Department of Justice accounts that would receive the funds by transfer are Salaries and expenses, General legal activities, which is to receive $1,445,000 and Salaries and expenses, Antitrust Division, which would receive $1,223,000. Additional funds are needed for General legal activities to alleviate a serious backlog of cases involving monetary claims of the government, white collar crime, corporate taxes, torts, fraud, and general litigation. Increased funding for the Antitrust Division is required to meet the additional grand jury workload resulting from criminal price fixing investigations, to increase ADP support in complex antitrust litigation, to administer the new antitrust enforcement grant program, and to maintain a computerized document retrieval system for the grand jury investigation related to ocean shipping.

The proposed transfer of funds had been submitted to the Congress as both a request for an appropriation transfer and (on September 23, 1977) a rescission proposal. The rescission proposal was made pursuant to a February 14, 1975, opinion of the Comptroller General to the effect that an action tantamount to a rescission occurs whenever it is the intention of the Administration to permanently withdraw funds from a program by requesting a transfer of budget authority. (Making a transfer request--according to that view--seemed equivalent to a finding under section 1012 of the Impoundment Control Act that "budget authority will not be required to carry out the full objectives or scope of programs for which it is provided." Such a finding requires a rescission proposal under section 1012. Congressional action on the transfer request was not completed within the 45-day Congressional consideration period provided for rescission proposals.)

On October 28, 1977, the Comptroller General issued an opinion to the effect that "...the President should have proposed a deferral of the $2,668 million in the LEAA account pending congressional action on the legislative request to transfer the funds." In a letter to the Acting Director of OMB, also dated October 28, 1977, GAO clarified its views regarding the relationship of transfers and rescissions. In the letter, GAO states that whether a rescission proposal or a deferral should accompany a transfer request depends on whether the funds to be transferred would or would not be needed if the transfer request was not approved by the Congress. According to GAO, a deferral report is appropriate if the funds would be used in the transferring account in the event that the Congress does not approve the transfer. If the funds would not be used in that circumstance, GAO believes that a rescission proposal should be submitted. The LEAA funds could be used in LEAA, rather than be transferred. However, the uses for which the transfer is requested have a higher priority than the alternative uses in LEAA.

Estimated Effect:

LEAA funds allocated to State and local governments, but not used by them, will be transferred, providing that the transfer becomes law, for use in the Salaries and expenses accounts of General legal activities and the Antitrust Division.

Outlay Effect: (estimated in millions of dollars)

Comparison with President's 1979 Budget:

1. Budget outlay estimate for FY 1978	807.3
2. Outlay savings, if any, included in the budget outlay estimate	0.3

Current Outlay Estimates for FY 1978:

3. Without deferral	807.6
4. With deferral	807.3
5. Current outlay savings (line 3 - line 4) 1/	0.3

Outlay Savings for FY 1979 1/	1.5
Outlay Savings for FY 1980 1/	0.9

1/ The outlay savings shown here would be offset in an equal amount by outlay increases in the two accounts receiving the additional funds by transfer.

Deferral No: D78-55

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Department of Labor	New budget authority (P.L.) $
Bureau Employment and Training Administration	Other budgetary resources 1,980,114,000
Appropriation title & symbol: Advances to the Unemployment Trust Fund and Other Funds 167/80327 1/	Total budgetary resources 1,980,114,000
	Amount to be deferred: Part of year $
	Entire year 1,380,114,000
OMB identification code: 16-0327-0-1-603	Legal authority (in addition to sec. 1013): [x] Antideficiency Act
Grant program [ ] Yes [x] No	[ ] Other
Type of account or fund: [ ] Annual	Type of budget authority: [x] Appropriation
[x] Multiple-year September 30, 1978 (expiration date)	[ ] Contract authority
[ ] No-year	[ ] Other

Justification:

P.L. 94-439 appropriated funds to this account to be used during fiscal years 1977 and 1978 to make advances to the Unemployment Trust Fund and to the Federal Unemployment Benefits and Allowances account whenever regularly available resources in those accounts are insufficient to pay unemployment compensation to individuals when due. Given the anticipated reduction in the unemployment rate, current indications are that a lesser amount than originally estimated will be needed for advances to the Unemployment Trust Fund and that no advances will be required for the Federal Unemployment Benefits and Allowances account. Therefore, $1,380,114,000 in unobligated balances are being reserved for use as needed during the remainder of FY 1978. If it is determined that a portion of these funds will not be required for advances in FY 1978, a rescission will be proposed.

Estimated Effects:

This deferral action will have no effect on those covered by unemployment compensation as the funds are currently not expected to be needed for benefit or allowance payments. The funds will be released if subsequent events indicate that additional advances are necessary.

Outlay Effect:

There is no outlay effect of this deferral since the funds would not be used if made available.

1/ This account was the subject of a similar deferral in FY 1977.

D78-23A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D78-23, transmitted to the Congress on October 3, 1977, and printed as House Document No. 95-235.

This revision reflects a change in the amount deferred from $134,293 to $148,123. This increase in the deferral results from an identical increase in the unobligated balance available to this program. The actual unobligated balance that developed was $13,830 higher than originally estimated.

Deferral No: D78-23A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. ____ ____ ____) $ ____
Bureau: Federal Aviation Administration	Other budgetary resources 148,123*
Appropriation title & symbol: Civil Supersonic Aircraft Development Termination, 69X0106 1/	Total budgetary resources 148,123*
Civil Supersonic Aircraft Development, 69X1358 1/	Amount to be deferred: Part of year $ ____
	Entire year 148,123*
OMB identification code: 69-0106-0-1-405	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Coverage	Total Budgetary Resources *	Amount Deferred *
Civil Supersonic Aircraft Development Termination	$ 84,764	$ 84,764
Civil Supersonic Aircraft Development	63,359	63,359
Total	$148,123	$148,123

Justification:
This account finances the termination of the supersonic transport development program. The total cost of settlement of contractor claims and closeouts, airline refunds, completion of specifically designated technology programs, and necessary governmental administrative costs incidental to these activities is included. These funds were appropriated in the Department of Transportation and Related Agencies Appropriation Acts of 1971 and 1972. Because of the difficulty in ending such a complex and massive undertaking, termination has taken a number of years. Settlement is being accomplished as quickly as possible consistent with the legitimate claims of the contractors and the protection of government interests.

Estimated Effects:
This deferral action has no programmatic or budgetary effect.

Outlay Effect:
There is no outlay effect of this deferral because the funds would not be used if made available.

1/ This account was the subject of a similar deferral during FY 1977.
* Revised from previous report.

D78-26C

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D78-26B transmitted to the Congress on December 15, 1977, and printed as House Document No. 95-270.

This revision of a deferral for the Antirecession financial assistance fund in the Office of the Secretary of the Treasury increases the previously reported deferral from $10,899,000 to $11,148,000. This increase of $249,000 results from waivers by various recipient jurisdictions of their grants.

Deferral No: D78-26C

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury	New budget authority (P.L. 95-119) $1,400,000,000
Bureau: Office of the Secretary	Other budgetary resources 85,786,000*
Appropriation title & symbol: Antirecession Financial Assistance Fund 207/80108 208/90108 1/ 2/	Total budgetary resources 4/ 1,485,786,000*
	Amount to be deferred: Part of year 4/ $ 8,534,000*
	Entire year 4/ 2,614,000
OMB identification code: 20-0108-0-1-852	Legal authority (in addition to sec. 1013): [x] Antideficiency Act
Grant program: [x] Yes [ ] No	[x] Other P.L. 95-369, P.L. 95-30
Type of account or fund: [ ] Annual [x] Multiple-year September 30, 1978 3/ September 30, 1979 (expiration date) [ ] No-year	Type of budget authority: [x] Appropriation [ ] Contract authority [ ] Other

Justification *

This deferral represents that remaining portion of the transition quarter and FY 1977 appropriation, and a portion of the FY 1978 appropriation which the Secretary of the Treasury must hold in reserve to meet valid claims from State and local governments that past antirecession financial assistance payments to them were too small. Because the total amount appropriated for all governments is fixed, the alternative to such a reserve is recurring recomputations of entitlements of 22,930 governments for prior entitlement periods. Accordingly, the Office of Revenue Sharing has withheld from obligation an amount equal to one-half of one percent of the amounts appropriated for the transition quarter, FY 1977, and the first quarter of FY 1978.

After adjusting for releases made to satisfy legitimate claims against the fund for prior entitlement periods, the cumulative unobligated reserve (the amount deferred) now totals $11.1million. The unobligated amount retained in the fund will be reduced whenever the Secretary determines that a lesser amount is adequate to meet foreseeable liabilities against the fund. This reduction will be made by paying the additional amount to recipients as part of a regular distribution of the program.

1/ This account was the subject of a similar deferral during FY 1977.
2/ This account is the subject of another deferral, D78-50.
3/ The availability of the $8,534,000 deferred for part of the year ends on this date. These funds will be made available in enough time to permit orderly obligation before their availability ends.
4/ These amounts do not agree with the latest SF 132. Adjustments, accounting for this difference, were made with OMB's approval in accordance with Section 44.4 of Circular A-34.
* Revised from previous report.

D78-26C

Estimated Effects

This action will postpone distribution of the amount of the reserve until necessary adjustments and corrections have been identified. It will also avoid substantial confusion and complexities in the administration of the program.

*Outlay Effect (estimated in millions of dollars)

Comparison with President's FY 1979 Budget:

1. Budget outlay estimate for FY 1978	$1,483.6
2. Outlay savings, if any, included in the budget outlay estimate	2.6

Current Outlay Estimates for FY 1978:

3. Without deferral	1,486.2
4. With deferral	1,483.6
5. Current outlay savings (line 3 - line 4)	2.6

Outlay savings for FY 1979	-2.6

*Revised from previous report.

D78-27C

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D78-27B transmitted to the Congress on December 15, 1977, and printed as House Document No. 95-270.

This revision of a deferral for the State and local government fiscal assistance trust fund in the Office of the Secretary of the Treasury increases the previously reported deferral from $81,732,000 to $82,461,000. This increase of $729,000 is the result of making a technical adjustment necessary to establish the correct amount of the deferral.

Deferral No: D78-27C

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of the Treasury	New budget authority (P.L. 95-119 ...) $ 6,854,924,000
Bureau: Office of the Secretary	Other budgetary resources 47,482,000
Appropriation title & symbol: State and Local Government Fiscal Assistance Trust Fund 1/ 2/ 20X8111	Total budgetary resources 6,902,406,000*
	Amount to be deferred: Part of year $ 12,414,000*
	Entire year 70,047,000*
OMB identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☒ Yes ☐ No	☒ Other P.L. 92-512, P.L. 94-488 (Section 6)
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification:*

The Secretary of the Treasury must hold in reserve an amount to meet valid claims from State and local governments that past general revenue sharing payments to them were too small. Because the total amount appropriated for all governments is fixed, the alternative to such a reserve is recurring recomputations of entitlements of 39,170 governments for prior entitlement periods. Accordingly, the Office of Revenue Sharing withheld from obligation an amount equal to one-half of one percent of the amounts appropriated for each entitlement period through FY 1975. In addition, one-half of one percent of the $4,991 million appropriated for general revenue sharing in the Economic Stimulus Appropriations Act, 1977 (Public Law 95-29), and the $6,855 million in regular FY 1978 appropriations for general revenue sharing in Public Law 95-119 were also withheld from obligation.

After adjusting for releases made to satisfy legitimate claims against the fund for prior entitlement periods, the cumulative unobligated reserve (the amount deferred) now totals $82.5 million. The unobligated amount of $82.5 million retained in the Trust Fund will be further reduced whenever the Secretary determines the amount is adequate to meet foreseeable liabilities against the Trust Fund. The reduction will be made by paying the additional amount to recipients as part of a regular distribution of the program.

1/ This account is the subject of another deferral, D78-28A.
2/ This account was the subject of a similar deferral during FY 1977.
* Revised from previous report.

Estimated Effects:

This action will postpone distribution of the amount of the reserve until necessary adjustments and corrections have been identified. It will also avoid substantial confusion and complexities in the administration of the program.

*Outlay Effect: (estimated in millions of dollars)

Comparison with President's FY 1979 Budget:

1. Budget outlay estimate for FY 1978	$6,825.9
2. Outlay savings, if any, included in the budget outlay estimate	70.0

Current Outlay Estimates for FY 1978:

3. Without deferral	6,895.9
4. With deferral	6,825.9
5. Current outlay savings (line 3 - line 4)	70.0
Outlay savings for FY 1979	-35.0
Outlay savings for FY 1980	-35.0

* Revised from previous report.

Deferral No: D78-56

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency National Science Foundation	New budget authority (P.L. 95-119 _ _) $ 783,200,000
Bureau	Other budgetary resources 23,871,970
Appropriation title & symbol Research and Related Activities 1/ 497/80100 498/90100	Total budgetary resources 807,071,970
	Amount to be deferred: Part of year $ _____ Entire year 6,900,000
CFDA identification code: 49-0100-0-1-251	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other _____
Grant program ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1978 2/ September 30, 1979 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification:

The funds deferred were appropriated in the Department of Housing and Urban Development--Independent Agencies Appropriation Act, 1978, for the National Science Foundation's (NSF) applied science and research applications program. The deferred amount of $6,900,000 consists of a portion of the funds provided for several program elements. These elements include: social and behavioral sciences; physical, mathematical, and biological sciences; and three problem-oriented subelements--chemical threats to man and the environment, alternative biological sources of materials, and community water management. The NSF applied science and research applications program is undergoing an extensive review and reappraisal. This deferral action will ensure that the funds provided for these programs are prudently obligated. The funds are planned to be obligated in FY 1979.

Estimated Effects:

The deferral will result in a temporary slowing in the rate at which funds are obligated for the program elements of the applied science and research applications programs, as discussed above.

1/ This account is the subject of another deferral, D78-46.
2/ None of these funds are deferred.

Outlay Effect: (estimated in millions of dollars)

Comparison with President's FY 1979 Budget:	
1. Budget outlay estimate for FY 1978	744.7
2. Outlay savings, if any, included in the budget outlay estimate	4.1
Current Outlay Estimates for FY 1978:	
3. Without deferral	748.8
4. With deferral	744.7
5. Current outlay savings (line 3 - line 4)	4.1
Outlay savings for FY 1979	-1.3
Outlay savings for FY 1980	-2.8

D78-41A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D78-41 transmitted to the Congress on October 3, 1977, and printed as House Document No. 95-235.

This revision of a deferral for the U.S. Information Agency increases the previously reported deferral from $1,153,000 to $1,653,000. This increase of $500,000 results from a decrease of $414,000 in the projected operating requirements of the program and an increase of $86,000 in the unobligated balances carried into fiscal year 1978.

Deferral No: D78-41A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Information Agency	New budget authority (P.L. 95-86) $ 7,057,000
Bureau	Other budgetary resources 3,842,000*
Appropriation title & symbol Salaries and Expenses (Special Foreign Currency Program) 1/ 67X0103	Total budgetary resources 10,899,000*
	Amount to be deferred: Part of year $ ____ Entire year 1,653,000*
OMB identification code: 67-0103-0-1-153	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification *

The United States Information Agency is authorized by the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 et seq.), Reorganization Plan No. 8 of 1953, the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451 et seq.), and Executive Order No. 11034 of June 25, 1962, as amended, to disseminate information abroad about the United States, its people, and its policies.

The Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105, approved August 17, 1977) authorized to be appropriated for fiscal year 1978, $269,286,000 for "Salaries and expenses" and "Salaries and expenses (special foreign currency program)" for USIA. The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1978, (Public Law 95-86, approved August 2, 1977) appropriated $7,057,000, to remain available until expended, for the "Salaries and expenses (special foreign currency program)" account. The account is used for payment of USIA local program expenses in U.S.-owned foreign currencies in those countries where the Department of the Treasury determines that the supply of local currency is in excess of the normal requirements of the U.S. Government. In fiscal year 1978, the "excess currency" countries are: Burma, Guinea, India, Pakistan, and Egypt. It was estimated in the 1978 Budget that additional budgetary resources of $2,698,000 would be available for 1978 from prior year unobligated balances brought forward, recovery of prior year obligations, and anticipated reimbursements from other agencies. Thus, total obligations of $9,755,000 were planned for 1978 in the 1978 Budget.

1/ This account was the subject of a similar deferral during FY 1977.
* Revised from previous report.

It is now estimated that the 1978 beginning-of-year unobligated balance for this account, plus anticipated recoveries and reimbursements from other agencies, will amount to $3,842,000, or $1,144,000 more than the sum estimated in the 1978 Budget. The additional unobligated balances were realized primarily from program reductions in India and added recovery of prior year obligations. Other resource adjustments will further reduce requirements in 1978 by $509,000 resulting in a total program of $9,246,000. Since total availabilities of $10,899,000 in this account for 1978 exceed program requirements by $1,653,000, that amount has been deferred for the entire year. These funds will be available for use in 1979, reducing the need for new appropriations in 1979 accordingly.

These funds are being reserved in accordance with the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

None. The amount deferred could not be obligated before fiscal year 1979.

Outlay Effect

There is no outlay effect of this deferral, because the funds would not be obligated if made available.

[FR Doc. 78-2888 Filed 1-30-78; 2:43 pm]