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WEDNESDAY, DECEMBER 27, 1978

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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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List of Public Laws

NOTE: A complete listing of all public laws from the second session of the 95th Congress was published as Part II of the issue of December 4, 1978. (Price: 75 cents. Order by stock number 022-003-00960-4 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone 202-275-3030.)

The continuing listing will be resumed upon enactment of the first public law for the first session of the 96th Congress, which will convene on Monday, January 15, 1979.

Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grants programs which were published in the FEDERAL REGISTER during the previous week.

Rules Going Into Effect Today.

CSA—Grantee personnel management; policy and procedures on $18,000 per year salary limitation; effective 1-10-79. 59844; 12-22-78

[Originally published at 43 FR 57890; 12-11-78]

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HEW/PHS—National Council on Health Care Technology, nominations for committee positions; nominations by 1-15-79. 59442; 12-20-78

Justice/LEAA—National Institute of Law Enforcement and Criminal Justice; solicitation of proposals for research and evaluation methodology development 59555; 12-21-78

presidential documents

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Title 3—The President

Memorandum of December 22, 1978

Determination Under Section 202(b) of the Trade Act; Bolts, Nuts, and Large Screws of Iron or Steel

Memorandum for the Special Representative for Trade Negotiations

THE WHITE HOUSE,
Washington, December 22, 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), transmitted to me on November 3, 1978, concerning the results of its investigation of a resolution submitted by the Committee on Ways and Means of the House of Representatives. The USITC investigation pertained to lag screws or bolts, bolts (except mine-roof bolts) and bolts and their nuts imported in the same shipment, nuts, and screws having shanks or threads over 0.24 inch in diameter, all of the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, 646.63, and 646.79 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those considerations set forth in section 202(c) of the Trade Act of 1974, I have determined that import relief in the form of 15 percent tariffs on iron or steel bolts, nuts, and large screws is in the national economic interest and therefore will proclaim this remedy. Under this remedy, tariffs will remain at 15 percent for large screws (including lag screws), 15 percent plus the current tariffs of 0.2 and 0.1 cent per pound, respectively, for bolts and nuts for a three-year period after which time they will revert to their current levels (which range from less than one percent ad valorem equivalent to 12.5 percent).

As required by statute, this relief must be implemented within 15 days of this determination.

The USITC recommended that tariffs on iron or steel bolts, nuts, and large screws be increased to 20 percent and staged down to 10 percent (except for lag screws where the tariff would revert to its current level of 12.5 percent) over a five-year period.

I have determined that the USITC remedy would not be an appropriate remedy for a number of reasons. The USITC remedy would substantially increase the cost of ferrous fasteners to U.S. consumers, thereby adding to inflationary pressures in the U.S. economy. Due to its shorter duration (three years versus five years as recommended by the USITC) and smaller tariff increases (15 percent versus 20 percent), the remedy I will proclaim will have a smaller inflationary impact on the U.S. economy, while still providing meaningful and necessary relief to the domestic fastener industry.

Given the recent increases in the prices of imported fasteners, the USITC remedy would be overly restrictive on the foreign countries that supply fasteners to the U.S. market. The smaller tariff increases that I will proclaim will mitigate the adverse impact of providing import relief on foreign suppliers of fasteners and on U.S. international economic interests.

The tariff increase remedy I have chosen should enable many domestically produced fasteners to be competitively priced relative to imports. Thus, implementation of this remedy should prevent further erosion of domestic fastener production, shipments, and employment and allow domestic producers to increase their share of the U.S. fastener market by using currently idle capacity.

This determination is to be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 78-36239 Filed 12-26-78; 11:36 am]

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.

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y; Docket Nos. R-0132 and R-0151]

PART 225—BANK HOLDING COMPANIES

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Nonbank Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules.

SUMMARY: The Board has adopted two related amendments to its regulations. The first rule changes the procedures for bank holding companies to obtain permission to engage in nonbank activities or to acquire shares or assets of companies engaged in nonbank activities, and clarifies the procedures governing the commencement of nonbank activities outside the United States. The rule dispenses with the present requirement that bank holding companies publish notice in local newspapers, in or outside the United States, of their intention to commence such activities or to acquire such shares or assets, and provides instead that the Board will publish such notices in the FEDERAL REGISTER. This action is taken to simplify nonbank application procedures and to make them more easily administrable and less burdensome. In conjunction with this action the Board has also made some technical amendments to its Rules Regarding Delegation of Authority to conform its references to the new procedures.

EFFECTIVE DATE: These rules will affect applications accepted by Reserve Banks after December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Associate General Counsel (202/452-3274), or James McAfee, Senior Attorney (202/452-3707), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) Sections 225.4(b)(1) and (2) of the Board's Regulation Y (12 CFR 225.4(b)(1) and (2)) require that bank holding companies publish a notice of any proposal to engage in nonbank activities under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), or to acquire or retain shares or assets of companies engaged in such activities, in newspapers of general circulation in the communities to be served. Several years' experience with this requirement, which is intended to provide notice of proposed nonbank expansion by bank holding companies to interested persons, indicates the required newspaper notices have not accomplished their intended purpose to an extent that justifies the burden they impose on bank holding companies. For that reason, the Board on June 29, 1978, published notice and invited public comment on a proposal to substitute FEDERAL REGISTER notice for newspaper notice of these applications, and to shorten slightly the comment period and normal processing times for *de novo* applications. 43 FR 29,796 (1978).

Upon consideration of the comments received in response to that proposal, the Board has adopted this final rule. It appears that the newspaper requirement has been both expensive and time-consuming and has not resulted in any significant volume of public comment on nonbank applications. The requirement that all communities to be served be specifically identified has also proved to be difficult to administer. Some comments have urged broader publication of notices, but there is no evidence that such a requirement would appreciably expand public participation in the application process. Under the circumstances, the Board believes FEDERAL REGISTER publication will afford adequate notice to interested parties. Giving notice in a single publication, rather than in various local newspapers, may materially assist competitors and trade associations representing competitors in receiving more timely and reliable notice of nonbank applications. The Board also publishes a summary of applications it receives each week, and this publication (H.2) is available to interested parties without cost.

Some comments objected that the proposed 20-day comment period for *de novo* applications would be too short to be effective. In response to these comments the Board has restructured the application schedule originally proposed in order to permit a longer comment period for typical *de novo* applications without delaying unnecessarily action on applications that are not protested. In occasional cases it may be necessary to extend processing times for brief periods in order to accommodate the longer comment period, but it is expected that any delays that occur on that account will be offset by the time saved from the elimination of the requirement that bank holding companies publish newspaper notices and obtain proof of publication before filing their applications.

This rule eliminates the requirement that bank holding companies publish notices in communities to be served by their proposed nonbank activities. Bank holding companies should continue to describe their proposed activities clearly (not just by reference to a paragraph of Regulation Y), to identify the offices they intend to acquire or open, and to define specifically the geographic area they intend to begin serving within a reasonable time after approval of their application, normally one year, and they should include this information, together with any other information required by the Reserve Bank, in each application under these amended sections of Regulation Y. The opening of new nonbank offices not described in an application and the expansion into new geographic areas generally requires a new application by a bank holding company.

Some comments received were outside the scope of this rulemaking proposal. In particular, the Board considered that suggestions to eliminate notice and application requirements altogether for particular classes of nonbank acquisitions were not fairly noticed for comment. In addition, suggestions that particular Board forms be changed are being considered as those forms are periodically revised.

The rule as adopted is procedural in nature and relieves a restriction. For those reasons it is not subject to the

provisions of 5 U.S.C. 553 relating to deferred effective date.

(2) On April 7, 1978, the Board published notice and invited comment on a proposal to eliminate the requirement of local newspaper notices in connection with *de novo* nonbank expansion outside the United States by bank holding companies. 43 FR 16,190 (1978). All comments received favored adoption of this amendment, but the proposal has been made moot by the Board's elimination of newspaper notices in connection with *de novo* nonbank applications.

A modified form of the proposed amendment has been adopted solely to clarify the fact that bank holding companies and their domestic nonbank subsidiaries may engage directly in approved nonbank activities outside the United States and may open offices there by complying with the procedures of § 225.4(b)(1) of Regulation Y. This procedure does not apply to the foreign direct activities of foreign bank holding companies or the foreign operations of bank holding companies conducted through foreign subsidiaries, matters governed by other provisions of Regulation Y. This clarifying amendment is an interpretative rule relating to agency procedure and is not subject to the provisions of 5 U.S.C. 553 relating to deferred effective date.

(3) In conjunction with this amendment to Regulation Y, the Board has also amended § 265.2(f)(20) of its Rules Regarding Delegation of Authority (12 CFR 265.2(f)(2)) for the sole purpose of conforming references in that section to the changes made in Regulation Y. This amendment has been adopted without following the provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date because the change involved is procedural in nature and does not constitute a substantive rule subject to the requirements of that section.

(4) These actions are taken pursuant to the Board's authority under sections 4(c)(8) and 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8) and 1844(b)), and section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)).

§ 225.4 [Amended]

1. Effective January 1, 1979, as to applications accepted by any Federal Reserve Bank on or after that date, § 225.4 of the Board's Regulation Y (12 CFR 225.4) is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

* * * * *

(b)(1) *De novo entry.* A bank holding company may engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in activities described in paragraph (a) of this section, 45 days after the company has furnished its Reserve Bank a notice of the proposal (in substantially the same form as F.R. Y-4A), unless the company is notified to the contrary within that time or unless it is permitted to consummate the transaction at an earlier date on the basis of exigent circumstances of a particular case. The Board will publish in the FEDERAL REGISTER notice of any such proposal and will give interested persons an opportunity to express their views on the proposal to the Reserve Bank. If adverse comments of a substantive nature are received within the time specified in the notice,[12] or if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal should be processed in accordance with the procedures of subparagraph (2) of this paragraph. With respect to activities to be engaged in outside the United States, the procedures of this subparagraph apply solely to activities to be engaged in directly by a domestic bank holding company or by domestic nonbank subsidiaries of any bank holding company. Paragraphs (f) and (g) of this section govern other international operations of bank holding companies.

(2) *Acquisition of going concern.* A bank holding company may apply to the Board to acquire or retain the assets of or shares in a company engaged solely in activities described in paragraph (a) of this section by filing an application with its Reserve Bank (Form F.R. Y-4). The Board will publish in the FEDERAL REGISTER a notice of any such application and will give interested persons an opportunity to express their views (including, where appropriate, by means of a hearing) on the question whether performance of the activity proposed by the holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition 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.

§ 265.2 [Amended]

2. Effective January 1, 1979, as to applications accepted by any Federal Reserve Bank on or after that date, § 265.2 of the Board's Rules Regarding Delegation of Authority (12 CFR § 265.2) is amended by revising paragraph (f)(20) of that section to read as follows:

* * * * *

(f) *Each Federal Reserve Bank* is authorized, as to member banks or other indicated organizations headquartered in its district:

* * * * *

(20) Under § 225.4(b)(1) of this chapter (Regulation Y), and subject to § 265.3 if a person submitting adverse comments that the Reserve Bank has decided are not substantive files a petition for review by the Board of that decision,

(i) To permit a bank holding company to engage *de novo* in activities specified in § 225.4(a) (or retain shares in a company established *de novo* and engaging in such activities) if its evaluation of the considerations specified in section 4(c)(8) of the Bank Holding Company Act leads it to conclude that the proposal can reasonably be expected to produce benefits to the public.

(ii) To notify a bank holding company that the proposal should not be consummated until specifically authorized by the Reserve Bank or by the Board or that the proposal should be processed in accordance with the procedures of § 225.4(b)(2).

(iii) To permit a bank holding company to consummate the proposal before the expiration of the 45-day period referred to in § 225.4(b)(1), because exigent circumstances justify consummation at an earlier time.

Board of Governors of the Federal Reserve System, December 18, 1973.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35937 Filed 12-26-78; 8:45 am]

[12] If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

[6210-01-M]

[Reg. Z; FC-0151]

PART 226—TRUTH IN LENDING

Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0151 of Regulation Z regarding the disclosures required in connection with certain interim student credit transactions. The agency is taking this action after reviewing the comments received upon republication of the interpretation.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3867.

SUPPLEMENTARY INFORMATION: (1) In FC-0151 the staff set forth criteria for determining whether loan or credit sale disclosures are required in connection with a federally insured program providing credit to students for educational purposes. The staff expressed the view that if a student has the option of receiving funds directly which may be used as the student sees fit, loan disclosures would be appropriate.

(2) FC-0151 was published on July 28, 1978, with an effective date of August 28, 1978. In response to a request for public comment submitted in accordance with § 226.1(d), the effective date was suspended and the interpretation was republished for public comment on September 11, 1978.

(3) Both the request for republication and the one comment received asserted that credit sale disclosures in connection with extensions of credit for educational purposes would be confusing to students who received the credit and would increase the cost of administering the credit program because of the necessity of maintaining stocks of disclosure forms for both credit sales and loans. It was indicated, however, that in connection with certain of such transactions students are not afforded the opportunity to obtain funds directly. Rather, credits are made to a student's account with the educational institution which is extending the credit, and the student receives goods and services from the institution. It was argued that such a procedure is necessary to protect against fraud and to assure that the credit extended is being used for educational purposes.

After fully considering the arguments contained in the request for republication and the comment received, the staff continues to believe that FC-0151 correctly interprets Regulation Z. The staff does not believe that providing loan disclosures for a credit transaction in which a student receives goods and/or services from the educational institution extending the credit would comport with the regulation. Rather, where a student receives goods and/or services on credit, as opposed to funds the use of which the student controls, the transaction would constitute a credit sale and credit sale disclosures would be necessary.

(4) Official Staff Interpretation FC-0151, which follows, remains unchanged, with the exception of language pertaining to its effective date, from the version published in the FEDERAL REGISTER on July 28, 1978. It is effective immediately.

(5) Authority: 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0151

§ 226.8(b) Under federally insured program providing credit to students for educational purposes, if student has option of receiving funds directly which may be used as the student sees fit, loan disclosures are appropriate.

§ 226.8(d) Under federally insured program providing credit to students for educational purposes, if student has option of receiving funds directly which may be used as the student sees fit, loan disclosures are appropriate.

DECEMBER 19, 1978.

This is in response to your letter of * * *, in which you request an official staff interpretation of Regulation Z regarding the Truth in Lending disclosures which must be made in connection with certain interim student credit transactions made pursuant to a federally insured program. The staff believes that the primary issue which you raise is appropriate for an official response. Other questions asked in your letter will be addressed in a separate, unofficial staff interpretation of the regulation.

The program with which you are concerned consists of a fund from which extensions of credit are made by participating colleges and universities to students who meet the financial need criteria established by the Higher Education Act of 1965. Use of funds received under the program is restricted to expenses related to attendance at the institution which advances the funds, and the student must sign an affidavit affirming that the funds will be used only for such expenses.

Under the program, funds may be disbursed directly to the student or a credit may be made to the student's account at the educational institution. You are concerned that if a credit is made to a student's account with the institution and the student simply receives goods and services (e.g., tuition, room, board, books) from the institution, the transaction could be viewed as a credit sale rather than a loan, and credit sale disclosures rather than loan disclosures would be required under Regulation Z.

In the staff's opinion the answer to whether loan or credit sale disclosures are required in connection with the program you describe is dependent upon the ability of students participating in the program to obtain funds (e.g., cash or a check) from the institution if they so desire. As long as a student has the option of receiving funds directly which may be used as the student sees fit, the staff believes that the applicable loan disclosures under §§ 226.8(b) and (d) of Regulation Z would be appropriate. Furthermore, even though use of the loan proceeds is restricted to expenses related to attendance or continued attendance at the institution which makes the loan, as long as use of the funds is not restricted to the purchase of *particular* goods or services *from the institution* the staff feels that loan disclosures would be proper.

This is an official staff interpretation of Regulation Z, issued after republication for comment in accordance with § 226.1(d)(2) of the regulation. It will become effective December 28, 1978.

We also note that your client may be subject to the laws and regulations of the State of Maine which has been granted an exemption from the applicable provisions of Regulation Z. Therefore, you may wish to contact Mr. Harry Giddinge, Acting Superintendent, Bureau of Consumer Protection, Department of Business Regulation, State House, Augusta, Maine 04330, for his views on the issue addressed in this letter.

Sincerely,

NATHANIEL D. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35960 Filed 12-26-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0152]

PART 226—TRUTH IN LENDING

Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0152 of Regulation Z regarding methods by which creditors may disclose a hypothetical immediate rate increase in variable rate transactions. The agency is taking this action after reviewing the comments received upon republication of the interpretation.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202) 452-3867.

SUPPLEMENTARY INFORMATION: (1) In FC-0152 the staff discussed the requirement of § 226.8(b)(8) of Regulation Z that, with regard to variable rate transactions, creditors disclose the impact on the number or amount of payments of a hypothetical immediate rate increase of one quarter of one per cent. The staff expressed the view that the hypothetical examples may be based on increases in the contract interest rate rather than increases in the annual percentage rate. The staff further stated that although the required examples must assume that the rate increase is immediate and in the specified amount, other examples showing the effects of rate changes at different times or in different

amounts may also be provided as additional information.

(2) FC-0152 was published on August 8, 1978, with an effective date of September 5, 1978. In response to a request for public comment submitted in accordance with § 226.1(d), the effective date was suspended and the interpretation was republished for public comment on September 22, 1978.

(3) The request for reconsideration raised four objections to the interpretation. These objections and the staff's responses to them are as follows:

(a) That the hypothetical examples should not be based on the simple interest rate because changes in interest rates may not always be the sole cause for annual percentage rate changes. Although interest is only one component of the finance charge, it is generally the largest component; furthermore, subsequent annual percentage rate increases are almost always caused by interest rate increases. Therefore the staff continues to believe that the results of changing the simple contract interest rate are almost equivalent to the results of changing the annual percentage rate and provides the reasonable estimate called for by the regulation.

(b) That it is unclear whether the interpretation applies only to mortgages or to all variable rate transactions. The interpretation deals with the requirements of subparagraphs (iii) and (iv) of § 226.8(b)(8) which, by the terms of the regulation itself, apply only to "transactions in which a security interest is taken in real property used or expected to be used as the customer's dwelling."

(c) That it is unclear whether the interpretation permits use of the term "interest rate" in the disclosures or simply permits calculations to be made based on interest rates. The staff believes that the disclosures should be phrased in terms of interest rates since it would be inaccurate to have the interest rate used in calculations, yet allow the results to be stated as if they represented changes in the annual percentage rate. Although the original interpretation included language indicating that disclosures should be made in terms of interest rates, in order to make that point clearer, the final sentence of paragraph 5 has been revised to substitute the words "in terms of" for the word "as."

(d) That inclusion of hypothetical rate changes other than the one mandated by § 226.8(b)(8) may constitute a *per se* violation of the regulation's provision concerning additional information. The staff believes that examples in addition to those required by the regulation can be presented in a fashion that is not misleading, confusing or contradictory, and that inclusion of them is therefore permissible.

(4) Official Staff Interpretation FC-0152, as revised, is effective immediately.

(5) Authority: 15 U.S.C. 1640(f).

12 CFR, Part 226, FC-0152

§ 226.8(b)(8) Variable rate hypothetical examples may be based on increases in contract interest rate rather than in APR (partially rescinds Letter 1232). Variable rate hypothetical examples must assume that rate increase is immediate and in specified amount; examples showing changes in different amounts or at different times may also be given as additional information.

DECEMBER 19, 1978.

This will reply to your letter of * * *, in which you request clarification of Public Information Letter 1232, concerning the provisions of § 226.8(b)(8) with regard to variable rate mortgages. You ask staff to elaborate on methods creditors could use to determine the increased number of payments or the increased payment amount which would result from a hypothetical immediate increase in the annual percentage rate, in order to make the disclosures called for by § 226.(8)b)(8) (iii) and (iv). Specifically, you ask whether Appendix B to Volume I of the Annual Percentage Rate Tables published by the Board of Governors can be used to make such calculations.

Use of the Board's tables is not required in order to comply with the regulation, but the tables do provide fairly simple methods for determining much of the information required to be disclosed under the regulation. Appendix B to Volume I of the tables describes a method of determining the amount of the finance charge and the amount of the level payment in cases where the annual percentage rate is known in a single advance transaction involving equal payments and equal payment periods. These formulas can be used to compute the information called for by § 226.8(b)(8)(iii).

For example, assume a loan with an amount financed of $40,000, to be repaid in 360 monthly instalments, with an annual percentage rate of 8 per cent. From the annual percentage rate tables we can determine that the finance charge per $100 of amount financed is $164.16. The total finance charge for this loan is $65,664 ($164.16 × 400 = $65,664) and the level monthly payment would be $293.51 (($65,664 + $40,000) divided by 360). If we assume a hypothetical immediate increase of one quarter of one per cent in the rate, as called for in § 226.8(b)(8)(iii), we can determine from the tables that the finance charge per $100 of amount financed at an annual percentage rate of 8¼ per cent is $170.46. The total finance charge under this assumption would be $68,184 ($170.46 × 400 = $68,184). The level monthly payment amount that would be required to amortize this hypothetically increased obligation would be $300.51 (($68,184 + $40,000) divided by 360 = $300.51), and this figure may be disclosed pursuant to § 226.8(b)(8)(iii). Alternatively, the increase in the payment amount may be expressed as the difference between $300.51 and $293.51, or $7.

Again, we would point out that use of the Board's tables and the calculation methods set out therein is not required in making Truth in Lending disclosures. You may, however, find the method outlined in this letter of some assistance in determining the information required to be disclosed pursuant to § 226.8(b)(8)(iii). You should note that this method cannot be used to determine the information required to be disclosed pursuant to § 226.8(b)(8)(iv); use of Volume I of the Board's Annual Percentage Rate Tables requires that you know the number of payments involved, and that is the information that must be calculated.

This information can, however, be estimated in another way. Changes in the annual percentage rate in variable rate mortgages are generally caused by changes in the simple contract interest rate. Since the results from changing the simple contract interest rate on most long-term mortgages are almost equivalent to the results from changing the annual percentage rate, and since § 226.8(b)(8)(iv) calls for a statement of the *estimated* increase in the number of payments, it is staff's opinion that a creditor may use tables based on simple interest rates to calculate the increased number of payments that would result if the interest rate were increased by one quarter of one percentage point. This approach yields an estimated figure that may be disclosed pursuant to § 226.8(b)(8)(iv). This approach may also be used, as an alternative to that outlined above, to determine the information called for by § 226.8(b)(8)(iii). To the extent that Public Information Letter 1232 states that the disclosures required by § 226.8(b)(8) (iii) and (iv) may never be made by reference to the contract interest rate, it is hereby rescinded. If this calculation approach is taken, the disclosures should be expressed in terms of the effects of a one quarter of one per cent increase in the interest rate.

Staff would like to point out that the alternatives expressed in this letter do not prohibit a creditor from basing its calculation on an increase in the annual percentage rate itself, which, we understand, is a calculation that can be made relatively simply on inexpensive calculators that are general available on the market. The procedures outlined in this letter are merely viewed by staff as reasonable alternatives.

You point out in your letter that lenders frequently do not have the authority under applicable statutes or the underlying contract to increase rates immediately. Rather, you believe that most lenders are required to wait a specified period of time before effecting a change. Moreover, you point out that changes in the rate may often be in increments less than the hypothetical one quarter of one per cent mentioned in § 226.8(b)(8) (iii) and (iv). You ask, therefore, whether creditors may provide additional examples of rate changes pursuant to § 226.6(c). We assume that what you wish to disclose are examples of the effect of rate changes occurring at a time later than consummation of the loan as well as rate changes greater than or less than one quarter of one per cent.

The disclosures called for by § 226.8(b)(8) (iii) and (iv) must be made on the assumptions (1) that the rate increase takes effect immediately upon consummation, and (2) that the increase is in a certain amount, i.e., one quarter of one per cent. Although creditors may not effect an increase in that particular amount or at that particular time, the regulation requires that disclosures be made on these assumptions in order to ensure uniformity among lenders and to fa-

cilitate comparisons. If a creditor wishes to provide further examples of the effect of a rate change in a different amount or at a different time in the loan term, this may be done as additional information pursuant to § 226.6(c), provided the additional examples are not stated so as to mislead or confuse the customer or contradict, obscure, or detract attention from the required information.

This is an official staff interpretation of Regulation Z, issued after republication for comment in accordance with § 226.1(d)(2) of the regulation. It will become effective December 27, 1978.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35961 Filed 12-26-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0149]

PART 226—TRUTH IN LENDING

Final Official Staff Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Official Staff Interpretation.

SUMMARY: The Board is publishing in final form official staff interpretation FC-0149 of Regulation Z regarding § 226.7(a). The agency is taking this action after reviewing the comments received upon republication of the interpretation.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Plows, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667.

SUPPLEMENTARY INFORMATION: (1) In FC-0149, the Board staff stated that "single written statement", as that phrase is used in § 226.7(a) of Regulation Z does not mean that initial open end disclosures must be placed on the same side of a single sheet of paper.

(2) FC-0149 was published on June 20, 1978, with an effective date of July 20, 1978. In response to a request for public comment submitted in accordance with § 226.1(d)(3) of Regulation Z, the effective date was suspended and the interpretation was republished for public comment on August 29, 1978.

(3) The request for republication argued that initial disclosures should be placed on one side of a sheet of paper. This position was based primarily on the argument that adoption of FC-0149 might result in confusing and inconspicuous disclosures, especially since a notice similar to that mandated by §§ 226.7(a)(9), 226.7(c), and 226.801 was not required by the interpretation.

The vast majority of the 25 comments received did not agree with the arguments detailed in the request for republication and, instead, supported the interpretation as originally published. Several commenters pointed to the regulatory language difference between §§ 226.7(a) and 226.8(a), the difference in the type of disclosures contemplated by those two regulatory sections (i.e. narrative as opposed to numerical), the advent of plain English laws, and the institution of more elaborate open end credit plans as support for their position that placement of the disclosures on one side of a sheet of paper would result in a lengthy, fine-print disclosure statement. Upon reviewing the arguments contained in the request for republication, as well as the comments received, the staff continues to believe that FC-0149 correctly interprets § 226.7(a) of Regulation Z.

(4) Official staff interpretation FC-0149, which follows, remains unchanged, with the exception of language pertaining to its effective date, from the version published in the FEDERAL REGISTER on June 20, 1978. It is effective immediately.

(5) Authority: 15 U.S.C. 1640(f)

12 CFR Part 226, FC-0149

§ 226.7(a) "Single written statement" does not mean that initial open end disclosures must be placed on the same side of a single sheet of paper.

DECEMBER 19, 1978.

This responds to your . . . letters requesting official staff interpretations of §§ 226.4 and 226.7 of Regulation Z. This letter answers your final question; your other questions will be dealt with in a separate letter.

You ask whether the initial open end credit disclosures required by § 226.7(a) can be set forth on two sides of a single sheet of paper. Section 226.7(a) provides that disclosures be made on a "single written statement." You note that, in contrast to that section, § 226.8(a), relating to credit other than open end, expressly requires that disclosures be made "on the same side of the page" or on "one side of a separate statement." Thus, you argue that a creditor would be permitted under § 226.7(a) to place the required disclosures on the front and the reverse sides of a page.

In the staff's opinion, the language "single written statement" does not mean that the initial open end credit disclosures required by § 226.7(a) must be placed on the same side of a single sheet of paper. Consequently, a creditor would not be prohibited from using the front and the reverse of "a single written statement."

This is an official staff interpretation of Regulation Z, issued after republication for comment in accordance with § 226.1(d)(2) of the regulation. It will become effective December 28, 1978.

I note that you may represent creditors subject to the laws of the State of Connecticut. Since Connecticut has been granted an exemption from the applicable provisions of the Truth in Lending Act, you may wish to contact the office of Mr. David H. Neiditz, Bank Commissioner of the State of Connecticut, for his views.

I trust that these official comments satisfactorily answer your inquiry. If you have other questions in the future, please feel free to contact Mr. Edward F. Kipfatuhl, Manager, Consumer Affairs and Regulations Department, at the Federal Reserve Bank of New York, New York, New York 10045.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35959 Filed 12-26-78; 8:45 am]

[6210-01-M]

[Docket No. R-0191]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Organizational Changes

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to reflect recent organizational changes, the Secretary of the Board has approved a technical and conforming amendment to the Board's Rules Regarding Delegation of Authority.

EFFECTIVE DATE: October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3257).

SUPPLEMENTARY INFORMATION: The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date are not followed in connection with the adoption of the amendment, because the change involved is procedural in nature and does not constitute substantive rules subject to the requirements of that section.

Effective October 17, 1978, § 265.2(j) is deleted and § 265.2(d) is amended as follows:

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

* * * * *

(d) The Staff Director for Federal Reserve Bank Activities or the Staff Director's designee is authorized:

* * * * *

(3) Under the provisions of the third paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 413), to apportion credit among the Reserve Bank for unfit notes that are destroyed, giving consideration to the net number of notes of each denomination that were issued by each Reserve Bank during the preceding calendar year.

(4) Under the provision of §§ 216.5(b), 216.5(d), and 216.6 of this chapter (Regulation P), with respect to Federal Reserve Banks and branches.

(i) To require reports on security devices;

(ii) To require special reports; and

(iii) To determine in view of the provisions of §§ 216.3 and 216.4 whether security devices and procedures are deficient in meeting the requirements of Part 216, to determine whether such requirements should be varied in the circumstances of a particular banking office, and to require corrective action.

(5) To approve or disapprove supplementary budget requests and special incentive programs to improve operations or reduce costs, provided that the Board has previously approved the budget of the requesting Reserve Bank and provided that the supplemental request adheres to the Board's general expense guidelines and such guidelines as the Board may have imposed in approving the Reserve Bank's budget. *And provided,* That the amount approved may not exceed in any budgetary year one hundred thousand dollars ($100,000) for each Reserve Bank and seven hundred fifty thousand dollars ($750,000) for all Reserve banks in the System.

* * * * *

Board of Governors of the Federal Reserve System, November 30, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-35958 Filed 12-26-78; 8:45 am]

[6714-01-M]

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Avoiding Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: These provisions amend FDIC regulations relating to employee conduct and are designed to avoid conflicts of interest or the appearance of conflicts. The amendments (1) prohibit senior policy makers from obtaining certain credit; (2) establish guidelines concerning ownership of bank-related securities; (3) eliminate disclosure requirements for certain financial interests owned by an employee's spouse or dependent; (4) greatly increase the number of employees required to file disclosure statements; (5) establish formal guidelines for processing these statements; and (6) unite in one regulation the various disclosure systems employed by the FDIC.

EFFECTIVE DATE: December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Rosen, Attorney, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429 (202-389-4637).

SUPPLEMENTARY INFORMATION: On June 30, 1978, (43 FR 28518) FDIC published these amendments as a proposed regulation, inviting public comment on or before July 31, 1978. Due to delays in distribution, many FDIC field employees did not receive the proposal until near the close of the comment period. Since the proposal impacted directly on employees, and their fullest participation in the rulemaking was desired, the comment period was extended until September 15, 1978 (43 FR 36461).

Based on comments received, staff review of those comments, and the recent enactment of the "Ethics in Government Act of 1978", several changes have been made. Section 336.735-11(b)(5) introduces new loan prohibitions for regional counsel and executive personnel. Paragraph (iv) has been revised in the final regulation to deal with obligations which these employees obtained prior to the new prohibition. Where it can be done without undue financial hardship, the obligation should be removed and other suitable arrangements made. However, in some cases employees may have obtained loans years ago at more favorable rates. In such cases, the Ethics Counselor may grant permission to repay the obligation according to its existing terms (without renegotiation), provided the employee is disqualified from any decisions which may directly or indirectly affect that lender.

Under previous regulations, ownership of insured bank stock had to be approved by the Board of Directors. Under these new regulations, the Ethics Counselor will be making these determinations. Footnote "2" to § 336.735-13 makes clear that employees who have obtained Board approval of ownership of bank stock need not obtain additional approval from the Ethics Counselor.

Section 336.735-13(a)(2) establishes the basic rule that employees may not purchase directly or indirectly any securities of an insured bank or its affiliates while employed by the Corporation. The final regulation varies from the proposal by providing one very limited exception to this general rule. Exercising preemptive rights is a purchase of securities. However, preemptive rights are designed to preserve a status quo and to prevent a "squeezing out" by other shareholders, and generally are not used to increase one's proportionate interest. In very unusual cases, an employee with an ownership interest that has already been approved may be permitted to exercise preemptive rights. This permission would have to be granted by the FDIC Board of Directors.

Under the proposed regulation, the Ethics Counselor could permit an employee to retain securities of an insured bank or affiliate if they were obtained prior to employment or through circumstances beyond his or her control (such as inheritance). Since only bank stock required approval under previous regulations, employees may have obtained other securities in a manner permitted at the time of acquisition but prohibited by the proposed rule. Accordingly, the final rule adds a new paragraph (iii) in § 336.735-13(a)(3) to permit employees, with the consent of the Ethics Counselor, to retain interests which were not prohibited by prior regulations, provided the employee is disqualified from participating in any matters relating to the interest.

Previous FDIC policy required examiners who obtained loans from banks not examined by FDIC (national banks and other member banks of the Federal Reserve System), which subsequent to the date of the loan became affiliated through merger or acquisition with banks examined by FDIC, to remove the loan. Since the loan was permissible when obtained, the Ethics Counselor may now, under § 336.735-13(a)(7), permit an examiner

to retain the loan when refinancing would cause undue financial hardship. In such cases, the examiner will pay the loan according to its existing terms, without renegotiation, and be disqualified from examining any affiliates of the lender. Where a loan can be refinanced without undue financial hardship, the Ethics Counselor will continue to require removal.

Sections 336.735-2, 336.735-31a, 336.735-32, 336.735-35, and 336.735-40 are amended to reconcile FDIC's policy on disclosure with the requirements imposed by the new "Ethics in Government Act of 1978". Thus, employees paid at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16 shall file disclosure statements required under the Act rather than statements of employment and financial interests required under Part 336 of FDIC's regulations. Furthermore, an employee under Part 336 is no longer required to disclose all employment and financial interests of "members of his or her household". Instead, an employee is required to disclose only those financial interests of his or her spouse and "dependent" children which are derived in some way from his or her resources, or from which he or she receives or expects to receive economic or financial benefit. This parallels the approach taken by the "Ethics in Government Act of 1978".

Section 336.735-41(a) provides that the Ethics Counselor may be assisted in his or her review of annual disclosure forms by Deputy Ethics Counselors. Several employees raised questions about the confidentiality of the forms. FDIC will treat these disclosures as confidential. To help ensure confidentiality, a suggestion by the Washington Office Employee Advisory Council to limit the number of Deputy Ethics Counselors assisting in the review to no more than two, has been incorporated in this section.

The remaining changes from the proposed regulation are technical adjustments, not requiring additional comment. A delayed effective date is being dispensed with because the annual filing is already overdue, and it is in the public interest to proceed as quickly as possible with implementation of this disclosure system. Accordingly, Part 336 of 12 CFR is amended as set forth below.

By Order of the Board of Directors, December 20, 1978.)

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

1. In § 336.735-2, revise paragraph (d) and add paragraphs (e) and (f) as follows:

§ 336.735-2 Definitions.

* * * * *

(d) "Special Corporation employee" means any employee serving with or without compensation for up to 130 days during any period of 365 days on a full-time or intermittent basis.

(e) "Affiliate" shall have the meaning described in 12 U.S.C. 1828(j).

(f) "Dependent child" of an employee means a son, a daughter, a stepson, or a stepdaughter of an employee who is either unmarried and under age 21 and is living in the employee's household, or who received over half of his or her support from the employee in the preceding calendar year.

§ 336.735-3 [Amended]

2. In § 336.735-3, in paragraph (b) substitute "Office of Personnel Management" for "Personnel Division"; amend paragraph (c) by changing "A Counselor" to "An Ethics Counselor", "Deputy Counselors" to "Deputy Ethics Counselors", and "Personnel Division" to "Office of Personnel Management"; and in paragraph (d) change "Counselor" to "Ethics Counselor".

3. In § 336.735-11, retitle and revise paragraph (b)(5) to read as follows:

§ 336.735-11 Gifts, entertainment, favors, and loans.

* * * * *

(b) * * *

(5) To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans, except that:

(i) A Corporation examiner or assistant examiner may not accept any gratuity from, or accept or become obligated on any extension of credit (including credit extended through the use of a credit card) by an insured State nonmember bank or its affiliate.

(ii) An attorney assigned to one of the Corporation's Regional Offices may not accept any gratuity from, or accept or become obligated on an extension of credit by an insured State nonmember bank or its affiliate whose principal place of business is within the region in which the attorney is employed.

(iii) An assistant or deputy to the Board of Directors or its individual members, Division or Office heads who report directly to the Board of Directors or the individual members thereof, and the holder or holders of the position immediately subordinate to these Division or Office heads may not accept any gratuity from, or accept or become obligated on an extension of credit by an insured State nonmember bank or its affiliate.[1]

(iv) The prohibitions described in subdivisions (ii) and (iii) of this subparagraph shall not apply to credit extended through the use of a credit card: *Provided,* That the credit card is not issued by an insured State nonmember bank. An employee with an obligation now prohibited by subdivisions (ii) or (iii) of this subparagraph, which was not prohibited at the time of acquisition, will remove the obligation unless the Ethics Counselor determines that removal would be an undue hardship for the employee. In such cases, the obligation will be paid according to its existing terms without renegotiation, and the employee will be disqualified under § 336.735-13a from participating in any decision having an economic impact on the lender, or any insured State nonmember bank which is affiliated with the lender.

* * * * *

4. Retitle and revise § 336.735-13 to read as follows:

§ 336.735-13 Financial interests and obligations.

(a) No employee shall have a direct or indirect financial interest or obligation that conflicts, or appears to conflict, with the employee's duties and responsibilities to the Corporation. To avoid conflict or the appearance of conflict:

(1) No employee may own or control, directly or indirectly, any securities of an insured bank or its affiliates without full disclosure to and the approval of the Ethics Counselor as set forth in subparagraph (3) of this paragraph.[2] Disclosures will be made in accordance with § 336.735-13a(b).

(2) No employee may purchase, directly or indirectly, any securities of an insured bank or its affiliates while employed by the Corporation, except that an employee may exercise preemptive rights in approved interests upon obtaining the consent of the Board of Directors.

(3) The Ethics Counselor may grant an employee approval to retain a direct or indirect interest in the securities of an insured bank or its affiliates if the employee's interest is considered so small as to not compromise the employee's integrity and judgment and:

(i) The interest was obtained before employment with the Corporation; or

[1] This paragraph includes an individual holding any of the positions on an "acting" or "temporary" basis.

[2] Under previous regulations, the Board of Directors approved direct or indirect ownership of stock in insured banks. Employees who have received Board approval need not obtain the approval of the Ethics Counselor to retain their interest.

(ii) The interest was obtained through circumstances beyond the employee's control, such as, but not limited to, inheritance, gift, or the acquisition by an insured bank or its affiliate of a non-bank entity in which the employee owned securities; or

(iii) The interest was obtained at a time when previous regulations or policy did not prohibit such interest.

(4) Any employee whose ownership or controlling interest has been approved by the Ethics Counselor under subparagraph (3) of this paragraph, or by the Board of Directors, will be disqualified under § 336.735-13a from participating in any decision which could have an economic impact on the bank in question, or any affiliate thereof.

(5) In cases where the Ethics Counselor's approval is not granted, the employee will be required to divest [3] himself or herself of the interest within a reasonable period of time. The time period will be long enough to ensure that the employee does not suffer undue financial hardship as a result of the divestiture. An employee may also obtain review of a denial of approval by the Ethics Counselor prior to any divestiture by requesting such review within 15 days of the denial. This review shall be made by the Chairman of the Board of Directors.

(6) No employee may engage, directly or indirectly, in a financial transaction where information regarding the transaction has been obtained primarily through his or her Corporation employment, unless the information is also in the public domain.

(7) In the event a merger, acquisition, or other transaction results in the existence of a credit extension prohibited by § 336.735-11(b)(5)(i), (ii), or (iii), the obligation will be removed unless the Ethics Counselor determines that removal would be an undue hardship on the employee. In such cases, the obligation will be paid according to its existing terms, without any renegotiation, and the employee will be disqualified under § 336.735-13a from participating in decisions having an economic impact on the lender, or any affiliate of the lender. If the employee is an examiner or assistant examiner, he or she will not be permitted to examine the lender or an insured State nonmember bank affiliated with the lender.

(8) An examiner or assistant examiner may become obligated on any extension of credit (including credit extended through use of a credit card) by a bank other than an insured State nonmember bank if—

(i) The lending bank is not affiliated with an insured State nonmember bank; and

(ii) Full disclosure of the obligation and the date the obligation is fully repaid is made in writing to the Regional Director on an official Corporation form designated for this purpose. The Regional Director shall also be notified of the repayment of the obligation. In the case of a bank credit card, these disclosure requirements are met if the Regional Director is notified in writing of the date of receipt of the card, the name of the bank acting as principal, and the date of the discontinuance if the card is destroyed or returned to the bank. Regional Directors will forward copies of the disclosures by examiners or assistant examiners to the Ethics Counselor.

(b) This § 336.735-13 does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Corporation so long as the specific activity is not prohibited by law, the Executive Order, this § 336.735-13 or other provisions in this Part 336.

(c) Despite the restrictions in § 336.735-13(a), an employee may own shares in a publicly held mutual fund whose investments are primarily in the securities of nonfinancial corporations. This indirect financial interest in securities of a bank or other financial institution is considered too remote and inconsequential to affect the integrity of the employee's services.

5. Add a new § 336.735-13a to read:

§ 336.735-13a Disqualification from decision-making.

(a) An employee with an interest (other than an insured deposit) in a bank or other financial institution which is not prohibited by law, or an interest in a bank, financial institution, or other entity which is or may be affected by a particular Corporation decision, will report the interest and be disqualified from participating in any such decision.

(b) Reports of interests required by this section shall be made as follows:

(1) Any employee who files an annual supplementary statement as described in § 336.735-34, and obtains a previously unreported interest subsequent to that filing, will report the interest within 30 days of the acquisition of the interest.

(2) Any employee not required to file an annual supplementary statement will report an interest within 30 days of his or her entrance on duty, or within 30 days of the acquistion of the interest, if acquired subsequent to his or her employment.

(3) Reports will be made on an official Corporation form designated for this purpose.

6. In § 336.735-17, revise paragraph (b) to read:

§ 336.735-17 Gambling, betting and lotteries.

* * * * *

(b) Related to internal solicitations approved by the Corporation for organizational support or welfare funds for employees, or similar Corporation-approved activities.

§ 336.735-18 [Amended]

7. In § 336.735-18, change the last word of the section title from "Government" to "Corporation."

§ 336.735-19 [Amended]

8. In § 336.735-19, add the phrase "which prescribes general standards of conduct." to the end of paragraph (a); delete and reserve paragraph (e); and add a new paragraph (t) to read "The prohibition against accepting excessive honorariums (2 U.S.C. 441i)."

9. Retitle and revise § 336.735-31 as follows:

§ 336.735-31 Criteria to determine who must submit statements.

Except as provided in § 336.735-32, statements of employment and financial interest shall be filed by the following employees—

(a) Those paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Positions which meet the following criteria:

(1) Positions the incumbent of which is responsible for making a Corporation decision or taking a Corporation action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing a private or other non-Federal enterprise; or

(iv) Other activities where the decision or action has an economic impact on the interests of banks or any other non-Federal enterprise.

(2) Positions which the Corporation determines require the incumbent to report employment and financial interest in order to carry out the purposes of law, Executive Order, this part, or any other Corporation regulations.

(3) Approval of the Civil Service Commission will be obtained before requiring the incumbent of a position below the GS-13 level to file a statement under this section.

10. Retitle and revise § 336.735-31a as follows:

[3] For purposes of this paragraph, a blind trust may be a form of divestiture. However, the blind trustee must not be related by blood or marriage to the employee and must not be an insured bank or an affiliate of an insured bank.

§ 336.735-31a Corporation employees required to file statements.

(a) The Corporation has determined that all positions enumerated in paragraphs (b) and (c) of this section meet the criteria described in § 336.735-31. Holders of these positions are required to file statements of employment and financial interest, unless § 336.735-32 is applicable to them.

(b) The Ethics Counselor shall file a statement with the Chairman of the Board of Directors.

(c) The following employees shall file statements with the Ethics Counselor:

(1) Assistants to the Board of Directors;

(2) Deputies or Assistants to the individual Directors;

(3) Division and Office Heads who report directly to the Board of Directors or its individual members;

(4) The holder or holders of the position immediately subordinate to a Division or Office Head covered subparagraph (3) (whether designated as Deputy, Assistant or any other title);

(5) Regional Directors;

(6) Assistant Regional Directors;

(7) Branch or comparable office heads;

(8) All commissioned bank examiners, as well as other employees of the Division of Bank Supervision who do not regularly examine banks but who are paid at or above the GS-13 level;

(9) Employees of the Division of Liquidation paid at or above the GS-13 level;

(10) Assessment Auditors paid at or above the GS-11 level;

(11) Those employees of the Operations Branch, the Office of the Controller, paid at the GS-9 level or above who evaluate, recommend, purchase, or contract for equipment, materials and services required by the Corporation;

(12) Employees assigned to the Software and Hardware: Support and Evaluation Section paid at or above the GS-14 level;

(13) Individuals employed by the Corporation as attorneys, whether assigned to the Washington Office of the Legal Division, another Washington Division or Office, a Regional Office or a liquidation office. This paragraph does not include outside attorneys retained by the FDIC, and who are otherwise engaged in the private practice of law.

(d) An employee may object to the Ethics Counselor that his or her position has been improperly included as one requiring the submission of a statement of employment and financial interest. When an objection cannot be resolved or explained satisfactorily to the employee, he or she shall be granted a review of the matter through the Corporation's grievance procedure.

11. Revise §336.735-32 to read:

§ 336.735-32 Employees not required to submit statements.

Employees or Special Employees who receive salaries at rates equal to or greater than the minimum rate of basic pay fixed for GS-16 shall file disclosure statements under Title II of Ethics in Government Act of 1978 rather than statements of employment and financial interest under this Part 336.

12. Revise § 336.735-33 to read:

§ 336.735-33 Time and Place for submission of employees' statements.

(a) An employee required to submit a statement of employment and financial interest under § 336.735-31 shall be advised in writing of this obligation by the Office of Personnel Management at least 15 days before the date the report is required.

(b) Employees shall file statements not later than 30 after the effective date of this revision to Part 336 if employed on or before that effective date, or 30 days after entrance on duty or reassignment or promotion to a covered position.

(c) Notwithstanding any other provision in this section, filing may be required prior to employment or promotion for executive level persons and certain other senior positions.

13. Revise § 336.735-34 to read as follows:

§ 336.735-34 Supplementary statements.

(a) Changes in, or additions to, the information contained in an employee's statement of employment and financial interest shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a report to that effect is required.

(b) Employees required to file these annual supplementary statements must be advised in writing of this obligation, with a copy of the relevant reporting form. Except as otherwise provided by the Board of Directors, a letter to this effect shall be distributed by the Office of Personnel Management no later than June 15th with the instruction that the statement must be returned after July 1st, but no later than July 31st.

(c) The filing of the annual supplementary statement required of certain employees by this section does not authorize any person to engage in any activity or maintain any interest prohibited by law, regulation, or order.

14. Revise and Retitle § 336.735-35 to read:

§ 336.735-35 Financial interests of employee's spouse and dependent child.

A financial interest of an employee's spouse or of an employee's dependent child is considered to be an interest of the employee, except that such interest shall not be so regarded if—

(a) The interest is solely the financial interest and responsibility of the spouse or of the dependent child, and the employee has no knowledge of it; and

(b) The interest is not in any way, past or present, derived from the income, assets, or activities of the employee; and

(c) The employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

§ 336.735-38 [Amended]

15. In the second sentence of § 336.735-38, substitute "Ethics Counselor" for "assistant to the Chairman of the Board of Directors". In the last sentence of § 336.735-38, insert "Chairman of the" prior to "Civil Service Commission".

§ 336.735-40 [Amended]

16. In § 336.735-40 amend the first sentence of paragraph (a) to read:

(a) * * * Except as provided in paragraph (b) of this section, each Special Corporation Employee who is not required to file disclosure statements under § 336.735-32, shall submit a statement of employment and financial interest which reports: Amend paragraph (b) by adding the following sentence after the word "patients", "Special Corporation Employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns, and individuals paid out of 'Imprest Funds' to assist in bank liquidations. * * *

17. Revise § 336.735-41, to read as follows:

§ 336.735-41 Reviewing statements and reporting conflicts of interest.

(a) Annual supplementary statements submitted under § 336.735-34 will be reviewed by the Ethics Counselor by August 31. The Ethics Counselor may be assisted in his or her review by no more than two of the Deputy Ethics Counselors referred to in § 336.735-3(c).

(b) When a statement submitted under § 336.735-31 and § 336.735-34, or information from other sources indicates a possible conflict between the interests of an employee or Special Corporation Employee and the performance of his or her service for the Corporation:

(1) The Ethics Counselor shall investigate the matter and allow the employee or Special Corporation Employ-

ee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of conflict exists.

(2) The Ethics Counselor shall attempt to resolve the matter expeditiously.

(3) If an employee is dissatisfied with the Ethics Counselor's proposed resolution, and the matter cannot be resolved by the September 30 following the filing of a required statement, the information concerning the conflict or appearance of conflict shall be reported to the Chairman of the Board of Directors for resolution.)

Appendix A [Deleted]

18. Delete Appendix A and its contents.

(12 U.S.C. 1819; 5 CFR 735.104; E.O. 11222)

[FR Doc. 78-35931 Filed 12-26-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

RESPONSIBILITIES UNDER TITLE II OF THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

Delegation to Assistant Director for Evaluation

AGENCY: Federal Trade Commission.

ACTION: Delegation to Assistant Director for Evaluation those responsibilities under Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 previously delegated to the Associate Director for Premerger Notification.

SUMMARY: In order to facilitate the efficient operation of the premerger notification program, implementing Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, the Commission, prior to the September 5, 1978 effective date, delegated several of its responsibilities under the Act to the Director, Deputy Director and Associate Director for Premerger Notification of the Bureau of Competition. These delegated responsibilities consist of the authority to make and issue requests for additional information. In addition, under the premerger notification rules, the above-designated staff members were authorized by the Commission to request the submission of documents, an index of which must be filed in connection with certain acquisitions exempted by the Act and rules. As of November 1, 1978, the responsibilities of the Associate Director for Premerger Notification have been transferred to the Assistant Director for Evaluation and the position of Associate Director for Premerger Notification has been eliminated. Thus, all responsibilities previously delegated by the Commission to the Associate Director for Premerger Notification are delegated to the Assistant Director for Evaluation.

EFFECTIVE DATE: November 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and Assistant Attorney General in charge of the Antitrust Division of the Department of Justice advance notice and wait designated periods before consummation of those plans. Section 7A(e)(1) and (e)(2) of the Act and § 803.20 of the rules authorize the Commission or the Assistant Attorney General prior to the expiration of the appropriate waiting period to make and issue requests for additional information to persons required to file notification. Sections 802.6 and 802.8 of the premerger notification rules authorize the Commission or the Assistant Attorney General or delegated officials of either to request the submission of documents, an index of which must be filed in connection with acquisitions exempted by section 7A(c)(6) and (c)(8) of the Act. These delegations of authority to the Director, Deputy Directors and Associate Director for Premerger Notification of the Bureau of Competition are included in the Statement of Basis and Purpose which accompanied the final rules and Form in the FEDERAL REGISTER of July 31, 1978, 43 FR 33450.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-35876 Filed 12-22-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 8987]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

National Commission on Egg Nutrition et al.

AGENCY: Federal Trade Commission.

ACTION: Modification of order to cease and desist.

SUMMARY: This modified order to cease and desist replaces the order issued on July 20, 1976. In accordance with the November 29, 1977 decision and judgment of the Court of Appeals for the 7th Circuit, as amended on December 6, 1977, the instant order mandates disclosure of controversy among medical experts as to the relationship of dietary cholesterol, including that in eggs, to heart and circulatory disease only when NCEN chooses to make a representation regarding the state of the available evidence or information concerning the controversy.

DATES: Decision issued July 20, 1976. Modifying order issued November 17, 1978.*

FOR FURTHER INFORMATION CONTACT:

FTC/GE, Jerold D. Cummins, Washington, D.C., 20580. (202) 523-1928.

SUPPLEMENTARY INFORMATION: In the Matter of National Commission on Egg Nutrition, et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, appearing at 41 FR 34939, remain unchanged.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45, 52))

The order modifying order to cease and desist, is as follows:

MODIFIED ORDER TO CEASE AND DESIST

Respondents, having filed in the United States Court of Appeals for the Seventh Circuit petition for review of the Commission's cease and desist order issued herein on July 20, 1976; and the Court having rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the Supreme Court of the United States having denied on October 2, 1978, a petition for writ of certiorari filed by the National Commission on Egg Nutrition:

*Copies of the modifying order filed with the original document.

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

It is ordered, That respondents National Commission on Egg Nutrition and Richard Weiner, Inc., corporations, their successors and assigns, either jointly or individually, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of eggs for human consumption do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that there is no scientific evidence that eating eggs increases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

2. Represent that there is scientific evidence that dietary cholesterol, including that in eggs, decreases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

3. Represents that there is scientific evidence that avoiding dietary cholesterol, including that in eggs, increases the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition;

4. Represents that eating eggs does not increase the blood cholesterol level in a normal person;

5. Represents that the blood cholesterol level is prevented from being raised or lowered by dietary cholesterol intake;

6. Represents that the human body increases its manufacture of cholesterol in an amount equal to a decrease in dietary cholesterol intake;

7. Represents that the average human body eliminates the same amount of cholesterol as that eaten;

8. Represents that dietary cholesterol, including that in eggs is needed by the body for building sex hormones, for transmitting nerve impulses and for maintaining life in cells; or

9. Utilizes the name "National Commission on Egg Nutrition" unless it is clearly and conspicuously disclosed in immediate conjunction with the name that the National Commission on Egg Nutrition is composed of egg producers and other individuals and organizations of, or relating to, the egg industry.

B. Disseminating, or causing the dissemination, of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that eating eggs does not increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition or

2. Makes any representation concerning the relationship of dietary cholesterol, including that in eggs, to heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition

unless it is clearly and conspicuously disclosed in immediate conjunction therewith that there is a controversy among medical experts concerning the relationship of dietary cholesterol, including that in eggs, to heart disease, and that respondents are presenting their side of that controversy.

C. Disseminating, or causing the dissemination of, any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents that there exists, or describes, scientific evidence which supports the theory that consumption of dietary cholesterol, including that in eggs, does not increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition or

2. Makes any representation concerning the state of the available evidence or information concerning the relationship of dietary cholesterol, including that in eggs, to heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition

unless it is clearly and conspicuously disclosed in immediate conjunction therewith that many medical experts believe that existing evidence indicates that increased consumption of dietary cholesterol, including that in eggs, may increase the risk of heart disease.

D. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in or effecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly

1. Represents as insignificant the available scientific evidence that the consumption of dietary cholesterol, including that in eggs, may increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition, or represents that there is overwhelming scientific evidence or otherwise misrepresents the amount of scientific evidence that eating eggs does not increase the risk of heart attacks, heart disease, atherosclerosis, arteriosclerosis, or any attendant condition.

2. Misrepresents in any manner the physiological effects of consuming dietary cholesterol or eggs.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions, and to all current and future members of respondent National Commission on Egg Nutrition.

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

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

By the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-35887 Filed 12-26-78; 8:45 am]

[6750-01-M]

[Docket Nos. 9058; 8901; C-2806; C-2807; C-2808; C-2809; C-2810; C-2811]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Capax, Inc.; Trans-American Collections, Inc.; United Compucred Collections, Inc.; Trans National Credit Corporation; Continental Collection Bureau of America, Inc.; North American Collections, Inc.; Power's Service, Inc.; Continental Collection Service

AGENCY: Federal Trade Commission.

ACTION: Interlocutory and Modifying Orders.

SUMMARY: This order denies a petition of Capax, Inc. requesting reconsideration of its order issued on May 25, 1978 or reopening of proceeding in Docket No. 9058. Additionally, the order reopens and modifies, by deleting the disclosure requirement, the final order in Docket No. 8901, issued on September 26, 1973, and those orders in Docket Nos. C-2806 through C-2811 inclusive, issued on March 11, 1976.

DATES: Interlocutory and Modifying Orders issued November 28, 1978.*

FOR FURTHER INFORMATION CONTACT:

FTC/PD, Alan D. Reffkin, Washington, D.C. 20580. (202) 724-1187.

SUPPLEMENTARY INFORMATION: In the Matter of Capax, Inc., a corporation, formerly Continental Credit Corporation, Inc., a corporation, and Joseph V. Defelice and Arnold Goodman, individually and as officers of said corporation; and Norman Bricker, individually and as a former officer of said corporation; and Trans-American Collections, Inc., a corporation, and Wayne E. Martin, individually and as officer of Trans-American Collections, Inc., and Eleanor G. Martin, individually and as officer of Trans-American Collections, Inc.; and United Compucred Collections, Inc., a corporation, and Wes Symmonds and Janet Symmonds, individually and as officers of said corporation; and Trans National Credit Corporation, a corporation, and Robert F. Mitchell and Pat B. Bangor, individually and as officers of said corporation; and Continental Collection Bureau of America, Inc., a corporation, and William M. Weinberg, Peter J. Vann, and Lavail Clements, individually and as officers of said corporation; and North American Collections, Inc., a corporation, and Robert J. Kerr, individually and as an officer of said corporation; and Power's Service, Inc., a corporation, and Community Systems Corporation, a corporation, and Rosalind M. Mikesell, H. O. Seymour and G. C. Seymour, individually and as officers of said corporations; and J. P. Mikesell, individually and as an officer of Power's Service, Inc.; and Continental Collection Service, a partnership, and Carol Carrick and Morris Perna, individually and as co-partners of said Partnership. The prohibited trade practices and/or corrective actions, except for the deletion of Subpart—Corrective Actions and/or Requirements and its associated sections, as codified under 16 CFR Part 13, appearing at 38 FR 28933, 40 FR 19206, 40 FR 19205, 40 FR 19204, and 40 FR 19201, respectively, remains unchanged.

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

The Interlocutory and Modifying Order to cease and desist, is as follows:

ORDER DENYING PETITION FOR RECONSIDERATION OF FINAL ORDER OR REOPENING OF PROCEEDING IN DOCKET. NO. 9058 AND REOPENING AND MODIFYING FINAL ORDERS IN DOCKET NOS. 8901 AND C-2806-C-2811

On May 25, 1978, the Commission issued its final order and opinion in *Capax, Inc.* The Commission held that respondents had engaged in certain misrepresentations in the course of their service to assist creditors in the collection of alleged delinquent debts, and prohibited these misrepresentations in its final order. The Commission rejected complaint counsel's request that respondents be required to provide an affirmative disclosure[1] in each communication sent to alleged debtors, stating:

[W]e do not consider the affirmative disclosure sought here by complaint counsel to be necessary, under the circumstances of this case, in light of the order's ample prohibitions on misrepresentations. Moreover, we believe that the proposed disclaimer could lull recipients into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal action or harm to their credit standing. Because creditors might pursue an alleged delinquent debt by bringing suit or could report the matter to a consumer reporting agency, debtors who decided not to make payment on the basis of the disclaimer could suffer harm. Therefore, our order will not include the proposed affirmative disclosure.

Previously, the Commission had ordered disclosures similar to that sought by complaint counsel in *Trans-American Collections, Inc.*, Docket No. 8901, 83 F.T.C. 525 (1973); *United Compucred Collections, Inc.*, Docket No. C-2806, 87 F.T.C. 542 (1976); *Trans National Credit Corp.*, Docket No. C-2807, 87 F.T.C. 549 (1976); *Continental Collection Bureau of America, Inc.*, Docket No. C-2808, 87 F.T.C. 557 (1976); *North American Collections, Inc.*, Docket No. C-2809, 87 F.T.C. 566 (1976); *Power's Service, Inc.*, Docket No. C-2810, 87 F.T.C. 574 (1976); and *Continental Collection Service*, Docket No. C-2811, 87 F.T.C. 582 (1976). On the date of issuance of the final order and opinion in *Capax*, the Commission issued orders to show cause why the above-cited orders should not be modified to delete the mandated affirmative disclosures, pursuant to Commission Rule 3.72(b). In its orders to show cause, the Commission stated that the reasoning articulated in *Capax* for rejecting complaint counsel's request for an affirmative disclosure may be equally applicable to the above-cited orders and that their requirement of an affirmative disclosure should be reconsidered.[2]

Complaint counsel have petitioned for reconsideration of the Commission's order in *Capax* pursuant to Rule 3.55, or in the alternative, for reopening of the proceeding in order to modify the Commission's decision not to require *Capax* to use an affirmative disclosure in its communications, pursuant to Rule 3.72. In support of their petition, complaint counsel argue that (1) since the Fair Debt Collection Practices Act became effective on March 20, 1978, "many complaints have been received pointing out the inherently deceptive nature of dunning letters sent by flat rate letter writing services," (2) an affirmative disclosure requirement is necessary to avoid the deception most certain to occur in the use of dunning notices, and (3) insertion of a modified version of the affirmative disclosures proposed by complaint counsel will prevent any misleading impression.

In a separate pleading, the Bureau of Consumer Protection has filed an opposition to the modification of the orders in Docket Nos. 8901 and C-2806—C-2811 pending determination of complaint counsel's petition in *Capax*.

Counsel for Capax have filed an answer opposing complaint counsel's petition for reconsideration or reopening. That petition has also been opposed by counsel for Trans World Accounts, another company which provides debt collection services and which is an appellant from a final Commission order.

Trans-American Collections and the other respondents in Docket No. 8901 have filed a response to the order to show cause, expressing their acceptance of the proposed modification to the order in that matter. Power's Service and Community Systems, respondents in Docket No. C-2810, have filed a motion requesting the Commission to modify the consent order in accordance with the order to show cause. None of the other respondents who received the show cause orders has filed a response.

Although the Commission does not have authority to modify the order in *Capax* at this time,[3] either in response to a petition for reconsideration or for reopening, we will address the substance of complaint counsel's arguments, since this issue is central to the orders to show cause which are opposed by the Bureau of Consumer Protection. The Commission finds that the pleadings do not raise material issues of fact, and therefore will decide the matters on the orders to show cause and answer thereto, in accordance with Rule 3.72(b)(3).

Complaint counsel argue that since the effective date of the Fair Debt Collection Practices Act, many complaints have been received indicating that dunning letters sent by flat rate

*Copies of the Interlocutory and Modifying orders filed with the original document.

[1] "We are an independent company employed by your creditor solely for the purpose of reminding you of your outstanding obligation. We are not authorized to engage in typical debt collection activity, to institute suit or to take any action which may affect your credit rating."

[2] In its opinion in *Capax*, the Commission noted that "(t)he appropriateness of those disclosures depends upon the facts of each case, including the prescribed language and the details of the firm's operations and authority."

[3] 15 U.S.C. 45(b).

letter debt collection services are inherently deceptive. According to complaint counsel, the majority of consumers are unaware that in most cases such services have "virtually no authority to proceed with what is commonly understood to be normal collection efforts," and an affirmative disclosure such as that proposed is necessary to avoid deception. The Commission has never found that third party collection letters are inherently deceptive, and has no basis for making any such finding now. We see no reason to depart from our determination that the prohibitions on misrepresentations contained in the *Capax* order render an affirmative disclosure unnecessary. Under the order, Capax is prohibited from misrepresenting (1) the urgency of any communication, (2) its authority to engage in certain kinds of debt collection activity, (3) the likelihood of legal action, (4) the effect of nonpayment upon a debtor's credit record, and (5) the imminency of any action that may or will be taken. A prohibition upon these misrepresentations will eliminate the deception found by the Commission in *Capax*. Similar prohibitions are contained in the consent orders subject to the orders to show cause.

The Fair Debt Collection Practices Act, which became effective on March 20 of this year, is relied upon by complaint counsel as a basis for reconsideration. That Act was fully taken into account in the Commissioner's determination, and presents no new question. The operation of that Act provides even less reason to mandate any affirmative disclosure than before, due to the requirement imposed upon debt collectors to provide a prescribed written notice within five days after the initial communication with a consumer and the requirement to cease collection of a debt after notification by the consumer. Section 809, 15 U.S.C. 1692g.

The Commission expressed concern in *Capax* that the affirmative disclosure proposed by complaint counsel may lull consumers into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal or other action by the creditor. To remedy this possible misimpression, complaint counsel now propose that the following sentence be added to the disclaimer: "The creditor is permitted to take whatever action is available under State law." While this modification may be helpful, we nevertheless believe that no additional disclosure is necessary.

Accordingly, it is ordered, That:

(1) The petition requesting reconsideration of reopening of the proceeding in *Capax*, Docket No. 9058, be denied;

(2) The final order in Docket No. 8901 is reopened and modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. Trans-American Collections, Inc., cannot accept monies nor will it take any action, legal or otherwise, regarding this claim.

(3) The final order in Docket No. C-2806 is reopened and modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. United Compucred Collections, Inc., does not accept payment. United Compucred Collections, Inc., does not ordinarily file suit.

(4) The final order in Docket No. C-2807 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a remainder of creditor's claim. Trans National Credit Corporation does not accept payment. Trans National Credit Corporation does not ordinarily file suit.

(5) The final order in Docket No. C-2808 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Continental Collection Bureau of America, Inc., does not accept payment. Continental Collection Bureau of America, Inc., does not ordinarily file suit.

(6) The final order in Docket No. C-2809 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. North American Collections, Inc., does not accept payment. North American Collection, Inc., does not ordinarily file suit.

(7) The final order in Docket No. C-2810 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is only a reminder notice. Power's Service, Inc., cannot accept payment nor will it take legal action regarding this claim.

(8) The final order in Docket No. C-2811 is modified by deleting the requirement that respondents disclose in each letter, form, or notice to alleged delinquent debtors the following statement:

This communication is a reminder of creditor's claim. Continental Collection Service does not accept payment. Continental Collection Service does not ordinarily file suit.

By the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-35978 Filed 12-26-78; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

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

[T.D. 79-5]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Delay in Effective Date for Mandatory Use of Cargo Declaration Forms in Connection With Vessel Arrivals or Departures

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

ACTION: Delay in effective date for use of cargo declaration forms.

SUMMARY: Treasury Decision 77-255 provided for the mandatory use as of September 1, 1978, of newly-developed cargo declaration forms in connection with vessel arrivals or departures. Because a number of ocean carriers advised Customs that mandatory use of the forms as of September 1, 1978, would work a hardship on them, Customs agreed to delay the mandatory effective date until January 1, 1979. This document extends the time for mandatory use of these forms until April 1, 1979, to allow time for consideration of a possible amendment to the Customs Regulations to simplify procedures relating to the reporting of bill of lading numbers of containerized cargo on one of the new forms and to give carriers additional time to comply with the new requirements.

EFFECTIVE DATE: The use of the Cargo Declaration, Customs Form 1302, and the Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, shall be mandatory as of April 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229, 202-566-5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Treasury Decision 77-255, published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56317), amended Part 4, Customs Regulations (19 CFR Part 4), to provide for newly-developed cargo declaration forms in connection with vessel arrivals or departures and to establish procedures for their use.

The forms, the Cargo Declaration, Customs Form 1302, and the Cargo Declaration Outward with Commercial Forms, Customs Form 1302-A, follow a format developed by the Intergovernmental Maritime Consultative Organization, as modified by the International Chamber of Shipping. Their development implements an agreement made by the United States when it ratified the Convention of Facilitation of International Maritime Traffic to use standardized international forms in connection with vessel arrivals or departures to the extent that the forms satisfy United States legal requirements. The purpose of the new forms is to simplify paperwork without reducing effective Customs control over vessel movements.

T.D. 77-255 provided for the use of the forms any time after October 25, 1977, and for their mandatory use as of September 1, 1978. However, a number of U.S. ocean carriers advised Customs that mandatory use of the forms as of September 1, 1978, would impose a hardship and requested that they be given additional time to comply with the new requirements. After consideration of these requests, by Treasury Decision 78-291, published in the FEDERAL REGISTER on August 18, 1978 (43 FR 36621), Customs delayed the effective date for mandatory use of the forms until January 1, 1979.

REPORTING OF BILL OF LADING NUMBERS FOR CONTAINERIZED CARGO

Section 4.7a(c)(2), Customs Regulations (19 CFR 4.7a(c)(2)), as amended by T.D. 77-255, provides that (1) all bills of lading for inward foreign cargo shipped in containers shall be listed in numerical sequence on Customs Form 1302, (2) the number of the container which contains the cargo covered by that bill of lading and the container seal number shall be listed opposite the bill of lading number, and (3) the number of any other bill of lading for cargo in that container also shall be listed immediately under the container and seal numbers. Therefore, for containers with merchandise covered by more than one bill of lading number, the same bill of lading numbers must be listed more than once on Customs Form 1302.

Because multiple listings of the same bill of lading number impose a burden on carriers without corresponding benefit to Customs, a simplified alternative is being developed to eliminate the need to report bill of lading numbers more than once on Customs Form 1302. The alternative procedure, if adopted, will be the subject of an amendment to § 4.7a(c)(2), Customs Regulations, published in the FEDERAL REGISTER and the Customs Bulletin in the near future.

REQUEST FOR FURTHER DELAY IN EFFECTIVE DATE

Customs has been requested, on behalf of an association of United States ocean carriers, to delay further, until April 1, 1979, the mandatory date for use of the new forms. The delay is requested to permit consideration of the amendment to section 4.7a(c)(2), Customs Regulations, described above, and to provide carriers additional time to comply with the new requirements.

DELAY IN MANDATORY EFFECTIVE DATE

After considering this request, Customs is delaying the date for mandatory use of Customs Form 1302 and Customs Form 1302-A until April 1, 1979. No further extensions of the time for mandatory use of the forms will be granted.

DRAFTING INFORMATION

The principal author of this document was Mark Jenkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 21, 1978.

R. E. CHASEN,
Commissioner of Customs.

[FR Doc. 78-35955 Filed 12-26-78; 8:45 am]

[4810-34-M]

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART 1—DISCLOSURE OF RECORDS

Subpart A—Under 5 U.S.C. 552, as Amended

APPENDIX F—BUREAU OF ENGRAVING AND PRINTING

AGENCY: Bureau of Engraving and Printing, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Bureau of Engraving and Printing is amending Appendix F to 31 CFR Part 1, Subpart A. This appendix is being changed to reflect a reorganization which changes the appellate official from the Assistant Secretary (Enforcement, Operations, and Tariff Affairs) to the Under Secretary of the Treasury.

EFFECTIVE DATE: December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

H. T. Krisak, Superintendent, Managment Services Division, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, D.C., 20228, (202) 447-0261.

SUPPLEMENTARY INFORMATION: Paragraph 4 is amended to change the official responsible for appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of Engraving and Printing. Public comment is deemed impracticable and unnecessary under 5 U.S.C. 553(b)(3)(B). This regulation does not meet the criteria for a significant regulation set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (42 FR 22319).

(5 U.S.C. 552; 31 CFR 1.1)

As amended, paragraph 4 reads as follows:

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of Engraving and Printing will be made by the Under Secretary of the Treasury. Appeals made by mail should be addressed to:

Under Secretary of the Treasury, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3312, Washington, D.C. 20220.

Requests may be delivered personally to the Under Secretary of the Treasury in Room 3312, Main Treasury Building located at 1500 Pennsylvania Avenue, NW., Washington, D.C.

SEYMOUR BERRY,
Director, Bureau of Engraving and Printing.

[FR Doc. 78-35977 Filed 12-26-78; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 224—GROUPS AND DEPARTMENTS

SUBCHAPTER N—PROCEDURES

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

Organizational Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document reflects organizational changes within the Administration Group due to the establishment of the position of Associate Judicial Officer. It also reflects the amendment by the Judicial Officer pursuant to his authority under 39 CFR 224.1(c)(5)(ii)(D) of the rules of practice before the Board of Contract Appeals contained in 39 CFR Part 955. The amendment provides that the Associate Judicial Officer is Vice Chairman of the U.S. Postal Service Board of Contract Appeals.

EFFECTIVE DATE: December 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Neva Watson (202) 245-4642. Accordingly, 39 CFR is amended as follows:

PART 224—GROUPS AND DEPARTMENTS

§ 224.1 [Amended]

1. In § 224.1(c)(5)(i) add the following new paragraph at the end thereof:

* * * * *

(c) * * *

(5) * * *

(i) * * * As directed by the Judicial Officer, the Associate Judicial Officer assists in the administration of the office and normally is the Acting Judicial Officer when the Judicial Officer is absent or unable to serve. The Associate Judicial Officer is the ex officio Vice Chairman of the Board of Contract Appeals.

2. In § 224.1(c)(5)(v)(B) revise the first sentence to read as follows:

* * * * *

(c) * * *

(5) * * *

(v) * * *

(B) The Board of Contract Appeals of the Postal Service is composed of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman and the Administrative Law Judges of the Postal Service. * * *

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

In § 955.1(b)(2) revise the first sentence to read as follows:

* * * * *

(b) * * *

(2) * * * The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman and the Administrative Law Judges of the Postal Service. * * *

(39 U.S.C. 204, 401(2))

W. ALLEN SANDERS,
Assistant General Counsel.

[FR Doc. 78-35893 Filed 12-26-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[SS Docket No. 78-137; FCC 78-855]

NEW PUBLIC COAST STATIONS, AERONAUTICAL ADVISORY STATIONS AND RADIONAVIGATION LAND STATIONS IN THE AVIATION SERVICES

Requiring Notification Upon Commencement of Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rulemaking amends Parts 1, 81, and 87 of the Commission's rules to require notification upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services except radionavigation land test stations (MTF or OTF). This has been a routine condition of grant for public coast stations. This rulemaking incorporates this condition of grant into the Commission's rules and extends it to aeronautical advisory stations and radionavigation land stations in the Aviation Services except radionavigation land test stations (MTF or OTF).

EFFECTIVE DATE: January 29, 1979.

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

FOR FURTHER INFORMATION CONTACT:

John C. K. Hays, Safety and Special Radio Services Bureau (202-632-7197).

SUPPLEMENTARY INFORMATION: In the matter of amendment of Parts 1, 81 and 87 of the Commission's rules to require notification upon commencement of service of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services. *Report and order* (Proceeding Terminated).

Adopted: December 12 1978.

Released: December 20, 1978.

By the Commission:

1. The Commission issued a Notice of Proposed Rule Making to amend its rules to require the licensees of new public coast stations, aeronautical advisory stations and radionavigation land stations in the Aviation Services to notify the Commission of the commencement of station operations. Each of these types of stations provides important services to the public, and their frequencies, locations and hours of service are listed in various Government and non-Government publications. Under Commission rules only one station is permitted to operate in the area defined for that type of station, and operations must commence within eight months of the initial grant of the station license. If a station does not commence operations within this time period, the station license becomes invalid and must be returned to the Commission for cancellation. A new applicant then may file for a station license to serve that area.

2. To properly administer these rules and to provide accurate information concerning station operations, it is necessary that the Commission be promptly informed of the commencement of station operations. These new rules require the licensees of these types of stations to notify the Commission in writing when the station is placed in operation. If the licensee fails to notify the Commission within 8 months of commencement of station operation, it is conclusively presumed that the station is not in operation and the license becomes invalid unless the licensee shows "good cause" why notification was not made. A statement of "good cause" is not sufficient if it merely rests on the actions of the licensee or those associated with him. To come within "good cause", the failure to notify must rest with some third party not within the control of the licensee.

3. The notice of Proposed Rule Making was released on May 3, 1978, and was published in the FEDERAL REGISTER on May 8, 1978 (43 F.R. 19690). Timely comments were filed by the Aircraft Owners and Pilots Association (AOPA) and the Aerospace and Flight Test Radio Coordinating Council (AFTRCC).

4. AOPA does not object to these amendments to the rules and recommends that the information on licenses issued and notification of com-

mencement of service for aeronautical advisory stations and radionavigation land stations be coordinated with the Federal Aviation Administration for dissemination to users in the various FAA publications. We believe this recommendation is in the public interest and will adopt it. Presently, we provide the FAA with the information on the station license when the license is issued. In the future, we will send this information to the FAA when the station becomes operational.

5. AFTRCC concurs with the intent of these amendments but requests that we clarify whether licensees of radionavigation land test stations (MTF or OTF) will be required to provide notification of commencement of service. (Radionavigation land test stations are radionavigation land stations used for the testing and calibration of aircraft navigational aids, receiving equipment, and interrogators at predetermined surface locations. A radionavigation land test station (MTF) is a Maintenance Test Facility used for maintenance testing by aircraft radio service personnel. A radionavigation land test station (OTF) is an Operational Test Facility which permits the pilot to check a radionavigation system aboard an aircraft prior to takeoff. The licensees of radionavigation land test stations (MTF or OTF) are generally aircraft and avionics manufacturing and service organizations.)

6. It was not our intent to include radionavigation land test stations (MTF or OTF) within the scope of these amendments. Under our rules more than one of these stations is permitted at a locality and, therefore, licenses may be issued without regard to prior grants provided there is no frequency interference. Moreover, information concerning the operation of these stations is not listed in the publications periodically issued by the FAA to inform pilots. In view of this, we will explicitly exclude radionavigation land test stations (MTF or OTF) from these new rules.

7. For further information on this proceeding, contact John Hays at 202-632-7197.

8. Accordingly, *it is ordered*, That pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 1, 81 and 87 of the Commission's rules are amended effective January 29, 1979, as set forth below.

9. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended; 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Parts 1, 81 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURES

Section 1.932 is revised to read as follows:

§ 1.932 Time in which station must be placed in operation.

(a) For operational-fixed stations authorized to operate on frequencies above 952 MHz, the authorized station must be placed in operation within twelve months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation. For all other stations, the authorized station must be placed in operation within eight months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new public coast station, a new aeronautical advisory station or a new radionavigation land station in the Aviation Services except a radionavigation land test station (MTF or OTF) shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months form the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA—PUBLIC FIXED STATIONS

Section 81.61 is revised to read as follows:

§ 81.61 Time in which station must be placed in operation.

(a) In those cases in which a license is issued initially in lieu of a construction permit, if the station authorized is not placed in operation within eight months from the date of the grant, the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new public coast station shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

PART 87—AVIATION SERVICES

A new § 87.58 is added to read as follows:

§ 87.58 Time in which station must be placed in operation.

(a) In those cases in which a license is issued initially in lieu of a construction permit, if the station authorized is not placed in operation within eight months from the date of the grant, the authorization shall be invalid and must be returned to the Commission for cancellation.

(b) The licensee of a new aeronautical advisory station or a new radionavigation land station except a radionavigation land test station (MTF or OTF) shall notify the Commission in writing when the station is placed in operation. If the licensee fails to notify this Commission within eight months from the date of grant that the station has been placed in operation, it shall be conclusively presumed the station is not in operation and, thus, the license becomes invalid by operation of paragraph (a) of this section, unless the licensee shows good cause why notification was not made.

[FR Doc. 78-35968 Filed 12-26-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Second Rev. S.O. No. 1305]

PART 1033—CAR SERVICE

Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order, (Second Revised Service Order No. 1305).

SUMMARY: There is a severe shortage of boxcars on The Atchison, Topeka and Santa Fe Railway Company (ATSF) and the Union Pacific Railroad Company (UP). These lines own a group of mechanical refrigerator cars which are now surplus. Because of their limited cubical capacity many shipments that could be transported in these cars cannot be loaded with the minimum quantities specified by the applicable tariffs. Second Revised Service Order No. 1305 authorizes the ATSF and the UP to substitute two of these refrigerator cars for each boxcar

ordered. The minimum weight to be applied to each set of two such cars is the minimum weight applicable to the boxcar ordered. The consent of the shippers is required.

DATED: Effective 12:01 a.m., December 22, 1978. Expires 11:59 p.m., May 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below: Decided: December 20, 1978.

There is an acute shortage of plain boxcars for loading shipments of various commodities on the lines of The Atchison, Topeka and Santa Fe Railway Company (ASTF) and the Union Pacific Railroad Company (UP). The ATSF and UP have a surplus of mechanical refreigerator cars which are suitable for transporting these products if the use of two such cars for each boxcar ordered is permitted.

The economic loss suffered by shippers dependent on the ATSF and UP for their car supplies can be alleviated by the substitution of sufficient smaller cars for the larger cars ordered to transport the shipments offered.

In the opinion of the Commission, present regulations and practices with respect to the use and supply of boxcars are ineffective to overcome these shortages of boxcars and an emergency exists requiring immediate action. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1305 Second Revised Service Order No. 1305.

(a) *Distribution of freight cars.* Subject to the concurrence of the shipper The Atchison, Topeka, and Santa Fe Railway Company (ATSF) and the Union Pacific Railroad Company (UP) may substitute two mechanical refrigerator cars identified below for each boxcar ordered:

SFRC—2300-55199, inclusive; UPRX—all cars.

(b) *Exception.* This order shall not apply to shipments subject to tariff provisions which require that cars be furnished by the shipper.

(c) *Rates and Minimum Weights Applicable.* The rates to be applied and the minimum weights applicable to shipments for which cars smaller than those ordered have been furnished and loaded as authorized by paragraph (a) of this section shall be the rates and minimum weights applicable to the larger cars ordered.

(d) *Billing to be Endorsed.* The carrier substituting smaller cars for larger cars as authorized by paragraph (a) of this section shall place the following endorsement on the bill of lading and on the waybills authorizing movement of the car:

Boxcar Ordered, UPRX or SFRC (——) and UPRX or SFRC (——) furnished authority ICC Second Revised Service Order No. 1305.

(e) *Concurrence of Shipper Required.* Smaller cars shall not be furnished in lieu of cars of greater capacity without the consent of the shipper.

(f) *Exceptions.* Exceptions to this order may be authorized to railroads by the Railroad Service Board, Washington, D.C., 20423. Requests for such exception must be submitted in writing, or confirmed in writing and must clearly state the points at which such exceptions are requested and the reason therefor.

(g) *Rules and Regulations Suspended.* The operation of all rules, regulations, or tariff provisions is suspended insofar as they conflict with the provisions of this order.

(h) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(i) *Effective date.* This order shall become effective at 12:01 a.m., December 22, 1978.

(j) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 10304-10305 and 11121-11126)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C, and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Robert S. Turkington not participating.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-36041 Filed 12-26-78; 8:45 am]

[7035-01-M]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 55 (Sub-No. 26)]

PART 1100—RULES OF PRACTICE

Protest Standards in Motor Carrier Application Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Administrative review of final rules

SUMMARY: Several motor carriers[1] have filed petitions seeking administrative review and a stay of the effective date of the final rules adopted in the title proceeding. 43 F.R. 50908 (1978). Each of the material issues raised in these petitions will be treated separately below. The final rules have been modified slightly in some respects.

EFFECTIVE DATE: The rules (43 F.R. 50908 (1978)) as modified by this notice will apply to all motor carrier applications filed on and after March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Telephone: 202-275-7292.

SUPPLEMENTARY INFORMATION: Material issues raised in petitioners' pleadings and the Commission's response are delineated below:

1. Do the provisions of subparagraph (e) of Special Rule 247 apply to petitions filed under subparagraph (1), *Intervention with leave in motor carrier application proceedings?* Yes. Petitioners may request oral hearing, cross-examination, or other forms of procedural relief under subparagraph (e). Where material issues are in dispute or where such relief otherwise would be appropriate, it will be granted upon request. The following language is added to subparagraph (1) of Special Rule 247:

(4) Except to the extent that they are inconsistent with the provisions of this subsection, the provisions of subparagraph (e) of this section apply to protests filed under this section.

Paragraph (e)(9) of Special Rule 247 also is modified to read:

(9) In motor carrier application proceedings, the provisions of paragraphs (k) and (l) of this section, to the extent they are inconsistent with this subsection, shall apply.

2. The time limitations provided for filing and responding to appeals under subparagraph (m) are unrealistically brief and tend to favor parties with

[1] Motor Freight Express, Brown Transport Corp., Refrigerated Transport Co., Inc. *et al.*, and Motor Carriers Central Freight Ass'n, *et al.*

representatives based in the District of Columbia area. Although, of necessity, time limits provided in subparagraph (m) are brief, they correspond with time limits now provided for appeals from intervention decisions. We agree, however, that parties with representatives in the District of Columbia area may be favored. To offset this advantage, service and filing dates will be measured from the date material mailed from or to the Commission is postmarked. The following sentence will be added to subparagraph (m) of Special Rule 247:

For purposes of measuring time periods under this subparagraph, the date on which material is postmarked will govern.

3. Will joint line carriers which otherwise qualify under the provisions of subparagraph (k) be permitted to intervene automatically in an application proceeding? Yes. Subparagraph (k) of Special Rule 247 is revised to read as follows:

(k) *Intervention without leave in motor carrier application proceedings.* Intervention without leave will be allowed in motor carrier application proceedings by persons supporting the application and by a carrier (or carriers performing a joint line operation) that files, within 30 days of the date of publication of application in the FEDERAL REGISTER, a petition showing that it

* * * * *

4. What is "within the scope of the application" where applications for regular route authority are involved? Since regular route authorities may be tacked, it has been argued that the true scope of an application cannot always be determined from the published notice. Where tacking is contemplated, however, applicant must so indicate in its application. This will be noted in the FEDERAL REGISTER notice so that the true scope of an application may be determined by interested persons who then may petition for intervention with or without leave, as appropriate.

5. How can a carrier not qualified to intervene automatically under subparagraph (k) inquire into the bona fides of an application? Any questions with respect to a particular application may be raised in a petition for intervention with leave. These questions will be examined thoroughly and, where it appears that intervention is necessary to resolve them, it will be granted.

6. Appendix II to our previously final rules in this proceeding was incorrectly entitled "Petition to intervene without leave." The title of Appendix II should be corrected to read: "Petition to intervene with leave."

7. *Effective date.* Additional time is required to enable the Commission to establish internal procedures for processing intervention petitions. Accordingly, the final rules (43 F.R. 50908 (1978)) as modified by this notice will apply to all motor carrier applications filed on and after March 1, 1979.

Decided December 18, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp, Commissioner Stafford dissenting.

NANCY L. WILSON,
Acting Secretary.

Commissioner Stafford, dissenting: I would grant the petitions and stay the decision.

[FR Doc. 78-36040 Filed 12-26-78; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Opening of Tamarac National Wildlife Refuge, Minnesota, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Tamarac National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource and will provide additional recreational opportunity to the public.

DATES: January 1, 1979, through December 31, 1979, in accordance with all applicable Minnesota state fishing laws.

FOR FUTHER INFORMATION CONTACT:

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rochert, MN 56578, Telephone Number 218-847-4355

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the Tamarac National Wildlife Refuge, Minnesota, only on the areas designated by signs and maps as being open to fishing. These areas comprising 13,675 acres are delineated on maps available at the refuge headquarters and from the Office of the Regional Director, Region 3, U.S. Fish & Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Sport Fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. Only that part of Tamarac Lake north of the water control dike is open during all regular state fishing seasons.

2. Big Egg, Two Island, Wauboose, Lost, and Blackbird Lakes are open only from the state seasons's opening in May through Labor Day.

3. Bank fishing 50 yards either side of the Ottertail River bridges on County Roads No. 26 and No. 126 is the only stream fishing permitted.

4. No areas other than those previously listed are open for fishing at any time.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish & Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

OMER N. SWENSON,
Refuge Manager, Tamarac National Wildlife Refuge Rochert, MN 56578.

DECEMBER 15, 1978.

[FR Doc. 78-35976 Filed 12-26-78; 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.

[6714-01-M]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Chapter III]

INTERNATIONAL BANKING ACT
Implementation of Provisions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FDIC is considering a series of amendments to its current regulations and a number of new regulations which will implement certain provisions of the International Banking Act of 1978. (Pub. L. 95-369, 92 Stat. 607, 12 U.S.C. 3101 *et seq.*). Under the International Banking Act, foreign banks operating in the United States through branches, agencies or commercial lending companies are subject to Federal supervision and regulation similar to that imposed on like activities of domestic banks.

DATE: Comments must be received by FDIC on or before January 19, 1979.

ADDRESS: Comments should be addressed to Alan R. Miller, Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT:

Edward T. Lutz, Examination Specialist (telephone 202-389-4389), or Margaret M. Olsen, Attorney (telephone 202-389-4433).

SUPPLEMENTARY INFORMATION: The International Banking Act, which became law on September 17, 1978, requires certain branches of foreign banks to obtain Federal deposit insurance. Other branches may apply for deposit insurance if they so desire. A number of issues have been raised regarding the criteria for mandatory deposit insurance, the mechanism for providing deposit insurance and the asset pledge requirements for insured branches. FDIC's staff has considered these issues and has reached preliminary conclusions regarding alternative courses of action. However, since the International Banking Act has just become law and the staff lacks experience with its provisions, FDIC has decided to invite public comment on both the issues raised and the alternatives presented.

All communications received by FDIC on or before January 19, 1979, will be considered by FDIC's Board of Directors before taking action on any changes in FDIC's current regulations or adopting any new regulations. The alternatives discussed in this notice may be changed or possibly eliminated, and others adopted, in the light of the comments received. All comments submitted will be available in the office of FDIC's Executive Secretary, Room 6108, 550 17th Street, N.W., Washington, D.C. 20429, both before and after the closing date for comments, for review by interested persons. If FDIC's Board of Directors decides to proceed further after considering the comments received in response to this notice, FDIC will issue a notice of proposed rulemaking.

MANDATORY DEPOSIT INSURANCE

Sections 6 (a) and (b) of the Act distinguish between the two types of domestic branches of foreign banks: State branches and Federal branches. State branches will be subject to mandatory insurance if they accept deposits of less than $100,000 and are located in States that require State chartered banks to obtain deposit insurance. Federal branches will be required to have deposit insurance if they accept deposits of less than $100,000. However, determinations may be made by the FDIC in the case of State branches and by the Office of the Comptroller of the Currency (OCC) in the case of Federal branches that the acceptance of deposits of less than $100,000 may not constitute domestic retail deposit activity requiring deposit insurance.

The staff has identified several pivotal issues in implementing the mandatory insurance provisions, and recommends the following approaches toward their resolution.

ISSUE 1—THE MEANING OF THE PHRASE "DEPOSITS OF LESS THAN $100,000"

The Act does not define the term "deposits of less than $100,000." There are several alternatives for interpreting the $100,000 limitation:

Alternatives:

1—The initial deposit;
2—A minimum account balance;
3—An average account balance; or
4—Each deposit without regard to the existing account balance.

Recommendations:

The staff recommends the adoption of Alternative 1 as the standard for determining whether the dollar limitation has been met. This approach would allow the account balance to subsequently decline below the $100,000 limitation and permit the acceptance of additional deposits of less than $100,000 without triggering the mandatory insurance provision. Acceptance of an initial deposit of less than $100,000 would require deposit insurance unless the FDIC finds that the deposit does not qualify as "domestic retail deposit activity requiring deposit insurance." The other alternatives might either unduly restrict the business affairs of the depositor and the branch or introduce an unnecessary degree of complexity and burden in administering and complying with the statute. If the depositor elects to place the initial deposit of $100,000 or more in diferent types of accounts (e.g., demand, savings, or time) the deposit in each type of account should be aggregated provided the deposit is held in the same right and capacity. However, in keeping with historical treatment of insured deposits, deposits *not* held in the same right and capacity would *not* be aggregated.

ISSUE 2—DEFINITION OF THE PHRASE "DOMESTIC RETAIL DEPOSIT ACTIVITY REQUIRING DEPOSIT INSURANCE"

Although a branch accepts deposits of less than $100,000, it may be exempted from mandatory insurance if it does not engage in a domestic retail deposit activity requiring deposit insurance protection. In determining whether to grant an exemption, the FDIC must consider the size and nature of the depositor and the size and nature of the deposit account.

The Act's legislative history indicates that Congress was primarily concerned with affording deposit insurance protection to individuals who are citizens or residents of the United States. Similar concern was not voiced for domestic commercial enterprises. Nevertheless, the individual/commercial dichotomy raises difficult public policy decisions relative to:

1. Accounts of officers of corporate customers, embassy or consulate employees, and branch employees; and

2. Accounts of small domestic business concerns.

Recommendations:

With respect to category 1, the staff is aware that branches of foreign banks may hold these types of accounts in nominal volume for business reasons or they may hold them as an accommodation to these individuals. These classes of depositors would appear to be within the definition of a citizen or resident of the United States. The question is whether these deposits would signify domestic retail deposit activity. The staff seriously considered excluding these classes of depositors from the definition of domestic retail deposit activity; however, in the staff's opinion, congressional intent to afford deposit insurance protection to domestic individuals may render this approach inconsistent with the purposes of the Act. Accordingly, the staff recommends the inclusion of category 1 depositors in the definition of domestic retail deposit activity.

With respect to category 2, the staff believes that deposits of small domestic corporations, partnerships, and other business entities should be afforded the benefits of deposit insurance. In a number of cases, such businesses essentially represent the economic endeavors of one or a few individuals who, consistent with congressional intent, warrant deposit insurance protection. In addressing this issue, the staff has been unable to find a clear-cut, universally accepted definition of a small business. Accordingly, the staff recommends that, with the exception of interbank deposits, foreign branches' acceptance of initial deposits of less than $100,000 from domestic corporations, partnerships, and other business entities would mandate deposit insurance.

The staff has formulated the following list of depositors who would not appear to require deposit insurance protection, and the staff recommends that acceptance of initial deposits of less than $100,000 from these classes of depositors would, by regulation, be automatically exempt form the mandatory insurance requirements:

1. Foreign corporations, partnerships, and other business entities organized and existing under the laws of a foreign country;

2. Foreign governments, any political subdivision and agencies thereof;

3. International agencies including but not limited to United Nations, World Bank, World Health Organization, International Monetary Fund, and Inter-American Development Bank;

4. The U.S. Government, any State Government, any political subdivision and agencies thereof;

5. Natural persons who are citizens of a country other than the United States and are not residents of the United States;

6. Any other person if the deposit (a) is to be transmitted abroad; (b) is to provide collateral or payment for extensions of credit by the branch; (c) represents proceeds of collections abroad that are to be used to pay for goods exported or imported or for other direct costs of export or import, or periodically transferred to the depositor's account at another financial institution; or (d) represents proceeds of extensions of credit by the branch;

7. Officer checks, expense checks, or payroll checks issued by the branch; and

8. Deposits of domestic commercial banks.

Specific comment is requested on whether additional classes of depositors should be included in the foregoing list.

ISSUE 3—DEPOSIT INSURANCE REQUIREMENTS OF STATE BANKING DEPARTMENTS

Pursuant to section 6(b) of the Act, a foreign branch may be subject to mandatory deposit insurance if it accepts deposits of less than $100,000 *and* is located in any State in which the deposits of a bank organized and existing under the laws of that State are required to be insured. In interpreting this portion of the Act, the staff has identified two possible approaches to defining the term "requires deposit insurance for State chartered banks":

Alternatives:

1—A requirement by statute or regulation; or

2—A requirement by statute, regulation, or consistently applied policy.

Based on written inquiries to the 50 State Banking Departments, most States require State chartered banks to obtain deposit insurance. However, the large majority of States require deposit insurance as a matter of policy rather than by statute or regulation.

The staff believes that the purpose of this provision was to provide for equal treatment of State licensed foreign branches and State chartered banks operating in the same State. In the staff's opinion, a statute or regulation is clearly a State requirement within the meaning of this provision. However, there is a question as to whether a policy requiring deposit insurance for State chartered banks should be considered a requirement under the Act.

Recommendation:

The staff recommends the adoption of Alternative 2. The staff has concluded that Banking Department and Bank Commissioner policies are binding on State chartered banks and, as such, should be considered as a requirement for the purposes of the Act. Accordingly, the staff recommends that branches of foreign banks accepting initial deposits of less than $100,000 shall be required to obtain deposit insurance if State chartered banks are required to be insured pursuant to statute, regulation, or policy of the State Banking Department or the Bank Commissioner.

PLEDGE OF ASSETS—SURETY BOND REQUIREMENTS

Section 6(c)(1) of the Act states that "Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the FDIC or as the FDIC may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the FDIC may require or approve, for the purpose set forth in paragraph (4) of this subsection."

Paragraph (4) states, "The purpose of surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the FDIC shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks."

This section of the Act raises a number of policy issues. The issues and the results of staff deliberation follow.

ISSUE 1—USE OF THE PROCEEDS OF THE PLEDGED ASSETS/SURETY BOND

It may be that the language of the statute and the legislative history suggest that the FDIC should assume a preferred position vis-a-vis the pledged assets/surety bonds. Therefore, in the event of liquidation of an insured branch, the FDIC would hold these assets to protect the deposit insurance fund from a loss of principal on cash disbursements and take these assets prior in time and right to any creditor of the branch.

An alternative approach, and one apparently in keeping with the concept of national treatment as well as equitable treatment of bona fide creditors, is that the proceeds derived from the pledge of assets/surety bond should be included in the receivership estate and should be shared pro rata with uninsured depositors and general creditors. This action would be consistent with the methodology employed in domestic bank liquidations. It is not clear under the Act whether the FDIC

should depart from methods employed in domestic bank liquidations in attempting to prevent loss to the insurance fund. Nevertheless, adherence to methods use in domestic bank liquidations raises the possibility that overseas creditors of the parent bank, assuming a simultaneous failure of the parent institution, in filing claims against the branch receivership estate might gain access to the pledge of assets/surety bonds, thereby diminishing the return to the FDIC and the other creditors of the domestic branch. Staff discussion has identified three possible solutions to this issue.

Alternatives:

1—Assume a preferred interest solely for the benefit of the FDIC;

2—Share the proceeds of pledged assets/surety bonds with domestic creditors; or

3—Share the proceeds with all creditors.

By choosing the first alternative, the FDIC would be certain of recovering a portion of its cash disbursement in connection with a foreign branch liquidation. This approach would exclude the claims of creditors of the parent institution from this portion of the branch receivership estate. This alternative would work to the detriment of uninsured depositors and other general creditors by excluding their claims from the pool of assets/bonds. However, it is believed by some staff members that this approach would be consistent with the concept of providing some measure of additional protection to the deposit insurance fund.

Alternative 2 would require the sharing of the proceeds with domestic creditors only and would provide a measure of protection against overseas claims of parent bank creditors. It also would ensure some recovery for domestic uninsured depositors and general creditors and would be more consistent with the disposition of the receivership estate in domestic bank failures. The third alternative would require a pro rata sharing of the pledge with all creditors but could result in overseas creditors of the parent bank gaining access to these assets.

Recommendations:

The staff recommends the adoption of Alternative 1. It is believed that by adopting this approach, the percentage of assets pledged to the FDIC could be held to a lower level.

ISSUE 2—AMOUNT OF THE PLEDGE OF ASSETS/SURETY BONDS

The language of section 6(c)(1) is sufficiently broad in scope by virtue of the clause "* * * in such amounts and of such types as the Corporation *may* require or approve * * *" to include the extremes of a zero pledge or a pledge equivalent to 100 percent of the FDIC's insured deposit liability or any amount in between. In evaluating this matter, FDIC staff has carefully considered, among other things, the testimony in the United States House of Representatives and the United States Senate, the requirements imposed by State Banking Departments, and the requirements imposed on American banks operating abroad. Given the unique risks of insuring the deposits of an entity whose parent is beyond the FDIC's jurisdiction, there is a clear need for some additional measure of protection in the form of a pledge of assets or surety bonds. The staff is keenly aware that a stringent requirement could severely hamper the operations of the branch.

Recommendations:

The staff recommends a pledge of assets linked to the total liabilities of the branch (excluding amounts due to related entities). The staff further recommends a minimum pledge requirement in the range of 5 to 8 percent of total liabilities, with a final decision on a fixed percentage being deferred pending the resolution of the issues relating to the use of the proceeds of the pledged assets/surety bond and the maintenance of assets payable in the United States (see Issue 3 which follows). The Board of Directors will retain the prerogative to require additional amounts as circumstances warrant. In the case of newly organized branches, the requisite pledge would be tied to projected total liabilities at the end of the first year of operations, with the FDIC reserving the right to request additional amounts if projections are exceeded.

ISSUE 3—ASSET MAINTENANCE RULE

Although the pledge of assets provides a measure of protection to the deposit insurance fund, these amounts would be insufficient to meet all creditor claims in the event of liquidation. As such, there is a need to impose additional requirements to help ensure that sufficient assets payable in the United States are maintained to meet this contingency. A number of States have provided for this concern by imposing, by statute or regulation, the New York 108 percent rule or a comparable mechanism.

Recommendation:

The staff recommends the adoption of a regulation imposing requirements similar to the New York State 108 percent rule for insured foreign branches. Specific comments are requested on this matter.

ISSUE 4—TERMS OF THE PLEDGE OF ASSETS

The staff believes that when the FDIC accepts asset pledges the quality and marketability of assets pledged as well as the assurance of payment within the United States should be emphasized. The staff recommends that cash deposits payable in the United States (including negotiable certificates of deposits from domestic commercial banks and domestic branches of foreign banks not directly related to the insured branch), interest bearing bonds, notes, and debentures of the United States or of any agency or instrumentality thereof or guaranteed by the United States would be acceptable. The staff favors the pledging of commercial paper or bankers acceptances provided they meet credit quality standards (restricting acceptances to those payable at domestic commercial banks and domestic branches of foreign banks consistent with the concept of ensuring that payment is made within the United States). With respect to State, county, and municipal obligations, acceptable pledges should be restricted to obligations rated "A" or better by Moody's or Standard and Poors (conflicts in ratings should be resolved in favor of the lower of the two ratings). Finally, obligations of Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development (World Bank) are considered acceptable asset pledges.

The staff recommends that pledged assets be held under the control of the appropriate Regional Director at an approved depository ordinarily within the city where the branch is located. Federal branches are specifically permitted to maintain deposits or investment securities with a member bank designated by the foreign branch (see section 4(g)(1) of the Act). Accordingly, it is logical to follow similar procedures for insured State branches but also to allow insured State nonmember banks to function as the depository. Safekeeping fees would be paid by the insured branch.

Insured branches should be permitted to substitute approved types of assets (as described above) as they may desire. However, the assets may be released only with the signature of the Regional Director or the Regional Director's designee.

Interest on pledged assets should accrue to the insured branch.

The staff recommends that asset pledges be a contractual obligation between the parent bank and the FDIC. The contract should specify matters including but not limited to the purpose of the pledge, the types of acceptable assets, the rights of substitution, as well as stipulation of the distribution of proceeds in the event of liquidation.

ISSUE 5—STATE BANKING DEPARTMENT PLEDGE OF ASSET REQUIREMENTS

The staff is aware that the States where foreign branches are situated have pledge-of-asset requirements for the purpose of ensuring that depositors and other domestic creditors are protected in the event of a branch failure. This raises the issue of whether foreign bank branches must meet the pledging requirements of both the States and the FDIC.

The staff believes that separate pledges to State Banking Departments and to the FDIC could result in a substantial burden to foreign branch operations and, to the extent practicable, should be avoided. The staff also believes the primary purpose of a State Banking Department's pledge of asset requirements (e.g., protection of depositors) is largely fulfilled by the branch's acquisition of deposit insurance.

Recommendation:

The staff recommends consulting with the State Banking Departments on this matter with the objective of determining whether the aforementioned pledge of assets formula can serve a dual purpose.

ISSUE 6—SURETY BOND FEASIBILITY

Based on preliminary research conducted by FDIC staff, bonding companies have shown very little interest in underwriting these types of instruments. Therefore, the staff does not anticipate the use of surety bonds, at least initially. Preliminary views of the surety bond option versus pledging assets point to the necessity of evaluating the positive and negative characteristics of the instruments (i.e., bonds are generally less liquid and will involve analysis of the financial standing of the bonding company). Nevertheless surety bonds may be advantageous in a liquidation because they represent an item of value in addition to assets held in the receivership estate of a failed branch. In summary, it is difficult at this time to render a judgment on how the magnitude of bonds and assets should be related.

Recommendation:

In view of the current lack of experience with these instruments, the staff recommends that regulations covering this topic provide the Board of Directors flexibility in determining suitable sureties and terms and amounts of such instruments. Specific comments are invited on this subject.

DEFINITION OF INSURED DEPOSIT

Section 6(c)(4) amends section 3(m) of the Federal Deposit Insurance Act by adding the following to the definition of insured deposit:

"(2) In the case of any deposit in a branch of a foreign bank, the term 'insured deposit' means an insured deposit as defined in paragraph (1) of this subsection which—

"(A) Is payable in the United States to—

"(i) An individual who is a citizen or resident of the United States,

"(ii) A partnership, corporation, trust or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

"(iii) An individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and

"(B) Meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof."

The foregoing passages provide the FDIC with wide latitude in defining an insured deposit. The statutory language explicitly provides for deposit insurance only if the deposit is payable in the United States to a domestic citizen, resident, or business entity. The accounts of nondomestic individuals or business entities may, at the Board of Directors' discretion, be considered insured deposits provided the depositor has sufficient business and financial relationships to warrant deposit insurance coverage consistent with the purposes of the Act. The discretion afforded to the Board of Directors to insure only certain accounts is in contrast to insurance afforded deposits in domestic banks where all deposits are insured (to the prescribed maximun amount) without regard to the origin of the deposit.

In analyzing this issue, the staff has identified two possible courses of action:

Alternatives:

1—Restrict the definition of insured deposits to domestic citizens, residents, and business entities and to foreign depositors with sufficient financial nexus to warrant deposit insurance coverage; or

2—Insure all deposits of the branch.

Recommendations:

In weighing these alternatives, the staff has considered the fact that Alternative 1 requires a workable definition of the terms resident and sufficient financial nexus to the United States. The adoption of this alternative would require the formulation of control procedures within the branch to ensure that new deposits are properly segregated as insured and uninsured. A particularly difficult problem would be changes in the status of the depositor. Additionally, there would be a need for a reporting and record keeping system to ensure that all depositors requiring deposit insurance are properly categorized for assessment purposes. Finally, the staff believes that this approach would be contrary to the theme of national treatment, one of the primary purposes of the Act, because it would treat deposits of foreign branches differently than deposits of domestic banks.

The staff recommends the adoption of Alternative 2. Alternative 2 would eliminate the need to define certain terminology and significantly reduce the need for control and reporting mechanisms. It is the staff's view that the Board of Directors, in exercising its discretion, may insure all foreign deposits. This approach would place foreign branches on an equal footing with domestic bank counterparts.

In the event of an imminent failure of an insured branch and its parent bank, there is concern for a massive shift of deposits from the parent to the branch for the sole purpose of obtaining the benefits of deposit insurance protection. The staff recommends that the regulations give the FDIC flexibility in determining whether deposits placed in the branch shortly before its closing are bona fide and warrant deposit insurance coverage.

ASSESSMENTS

Consistent with the proposed position on insured deposits, the staff recommends that assessments be paid on the entire deposit structure of the branch in accordance with the rules prescribed in Part 327 of the FDIC's Rules and Regulations. This approach would place foreign branches on an equal footing vis-a-vis domestic bank counterparts.

REPORTING

The Act amends section 7(a)(1) of the Federal Deposit Insurance Act by requiring each foreign bank with an insured branch to file reports of condition with the FDIC in a manner similar to reports required by domestic banks. In developing required reports, the FDIC is authorized to differentiate between domestic banks and foreign banks to the extent necessary to avoid hardship to foreign banks without compromising regulatory effectiveness.

Staff members of the three Federal bank regulatory agencies are working toward the development of a uniform reporting system for domestic operations of foreign banks. Pursuant to

section 309(4)(b) of the FDIC's Rules and Regulations, domestic bank reports of condition may be made publicly available at the FDIC's discretion. Presently, the FDIC makes all such reports available upon request. The staff is cognizant of the concern expressed by foreign bankers that disclosure of condition reports of foreign branches may be misleading because they reflect only a segment of the entire enterprise. Specific comments are requested on whether or not these reports should be publicly available.

By direction of the Board of Directors dated December 20, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 78-36044 Filed 12-26-78; 8:45 am]

[6714-01-M]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 337]

UNSAFE AND UNSOUND BANKING PRACTICES

Insider Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed amendments to regulation.

SUMMARY: The FDIC is withdrawing from consideration the proposed amendments to its regulation dealing with insider transactions (12 CFR 337.3) which were published for comment on January 31, 1978 (43 FR 4051). The FDIC is taking this action because the recently enacted Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRIRCA) preempts much of the subject matter of the proposed amendments.

DATE: Effective December 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Alan J. Kaplan, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, telephone (202) 389-4433.

SUPPLEMENTARY INFORMATION: On January 31, 1978, the FDIC published for comment in the FEDERAL REGISTER proposed amendments to its regulation dealing with insider transactions of insured State nonmember banks. The insider transaction regulation, which has been in effect since May 1, 1976, is intended to minimize abusive self-dealing and overreaching by bank insiders through the establishment of procedures designed to ensure that bank boards of directors supervise insider transactions effectively and to better enable FDIC examiners to identify and analyze insider transactions.

Among other things, the proposed amendments would have specified the circumstances under which the FDIC considers an insider transaction to be an unsafe or unsound banking practice, prescribed specific reporting and review requirements with respect to correspondent accounts and certain bank stock loans, and made certain other language changes for purposes of clarity.

As a result of the recent enactment of FIRIRCA, the FDIC is reviewing its insider transaction regulation and the proposed amendments thereto. The initial review indicates that certain provisions of FIRIRCA preempt portions of the proposed amendments.

For example, the proposed amendment relating to correspondent accounts would have required each insider to report in writing to the bank's board of directors all bank stock loans made to the insider and certain of the insider's relatives by a financial institution with which the bank maintains a correspondent account. The bank's board of directors would have been required to review, at least annually, all of the bank's correspondent accounts to ensure their fairness to the bank.

FIRIRCA's provisions relating to correspondent accounts go much further. FIRIRCA *prohibits all* preferential loans to insiders (executive officers, directors, and 10% shareholders) of correspondent banks, authorizes the FDIC to collect substantial civil fines for violations, and imposes certain reporting requirements on banks and their insiders regarding loans from correspondent banks. It is therefore unnecessary for the FDIC to adopt its proposed amendments relating to correspondent accounts.

Similarly, FIRIRCA covers a number of other issues addressed in the proposed amendments (*e.g.*, prior board of directors' approval of certain insider loans; definitional description of "preferential" loans; and enforcement provisions).

In view of the foregoing, the FDIC has determined that rulemaking action on the proposed amendments is not appropriate at the present time and that the proposed amendments should be withdrawn. The withdrawal of this proposal, however, does not preclude the FDIC from issuing similar proposals in the future or commit the FDIC to any course of action.

Accordingly, the proposed amendments to 12 CFR 337.3 which were published for comment in the FEDERAL REGISTER on January 31, 1978 (43 FR 4051) are hereby withdrawn.

By order of the Board of Directors, dated December 20, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 78-35932 Filed 12-26-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[PDR-59; Procedural Regulations Docket 34304; Dated: December 21, 1978]

[14 CFR Parts 302 and 321]

RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

UNUSED AUTHORITY PROCEDURES

Notice of Proposed Rulemaking

DECEMBER 21, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes substantial revisions of the rules governing unused authority under the Airline Deregulation Act of 1978. The changes include (1) new names, format requirements, and filing deadlines for certain existing types of documents; (2) new types of documents; (3) a drawing or lottery to establish priorities among applications and incumbent carriers' notices of intent to begin service that are filed on the same day; (4) procedures for disposition of these filings; and (5) interpretations of some provisions of the Act.

DATE: Comments by January 4, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Send 20 copies of comments to Docket 34304, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: The unused or "dormant" authority provision of the Federal Aviation Act, section 401(d)(5), was added by the Airline Deregulation Act of 1978, Pub. L. 95-504. In anticipation of applications, and incumbent carriers' notices of intent to begin service, to be filed upon the signing of the Deregulation

Act, we established rules governing unused authority proceedings. These rules are found in Subpart R of 14 CFR Part 302, *Rules of Practice in Economic Proceedings.* (PR-180, October 18, 1978; 43 FR 49529, October 24, 1978.) We later amended Subpart R to allow applications to include page citations instead of actual copies of Official Airline Guide pages used to demonstrate dormancy. (PR-183, November 2, 1978; 43 FR 52021, November 8, 1978.)

This notice proposes substantial revisions of the unused authority rules. In connection with these revisions, the rules would be moved from Subpart R to a new Part 321. The changes include new names, format requirements, and filing deadlines for certain existing types of documents; new types of documents, with corresponding deadlines and service requirements; a drawing or lottery to establish priorities among applications and incumbents' notices filed on the same day; procedures for disposition of these filings; and interpretations of some provisions of the Act.

Carriers that already have been awarded new authority under the unused authority provisions have in a majority of cases until January 20, 1979, to begin service. A new round of applications is likely after that date, since evidently more authority has been granted than can actually be exercised with the aircraft now available. So that we may take final action on this proposal before January 20, comments are due on January 4. Because of the need to provide functioning and fully understood procedures as soon as possible, no extensions of the comment period will be granted.

In the discussion that follows, "subparagraph (A) market" refers to a pair of points governed by subparagraph (A) of section 401(d)(5), where the dormant carrier has a year-round certificate and the points are actually receiving service from not more than one other carrier. Similarly, "subparagraph (B) market" means a pair of points governed by section 401(d)(5)(B), where the dormant carrier has a seasonal certificate and the points are actually receiving service from not more than one other carrier. "Subparagraph (D) markets" and "subparagraph (E) markets", correspondingly, are those receiving actual service from two or more carriers. In the former, the dormant certificates are for year-round service, while in the latter, they are seasonal. The Act prescribes different treatment for each of these types of unused authority.

CHANGES FOR EXISTING TYPES OF DOCUMENTS

All documents. All documents would be required to show on their covers which subparagraph of section 401(d)(5) applied to the markets involved. One document could address multiple markets as long as they were covered by the same subparagraph.

Applications. The proposed Part 321 would prescribe a uniform format for applications for unused authority, so that they can be entered quickly into the Board's computer system. The basic information about the markets where authority is sought would be included in a table with a separate, numbered line for each market (pair of points). The lines would be alphabetized by market, and each would contain the following items: market, 26-week period or season relied on, active carriers, inactive carriers, inactive period, and (for subparagraph (A) markets only) whether or not a suspension is requested. Air carriers would be identified by the Official Airline Guide's 2-letter carrier codes. The columns of the table would be labeled accordingly. The method of identifying the cities in a market would differ from that of the present rule in that the Official Airline Guide's 3-letter *city* codes would be used instead of airport codes, where these differ. (At most cities, they are the same.) At a city served by two or more airports, authority to serve the city ordinarily carries with it authority to serve any or all of its airports. Where the inactive carrier's authority at a city is limited to a particular airport, that limitation would be shown by putting the airport code in parentheses after the city code, *e.g.,* "WAS(IAD)" or "CHI(MDW)". Points that are invariably hyphenated, like Minneapolis-St. Paul, would be shown by a single 3-letter city code (MSP). At points that are sometimes hyphenated and sometimes not, like San Fransicso, Oakland, and San Jose, the authority that can be applied for is defined by the inactive carrier's certificate, and would be shown by listing the city codes of the hyphenated cities in the order the cities appear in the certificate, *e.g.,* "SFO/OAK/SJC" if the inactive carrier's certificate hyphenates all three of these cities.

In addition to aiding computer processing, this change in the identification of markets would serve to emphasize "points" (cities or groupings of cities) rather than particular airports, consistently with what we believe to be the intent of Congress in section 401(d)(5). Since what is being awarded under this provision is nonstop authority based on that not used by a certificated carrier, the terms of the incumbent's certificate defining the nonstop authority are controlling.

Citations of the relevant pages from the Official Airline Guide would be included in a separate table in the application, as shown in the example set out in proposed § 321.11(c).

Amendments to applications would be required to restate the relevant lines from the original application that are to be amended, with corrected entries underlined. An amendment could delete markets or correct errors, but not add markets.

It is also proposed that a minimum amount of additional information be required on all applications, so that the Board can verify the certification that the applicant's aircraft meet FAA specifications. This might consist of the aircraft description set forth in proposed § 321.12 for applications requesting suspension of incumbent authority, or some similar data. Comments are requested on what might be the best form and content of this information.

Answers to applications. Answers would include tables using the line format discussed above for applications, with challenged items underlined. There would also be three new columns, showing the applicant, docket number, and code numbers for the type of objection raised by the answer. The code numbers appear in proposed § 321.13(f). The objections would be explained in text to the extent necessary.

Answers would have to be served on the applicant and on those persons who were required to be served by the applicant. For subpargraph (A) and (B) markets, the filing deadline would continue to be 7 calendar days after the application was filed, since section 401(d)(5)(C) requires the Board to act on the application within 15 days. For subparagraph (D) and (E) markets, where the Board has 60 days to act, answers would be due within 14 days.

Incumbent carriers' notices of intent to begin service. These notices, filed under section 401(d)(5)(G), would be retitled "Incumbent's Notice of Intent to Exercise Unused Authority". Each incumbent's notice would be required to include a table similar to that in applications and answers. Each line of the table would identify the market, the 26-week period or season upon which the notice is based, and the date by which the carrier intends to begin service. These notices could be amended in the same manner as applications.

Notices of inauguration of service. The present rule requires these notices to be filed within 7 days after the beginning of service by applicants that are awarded new authority. The proposed rule would extend this requirement to incumbent carriers that have previously filed notices of intent to exercise unused authority, other than carriers whose earlier notices have stated that service had already begun. The present rule requires three copies of these notices to be filed with the Board. The U.S. Postal Service has informally asked the Board to require

that these notices also be sent to it, so that it will be informed of potential new sources for the transportation of mail. This proposal includes such a requirement.

NEW TYPES OF DOCUMENTS

Replies to answers to applications. Any person could file a reply to an answer. Replies would be served on the person who filed the answer and everyone whom that person was required to serve. In view of the 15-day limit for Board action in subparagraph (A) and (B) markets, replies would have to be filed within 10 days after the application (*i.e.*, 3 days after answers), and would be considered by the Board only to the extent practicable. In subparagraph (D) and (E) markets, replies would be due 28 days after the application (*i.e.*, 14 days after answers). In these cases, if any answer alleged that the grant of the application would be inconsistent with the public convenience and necessity, the applicant's reply would have to indicate, by frequency and equipment type, what service it would provide and what service (if any) it would discontinue in order to make aircraft available for the new service. This information will enable interested persons to submit informed comments in accordance with section 401(d)(5)(F), which requires a comment period before Board disposition of applications in subparagraph (D) and (E) markets.

Responses to replies. Any person could file one of these further responsive documents for a subpargraph (D) or (E) market. They would be due within 42 days after the application (*i.e.*, 14 days after replies). The opportunity to file these documents would satisfy the requirement of section 401(d)(5)(F) to allow comments.

Answers to incumbents' notices. Since many incumbents' notices were contested by applicants, proposed § 321.22 would formalize these challenges. Any person could file an answer to an incumbent's notice, which would be due within 7 days after the notice for subparagraph (A) and (B) markets and within 14 days for subpargraph (D) and (E) markets. It would be served as if it were an answer to an application. The answer would include a table following the line format of the notice, with two extra columns: one to identify the filer of the notice, and one listing the basis or bases for the objection to the notice. Objections would be coded as follows: "NX": The notice does not comply with section 401(d)(5)(G) or Part 321. "NE": The filer of the notice already filed another one for the same market. "NA": A valid application for the filer's unused authority was filed before the notice. "NR": Any other objection. Objections would be explained further in the text.

Replies to answers to incumbents' notices. Any person could file such a reply. It would be filed and served as if it were a reply to an answer to an application.

Notices of completion of 13 weeks of service. In addition to filing notices of inauguration of service, carriers awarded new route authority under section 401(d)(5) and carriers that have filed successful incumbents' notices would be required to file with the Board three copies of a notice, within 7 days after completing 13 consecutive weeks of service of at least five round trips per week. (The 13-week minimum service requirement for carriers newly certificated under the dormant authority provisions is discussed below under "Interpretations".) These notices would complete the obligations of both winning applicants and successful incumbent under this rule.

Relinquishments of newly awarded authority and waivers of incumbents' notices. In a number of cases, carriers have notified the Board that they do not intend to commence service in some of the markets awarded to them under section 401(d)(5), or in which their incumbents' notices were successful. We encourage such pleadings, since they open the markets involved to applications by other carriers. The Board does not encourage applicants to apply, or incumbents to give notice, for markets they have no present intention or ability to serve, since such action can operate to preempt applications by other, more willing carriers. However, the Board recognizes the uncertainties involved in the application process, both in the queue process used at the outset and the random allocation (by drawing) process more recently adopted, and hence the likelihood that applicants may sometimes find themselves with more authority than they can use immediately. Since the Congressional purpose is prompt institution of service in unused-authority markets, it is desirable for carriers to waive their claims as soon as they determine they will not be starting service in such a market. The proposed rule woud provide for such relinquishments and waivers, and would specify the form and

DRAWING OR COMPUTER-BASED LOTTERY

As announced in Order 78-11-152, November 30, 1978, we reconsidered and departed from our original conclusion that the Deregulation Act requires the Board to accept applications strictly in the order of their filing. We determined instead that the order of filings that are essentially simultaneous can be established by a drawing or some other random distribution procedure. Order 78-11-152 defined same-day filings as essentially simultaneous and stated that drawings would be used until after there was an opportunity for comment on other possible procedures. We now propose in the alternative to use either a drawing (OPTION I) or a computer-based assignment of random numbers (OPTION II). For convenience, the discussion that follows uses the term "drawing" for the conventional blind selection from a container and the term "lottery" for the computer-based procedure.

Drawing (OPTION I). This option would codify the procedure that is already being used on an interim basis. For each day on which one or more markets are addressed in multiple (*i.e.*, essentially simultaneous) filings, a separte drawing would be conducted for each such market. Otherwise identical cards bearing the name of each filer (applicant or incumbent carrier) would be placed in an opaque container. The container would be covered and shaken, and then a Board staff member would draw the cards out successively until all have been drawn. The order of the draw would estabish the order in which the documents would be considered to have been filed. Drawings would be open to the public. If we adopt the interpretation of "week" that is discussed below, most applications and incumbents' notices will be filed on Mondays. Therefore, drawings would ordinarily be conducted on the first Wednesday after a multiple filing, instead of on Mondays as announced in Order 78-11-152.

The drawing process would not interfere with the filing of answers. In general, questions about the validity of applications and incumbents' notices would be resolved after the drawing. Invalid filings would then merely be disregarded.

Lottery (OPTION II). A random number, generated as discussed below, would be assigned to each market line of each application and incumbent's notice. The numbers assigned to lines that were not duplicated would merely be disregarded. For markets that did receive multiple filings, the filings would be considered as having been made in the order of the random numbers assigned to the corresponding lines, beginning with the lowest. If two or more lines that addressed the same market were assigned a common number, the order of those filings would be established by a blind drawing.

For each application and incumbent's notice, a "seed number" would be determined upon filing as follows: The Docket Section would have available an electric digital clock or watch that, when operated in rapid-advance mode to reset the time, advances at

the rate of 1 hour per second or faster. A Board staff member would press down the rapid advance button for at least 5 seconds and then release it. The time in minutes upon release of the button (2 digits) would be appended to the docket number of the application or notice to provide the seed number.

Using this seed number, the Board's computer would generate a sequence of random numbers using the IBM RANDU random number generator program. These numbers would be assigned in succession to the lines within the application or notice. The assignment would be conducted as soon as practicable after the day of the multiple filings, normally within 3 days. The results, including documentation of the random number procedure, would be announced and made available in the Docket Section. As with drawings, the lottery process would not interfere with the filing of answers. Questions about the validity of filings would ordinarily be resolved after the lottery.

We considered an allocation procedure with "rounds" that would tend to distribute awards evenly among applicants in the manner of the player drafts of professional sports leagues. This proposal does not include such a procedure, however, since it would be unnnecessarily complex in light of what we expect in the future to be the small number of markets simultaneously receiving multiple applictions, and the varying groupings of carriers filing for those markets.

DISPOSITION OF APPLICATIONS AND INCUMBENTS' NOTICES

The proposed Part 321 would also elaborate and codify some of the other procedures announced in Order 78-11-152. In any given market, the Board would dismiss all applications remaining after it recognized an incumbent's notice as "successful", granted an application, denied an application on the ground that no unused authority was available in the market, or denied (in a subparagraph (D) or (E) market only) an application on the ground of inconsistency with the public convenience and necessity. An unsuccessful incumbent's notice would not be dismissed, and in fact could become successful if (1) the winning applicant relinquished its authority or lost it by failing to begin service in time, and (2) the incumbent began service within the time required by its notice.

In a market with more than one carrier holding unused authority, the Board would, with respect to each one, announce that an incumbent's notice was successful, grant an application, or deny an application on public convenience and necessity grounds. Only then would the remaining applications be dismissed.

Once all applications were dismissed, a market would become open for new applications if a winning applicant or successful incumbent did not begin service within the time required by the Act. Applications could be filed on the first business day after the first day that the statutory noncompliance occurred. New applications would be accepted sooner if a winning applicant filed and served a "Relinquishment of Newly Awarded Authority" or a successful incumbent filed and served a "Waiver of Incumbent's Notice." Carriers would be encouraged to file these documents if they were not going to exercise their newly awarded or protected authority within the statutory time limits.

"Commence service". The Act requires an incumbent air carrier with regular authority to "commence service" within 30 days after filing a successful incumbent's notice, or else to lose the protection afforded by that notice. For seasonal authority, the service must begin within 15 days after the beginning of the next season. Similarly, a successful applicant must "commence service" within 45 days after being awarded the new authority, with a corresponding requirement where the authority is seasonal. Otherwise, the Board is required to revoke the new authority.

In the case of successful incumbents, the meaning of the requirement to commence service is clear, because section 401(d)(5)(G)(i) speaks of:

> a notice from such air carrier that it intends to commence service within thirty days of such notice *and to provide a minimum of five round trips per week for thirteen consecutive weeks . . .* (emphasis added)

Similarly, subparagraph (G)(ii), for seasonal authority, specifies five round-trips per week for the first half of the season. In the case of winning applicants, however, there is nothing in section 401(d)(5)(H) analogous to the emphasized language to give meaning to "commence service." The legislative history is also silent on this question. We propose to interpret these words as though Congress had included wording in subparagraph (H) similar to that of subparagraph (G). A winning applicant would thus have to begin service within 45 days and continue it at the minimum level for 13 weeks (or within 15 days after the beginning of the next season, continued for at least half the season). Although this interpretation is not clearly mandated by the Act, it appears to be the one best calculated to carry out the overall intent of Congress. Clearly Congress wanted actual service to unused-authority markets at a level of at least five round trips a week for at least a reasonably extended trial period, and not merely a token inauguration of service followed by a lapse into inactivity. Section 401(d)(5)(H) instructs the Board to revoke the new carrier's certificate if it fails to commence service within the specified time. We think the fairest scheme is to make the successful applicant's obligation in this respect identical to that of an incumbent carrier upgrading its service: 13 consecutive weeks of service of at least the specified minimum frequency. After this time the successful applicant's authority would become permanent and could only be revoked under other provisions of the Act. Its authority could of course become unused under section 401(d)(5) and thus open to another applicant.

"Week" to mean calendar week. With several routes that have become dormant since the signing of the Deregulation Act, there has been confusion about the precise day on which applications and incumbents' notices can validly be filed. Under section 401(d)(5)(A), (D), and (G)(i), applications and incumbents' notices cannot be filed until after the last day of a 26-week period during which the incumbent air carrier "fails to provide . . . a minimum of five round-trips per week for at least thirteen weeks." The Director of the Bureau of Pricing and Domestic Aviation explained in Order 78-12-76, issued on December 11, 1978, under delegated authority, that in this provision the phrase "for at least thirteen weeks" is interpreted as modifying "provide," not "fails." Briefly, a 26-week period that includes exactly 13 weeks *without* the minimum level of service does not qualify, because that period also includes 13 weeks *with* service at the minimum level. A route becomes unused only after a 26-week period with *12 or fewer* weeks of minimum-level service. For example, if a carrier flies two round-trip flights per day until a Tuesday and stops service entirely on Wednesday, the 26-week period ending 13 weeks from that Wednesday does not establish dormancy, since the 13th week of that period would have 12 flights (2 per day for 6 days, 0 on the 7th day). Not until the next Sunday would there be a 26-week period in which the 13th week had fewer than 5 flights (2 per day for 2 days, 0 per day for 5 days). Applications cannot be filed until the day after the 26-week period, Monday in this example. If, instead of stopping all flights, the incumbent continued them in an unusual pattern, the calculation would be more complex.

We agree with the Bureau Director's interpretation of the statutory language, which will continue to be applied without modification until January 19, 1979. We propose, however, for purposes of simplification to modify the application of the statute for peri-

ods ending on and after January 20, 1979. We would consider each "week" to be a calendar week, running from a Sunday through the following Saturday. A 26-week period, similarly, would always end on a Saturday. Since January 20 is a Saturday, there should be no problem in transition. This approach would not only simplify the computation of dormancy periods, but also reduce any advantage that could arise from one applicant's having special knowledge of what actually happened on the allegedly last day of an incumbent's service. This modification by rule would not in any way contravene the intent of Congress in enacting this program, and would go far to eliminate possible errors and misinterpretations.

This interpretation of "week" would be applied throughout section 401(d)(5) and Part 321. Mondays would therefore become the predominant filing days for applications and incumbents' notices, since 26-week periods would end on Saturdays. Similarly, for an incumbent that began service within 30 days of its successful notice (or a winning applicant that began service within 45 days of its award) but did not continue it for the required number of weeks, the failure to continue would occur on a Saturday. Only if the carrier fails to start (on a day other than Saturday) or files a "Relinquishment of Newly Awarded Authority" or a "Waiver of Incumbent's Notice" would the day for filing new applications be other than a Monday.

Accordingly, the Civil Aeronautics Board proposes to amend Part 302 and add a new Part 321 to Chapter II, Title 14, Code of Federal Regulations, as set forth below.

Part 302, *Rules of Practice in Economic Proceedings,* would be amended as follows:

1. Section 302.901 would be amended to read:

§ 302.901 Applicability.

This subpart sets forth the special rules applicable to proceedings for conferment and/or modification of route authority under sections 401 and 402 of the Federal Aviation Act of 1958. However, this subpart does not apply to applications for unused authority under section 401(d)(5) (Part 321) or applications for automatic market entry under section 401(d)(7) (Part 322). For information as to other applicable rules, reference should be made to Subpart A of this part, to the Federal Aviation Act, and to the substantive rules (Parts 201 and 211 for the form of applications) and orders of the Board.

2. In § 302.908, paragraph (a) would be amended to read:

§ 302.908 Applications for new or modified certificated route authority.

(a) This section applies to all applications filed under this part for new or modified certificated route authority except those filed under Subpart M or N and those filed in response to, and conforming to, an order instituting a route investigation. Except as modified by this section, the rules in Subpart A of this part continue to apply.

* * * * *

Subpart R-§§ 302.1801-302.1812 [Revoked]

3. Subpart R—*Rules Applicable to Unused Authority Proceedings,* would be revoked.

4. The Table of Contents would be amended accordingly.

A new Part 321 would be added, to read:

PART 321—UNUSED AUTHORITY PROCEDURES

Subpart A—General

Sec.
321.1 Applicability.
321.2 Conformity with Subpart A of Part 302.
321.3 Definitions.
321.4 Notices of inauguration and completion of 13 weeks of service.
321.5 Environmental evaluations and energy information not required.
321.6 No conflict with separation of functions rule.

Subpart B—Applications for Unused Authority and Related Documents

321.10 General requirements for applications.
321.11 Contents of applications.
321.12 Additional requirements for applications that request suspension of unused authority.
321.13 Answers to applications.
321.14 Responses to replies.I82

Subpart C—Incumbent Carriers' Notices of Intent To Begin Service and Related Documents

321.20 General requirements for incumbent carriers' notices of intent to begin service.
321.21 Contents of incumbents' notices.
321.22 Answers to incumbents' notices.
321.23 Replies to answers to incumbents' notices.

Subpart D—Processing of Documents

321.30 Simultaneous filings.
321.31 Disposition of applications and incumbents' notices.
321.32 Successful applicant's failure to commence service.
321.33 Successful incumbent carrier's failure to begin service.
321.34 Option I: Drawing. Option II: Lottery.

Subpart E—Interpretations of the Act's Unused Authority Provisions

321.40 "Commence service".
321.41 "Week" means calendar week.

AUTHORITY: Secs. 204, 401, and 1001 of the Federal Aviation Act of 1958, as amended by Pub. L. 95-504, 72 Stat. 743, 754, and 771, 92 Stat. 1713; 49 U.S.C. 1324, 1371, and 1481.

Subpart A—General

§ 321.1 Applicability.

This part applies to applications for nonstop route authority where unused authority exists, filed under sections 401(d)(5)(A), (5)(B), (5)(D), and (5)(E), and to notices of incumbents' intent to begin service that are filed under section 401(d)(5)(G).

§ 321.2 Conformity with Subpart A of Part 302.

Except where they are inconsistent with this part, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

§ 321.3 Definitions.

As used in this part:

"Application" means an application for nonstop route authority, on the basis of unused authority, under section 401(d)(5)(A), (5)(B), (5)(D), or (5)(E).

"Applicant" means a person who files an application under this part.

"Minimum level" and "minimum level of service" mean the minimum level of service set forth in subparagraph (A), (B), (D), or (E) of section 401(d)(5), as applicable.

"Section 401(d)(5)" refers to the unused authority program of the Act, 49 U.S.C. 1371(d)(5).

§ 321.4 Notices of inauguration and completion of 13 weeks of service.

(a) Every applicant that is awarded new authority and every carrier that files an incumbent's notice shall file a notice (1) within 7 days after inaugurating service between any pair of points covered by the award or incumbent's notice, and (2) within 7 days after completing 13 consecutive weeks of service of at least five nonstop round trips per week. However, if an incumbent's notice states that service has already begun, the incumbent need not give the inauguration notice required by clause (1) above.

(b) Notices required by paragraph (a) of this section shall be titled "Notice of Inauguration of Service" or "Notice of Completion of 13 Weeks of Service," as applicable. They shall specify on the cover the subparagraph of section 401(d)(5) that governs the market or markets involved, and shall identify the pairs of points between which service has been inaugurated or carried on for 13 weeks.

(c) Notices described in paragraph (a) of this section shall be filed in three copies, marked for the attention

of the Director, Bureau of Pricing and Domestic Aviation.

(d) A copy of each notice described in paragraph (a) of this section shall be served on the U.S. Postal Service Headquarters, Law Department, Transportation Division, Washington, D.C. 20260.

§ 321.5 Environmental evaluations and energy information not required.

Notwithstanding any provision of Part 312 or Part 313 of this title, a person filing an applicaion under this part is not required to file an environmental evaluation or energy information with the application.

§ 321.6 No conflict with separation of functions rule.

Actions taken by the Director of the Bureau of Pricing and Domestic Aviation under delegated authority to administer section 401(d)(5) will not be considered as conflicting with the Board's separation of functions rule, § 300.4 of this chapter.

Subpart B—Applications for Unused Authority and Related Documents

§ 321.10 General requirements for applications.

(a) Each application shall be titled "Application for Unused Authority."

(b) An application may request nonstop authority in more than one market. However, applications shall not include requests for authority under more than one subparagraph of section 401(d)(5).

(c) An application may be amended after filing at any time before it is granted or dismissed to eliminate markets or correct errors, but not to add markets. Markets to be eliminated shall be listed by line number from the original application and city or airport codes as set forth in § 321.11(b)(1). Corrections shall be shown by setting forth the entire line from the table described in § 321.11(b) or (c), as applicable, with the corrected items underlined. Any necessary explanation of the correction shall be included in text or footnotes.

(d) Applications and amendments of applications shall be served on: (1) All air carriers named in the application in accordance with § 321.11(b)(3) or (4).

(2) The airport authority of each airport the applicant proposes to use.

(3) The Federal Aviation Administration.

§ 321.11 Contents of applications.

Each application shall:

(a) Identify on its cover page the subparagraph of section 401(d)(5) that governs the application.

(b) Include a table with a separate, numbered line for each pair of points between which the applicant seeks nonstop route authority. The lines shall be alphabatized by the points named in them. Each line shall include the following information, with the columns of the table labeled accordingly:

(1) *Market.* The pair of points as specified in the inactive carrier's certificate, with each point identified by the Official Airline Guide's 3-letter city code. Where the inactive carrier only has authority to serve a point through a named airport, this limitation shall be shown by adding the 3-letter airport code for the airport in parenthesis after the city code. (EXAMPLE: "WAS(IAD)" for Washington, to be served through Dulles International Airport.) Where a point is hyphenated in all or substantially all carriers' certificates, its single 3-letter code shall be used. (EXAMPLE: "MSP" for Minneapolis-St. Paul.) At points that are sometimes hyphenated and sometimes listed separately in certificates, the authority of the inactive carrier or carriers shall be shown by listing the city codes of the hyphenated cities in the order shown in each inactive carrier's certificate. (EXAMPLE: "SFO/OAK/SJC" for San Francisco-Oakland-San Jose.)

(2) *Period of season.* The beginning and ending dates of the 26-week period or season, as applicable, upon which the request for authority is based. If the dates differ for different inactive carriers, each set of dates shall be included. If a split period is relied on because of a strike, the computation shall be explained elsewhere in the application.

(3) *Active carriers.* The Official Airline Guide's 2-letter carrier code for each carrier, certificated or not, that has provided the minimum level of service between the points during the period or season described in paragraph (b)(2) of this section.

(4) *Inactive carriers.* The Official Airline Guide's 2-letter carrier code for each air carrier having certificate authority to provide nonstop round-trip service between the points that has not provided the minimum level of service during the time described in paragraph (b)(2) of this section.

(5) *Inactive period.* For each carrier named in paragraph (b)(4) of this section, the beginning and ending dates of below-minimum service during the period or season described in paragraph (b)(2) upon which the request for authority is based.

(6) *Suspension requested.* For applications governed by section 401(d)(5)(A) only: Whether or not the applicant requests suspension of the unused authority of incumbent air carriers.

(c) Include a table that lists, for each pair of points named in the application, the Official Airline Guide pages covering service for the entire 26-week period or season upon which the request for authority is based. There shall be a separate line for service in each direction. The page citations shall be to successive monthly issues of the Official Airline Guide, using consistently the editions of the 1st or the 15th of the month. The table shall be in the format shown in the following fictitious example:

OAG EDITION OF ——

	5/1/78	6/1/78	7/1/78	8/1/78	9/1/78	10/1/78	11/1/78
ATL-DEN	140	143-4	151	146	137	142	145
DEN-ATL	311	315	329	317-8	304	313	316
•	•						
•				•			
•						•	

(d) Certify that the applicant's aircraft meet all applicable requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce.

(e) Certify that the applicant will obtain any necessary operating authority from the Federal Aviation Administration in time to begin exercising the nonstop route authority sought under this part within the time set forth in subparagraph (H)(i) or (H)(ii) of section 401(d)(5), as applicable.

(f) Certify that the applicant is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to the Act.

§ 312.12 Additional requirements for applications that request suspension of unused route authority.

(a) If an applicant for authority under section 401(d)(5)(A) wants the Board to suspend the unused authority of incumbent carriers as set forth in

section 401(d)(5)(J), its application shall at a minimum include, in addition to the information set forth in § 321.11, the following:

(1) Information specific to each pair of points showing why suspension is necessary to encourage continued service between those points by the applicant;

(2) A list, by filing date and points, of all other applications filed or to be filed on the same day and within the preceding 45 days; and

(3) A description of the aircraft that the applicant intends to use in exercising the authority sought in the current application and all applications filed or to be filed on the same day and within the preceding 45 days. The description shall consist of either a plan for obtaining aircraft, identified by type, that can be verified within 15 days by the Board's staff, or a list of aircraft identified by FAA registration number.

(b) If the Board grants an application that does not include the information set forth in paragraph (a) of this section, the Board will not suspend the unused authority of incumbent carriers.

§ 321.13 Answers to applications.

(a) Any person may file an answer to an application. If the application is governed by subparagraph (A) or (B) of section 401(d)(5), the answer shall be filed within 7 calendar days after the application is filed. If the application is governed by subparagraph (D) or (E), the answer shall be filed within 14 days after the application is filed.

(b) Answers filed under this section shall be entitled "Answer to Application for Unused Route Authority."

(c) Each answer filed under this section shall identify on its cover page the subparagraph of section 401(d)(5) that governs the application being answered.

(d) Each answer filed under this section shall include a table that, except as set forth in paragraph (e) of this section, repeats the lines included in the application in accordance with § 321.11(b) that are being answered. The items that the answer challenges in each line shall be underlined.

(e) The table required by paragraph (d) of this section shall also include the following three columns:

(1) After the column showing the market (§ 321.11(b)(1)): A column showing the applicant, identified by 2-letter carrier code.

(2) After the applicant column described in paragraph (e)(1) of this section: A column showing the docket number of the application.

(3) After the last column: A column showing the type or types of objection that the answer raises, using the code numbers set out in paragraph (f) of this section. Each objection shall be explained to the extent necessary in the text of the answer.

(f) Objections shall be identified by the following code numbers:

(1) The application was filed under the wrong subparagraph of section 401(d)(5).

(2) The allegedly inactive carrier does not have certificate authority to provide nonstop service in the market.

(3) The allegedly inactive carrier has certificated nonstop authority, but did not have it throughout the 26-week period or season relied on.

(4) The authority of the allegedly inactive carrier has been suspended by the Board under section 401(g) of the Act, or under section 401(j) by an order that requires the carrier to obtain Board approval before resuming service.

(5) The 26-week period or season relied on includes more than 6 weeks of a labor dispute that interrupted the service of the allegedly inactive carrier.

(6) The authority in question was not unused because the allegedly inactive carrier served the point or points through at least one airport and was not required to serve through more than one airport.

(7) The allegedly inactive carrier in fact provided the minimum level of service.

(8) The unused authority relied on has already been the basis of an award that has not been revoked.

(9) For applications governed by section 401(d)(5)(D) or (5)(E) only: Award of the authority sought would not be consistent with the public convenience and necessity.

(0) Any other objection. (NOTE: This code is "0" not "10".)

(g) Answers filed under this section shall be served on the persons whose applications are being answered and on the persons listed in § 321.10(d).

§ 321.14 Replies to answers to applications.

(a) Any person may file a reply to an answer to an application.

(b) Replies filed under this section shall be titled "Reply to Answer to Application for Unused Authority" and shall identify on the cover page the subparagraph of section 401(d)(5) that governs the application.

(c) For applications governed by subparagraph (A) or (B) of section 401(d)(5): Replies shall be filed within 10 calendar days after the application is filed, and will be considered by the Board only to the extent practicable.

(d) For applications governed by subparagraph (D) or (E) of section 401(d)(5):

(1) Replies shall be filed within 28 calendar days after the application is filed.

(2) If an answer alleges that grant of the application would be inconsistent with the public convenience and necessity, the applicant's reply shall at a minimum indicate, by frequency and equipment type, what service it will provide and what service (if any) it will discontinue to make aircraft available for the new service.

(e) Replies filed under this section shall be served on the person that filed the answer and on all persons who were required to be served with the answer.

§ 321.15 Responses to replies.

(a) In the case of an application that is governed by subparagraph (D) or (E) of section 401(d)(5), any person may file a response to a reply filed under § 321.14.

(b) Responses shall be titled "Response to Application for Unused Authority."

(c) Responses shall be filed within 42 calendar days after the application is filed.

(d) Responses shall be served on the person that filed the reply and on all persons who were required to be served with the reply.

Subpart C—Incumbent Carriers' Notices of Intent To Begin Service and Related Documents

§ 321.20 General requirements for incumbent carriers' notices of intent to begin service.

(a) A carrier holding unused authority in a given market that intends to resume nonstop service such as to preclude a grant of authority to another carrier under section 401(d)(5) shall file a notice titled "Incumbent's Notice of Intent to Exercise Unused Authority" (hereafter called "incumbent's notice").

(b) An incumbent's notice may address service in more than one market. However, notices shall not address authority covered by more than one subparagraph of section 401(d)(5).

(c) An incumbent's notice may be amended in the manner set forth in § 321.10(c) for applications at any time before the Board announces by order that it is successful.

(d) An incumbent's notice shall be served on those persons whom the incumbent would be required by § 321.10(d) to serve if it were an applicant for unused authority.

§ 321.21 Contents of incumbent's notice.

Each incumbent's notice shall:

(a) State on its cover the subparagraph of section 401(d)(5) that governs the authority addressed by the notice.

(b) Include a table with a separate, numbered line for each pair of points between which the carrier filing the notice intends to begin service within

the time set forth in section 401(d)(5)(G)(i) or (G)(ii), as applicable. The lines shall be alphabetized by the points named in them. Each line shall include the following information:

(1) *Market.* The pair of points, identified as set forth in § 321.11(b)(1).

(2) *Period or season.* The beginning and ending dates of the 26-week period or season, as applicable, upon which the notice is based.

(3) *Date.* The date (not more than 30 days after the date of filing) on or before which the carrier intends to begin service between those points.

§ 321.22 Answers to incumbent's notices.

(a) Any person may file an answer to an incumbent's notice. The answer shall be filed within the time set forth in § 321.13(a) for answers to applications.

(b) Answers filed under this section shall be titled "Answer to Incumbent's Notice."

(c) Each answer filed under this section shall identify on its cover the subparagraph of section 401(d)(5) that governs the notice being answered.

(d) Each answer filed under this section shall include a table that repeats the lines included in the notice in accordance with § 321.21(b) with the air carrier that filed the notice and the basis or bases for the objection to the notice listed at the end of each line. The filer of the notice shall be identified by 2-letter air carrier code. The objections shall be listed by the following 2-letter codes and explained to the extent necessary in the text of the answer:

(1) "NX": That the notice does not comply with the requirements of section 401(d)(5).

(2) "NE": That the filer of the notice has previously filed a similar notice in the same market.

(3) "NA": That a valid application for the filer's unused authority was filed before the notice.

(4) "NR": Any other objection.

(e) Answers filed under this section shall be served as if they were answers filed under § 321.13 to applications.

§ 321.23 Replies to answers to incumbent's notices.

(a) Any person may file a reply to an answer to an incumbent's notice. The reply shall be filed within the time set forth in § 321.14 (c) or (d), as applicable, for replies to answers to applications.

(b) Replies filed under this section shall be titled "Reply to Answer to Incumbent's Notice," and shall identify on the cover the subparagraph of section 401(d)(5) that governs the notice.

(c) Replies filed under this section shall be served as if they were replies filed under § 321.14 to answers to applications.

Subpart D—Processing of Documents

§ 321.30 Simultaneous filings.

Applications and incumbents' notices that are filed on the same day will be considered essentially simultaneous. Each application and notice will be treated as a separate filing for each pair of points that it names. These filings will be treated for the purposes of section 401(d)(5) as if they were made in the order established in accordance with § 321.34.

§ 321.31 Disposition of applications and incumbents' notices.

For each pair of points named in a document filed under this part:

(a) If no air carrier had unused authority within the meaning of section 401(d)(5), the Board will deny all applications.

(b) If the earliest filed valid document that has not been amended to delete those points is an incumbent's notice, the Board will by order announce that the notice is successful and dismiss all applications for authority between those points.

(c) If the earliest filed valid document that has not been amended to delete those points is an application, the Board will dismiss all other applications for authority between those points and, except as set forth in paragraph (d) of this section, grant that application.

(d) If the application is governed by subparagraph (D) or (E) of section 401(d)(5) and the Board finds that issuance of a certificate is inconsistent with the public convenience and necessity, the Board will deny the application.

(e) Unsuccessful incumbents' notices will not be dismissed and may become successful as set forth in § 321.32(c).

(f) If more than one air carrier holds unused authority to provide round-trip nonstop service between those points, the Board will not dismiss any applications in accordance with paragraph (a) or (b) of this section until it has, with respect to each carrier holding unused authority, announced that a notice is successful, granted an application, or denied an application on the ground of inconsistency with the public convenience and necessity.

§ 321.32 Successful applicant's failure to commence service.

For each award to a person of new certificate authority between a pair of points under section 401(d)(5):

(a) Except as set forth in paragraphs (b) and (c) of this section, if that person does not "commence service" within the meaning of section 401(d)(5)(H) as defined in § 321.40, the Board will accept new applications for authority between those points on the first business day after the first day that the person is not in compliance with section 401(d)(5)(H).

(b) Except as set forth in paragraph (c) of this section, if that person, before being required by section 401(d)(5)(H) to "commence service" files and serves a "Relinquishment of Newly Awarded Authority" in the manner described in § 321.33(c) for waivers of incumbents' notices, the Board will accept new applications on the first business day after the day that the relinquishment is filed.

(c) If, upon the noncompliance described in paragraph (a) of this section or the filing of a relinquishment described in paragraph (b), there is an outstanding valid incumbent's notice that has not been vitiated by the incumbent carrier's failure to exercise its unused authority, the Board will by order announce that the notice has become successful. Further unused authority proceedings for the pair of points will be governed by § 321.33.

(d) If the Board accepts new applications in accordance with paragraph (a) or (b) of this section or announces in accordance with paragraph (c) that an outstanding incumbent's notice has become successful, it will revoke the previously awarded new certificate authority.

§ 321.33 Successful incumbent carrier's failure to begin service.

For each pair of points for which the Board has announced that an incumbent's notice is successful:

(a) Except as set forth in paragraphs (b) and (c) of this section, if the incumbent carrier does not begin and maintain service in accordance with section 401(d)(5)(G)(i) or (G)(ii), as applicable, the Board will accept new applications for authority between those points on the first business day after the first day that the incumbent is not in compliance with section 401(d)(5)(G).

(b) If the incumbent carrier, before it is required by section 401(d)(5)(G) to begin service, files a waiver in accordance with paragraph (c) of this section, the Board will accept new applications on the first business day after the day that the waiver is filed.

(c) Air carriers that decide not to begin service in accordance with their successful notices are encouraged to file, in the same docket, a "Waiver of Incumbent's Notice". These documents shall:

(1) Indicate the subparagraph of section 401(d)(5) that governs the notice;

(2) Identify the pair or pairs of points for which the notice is waived;

(3) Identify the Board order announcing that the notices are successful; and

(4) Be served on all certificated air carriers and all persons required by § 321.20(d) to be served with incumbents' notices.

OPTION I:

§ 321.34 Drawing.

(a) For each day on which one or more pairs of points receive essentially simultaneous filings, a drawing will be conducted for each such pair of points as follows: For each person who filed an application or incumbent's notice, a card bearing that person's name will be placed in an opaque container. The cards will be otherwise identical. The container will be covered and shaken thoroughly. A Board staff member will reach into the container and, without being able to see the cards, draw them out successively until all have been drawn.

(b) The order in which the cards are drawn will be the order in which the documents are considered to have been filed.

(c) Drawings will take place on the first Wednesday after the day that the essentially simultaneous documents are filed, unless the filers of those documents are notified otherwise. It will be open to the public. Information about the time and location can be obtained from the Office of the Secretary, Civil Aeronautics Board.

(d) The drawing process will not interfere with the filing of answers in accordance with §§ 321.13 and .22. In general, questions about the validity of applications and incumbents' notices will be resolved after the drawing.

(e) If (1) there is a dispute about the precise date on which authority can be applied for or protected by an incumbent's notice, and (2) documents for that authority are filed on more than one day, then a separate drawing will be conducted for each day's documents. When the correct date is determined, filings before that date will be disregarded. The drawings for filings on and after that date, ordered by date of filing, will establish the order in which the documents are considered to have been filed.

OPTION II:

§ 321.34 Lottery.

(a) Each line from an application (included in accordance with § 321.11(b)) or from an incumbent's notice (included in accordance with § 321.21(b)) will be assigned a random number as set forth in paragraph (b) of this section. For each pair of points for which there are essentially simultaneous filings, those filings will be considered to have been made in the order of the random numbers assigned to the relevant lines, beginning with the smallest number and ending with the largest. If two or more lines that address the same pair of points are assigned a common number, the order of those filings will be established by a blind drawing.

(b) For each application and incumbent's notice, a sequence of random 6-digit numbers will be generated using the IBM RANDU random number generator program and the seed number derived in accordance with paragraph (c) of this section. These random numbers will be assigned in succession to the lines of the application or notice.

(c) The Docket Section will have available an electric digital clock or watch that, when operated in a rapid-advance mode to reset the time, advances at the rate of 1 hour per second or faster. Each application and incumbent's notice will, upon filing, be assigned a seed number as follows: A Board staff member will press down the rapid advance button on the clock or watch for at least 5 seconds and then release it. The time in minutes upon release of the button (2 digits) will be appended to the docket number of the application or notice.

(d) Random numbers assigned to lines of applications or notices that are not duplicated by lines of other applications or notices will be disregarded.

(e) The process described in paragraphs (a) and (b) of this section will be conducted as soon as practicable after the day on which essentially simultaneous filings are received. The results, including documentation of the random number procedure, will be announced and made available in the Docket Section.

(f) [Same as paragraph (d) of OPTION I, except that "drawing" is replaced by "lottery".]

(g) [Same as paragraph (e) of OPTION I, except that "drawing" is replaced by "lottery".]

Subpart E—Interpretations of the Act's Unused Authority Provisions

§ 321.40 "Commence Service."

(a) The Board interprets the requirement of subparagraph (H)(i) of section 401(d)(5) that air carriers issued certificates under subparagraph (A) or (D) "commence service pursuant to such certificate within forty-five days of such issuance" as follows: The air carrier shall begin to provide service within 45 days and provide a minimum of 5 round trips per week for the first 13 full calendar weeks after the day that it begins service.

(b) The Board interprets the requirement of subparagraph (H)(ii) to "commence service pursuant to such [seasonal] certificate within fifteen days after the beginning of the first such season which begins on or after the date of such issuance" as follows: The air carrier shall begin to provide service within 15 days after the beginning of the season and provide a minimum of 5 round trips per week for the first half of the season.

§ 321.41 "Week" means calendar week.

(a) Except as provided in paragraph (b) of this section, the Board considers the term "week", as used in this part and section 401(d)(5), to mean a 7-day period that begins on a Sunday and ends on the following Saturday.

(b) For the determination of 26-week periods or seasons that end before January 20, 1979, or the computation of inactive service within those intervals, the Board considers the term "week" to mean any 7-day period.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-36063 Filed 12-26-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Parts 10, 11, 127, 132, 141, 142, 143, 144, 158, 159, and 173]

ENTRY OF MERCHANDISE AND LIQUIDATION OF ENTRIES

Proposed Rule

Correction

In FR Doc. 78-33391 appearing at page 55774 in the issue for Wednesday, November 29, 1978, make the following corrections:

(1) On page 55774, in the middle column, in the "SUMMARY" paragraph, in the second line, "Simplica-" should read "Simplifica-".

(2) Also in the first paragraph of the summary, in the seventh line, the word "entires" should read "entries".

(3) In the seventh paragraph of the summary, in the third line, the word "reliquidation" should read "reliquidating".

(4) On page 55776, in the middle column, in paragraph 5, in the sixth line, the word "release" should read "released".

(5) On page 55778, in the middle column, in the second complete paragraph, the reference to "Section 141.63(a)" should read "Section 141.63(b)".

(6) On page 55778, in the third column, in paragraph 9., in the second line, the word "notice" should read "invoice".

(7) On page 55779, in the first column, in paragraph 12., in the third line, the word "rquired" should read "required".

(8) On page 55780, in the third column, in the last paragraph, in the second and third lines, the word "limitation" should read "liquidation".

(9) On page 55781, in the third column, in § 10.1(g), in the seventh line, the word "perator" should read "operator".

(10) On page 55784, in the third column, in paragraph § 132.14(b), in the fourth line, the word "priorities" should read "priority".

(11) Also on page 55784, in the third column, in § 141.0a(a), in the second line, the reference to "§ 142.2" should read "§ 142.3".

(12) On page 55786, in § 141.61 (f)(1)(iv), in the third column, make the following corrections:

(a) In the first line, the word "computations" should read "computation".

(b) In the third line, the word "value" should read "values".

(c) In the sixth line, the word "of" should read "or".

(d) In the last line of the paragraph, the customs forms should be numbered "7505, 7506, 7519 and 7521".

(13) On page 55787, in the first column, in § 141.62(b)(2)(ii), in the eleventh line, the word "which" should read "with".

(14) Also in § 141.62(b)(2)(ii), in the fifteenth line, the word "of" should read "or".

(15) On page 55787, in the middle column, in § 141.68(a)(2), in the fifth line, the word "without" should read "within".

(16) On page 55790, in the first column, in the last paragraph, in the third line, "section 464" should read "section 484".

(17) Also on page 55790, in the first column, in the last paragraph, in the fourth line, "19 U.S.C. 1464" should read "19 U.S.C. 1484".

(18) On page 55790, in the middle column, the footnote at the bottom of the column should be moved up above the heading for § 142.6.

(19) On page 55790, in the third column, in the first and second lines, "§ 142.7 invoice requirements" is a section heading and should appear as follows:

§ 142.7 Invoice requirements.

(20) On page 55790, in the third column, in § 142.7(a)(4), the word "tariff" should begin with a capital "T".

(21) Also in § 142.7, in paragraph (b), in the eighth line, "§§ 141.66" should read "§§ 141.86".

(22) On page 55791, in the first column, in § 142.12(a)(1), in the third line, the comma (,) after the word "summary" should be deleted.

(23) On page 55791, in the third column, in § 142.16(a), in the eleventh line, the word "Merchandise" should begin with a lower case "m".

(24) Also in § 142.16(a), in the sixteenth line, the reference to "§ 142.15" should read "142.13".

(25) On page 55790, in the third column, in the rider which follows § 142.21(b)(2), in the third paragraph, in the seventh line, after the blank insert ",".

(26) In the same rider, in the third paragraph, in the tenth line, the reference to "§ 138.11(b)" should read "§ 158.11(b)".

(27) On page 55793, in the first column, in § 142.21(b)(3), in the fifth line, after the word "necessary" insert ",".

(28) On page 55793, in the middle column, in § 142.24(a), in the fifth line, "5461" should read "3461".

(29) Also on page 55793, in the third column, in § 142.28(a), in the seventh line, "141.115" should read "141.113".

(30) On page 55794, in § 142.28(a)(1), in the fourth line, "142.25" should read "142.23".

(31) On page 55794, in the middle column, in § 144.11(c), in the second line, "deisignate" should be spelled "designate".

(32) Also on page 55794, in the third column, in § 144.13(a), in the ninth line, "Customs Form 755" should be "Customs Form 7555".

(33) On page 55795, in the first column, in § 144.36(d)(7), in the second line, "§ 141.61(d)" should read "141.61(e)".

(34) On page 55795, in the first column, under Part 158, in amendatory paragraph 1., in the second line, "§ 158.12a" should read "158.21a".

(35) Also on page 55795, in the first column, the section heading "§ 158.12a Time Period" should be numbered "158.21a".

[4110-07-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Reg. No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

International Totalization Agreements

AGENCY: Social Security Administration, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations implement a provision of the "Social Security Amendments of 1977". This provision authorizes the President to enter into bilateral agreements with other countries to provide for coordination between the social security systems of the United States (U.S.) and of other countries. The bilateral agreements are generally known as totalization agreements. The purposes of a totalization agreement are (1) to permit each country to establish entitlement to and the amount of old-age, survivors, disability, or derivative benefits by combining a person's periods of coverage under the social security systems of both countries, and (2) to preclude dual coverage and dual social security taxation for work covered under both systems.

DATES: Comments must be received on or before February 26, 1979.

ADDRESSES: Before final adoption of the proposed rule, consideration will be given to any comments submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

John W. Modler, Legal Assistant, Office of Policy and Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7337.

SUPPLEMENTARY INFORMATION:

A. Background

Before the enactment of the Social Security Amendments of 1977 (Pub. L. 95-216), there was no authority in the Social Security Act (the Act) for entering into agreements with other countries to provide for coordination between the social security systems of the U.S. and of other countries. As a result, there was no way to address two serious problems.

First, many U.S. citizens employed by U.S. employers in foreign countries must pay the social security taxes in both the U.S. and the foreign countries. Also, U.S. citizens may get little if any return for the taxes they and their employers pay to the foreign system, especially where social security eligibility requirements are stricter under foreign systems, and most of them do not work long enough under the foreign system to meet these requirements.

Second, many U.S. citizens who divide their careers between work covered under the U.S. social security system and work covered under a foreign social security system lose continuity in their social security cover-

age. Some who work in foreign countries for a number of years and have separate (as opposed to overlapping) periods of coverage under two or more social security systems may not qualify for benefits under any system when they retire, become disabled, or die. For example, U.S. citizens who work in foreign countries for a number of years may not be eligible for U.S. social security disability insurance because this generally requires substantial recent work covered by the U.S. system (see § 404.116). Others may qualify for social security benefits but their benefits may not be in proportion to the work they have performed because all of their periods of coverage inside and outside the U.S. may not be considered in determining these benefits.

Congress included section 317 in Pub. L. 95-216, which allows for combining work under two systems and eliminating dual coverage and dual taxation, to help solve these problems.

B. PROPOSED REGULATIONS

The proposed regulations provide definitions and principles for the negotiation and administration of totalization agreements. These principles cover (1) general provisions, (2) benefits, (3) coverage, (4) computations, (5) applications, (6) evidence, (7) appeals, (8) effect of the alien non-payment provision, (9) overpayments, and (10) disclosure of information.

While these definitions and principles are intended to ensure consistent and equitable treatment of all individuals affected by the agreements, they will necessarily apply to foreign social security systems with diverse characteristics. We will, where necessary to accomplish the purposes of totalization, apply these definitions and principles, as appropriate and within the limits of the law, to accommodate the diverse characteristics of these systems.

1. GENERAL PROVISIONS

An agreement shall be negotiated with the National government of the foreign country for the entire country. However, agreements can only be negotiated with foreign countries that have a social security system of general application in effect. We will consider a system in effect if it is collecting social security taxes or paying social security benefits.

An agreement may provide that the provisions of the social security system of each country will apply equally to the nationals of both countries (regardless of where they reside). For this purpose, refugees, stateless persons, and other nonnationals who derive benefit rights from nationals, refugees, or stateless persons may be treated as nationals if they reside within one of the countries.

An agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of a period of 90 days in any one Congress (following the date on which the agreement is transmitted to Congress by the President) on each of which both Houses of Congress have been in session. The agreement shall become effective unless one of the Houses of Congress adopts a resolution of disapproval within the 90-session-day period.

Each agreement shall contain provisions for its possible termination. If an agreement is terminated, entitlement to benefits and coverage acquired by an individual before termination shall be retained. The provisions shall provide for notification of termination and the effective date of termination.

Provisions on amendments of totalization agreements are not included in this NPRM. If we find that regulations are necessary, we will publish them at a later date.

2. BENEFITS

As a result of a totalization agreement, a person who has at least 6 quarters of coverage (QC's) (see § 404.103 and 404.103a) under the U.S. system may have foreign periods of coverage combined with U.S. coverage to determine entitlement to and the benefit amount payable under the U.S. system. No credit will be given, however, for foreign periods of coverage acquired before January 1, 1937. Also, foreign earnings will be added to any covered U.S. earnings only to the extent that the combined earnings do not exceed the maximum annual earnings limitation under U.S. law (see § 404.1027).

Generally, a person will be credited with a QC for every 3 months (or equivalent period) of coverage certified by the foreign system. QC's based on foreign periods of coverage may be credited only to calendar quarters not already QC's under the U.S. system. Furthermore, foreign earnings may be assigned to a calendar quarter only if that quarter is a QC based on foreign coverage. A person may fail to meet the requirements for a currently insured status or the insured status needed to establish a period of disability solely because of the assignment of QC's based on foreign coverage to calendar quarters on a chronological basis. If this occurs, the QC's based on foreign coverage may be assigned to different calendar quarters (not already QC's under the U.S. system) within the beginning and ending date of the period reported by the foreign country.

An agreement will not provide for combining periods of coverage under more than two social security systems. A person, however, may qualify for benefits under more than one agreement. If this occurs, the person shall receive benefits only under the agreement affording the most favorable treatment. In the absence of evidence to the contrary, the agreement that provides the higher benefit shall be considered as affording the most favorable treatment.

A person may not become entitled to hospital insurance benefits under section 226 of the Social Security Act by combining periods of coverage under the U.S. system with those under the foreign system. Entitlement to hospital insurance benefits is not precluded if the person otherwise meets the requirements.

3. COVERAGE

An agreement shall contain provisions precluding dual coverage. Employment or self-employment (or service recognized as equivalent under the U.S. system or the foreign system) shall, on or after the effective date of the agreement, result in a period of coverage under either the U.S. or foreign system, but not under both. Methods shall be described in the agreement for determining under which system the service shall result in a period of coverage.

Although an agreement may modify coverage provisions of title II of the Act, it should do so by exemptions from coverage rather than by extensions of coverage under title II. Generally, a worker will be covered by the country in which he or she is working. However, an agreement may provide exceptions to this principle so that a worker will be covered by the country to which he or she has the greater attachment. Examples illustrating this principle are provided in proposed §§ 404.1913(b)(2) and 404.1913(b)(3).

Agreements may provide for variations from the general principles for precluding dual coverage to avoid inequitable or anomalous coverage situations for certain workers. However, if a person performs services that are not now covered by the U.S., an agreement should refrain from creating coverage for those services.

An agreement will contain provisions precluding dual payment of contributions or taxes. On or after the effective date of an agreement, any employment or self-employment (or service recognized as equivalent under the U.S. social security system or the foreign system) which is covered under the agreement shall be subject to taxes or contributions under the U.S. system or the foreign system, but not under both (see section 317(b) of Pub. L. 95-216).

4. COMPUTATIONS

An agreement shall contain a provision regarding the method of computing the benefits payable under the U.S. system if entitlement is established based on combined periods of coverage under the U.S. system and under the foreign system. The benefit payable under the U.S. system shall be based on the proportion of the person's periods of coverage completed under the U.S. system.

To determine the benefit payable under an agreement, a "theoretical" primary insurance amount (PIA) (see § 404.203(a) for the definition of the PIA) shall be computed like other title II PIA's, but by combining the person's covered earnings under both the U.S. and the foreign systems. The theoretical PIA shall then be reduced in proportion to the periods of coverage actually completed under the U.S. system. The amount derived shall be called the pro rata PIA. An example illustrating this provision is provided in the proposed § 404.1918(a).

Auxiliary and survivors benefit amounts shall be determined on the basis of the pro rata PIA. The regular reductions for age under section 202(q) of the Act shall apply to the pro rata benefits of the wage earner and to any auxiliaries or survivors. Benefits shall be payable subject to the family maximum (see § 404.403) derived from the pro rata PIA. If the pro rata PIA is less than the minimum PIA, the family maximum shall be 1½ times the pro rata PIA.

The pro rata PIA shall be recomputed only if the inclusion of the additional earnings will result in an increase in both the theoretical PIA and the benefits payable by the U.S. to all beneficiaries, unless otherwise provided by the agreement. Subject to these limitations, the pro rata PIA shall be automatically recomputed, as provided in § 404.244, to include additional earnings under the U.S. system. An application, however, must be filed to have the pro rata PIA recomputed to include additional foreign earnings.

A U.S. resident may receive benefits under an agreement from both the U.S. and from the foreign country. The total amount of the resident's two benefits, however, may be less than the amount for which the resident would qualify under the U.S. system based on the minimum PIA. A totalization agreement may provide that the U.S. supplement the total amount to raise it to the amount for which the resident would have qualified under the U.S. system based on the minimum PIA.

5. APPLICATIONS

We will consider an application filed with the foreign system to be filed with the Social Security Administration (SSA) as of the date it is filed with the foreign system, if an applicant expresses or implies an intent to claim benefits from the U.S. under an agreement. Generally the same rules for applications filed with SSA will apply. Benefits shall not be payable on the basis of an application filed before the effective date of the agreement.

6. EVIDENCE

SSA may consider evidence submitted to the social security system of the foreign country as evidence submitted to SSA. SSA shall use the rules in §§ 404.708 and 404.709, which were published as a final rule in the FEDERAL REGISTER on June 7, 1978 (43 FR 24794), to determine if the evidence submitted is sufficient or if additional evidence is needed to prove initial or continuing entitlement to benefits.

If an application is filed for disability insurance benefits, SSA shall consider medical evidence, if any, submitted to the foreign system as if it were submitted to the U.S. system. We will use the rules in Subpart P of Regulations No. 4, for making a disability determination.

7. APPEALS

SSA will consider a request for consideration, hearing, or Appeal Council review of a determination made by SSA that is filed with the foreign system within the 60-day time period applicable to SSA determinations to be timely filed with SSA. We will apply the provisions in Subpart J of Regulations No. 4 in adjudicating the request.

8. EFFECT OF THE ALIEN NON-PAYMENT PROVISION

An agreement may provide that a person entitled to benefits under the U.S. system may receive those benefits while residing in the foreign country party to an agreement, regardless of the alien non-payment provision (see § 404.460).

9. OVERPAYMENTS

Section 204 of the Act, § 404.502 of the regulations, provides for adjusting payments if a person has received more than the correct payment under title II. Payments made by a foreign country, however, are not considered payments under title II. Therefore, title II benefits may not be adjusted under section 204 of the Act to recover an overpayment made by the foreign system of a country party to a totalization agreement. Section 233 of the Act provides that an "agreement may contain other provisions which are not inconsistent with other provisions of this title * * *." If an agreement authorized the adjustment of title II benefits to recover an overpayment made by the foreign country, the provisions would be "inconsistent with" sections 205(i) and 207 of the Act. Therefore, a totalization agreement may not authorize the adjustment of title II benefits to recover an overpayment made by the foreign system. Proposed § 404.1929 reflects these adjustment prohibitions.

10. DISCLOSURE OF INFORMATION

The use of information furnished under an agreement generally shall be governed by the national statutes on confidentiality and disclosure of information of the country that has been furnished the information. In negotiating an agreement, consideration should be given to the compatibility of the other country's laws on confidentiality and disclosure with those of the U.S. To the extent possible, information exchanged between the U.S. and the other country should be exclusively for purposes of implementing the agreement.

The U.S. signed totalization agreements with Italy in 1973 and with the Federal Republic of Germany in 1976. The Italian agreement has already been through the Congressional review process and is expected to become effective on November 1, 1978. The President sent the agreement with the Federal Republic of Germany to Congress on September 21, 1978. The agreements entered into with Italy and the Federal Republic of Germany are consistent with these proposed regulations. As agreements become effective, they will be published as notices in the FEDERAL REGISTER.

The proposed rule is to be issued under the authority of sections 205, 233, and 1102 of the Social Security Act; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; 42 U.S.C. 405, 433, and 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.802, Social Security—Disability Insurance and 13.803-4, Social Security Retirement and Survivors Insurance)

Dated: October 2, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: December 11, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Part 404 of chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Subpart T is added to read as follows:

Subpart T—Totalization Agreements

GENERAL PROVISIONS

Sec.
404.1901 Introduction.
404.1902 Definitions.

Sec
404.1903 Negotiating totalization agreements.
404.1904 Effective date of a totalization agreement.
404.1905 Termination of agreements.

BENEFIT PROVISIONS

404.1908 Crediting foreign periods of coverage.
404.1910 Person qualifies under more than one totalization agreement.
404.1911 Effects of a totalization agreement on entitlement to hospital insurance benefits.

COVERAGE PROVISIONS

404.1913 Precluding dual coverage.
404.1914 Certificate of coverage.
404.1915 Payment of contributions.

COMPUTATION PROVISIONS

404.1918 How benefits are computed.
404.1919 How benefits are recomputed.
404.1920 Supplementing the U.S. benefit if the total amount of the combined benefits is less than the U.S. minimum benefit.
404.1921 Benefits of less than $1 due.

OTHER PROVISIONS

404.1925 Applications.
404.1926 Evidence.
404.1927 Appeals.
404.1928 Effect of the alien non-payment provision.
404.1929 Overpayments.
404.1930 Disclosure of information.

AUTHORITY: Sec. 205, 233, and 1102; 53 Stat. 1368, 91 Stat. 1538, and 49 Stat. 647, as amended; (42 U.S.C. 405, 433, 1302)

Subpart T—Totalization Agreements

GENERAL PROVISIONS

§ 404.1901 Introduction.

Under section 233 of the Social Security Act, the President may enter into an agreement establishing a totalization arrangement between the social security system of the U.S. and the social security system of a foreign country. An agreement permits entitlement to and the amount of old-age, survivors, disability, or derivative benefits to be based on a combination of a person's periods of coverage under the social security system of the U.S. and the social security system of the foreign country. An agreement also provides for the precluding of dual coverage and dual social security taxation for work covered under both systems. An agreement may provide that the provisions of the social security system of each country will apply equally to the nationals of both countries (regardless of where they reside). For this purpose, refugees, stateless persons, and other nonnationals who derive benefit rights from nationals, refugees, or stateless persons may be treated as nationals if they reside within one of the countries. The following sections provide definitions and principles for the negotiation and administration of totalization agreements. Where necessary to accomplish the purposes of totalization, we will apply these definitions and principles, as appropriate and within the limits of the law, to accommodate the widely diverse characteristics of foreign social security systems.

§ 404.1902 Definitions.

For purposes of this subpart—

"Act" means the Social Security Act (42 U.S.C. 401 et. seq.).

"Agency" means the agency responsible for the specific administration of a social security system including responsibility for implementing an agreement; the Social Security Administration (SSA) is the "agency" in the U.S.

"Agreement" means the agreement negotiated to provide coordination between the social security systems of the countries party to the agreement. The term agreement includes any administrative agreements concluded for purposes of administering the agreement.

"Competent authority" means the official with overall responsibility for administration of a country's social security system including applicable laws and international social security agreements; the Secretary of HEW is the "competent authority" in the U.S.

"Period of coverage" means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent under the social security system of the U.S. or under the social security system of the foreign country which is a party to an agreement.

"Residence" or "ordinarily resides," when used in agreements, has the following meaning for the U.S. "Residence" or "ordinarily resides" in a country means that a person has established a home in that country intending to remain there permanently or for an indefinite period of time. Generally, a person will be considered to have established a home in a country if that person assumes certain economic burdens, such as the purchase of a dwelling or establishment of a business, and participates in the social and cultural activities of the community. If residence in a country is established, it may continue even though the person is temporarily absent from that country. Generally, an absence of six months or less will be considered temporary. If an absence is for more than six months, residence in the country will generally be considered to continue only if there is sufficient evidence to establish that the person intends to maintain the residence. Sufficient evidence would include the maintenance of a home or apartment in that country, the departure from the country with a reentry permit, or similar acts. The existence of business or family associations sufficient to warrant the person's return would also be considered.

"Social security system" means a social insurance or pension system which is of general application and which provides for paying periodic benefits, or the actuarial equivalent, because of old-age, death, or disability.

§ 404.1903 Negotiating totalization agreements.

An agreement shall be negotiated with the National government of the foreign country for the entire country. However, agreements may only be negotiated with foreign countries that have a social security system of general application in effect. The system shall be considered to be in effect if it is collecting social security taxes or paying social security benefits.

§ 404.1904 Effective date of a totalization agreement.

A totalization agreement shall become effective on any date provided in the agreement if—

(a) The date occurs after the expiration of 90 days in any one Congress on each of which both Houses of Congress have been in session following the date on which the agreement is transmitted to Congress by the President; and

(b) Neither House of Congress adopts a resolution of disapproval of the agreement within the 90-day period described in paragraph (a) of this section.

§ 404.1905 Termination of agreements.

Each agreement shall contain provisions for its possible termination. If an agreement is terminated, entitlement to benefits and coverage acquired by an individual before termination shall be retained. The provisions shall provide for notification of termination to the other party and the effective date of termination.

BENEFIT PROVISIONS

§ 404.1908 Crediting foreign periods of coverage.

(a) *General.* An individual must have at least 6 quarters of coverage, as defined in section 213 of the Social Security Act, to have foreign periods of coverage combined with U.S. periods of coverage for purposes of determining entitlement to and the amount of benefits payable under title II. As a rule, SSA will accept foreign coverage information, as certified by the foreign country's agency, unless otherwise specified by the agreement. No credit will be given, however, for peri-

ods of coverage acquired before January 1, 1937. Also, foreign earnings will be added to any covered U.S. earnings, subject to the maximum yearly limitation in U.S. law (see § 404.1027).

(b) *For quarters of coverage purposes.* (1) Generally, a quarter of coverage (QC) will be credited for every 3 months (or equivalent period) of coverage certified to SSA by the other country's agency. QC's based on foreign periods of coverage may be credited as QC's only to calendar quarters not already QC's under title II. Earnings under the foreign system may be assigned only to those calendar quarters where a QC has been credited based on foreign coverage.

(2) If an individual fails to meet the requirements for currently insured status or the insured status needed for establishing a period of disability solely because of the assignment of QC's based on foreign coverage to calendar quarters chronologically, the QC's based on foreign coverage may be assigned to different calendar quarters within the beginning and ending date of the period reported by the foreign country, but only as permitted under paragraph (b)(1) of this section.

§ 404.1910 Person qualifies under more than one totalization agreement.

(a) An agreement may not provide for combining periods of coverage under more than two social security systems.

(b) If a person qualifies under more than one agreement, the person will receive benefits from the U.S. only under the agreement affording the most favorable treatment.

(c) In the absence of evidence to the contrary, the agreement that provides the higher benefit will be considered as affording the most favorable treatment for purposes of paragraph (b) of this section.

§ 404.1911 Effects of a totalization agreement on entitlement to hospital insurance benefits.

A person may not become entitled to hospital insurance benefits under section 226 of the Act by combining the person's periods of coverage under the social security system of the U.S. with the person's periods of coverage under the social security system of the foreign country. Entitlement to hospital insurance benefits is not precluded if the person otherwise meets the requirements.

COVERAGE PROVISIONS

§ 404.1913 Precluding dual coverage.

(a) *General.* Employment or self-employment or services recognized as equivalent under the Act or the social security system of the foreign country shall, on or after the effective date of the agreement, result in a period of coverage under the U.S. system or under the foreign system, but not under both. Methods shall be set forth in the agreement for determining under which system the employment, self-employment, or other service shall result in a period of coverage.

(b) *Principals for precluding dual coverage.* (1) Although an agreement may modify coverage provisions of title II of the Act, it should do so by exemptions from coverage rather than by extensions of coverage under title II of the Act. Generally, a worker will be covered by the country in which he or she is working. However, an agreement may provide exceptions to this principle so that a worker will be covered by the country to which he or she has the greater attachment.

(2) If the work would otherwise be covered by both countries, an agreement will exempt the worker from coverage by one of the countries.

EXAMPLE: A U.S. citizen working temporarily in the branch office of a U.S. employer in XYZ country will remain covered by the U.S. and exempt from coverage by XYZ country.

(3) If the work would otherwise be covered only by the U.S. but the worker has the greater attachment to the economy of the foreign country, an agreement may exempt the worker from U.S. coverage and provide for coverage by the foreign country.

EXAMPLE: A national of XYZ country sent by his employer in XYZ country to work for that employer in the U.S. will, after the effective date of the agreement, be covered by XYZ country and exempt from coverage by the U.S.

(4) Agreements may provide for variations from the general principles for precluding dual coverage to avoid inequitable or anomalous coverage situations for certain workers. However, if a worker performs services that are not now covered under the U.S. system, an agreement should refrain from creating coverage for those services.

§ 404.1914 Certificate of coverage.

Under some agreements, proof of coverage under one social security system may be required before the individual may be exempt from coverage under the other system. Requests for certificate of coverage under the U.S. system may be submitted by the employer, employee, or self-employed individual to SSA.

§ 404.1915 Payment of contributions.

On or after the effective date of the agreement, to the extent that employment or self-employment (or service recognized as equivalent) under the U.S. social security system or foreign system is covered under the agreement, the agreement shall provide that the work or equivalent service be subject to payment of contributions or taxes under only one system (see sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1954).

COMPUTATION PROVISIONS

§ 404.1918 How benefits are computed.

(a) To determine the benefit payable under an agreement, a theoretical primary insurance amount (see § 404.203(a) for the definition of the PIA) shall be computed like other title II PIA's, but by combining the person's covered earnings under both the U.S. and the foreign systems. The theoretical PIA shall then be reduced in proportion to the periods of coverage actually completed under the U.S. system. The amount derived shall be called the pro rata PIA.

EXAMPLE. A person needs 25 QC's to be insured, but has only 5 years of work (20 QC's), under the U.S. system. The person, however, has 10 years of work (40 QC's) under the social security system of a foreign country that is a party to a totalization agreement. The combined coverage gives the person insured status. The theoretical PIA is computed on the basis of combined earnings under both the U.S. and foreign systems. This amount is then reduced in proportion to the coverage earned under the U.S. system. If the theoretical PIA is $270, the computation shall be as follows:

$270 (Theoretical PIA) × 20 (U.S. QC's)/60 (20 U.S. + 40 Foreign QC's)=$90 (Pro rata PIA)

(b) If the pro rata PIA, as described in paragraph (a) of this section, does not correspond to a PIA provided by section 215(a) of the Act, it shall be rounded to the nearest PIA provided by that section. If the pro rata PIA is less than the minimum PIA provided by section 215(a), it shall be rounded to the next higher multiple of $.10, if it is not a multiple of $.10 (see section 215(g) of the Act).

(c) Auxiliary and survivors benefit amounts (see Subpart D) shall be determined on the basis of the pro rata PIA. The regular reductions for age under section 202(q) of the Act shall apply to the pro rata benefits of the wage earner and to any auxiliaries or survivors. Benefits shall be payable subject to the family maximum (see § 404.403) derived from the pro rata PIA. If the pro rata PIA is less than the minimum PIA, the family maximum shall be 1½ times the pro rata PIA.

§ 404.1919 How benefits are recomputed.

The pro rata PIA shall be recomputed only if the inclusion of the additional earnings results in an increase in both the theoretical PIA and the benefits payable by the U.S. to all beneficiaries, unless otherwise provided by the agreement. Subject to

these limitations, the pro rata PIA will be automatically recomputed (see § 404.244) to include additional earnings under the U.S. system. An application, however, must be filed to have the pro rata PIA recomputed to include additional earnings under the foreign system.

§ 404.1920 Supplementing the U.S. benefit if the total amount of the combined benefits is less than the U.S. minimum benefit.

If a resident of the U.S. receives benefits under an agreement from both the U.S. and from the foreign country, the total amount of the two benefits may be less than the amount for which the resident would qualify under the U.S. system based on the minimum PIA. An agreement may provide that the U.S. shall supplement the total amount to raise it to the amount for which the resident would have qualified under the U.S. system based on the minimum PIA. (The minimum benefit shall be based on the first figure in column IV in the table in section 215(a) of the Act for a person becoming eligible for the benefit before January 1, 1979, or the primary insurance amount determined under section 215(a)(1)(C)(i)(I) of the Act for a person becoming eligible for the benefit after December 31, 1978.)

§ 404.1921 Benefits of less than $1 due.

If the monthly benefit amount due an individual (or several individuals, e.g., children, where several benefits are combined in one check) as a result of a claim filed under an agreement is less than $1, the benefits may be accumulated until they equal or exceed $5.

OTHER PROVISIONS

§ 404.1925 Applications.

(a) An application filed with the competent authority or agency of a country with which the U.S. has concluded an agreement shall be considered an application for benefits under title II of the Act, if an applicant expresses or implies an intent to claim benefits from the U.S. under an agreement.

(b) An application or a written statement requesting benefits submitted to the competent authority or agency of a country, described in paragraph (a) of this section, shall be considered to have been filed with SSA as of the date it is filed with the competent authority or agency.

(c) Benefits under an agreement may not be paid on the basis of an application filed before the effective date of the agreement.

(d) If an application, as described in this section constitutes an application for title II benefits, it shall be subject to the same rules that apply to applications filed with SSA (see Subpart G of this part).

§ 404.1926 Evidence.

(a) An applicant for benefits under an agreement shall submit the evidence needed to establish entitlement, as provided in Subpart H of this part. Special evidence requirements for disability benefits are in Subpart P of this part.

(b) Evidence submitted to the competent authority or agency of a country with which the U.S. has concluded an agreement may be considered as evidence submitted to SSA. SSA shall use the rules in §§ 404.708 and 404.709 to determine if the evidence submitted is sufficient, or if additional evidence is needed to prove initial or continuing entitlement to benefits.

(c) If an application is filed for disability benefits, SSA shall consider medical evidence submitted to a competent authority or agency, as described in paragraph (b) of this section, and use the rules of Subpart P of this part for making a disability determination.

§ 404.1927 Appeals.

(a) A request for reconsideration, hearing, or Appeals Council review of a determination that is filed with the competent authority or agency of a country with which the U.S. has concluded an agreement, shall be considered to have been timely filed with SSA if it is filed within the 60-day time period provided in §§ 404.911, 404.918, and 404.946.

(b) A request for reconsideration, hearing, or Appeals Council review of a determination made by SSA resulting from a claim filed under an agreement shall be subject to the provisions in Subpart J of this part. The rules governing administrative finality in Subpart J of this part shall also apply.

§ 404.1928 Effect of the alien non-payment provision.

An agreement may provide that a person entitled to benefits under title II of the Social Security Act may receive those benefits while residing in the foreign country party to the agreement, regardless of the alien non-payment provision (see § 404.460).

§ 404.1929 Overpayments.

An agreement may not authorize the adjustment of title II benefits to recover an overpayment made under the social security system of a foreign country (see § 404.501). Where an overpayment is made under the U.S. system, the provision in Subpart F of this part will apply.

§ 404.1930 Disclosure of information.

The use of information furnished under an agreement generally shall be governed by the national statutes on confidentiality and disclosure of information of the country that has been furnished the information. (The U.S. will be governed by pertinent provisions of the Social Security Act, the Freedom of Information Act, the Privacy Act, the Tax Reform Act, and other related statutues.) In negotiating an agreement, consideration should be given to the compatibility of the other country's laws on confidentiality and disclosure to those of the U.S. To the extent possible, information exchanged between the U.S. and the foreign country should be exclusively for purposes of implementing the agreement.

2. Section 404.302 is revised to read as follows:

§ 404.302 Amount of benefit payments.

Ordinarily, a beneficiary is paid the monthly benefit or lump sum to which he or she is entitled in the amount indicated in the succeeding sections of this subpart. However, in some instances a beneficiary may be paid more or less than that amount because of the provisions of Subparts E or F of this part. See those subparts for full explanation of the circumstances under which these changes occur. See Subpart E of this part also for conditions under which benefits will not be paid where the person on whose earnings record benefits are claimed or based is deported, or where a claimant or beneficiary is an alien residing outside the United States or has been convicted of certain offenses. Also see § 404.377 of this subpart for reduction of special payments to persons at age 72 because of eligibility for governmental pension system benefits. In addition see § 404.1918 when a proportionate payment is made to a person under a totalization agreement.

§ 404.460 [Amended]

3. In § 404.460, the cross-reference in paragraph (a) immediately preceding paragraph (a)(1) is changed from "(See § 404.380 regarding special payments at age 72.)" to "(See § 404.380 regarding special payments at age 72 and § 404.1928 regarding payments under a totalization agreement.)"

[FR Doc. 78-35967 Filed 12-26-78; 8:45 am]

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Part 650]

[FHWA Docket No. 78-9]

LOCATION AND HYDRAULIC DESIGN OF ENCROACHMENTS ON FLOOD PLAINS

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document is issued to solicit comments on suggested revisions to an existing regulation, Hydraulic Design of Highway Encroachments on Flood Plains. The revisions set forth criteria for flood-plain management within programs administered by the Federal Highway Administration (FHWA) as established by Executive Order 11988 of May 24, 1977.

DATE: Comments must be received on or before February 26, 1979.

ADDRESS: Written comments should be sent (preferably in triplicate) to: FHWA Docket No. 78-9, Federal Highway Administration, Room 4205, (HCC-10), 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Mr. Frank L. Johnson or Mr. Philip L. Thompson, 202-472-7690, Office of Engineering; Mr. Lee J. Burstyn, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This rulemaking process solicits comments on the implementation of procedures for the location and hydraulic design of highway encroachments on flood plains. This rulemaking is proposed to amend an existing regulation to include provisions required by Executive Order 11988-Floodplain Management which are not addressed in other Federal Highway Administration (FHWA) regulations. The existing regulation (23 CFR 650, Subpart A) was originally published at 39 FR 36331 on October 9, 1974. This proposed revision would codify the policies and procedures contained in Volume 6, Chapter 7, Section 3, Subsection 2, of the Federal-Aid Highway Program Manual.* Pursuant to Executive Order 11988, the Department of Transportation published at 43 FR 27148 on June 22, 1978, its proposed policies and procedures on protection and management of flood plains. This rulemaking is consistent with the aforementioned Department of Transportation's directive.

Since provisions of this proposed regulation will be implemented by highway agencies which receive Federal-aid highway funds, the provisions are in the form of general policy and requirements. Specific procedures to satisfy this regulation will be established by highway agencies within the framework of their environmental action plans (23 CFR 795, Process Guidelines for the Development of Environmental Action Plans) and design policy. Review for compliance with this regulation will be accomplished by FHWA Division Offices located in each State.

In preparing this proposed regulation, the FHWA consulted with the U.S. Water Resources Council (WRC), the U.S. Council on Environmental Quality, and the Federal Insurance Administration.

Advisory material in the Water Resources Council Floodplain Management Guidelines for Implementing E.O. 11988 (43 FR 6030) was considered in drafting this regulation. The decisionmaking process set forth in the Guidelines, as an explanation of the Executive Order's provisions, is dissimilar to procedures applicable to programs administered by the FHWA. The Guidelines assume that the decisionmaking process involves a single large flood plain and a proposed action at a location on that large flood plain. With this premise, the following WRC decisionmaking process steps appear workable: (1) determine if proposed action is in the base flood plain, (2) provided early public review, (3) identify and evaluate alternatives to locating in the base flood plain, (4) identtify impacts of proposed action, (5) minimize impacts, restore and preserve flood plain values, (6) reevaluate alternatives, and (7) make findings and provide public explanation.

This WRC decisionmaking process is inappropriate for general application in determining highway design and location. Highway actions are processed and reviewed as sections or projects between logical termini and, as such, traverse numerous flood plains of various size and relevance. Since flood plains can only be entirely avoided for those rare projects located on a watershed boundary, the "no-build" alternative is the only alternative to an encroachment of even minimal impact. If a specific flood plain or series of flood plains are avoided, encroachment at other locations or other flood plains by necessity become involved. Therefore, giving consideration to avoidance of all base flood plains with a highway actions is not feasible. Except for locations on a watershed boundary and the "no-build" solution, alternative locations under consideration will involve flood plains.

For proposed highway actions on flood plains the decision process involves comparing various highway alternatives and their related impacts, choosing an alternative, minimizing the impacts of the chosen alternative, and restoring and preserving the impacted flood-plain values. This process includes the alternative of avoiding any action by withdrawing the proposed project. The decision generally is not whether the highway should be located in or out of the base flood plain, but rather which series of flood plains to impact if the "no-build" alternative is not a viable alternative. To support the resulting decision the proposed regulation requires that all base flood plains and the impacts to them be identified for all alternatives. If this identification reveals that an "action on the base flood plain" (encroachment) will cause unusually adverse impacts, the action will be termed a "significant encroachment" and require special attention. This includes making an only practicable alternative finding by FHWA of why these unusual impacts cannot be avoided and what alternatives were considered.

A significant encroachment, as defined in this proposed regulation, contemplates construction or flood related impact which may include substantial likely future damage, disruption of an emergency or evacuation route, high probability of loss of human life, or notable averse impact on flood-plain values. The application of this definition in highway design and location will avoid the significant adverse effects due to occupancy and alteration of flood plains as contemplated by the Executive Order. It will allow for the thorough consideration of all relevant highway actions in accordance with the procedures outlined in this proposed regulation.

This notice of proposed rulemaking is issued under the authority of 23 U.S.C. §§ 109(a), 315 and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b).

NOTE: The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation purusant to E.O. 12044.

* This document is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

ssued on: December 12, 1978.

JOHN S. HASSELL, Jr.,
Deputy Administrator.

In consideration of the foregoing, the Federal Highway Administration proposes to revise Part 650, Subpart A of Chapter I, Title 23, Code of Federal Regulations to read as follows:

PART 650—BRIDGES, STRUCTURES AND HYDRAULICS

Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

Sec.
650.101 Purpose.
650.103 Policy.
650.105 Definitions.
650.107 Application.
650.109 Flood-plain identification.
650.111 Public involvement.
650.113 Location hydraulic studies.
650.115 Environmental processing.
650.117 Only practicable alternative finding.
650.119 Design standards.
650.121 Design studies and documentation.

AUTHORITY: 23 U.S.C. 109(a), 315; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988—Floodplain Management, May 24, 1977, (42 FR 26951).

Subpart A—Location and Hydraulic Design of Encroachments on Flood Plains

§ 650.101 Purpose.

To prescribe Federal Highway Adminstration (FHWA) policies and procedures for the location and hydraulic design of highway encroachments on flood plains, including Direct Federal highway projects administered by FHWA.

§ 650.103 Policy.

It is the policy of the FHWA:

(a) To encourage a broad and unified effort to prevent uneconomic, hazardous or incompatible use and development of the Nation's flood plains,

(b) To avoid highway encroachments, where practicable,

(c) To minimize the impacts of highway agency actions which adversely affect base flood plains,

(d) To restore and preserve the function of natural and beneficial flood-plain values adversely impacted by highway agency actions,

(e) To avoid the direct and indirect support of incompatible flood-plain development, and

(f) To be consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where applicable, in the construction of Direct Federal highway projects, and

(g) To incorporate "A Unified National Program for Floodplain Management" of the Water Resources Council into FHWA procedures.

§ 650.105 Definitions.

As used in this regulation—

(a) "Action" shall mean any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds.

(b) "Base flood" shall mean that flood or tide having a 1-percent chance of being exceeded in any given year.

(c) "Base flood plain" shall mean that area subject to flooding by the base flood.

(d) "Design Flood" shall mean the peak discharge, volume, if appropriate, stage or wave crest elevation, of the flood associated with the recurrence interval selected for the design of a highway encroachment. Except where terrain or other factors, such as a grade separation, control the highway profile elevation, floods greater than the design flood will overtop the highway or flow over the watershed divide.

(e) "Encroachment" shall mean an action within the limits of the base flood plain.

(f) "Facility" shall mean any element of the built environment other than a walled or roofed building.

(g) "Flood of record" shall mean the largest historical flood event which has been reliably determined and recorded.

(h) "Floodproof" shall mean to design and construct individual buildings, facilities, and their sites to protect against structural failure, to keep water out or to reduce the effects of water entry.

(i) "Floodway" shall mean the flood-plain area that is reserved in an open manner by Federal, State or local requirements, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so that the cumulative increase in water surface elevation is no more than a designated amount (not to exceed 1 foot as set by the National Flood Insurance Program).

(j) "Minimize" shall mean to reduce to the smallest practicable amount or degree.

(k) "Natural and beneficial flood plain values" shall include but are not limited to: fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, forestry, natural moderation of floods, water quality maintenance, and groundwater recharge.

(l) "Practicable" shall mean capable of being done within reasonable natural, social, and economic constraints.

(m) "Preserve" shall mean to avoid modification to the natural flood-plain environment or to maintain it as closely as practicable in its natural state.

(n) "Restore" shall mean to reestablish a setting or environment in which the functions of the natural and beneficial flood-plain values adversely impacted by the highway agency action can again operate.

(o) "Risk" shall mean the economic and other consequences associated with the probability of flooding attributable to an encroachment. It shall include the potential for property loss, hazard to life, and impact on natural and beneficial flood-plain values during the service life of the highway.

(p) "Significant encroachment" shall mean a highway encroachment and any direct support of likely base flood-plain development that would involve one or more of the following construction or flood related impacts:

(1) Likely future damage associated with the encroachment that could be substantial in cost or extent, including potential interruption or termination of a transportation facility which is needed for emergency vehicles or provides a community's only evacuation route,

(2) A high probability of loss of human life, or

(3) A notable adverse impact on natural and beneficial flood-plain values.

(q) "Structure" shall mean a bridge, culvert or other facility designed for the purpose of conveying flood waters. (As defined by the Water Resources Council (WRC) and the Federal Insurance Administration (FIA), a structure is a walled and roofed building.)

(r) "Support base flood-plain development" shall mean to encourage, allow, serve, or otherwise facilitate additional base flood-plain development. Direct support results from an encroachment, while indirect support results from an action out of the base flood plain.

§ 650.107 Application.

(a) The provisions of this regulation, except the provisions of § 650.117, shall apply to all encroachments and to all actions which affect base flood plains, except as set forth in § 650.107(d).

(b) The provisions of §§ 650.109 through 650.117 of this regulation shall be implemented in a timely manner during development of current projects. Documentation of compliance with these provisions should be incorporated into project records, where practicable. However, highway sections may be processed without formal documentation where one of the following actions have occurred:

(1) The draft environmental impact statement (EIS) has been filed with the Environmental Protection Agency (EPA) prior to or within 6 months following the date of this regulation and the final EIS for this draft EIS is filed with EPA within 1 year following the date of this regulation, or

(2) The provisions for public hearings under the State Action Plan (23 CFR 790) have been met, the FHWA has concurred in a "nonmajor action" determination or approved the nega-

tive declaration, and the FHWA (or State highway agency under the provisions of 23 CFR 640) has given approval which is equivalent to location approval within 60 days following the date of this regulation.

(c) The following actions are found to be in compliance with the provisions of this regulation and no further documentation is required of highway agencies:

(1) Resurfacing highways, correcting substandard intersections, improving railroad at-grade crossings,

(2) Lighting, signing, pavement marking, signalization, freeway surveillance and control systems, and protective devices at railroad crossings,

(3) Pavement grooving, glare screen, and energy attenuators for safety improvement,

(4) Reconstruction of crossroad or railroad separations,

(5) Highway landscaping, and

(6) Construction of bus shelters and bays.

(d) The provisions of this regulation shall not apply to repairs made with emergency funds (23 CFR 630, Subpart E) during or immediately following a disaster.

(e) The provisions of 23 CFR 640, Certification Acceptance, cannot be applied to the requirements of this regulation.

§ 650.109 Flood-plain identification.

Base flood-plain limits shall be established and encroachments delimited for location alternatives. FIA maps, where available, shall be used to identify flood plains.

§ 650.111 Public involvement.

If an alternative under consideration contains an encroachment, opportunity for early public review and comment on the proposed encroachment shall be provided within the framework of procedures which have been established to meet the public involvement requirements of 23 CFR, Parts 771 and 795 or 790.

§ 650.113 Location hydraulic studies.

(a) Alternatives to encroachments shall be investigated.

(b) Alternatives containing encroachments shall be evaluated in sufficient detail to assess the flood risk.

§ 650.115 Environmental processing.

(a) Project records shall contain discussion of the following items, commensurate with the significance of the impact, for all alternatives containing encroachments and for those actions which would support base flood-plain development:

(1) The risks associated with implementation of the action,

(2) The impacts on natural and beneficial flood-plain values,

(3) The degree of direct and indirect support of incompatible flood-plain development,

(4) The measures to minimize impacts associated with the action, and

(5) The measures to restore and preserve the natural and beneficial flood-plain values impacted by the action.

(b) Project records shall contain discussion of § 650.117 (a)(1) through (3) in sufficient detail to permit review of the practicability of alternatives to significant encroachments.

(c) Where FIA standards and criteria are demonstrably inappropriate for a proposed Direct Federal highway action, project records shall contain discussion of the reasons therefor.

§ 650.117 Only practicable alternative finding.

(a) A proposed action which includes a significant encroachment shall not be approved unless the Division Administrator finds, in writing, that the proposed significant encroachment is the only practicable alternative. The proposed finding shall ordinarily be included in the final environmental document for the proposed action. The finding shall include:

(1) The reasons why the proposed action must be located in the flood plain,

(2) A list of alternative considered and why they were not practicable, and

(3) A statement indicating whether the action conforms to applicable State or local flood-plain protection standards.

(b) A copy of the finding and a location map shall be made available to appropriate State and areawide clearinghouses following procedures established in accordance with 23 CFR 420, Subpart C.

§ 650.119 Design standards.

(a) All encroachments shall be designed with consideration of capital costs and risks to accommodate passage of the base flood and to be consistent with standards established by the FIA, State, and local governmental agencies for the administration of the National Flood Insurance Program where a floodway has been designated.

(1) Accommodation of the base flood may be through highway drainage structures, over the highway, or both.

(2) Accommodation of the base flood along a highway may include inundation of the highway.

(b) The design flood selected for each encroachment shall be supported by an analysis of design alternatives with consideration given to capital costs, risks, stream stability, budgetary constraints, the need for emergency supply and evacuation routes and the need for emergency vehicle access.

(1) The design flood for encroachments by through lanes of Interstate highways shall not be less than the flood with a 2-percent chance of being exceeded in any given year. No minimum design flood is specified for Interstate highway ramps and frontage roads or for other Federal-aid highways.

(2) The effects of existing flood control channels, levees, and reservoirs shall be considered in estimating the peak discharge and stage for all floods considered in the design.

(c) Rest area buildings and waste treatment facilities shall be located outside the base flood plain or floodproofed against damage from the base flood.

(d) Where highway fills are to be used as dams to permanently impound water more than 50 acre-feet in volume or 25-feet deep, the hydrologic, hydraulic, and structural design of the fill and appurtenant spillways shall have the approval of the State or Federal agency responsible for the safety of dams or like structures within the State, prior to authorization by the Division Administrator to advertise for bids.

(e) Safety grates shall not be installed on cross-drainage structures unless upstream debris control structures exist or are installed.

§ 650.121 Design studies and documentation.

(a) The detail of studies and documentation shall be commensurate with the risk associated with the encroachment, the importance of the highway facility and the importance of the flood plain. Less comprehensive studies are appropriate for encroachments on minor streams and at locations where the risk is small.

(b) Documentation of studies by highway agencies shall contain:

(1) Hydrologic and hydraulic data and design computations, and

(2) The design flood and base flood analysis required by § 650.119(a) and (b).

(c) At each encroachment location, project plans shall show:

(1) The magnitude, probability of exceedence, and water surface elevations at appropriate locations for the design flood and the base flood, if different from the design flood, and

(2) The magnitude, water surface elevation and date of occurrence of the flood of record, if greater than the base flood.

(d) The documentation of design computations shall be retained in accordance with 23 CFR Part 17.

[FR Doc. 78-35979 Filed 12-26-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 445]

[Docket No. R78-601]

SECTION 312 REHABILITATION HOUSING

Application of Payments

AGENCY: Department of Housing and Urban Development (HUD)

ACTION: Proposed rule.

SUMMARY: This rule applies repayments on delinquent loans for Section 312 Rehabilitation Housing first to interest, and the remainder to principal. This rule is necessary because the current practice of not computing interest until the principal is paid in full results in a lower interest rate for borrowers who default than for borrowers who remain current in payment.

DATE: Comments must be received on or before January 28, 1979.

ADDRESS: Written comments should refer to the docket number and date and should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 Seventh Street, S.W., Washington, D.C. 20410. A copy of each such communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

John D. McNees, Acting Director, Office of Property Disposition HUD, Room 9282, 451 7th Street, S.W. Washington, D.C. 20410, 202-755-6675. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Presently, all receipts on delinquent loans are applied to the reduction of principal. Interest is not computed until the principal has been paid in full. This reduces the effective interest rate from three percent (3%) to as low as two and one-fifth percent (2⅕%). This effectively provides motivation for a borrower to default and penalizes those borrower/mortgagors who maintain payments in a current manner. The effect of this proposed rule will eliminate the incentive to default and provide equitable treatment between borrowers who default and those who remain in a current status.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of the Finding of Inapplicability is available for public inspection during regular working hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10245, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, the Department proposes to amend Title 24 CFR Part 445 as follows:

§ 445.1 Application of payments.

When a debt is paid in installments and interest is collected, for a Section 312 loan, the installment payments will first be applied to the payment of accrued interest and then to principal as prescribed in § 102.10 of the Joint Regulations of the General Accounting Office and the Department of Justice. (4 CFR 102.10)

(Sec. 7(d), Department of HUD Act; 42 U.S.C. 3535(d). [38 FR 27216 Oct 1, 1973]. Section 312 of the Housing Act of 1964, (42 U.S.C. 1452b).)

In accordance with section 7(o) (4) of the Department of HUD Act, section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at that time for public comment.

Issued at Washington, D.C., November 7, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 78-35933 Filed 12-26-78; 8:45 am]

[4210-01-M]

[24 CFR Part 870]

[Docket No. R78-600]

PHA-OWNED PROJECTS—DEMOLITION OF STRUCTURES OR DISPOSITION OF REAL PROPERTY

Proposed Policy, Procedures, and Guidance

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: The Secretary is amending part 870 to provide policy, procedures, and guidance for Public Housing Agencies (PHAs) in carrying out either partial or total demolition of structures and partial or total disposition of land for PHA-Owned Public Housing projects.

DATE: Public comments must be received by HUD on or before January 28, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Each person submitting a comment should include his or her name and address, refer to the document by the docket number indicated in the heading, and give reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above. The proposal may be changed in the light of the comments received.

FOR FURTHER INFORMATION CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6460. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This part pertains to proposed action by a PHA to demolish housing units or other structures of a public housing project, or to sell or otherwise dispose of land of a public housing project, or to any combination of those types of action. It provides that prior HUD approval shall be required for any of these actions and prescribes procedures and criteria for HUD approval. This part covers partial demolition or disposition (i.e., affecting only a part of the structures or land of a public housing project) as well as transactions involving demolition of all of a project's structures and/or disposition of all of a project's land. Cross-reference is made to part 868, Low-Income Housing—Modernization Program, in connection with consideration of physical rehabilitation as an alternative to demolition or disposition.

This part is consistent with section 6(f) of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, which requires the inclusion in each Annual Contributions Contract of a provision that, when a PHA and HUD mutually agree that a housing project is "obsolete" as to physical condition, or location or other factors, making it unusable for housing purposes, a program of "modifications or closeout" shall be prepared.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedure. A copy of the Finding of Inapplicability is available for public inspection during regular business hours at the above address.

Accordingly, the Department proposes to amend Chapter VIII of Title 24 of the Code of Federal Regulations by adding part 870 as set forth below.

PART 870—PHA-OWNED PROJECTS—DEMOLITION OF STRUCTURES OR DISPOSITION OF REAL PROPERTY

Sec.
870.1 Purpose.
870.2 Applicability.
870.3 Definitions.
870.4 HUD policy.
870.5 HUD review of PHA requests.
870.6 A-95 clearance.
870.7 Criteria.
870.8 Tenant participation.
870.9 Disposition of excess property.

§ 870.1 Purpose.

This part sets forth policy, procedures and criteria for HUD review of requests by public housing agencies (PHAs) for authority to demolish structures and/or dispose of real property of PHA-owned, low-income public housing projects.

§ 870.2 Applicability.

This part applies to PHA-owned, low-income public housing projects which are subject to Annual Contributions Contracts (ACCs) between PHAs and HUD under the United States Housing Act of 1937. It does not apply to the Section 23 and Section 10(c) Leased Housing Programs or the Section 23 and Section 8 Housing Assistance Payments Programs. Nor does this part apply to the sale of dwellings to homebuyers, under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunities Program.

§ 870.3 Definitions.

"Demolition" means the demolition of one or more structures of a public housing project.

"Disposition" means the conveyance by a PHA, pursuant to sale or other transaction, of any interest in the real estate of a public housing project, e.g., fee title, leasehold, right-of-way or easement, except for leasehold interests incident to the normal operation of the project for low-income housing and related purposes.

§ 870.4 HUD policy.

It is HUD's policy to conserve and maintain the existing stock of low-income public housing to the maximum extent consistent with considerations of need and feasibility. Unless it can be demonstrated that a project, or a portion of a project, is excess to local needs for low-income housing, every reasonable effort will be made by HUD and the PHA to keep the property within the low-income housing inventory. If a project, or a portion of a project, is not excess to local needs, but is unsuitable for housing use because of its physical condition, every reasonable effort shall be made to return it to a condition suitable for housing use, through the Modernization Program or other means. Accordingly, HUD will limit approval for demolition or disposition to those cases where such action can be fully justified in accordance with the criteria set forth under this part.

§ 870.5 HUD review of PHA requests.

Written HUD approval shall be required prior to any demolition or disposition, or any transaction involving both demolition and disposition. To obtain HUD approval, the PHA shall submit to HUD a written request describing the proposed action, the property involved and such other information as HUD shall require for a decision based on the criteria set forth in § 870.7 and other applicable requirements, including provisions of the National Environmental Policy Act of 1969. Upon consideration of the PHA's request, supporting documentation and any other relevant information, HUD will notify the PHA in writing of its decision.

§ 870.6 A-95 Clearance.

With respect to any request for demolition or disposition of 100 or more dwelling units, or any lesser number of dwelling units comprising all of the dwelling units of a project, the following requirements shall be applicable:

(a) At least 45 days prior to the submission of the PHA's request to HUD, the PHA shall transmit a copy of the request to the appropriate State and areawide A-95 clearinghouses for review and comment, unless the clearinghouses relinquish this requirement prior to the submission of the request to HUD.

(b) The PHA shall transmit all clearinghouse comments with the request to HUD. If comments are not received by the PHA within the 45 day period, the PHA shall include a statement indicating that the clearinghouses were notified and no comments were received.

(c) If the A-95 review comments contain any finding of inconsistency with State, areawide or local plans or noncompliance with environmental or other applicable requirements, the PHA must state how it proposes to resolve the finding or state its justification for proposing to proceed with the requested action despite the finding.

§ 870.7 Criteria.

HUD shall use the following criteria in determining whether a PHA's request for demolition and/or disposition is justified under the policy stated in § 870.4:

(a) Current and projected needs for low-income housing in the jurisdiction served by the PHA, taking into account both demand and supply factors. If there is a local need for low-income housing, the PHA's request for demolition or disposition of dwelling units shall include a plan for replacement housing on a one-to-one basis, subject to the availability of funds.

(b) The physical condition of the property and, where pertinent, the feasibility of rehabilitation, from an engineering and cost standpoint and the availability of funds for rehabilitation.

(c) The PHA's plan for relocating any displaced tenants to other decent, safe and sanitary housing within their means.

(d) Location, in terms of any condition in the surrounding neighborhood that adversely affects the life, health or safety of project residents.

(e) Social conditions which have seriously adverse effect on the suitability of the project as a living environment.

(f) The project's density and related needs for open space, for recreation, parking or other purposes.

(g) Benefits to the project from disposition of a limited interest in project real estate (e.g., easement, right-of-way or dedication for public use).

(h) Effects on the surrounding neighborhood and wider community.

(i) Views of tenants, the local governing body, other governmental agencies, community organizations and any other interested parties.

§ 870.8 Tenant Participation.

Before submission to HUD of a request for demolition and/or disposition the PHA shall notify the residents of the project and the resident organization, if any, of the proposed request, afford residents a reasonable opportunity to present their views on the proposal and alternatives to it, and give full and serious consideration to resident recommendations. The PHA shall provide HUD with an evaluation of resident recommendations, indicating the reasons for PHA acceptance or rejection. The PHA shall also provide a copy of this evaluation to the residents and the resident organization, if any. After HUD's decision on the PHA's request, the PHA shall inform the residents and the resident organization, if any, of the decision. The provisions of this section shall not apply in emergencies, where it can be demonstrated that adherence to them would result in delay endangering life, health or safety. At the request of a PHA, compliance with the provisions of this section may be waived by HUD with regard to the disposition of limited interests in a project's real estate (e.g., an easement) which do not include dwelling units or significantly reduce amenities available to project tenants.

§ 870.9 Disposition of Excess Property.

Where HUD approves the disposition of real property of a project, the

PHA shall, in accordance with the requirements of the ACC, determine such property to be excess and shall sell it as soon as practicable, unless another method of disposition is approved by HUD. The proceeds of sale or other disposition shall be applied as directed by HUD in accordance with the ACC.

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., December 4, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 78-35934 Filed 12-26-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1007-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Revision to the New Jersey Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces an Environmental Protection Agency proposal to approve a request from the State of New Jersey to revise its air quality control plan and to promulgate a related provision to such plan. The State is requesting that certain changes it has made to its regulation entitled, "Sulfur in Fuels," be incorporated into the New Jersey State Implementation Plan. If approved by the Environmental Protection Agency, these changes will provide for increases in the sulfur content limitations now applicable to fuels used in Atlantic, Cape May, Cumberland, Ocean, Salem, Burlington, Camden, Gloucester, and Mercer Counties. These proposed changes to the New Jersey regulation complement proposed changes to the Pennsylvania State Implementation Plan and are intended to resolve regulatory inconsistencies among the various jurisdictions in the Philadelphia Interstate Air Quality Control Region in a manner which protects air quality.

DATE: Comments must be received or a hearing requested on or before January 26, 1979.

ADDRESSES: All comments should be addressed to: Eckardt C. Beck, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007.

Copies of the proposal are available for public inspection during normal business hours at: U.S. Environmental Protection Agency, Air Programs Branch, Room 908, Region II Office, 26 Federal Plaza, New York, New York 10007; U.S. Environmental Protection Agency, Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, (Docket No. 2A-78-1); and New Jersey Department of Environmental Protection, John Fitch Plaza, P.O. Box 2807, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007, 212-264-2517.

SUPPLEMENTARY INFORMATION: On August 10, 1978 the Environmental Protection Agency (EPA) received from New Jersey a proposed revision to its State Implementation Plan (SIP). The State's submittal consisted of a revised State regulation entitled "Sulfur in Fuels" (Subchapter 9 of Chapter 27, Title 7, New Jersey Administrative Code (N.J.A.C. 7:27-9.1 *et seq.*)) and an Order of Adoption signed by the Commissioner of the New Jersey Department of Environmental Protection (NJDEP).

The proposed SIP revision changes Subchapter 9 in the following manner:

1. There are additions, deletions and changes to the definitions appearing in Section 9.1.

2. The provisions of Section 9.2, "Commercial Fuel Oil," and Section 9.3, "Noncommercial Fuel," have been combined into a new Section 9.2 entitled, "Sulfur Content Standards." The major change to the provisions of these sections involves applicable fuel oil sulfur content limitations:

a. In Atlantic, Cape May, Cumberland and Ocean Counties the previous sulfur content limitations of 0.7 percent for No. 4 fuel oil and 1.0 percent for No. 5 and heavier fuel oils have all been changed to 2.0 percent.

b. In Salem County the previous sulfur content limitations of 0.2 percent for No. 2 and lighter fuel oils and 0.3 percent for No. 4 and heavier fuel oils have been changed to: 0.3 percent for No. 2 and lighter fuel oils; 0.7 percent for No. 4 fuel oil; and 1.0 percent for No. 5 and heavier fuel oils.

c. In portions of Burlington, Camden, Gloucester and Mercer Counties not designated as a part of the pine barrens the previous sulfur content limitation of 0.3 percent for No. 5 and heavier fuel oils has been changed to 0.5 percent.

3. Section 9.4, "Exemptions," is now codified as Section 9.3. Among other minor changes to this section is one which permits the State to set more stringent sulfur limitations than would normally apply to sources of air pollution which experience aerodynamic downwash at their stacks.

4. Section 9.5 which permitted the State to grant temporary variances from applicable sulfur limitations to sources in Salem, Cumberland and parts of Cape May County has been deleted.

This request by New Jersey is the product of the State's participation in a multi-state effort involving New Jersey, Pennsylvania and Delaware to provide for attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide in the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR) and to resolve regulatory inequities among the various jurisdictions in the AQCR.

Since 1974 sources in the New Jersey portion of the Metropolitan Philadelphia AQCR have been subject to a sulfur content limit of 0.3 percent in heavy fuel oils and 0.2 percent in light fuel oils while sources in the Pennsylvania jurisdictions on the western bank of the Delaware River were subject to higher limitations. Effective October 1, 1973 the Pennsylvania SIP, as approved by EPA, required a reduction in sulfur content to lower limits equivalent to those in New Jersey in the City of Philadelphia. However, implementation of the required reduction has been postponed several times.

In late 1975, NJDEP petitioned EPA to take action to assure the implementation of a more equitable set of requirements throughtout the region. Sulfur dioxide control strategies for the portions of Delaware, Pennsylvania, and New Jersey which comprise the Metropolitan Philadelphia AQCR have been under review by EPA and the affected states since that time. Initial proposals to change sulfur-in-fuel-oil standards by both Pennsylvania and Philadelphia were unacceptable to NJDEP. Subsequent failures by the involved parties to agree on modifications to those proposals resulted in New Jersey's announcement, on October 11, 1977, of its intent to seek judicial relief in accordance with the Clean Air Act.

Concurrent with the Metropolitan Philadelphia AQCR analysis, New Jersey undertook a similar air quality evaluation for the four counties which

comprise the New Jersey Intrastate AQCR. Sulfur-in-fuel strategies instituted in the Philadelphia area are pertinent to air quality in the New Jersey Intrastate AQCR in that as much as 50 percent of the sulfur dioxide concentration measured in the Intrastate Region is claimed to be generated in, and transported from, sources located in the Philadelphia area.

In January 1976, while the two regional studies were being conducted, Governor Byrne issued an Executive Order calling for immediate steps to modify the sulfur-in-fuel-oil standards in South Jersey where it was possible to do so without jeopardizing State or federal air quality standards. Variances were issued by the State and approved as SIP revisions by EPA for industrial plants in Salem and Cumberland Counties and for Atlantic City Electric's B. L. England Generating Station in Cape May County after technical studies indicated no likelihood for contravention of the standards existed and after a system of air quality monitors was established. These variances have been renewed several times by the State and EPA. If EPA approves the limitations proposed in this FEDERAL REGISTER notice, they will replace the limitations currently in effect under the New Jersey variances, and EPA approval of these variances will be terminated.

In April 1978, Pennsylvania completed its proposed sulfur dioxide regulatory changes for southeastern Pennsylvania. A Memorandum of Agreement was entered into by NJDEP, EPA Region II, and EPA Region III which sets forth a commitment by the parties to process these regulatory changes in accordance with an agreed upon schedule. The amended regulations have been submitted to EPA as a revision to Pennsylvania's SIP. The complementary New Jersey proposal was drafted, reviewed in public hearing on July 13, 1978, and submitted to EPA as a SIP revision on August 10, 1978.

This current SIP revision request was submitted to EPA in accordance with all applicable EPA requirements as contained in 40 CFR Part 51.

EPA has found in its review of the technical information generated under an EPA funded contract and the technical information submitted by the State that this proposed SIP revision will not result in the contravention of any applicable air quality standard or Prevention of Significant Deterioration (PSD) increment (established pursuant to Section 163 of the Clean Air Act, as amended). However, the technical analyses submitted are predicated on the assumption that two power generating facilities located in the Metropolitan Philadelphia Interstate AQCR continue to burn fuel oil rather than coal. Under an existing New Jersey regulation, "Sulfur in Coal" (N.J.A.C. 7:27-10.1 *et seq.*), these two oil burning facilities, the Atlantic City Electric Company's Deepwater facility in Salem County and the Public Service Electric and Gas Company's Burlington facility in Burlington County, could make a conversion to bituminous coal with a sulfur content of up to 1.0 percent, by weight, or up to 1.5 percent, by weight, if granted a variance by the State. Since these facilities have burned coal in the past and are believed not to have to undergo any major reconstruction or construction in order to burn coal now, they may not be subject to the 0.20 percent sulfur content limitation provided under the State's "Sulfur in Coal" regulation for large sources that undergo expansion, reconstruction or construction.

As mentioned, the technical demonstration of the air quality impact of this proposed revision to N.J.A.C. 7:27-9.1 *et seq.* did not include a consideration of the potential effect of these coal conversions. Since Section 110 of the Clean Air Act requires that implementation plans or revisions thereto not be approved by EPA in the absence of an adequate technical demonstration that such plans or plan revisions provide for attainment and maintenance of air quality standards, EPA must condition any approval of this proposed revision on the assurance that, if the coal conversions mentioned were to be made, they would be accompanied by any necessary "offsetting" emission reductions.

Any potential conversion from fuel oil to coal by the two facilities would require a permit to be issued by the State of New Jersey. However, a review of New Jersey's current permitting requirements does not assure EPA that the conversions would be allowed by the State only after a full analysis of the permitted conversions' effect on air quality, particularly with respect to the effect on air quality within the Pennsylvania portion of the Metropolitan Philadelphia AQCR. This concern is reinforced by the fact that, as mentioned, these two conversions could occur without a reconstruction of the facilities, which would otherwise trigger the stringent coal sulfur content limitations provided in the State's "Sulfur in Coal" regulation. Also, conversions, as fuel switching, would not normally subject a source wishing to convert to EPA requirements with respect to new source review. In light of all these circumstances, EPA believes that a potential, limited gap exists in the State's control strategy for sulfur oxides which must be redressed by proposed corrective federal action contemporaneous with EPA's approval of the State submitted revision to N.J.A.C. 7:27-9.1 *et seq.*

It is therefore proposed that the State be required to submit to EPA for review an analysis of the air quality impact of any conversion to coal at the Atlantic City Electric Company's Deepwater Generating Station in Salem County or the Public Service Electric and Gas Company's Burlington Generating Station in Burlington County prior to issuance of a State permit authorizing such conversions. Upon a finding by EPA that the conversion to coal, at the sulfur-in-coal limit specified in the proposed permit, would not result in the contravention of air quality standards and would not cause PSD increments to be exceeded, the State permit could be granted. Should EPA find that the conversion would result in the contravention of standards or the exceedance of PSD increments, the State permit could not be granted, and the conversion could not occur, until an equivalent emission reducing strategy had been submitted by the State and approved by EPA as a revision to the SIP. A similar procedure would be followed if the State were to increase the permitted sulfur-in-coal limitation subsequent to an initial conversion.

It must be emphasized that this procedure is not meant to give EPA the right to veto any proposed fuel conversion. It merely ensures that the State and EPA have an opportunity to take a "second look" at the adequacy of the State's control strategy if a fuel conversion is to take place. If the conversion can be accommodated within the existing strategy, it may take place without further action. If not, appropriate revisions to the strategy (to be initiated by the State) must occur prior to the conversion being permitted.

Persons wishing to comment on this proposed action may do so by submitting written comments or by requesting a public hearing within 30 days of publication of this notice.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. By amending Subpart FF § 52.1601 by adding new Paragraph (b) as follows:

§ 52.1601 Control Strategy and Regulations: Sulfur Oxides.

* * * * *

(b) Before any steam or electric power generating facility in Zone 3, as defined in N.J.A.C. 7:27-10.1, burning fuel oil on (the date of publication of EPA's final action on this revision request), having a rated hourly gross

heat input greater than 200,000,000 British Thermal Units (BTU's), and capable of burning coal without major reconstruction or construction which was in operation prior to May 6, 1968 or group of such facilities having a combined rated hourly capacity greater than 450,000,000 BTU's may be permitted by the State to convert to the use of coal, the State shall submit to EPA a copy of the proposed permit together with an air quality analysis employing methodology acceptable to EPA. If EPA determines, on the basis of the submitted analysis, that the proposed coal conversion will not interfer with the attainment or maintenance of air quality standards and will not be the cause of an exceedance of any Prevention of Significant Deterioration (PSD) increment, then the permit authorizing conversion may become effective immediately upon the publication of such a determination (as a Notice) in the FEDERAL REGISTER. If EPA determines that the submitted analysis is inadequate or that it shows that the proposed conversion will interfere with attainment or maintenance of air quality standards or cause the exceedance of a PSD increment, then EPA shall so inform the State of its determination, and the permit authorizing conversion shall not become effective until an adequate analysis is submitted or, if necessary, until a control strategy revision which would require necessary emission reductions were submitted by the State and placed into effect as an EPA approved revision to the implementation plan. In addition, this same procedure shall apply to any State permit applied for that would authorize a relaxation in the sulfur-in-coal limitation at any such facility, as defined, having already been granted a permit to convert to coal.

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted or a public hearing requested on whether the proposed revision to the New Jersey State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Section 110(a)(2)(A)-(K), (a)(3) of the Clean Air Act and EPA regulations in 40 CFR Part 51.

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

Dated: December 5, 1978.

ECKARDT C. BECK,
Regional Administrator,
Environmental Protection Agency.

[FR Doc. 78-35886 Filed 12-26-78; 8:45 am]

[6560-01-M]

[40CFR Part 52]

[FRL 1007-2]

COMMONWEALTH OF PENNSYLVANIA

Proposed Revisions of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendments to the Philadelphia Code relating to Air Management and to the Pennsylvania Code relating to Environmental Resources.

SUMMARY: The Commonwealth of Pennnsylvania has requested that certain amendments to their regulations and those of the City of Philadelphia relating to the sulfur content of fuel burned in southeastern Pennsylvania be reviewed and processed as a revision of the Pennsylvania State Implementation Plan for meeting air quality standards. These amendments are designed to attain and maintain the air quality standards for sulfur dioxide and to resolve regulatory inequities among the various jurisdictions in the Philadelphia metropolitan area.

DATE: Comments must be received on or before January 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Brian McLean (3AH12), U.S. Environmental Protection Agency, Region III, 6th & Walnut Sts., Philadelphia, PA 19106, telephone number (215) 597-8179.

ADDRESSES: Copies of the proposed revisions are available for public inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Attn: Mr. Brian McLean; Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, Third and Fulton Streets, Harrisburg, Pennsylvania 17120. Attn: Mr. Gary Triplett; Philadelphia Air Management Services, 301 Arch Street, Philadelphia, Pennsylvania 19106. Attn: Mr. William Reilly; and Public Information Reference Unit, Room 2922 (EPA Library), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

All comments submitted on or before January 26, 1979, will be considered and should be directed to: Mr. Howard R. Heim, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Attn: AHO12cPA.

SUPPLEMENTARY INFORMATION: On July 31, 1978, the Commonwealth of Pennsylvania submitted to the Regional Administrator, EPA Region III, an amendment to Title 3 of the Philadelphia Code relating to Air Management and an amendment to Title 25 of the Pennsylvania Code relating to Environmental Resources. The Commonwealth has requested that these amendments be reviewed and processed as a revision of the Pennsylvania State Implementation Plan (SIP) for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS).

The amendments consist of changes to Section 3-207 (Sale of Fuel Oil) of the Philadelphia Code pertaining to Philadelphia County and changes to Title 25, Part I, Subpart C, Article III, Chapter 121 (Definitions) and chapter 123 (Standards for Contaminants, Sulfur Compound Emissions) of the Pennsylvania Code pertaining to Bucks County, Chester County, Delaware County, and Montgomery County, Pennsylvania.

The request by the Commonwealth of Pennsylvania represents the final action by the Commonwealth as part of a multi-State effort to provide for attainment and maintenance of the NAAQS for sulfur dioxide in the Metropolitan Philadelphia Interstate Air Quality Control Region (MPIAQCR) and to resolve regulatory inequities among the various jurisdictions in the MPIAQCR. The request establishes two regulatory zones in the Pennsylvania portion of the MPIAQCR: An inner zone consisting of Philadelphia County and portions of Bucks County, Delaware County, and Montgomery County adjacent to Philadelphia County and an outer zone consisting of Chester County and the portions of Bucks County, Delaware County and Montgomery County not included in the inner zone. Combustion of residual oil and distillate oil in the inner zone would be limited to 0.5 percent sulfur content by weight and 0.2 percent sulfur content by weight respectively; combustion of residual oil and distillate oil in the outer zone would be limited to 1.0 percent sulfur content by weight and 0.3 percent sulfur content by weight, respectively. Emissions from combustion of non-commercial fuels and coal would be limited to 1.2 pounds per million BTU of heat input in the outer zone or 0.6 pounds per million BTU of heat input in the inner zone except in Philadelphia County where coal combusted is limited to 0.3 percent sulfur by weight and where the concentration of emissions from combustion of non-commercial fuel is limited to 250 ppm on an annual average.

The request by the commonwealth of Pennsylvania has been preceded by

a series of requests by the City of Philadelphia and the Commonwealth of Pennsylvania to delay the effective date for 0.3 percent sulfur by weight in residual oil for Philadelphia County originally scheduled for October 1, 1973.

On February 17, 1977 (42 FR 9685), the Acting Regional Administrator acknowledged receipt of the most recent request to delay the 0.3 percent sulfur-in-fuel requirement dated November 10, 1976. He also summarized actions taken by EPA with regard to the previous requests, proposed the November 10, 1976 request as a revision of the Philadelphia County portion of the Pennsylvania SIP, and provided a 30-day public comment period, ending March 21, 1977. During the public comment period, EPA received comments from the Atlantic Richfield Company, the Penjerdel Corporation and the New Jersey Department of Environmental Protection (DEP). The Atlantic Richfield Company and the Penjerdel Corporation supported the request for a delay until a more equitable regional control strategy, then under development, could be implemented. The New Jersey DEP opposed the request for a delay.

The process of developing a more equitable regional approach to sulfur dioxide control in the MPIAQCR had formally begun in February 1976 with the establishment of an interstate committee composed of representatives from the New Jersey DEP, the Pennsylvania Department of Environmental Resources (DER), the Philadelphia Air Management Services (AMS) and the Delaware Department of Natural Resources and Environmental Control (DNREC). Regions II and III of EPA provided contractual assistance. Although a final report was published in August 1977 which included several regional control strategies, agreement among the participants on a single strategy could not be reached.

Dissatisifed with the progress being made on the development of a regional control strategy, New Jersey DEP advised EPA, the Commonwealth of Pennsylvania, and the City of Philadelphia in October 1977 of their intention to file a lawsuit to force implementation of the 0.3 percent sulfur-in-fuel requirement in Philadelphia. In December 1977, Pennsylvania DER, after consultation with Philadelphia AMS, submitted a regional control strategy to EPA similar to the subject proposed revision. EPA provided contractual assistance to perform air quality modeling of the DER proposal. In April 1978, New Jersey agreed to forbear from their suit in consideration of Pennsylvania's intention to propose the adoption of the subject amendments and EPA's intention to either adopt the subject amendments or enforce the 0.3 percent sulfur-in-fuel requirement in Philadelphia.

The EPA had not made a final determination on the delay request of November 10, 1976 when the Commonwealth of Pennsylvania submitted the current request on July 31, 1978 for amendments to both the Pennsylvania and Philadelphia Codes. The current request purports to attain and maintain NAAQS for sulfur dioxide, to resolve regulatory inequities among the various jurisdictions in MPIAQCR, and to result in lower regional compliance costs for sources within the Commonwealth of Pennslyvania than would the 0.3 percent sulfur-in-fuel requirement for Philadelphia County.

The Commonwealth of Pennslyvania submitted proof that a public hearing regarding the amendment to the Philadelphia Code was held on April 18, 1978 in accordance with the requirements set forth in 40 CFR 51.4 and that a public hearing regarding the amendment to the Pennslyvania Code was held on June 9, 1978 in accordance with the requirements set forth in 40 CFR 51.4.

This notice is to announce the Regional Administrator's receipt of the amendments and to provide for a 30-day period for public comments to be submitted to the address stated above. The Administrator's decision to approve or disapprove this proposed revision will be based on whether the amendments to Title 3 of the Philadelphia Code and to Title 25 of the Pennslyvania Code meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(42 U.S.C. 7401)

Dated: September 15, 1978.

JACK SCHRAMM,
Regional Administrator.

[FR Doc. 78-35885 Filed 12-26-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1001-8]

DELAYED COMPLIANCE ORDERS

Proposed Delayed Compliance Order for Triangle Refineries, Inc., Clermont, Indiana

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Triangle Refineries, Inc. The Order requires the Company to bring the gasoline loading facility at Clermont, Indiana (the source), into compliance with APC-15, Section 4, part of the federally-approved Indiana State Implementation Plan (SIP). Because the Company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air act (the act) for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before January 26, 1979, and requests for a public hearing must be received on or before January 11, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur E. Smith, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

SUPPLEMENTARY INFORMATION: Triangle Refineries, Inc. owns the gasoline loading facility at Clermont, Indiana. The proposed Order addresses emissions from the gasoline loading facility, which is subject to APC-15, Section 4, of the Indiana State Implementation Plan. The regulation limits the emissions of volatile organics (hydrocarbons) and is part of the federally-approved Indiana Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms. The source has agreed to meet the Order's increments during

the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

Dated: October 23, 1978.

JOHN MCGUIRE,
Regional Administrator,
Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.190, Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act, to reflect a approval of the following order.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

In the Matter of: Triangle Refineries, Inc. Clermont, Indiana—Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended (42 U.S.C. Section 7413(d)); Order No. ————.

The Order is issued this date pursuant to Sections 113(a), 113(d) and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (Act). This Order contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Indiana have been provided pursuant to Section 113(d)(1) of the Act.

FINDINGS

1. On April 12, 1978, the United States Environmental Protection Agency (U.S. EPA) issued a Notice of Violation, pursuant to Section 113(a)(1) of the Act, to Triangle Refineries, Inc., owned by Kerr-McGee (Triangle), upon a finding that the Clermont Terminal, gasoline loading facility, was in violation of Indiana APC-15, Section 4, a part of the applicable Implementation Plan defined in Section 110(d) of the Act. This finding was based upon emission factor calculations derived from data submitted to U.S. EPA by the subject facility.

2. In satisfaction of Section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegate was given to Triangle, and on April 27, 1978, an enforcement conference was held.

3. It has been determined that Triangle is unable to immediately comply with the applicable Implementation Plan.

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Ordered:

I. That Triangle will comply with the Indiana Implementation Plan regulation APC-15, Section 4, as approved by U.S. EPA on May 14, 1973, including a vapor collection and disposal/recovery system, in accordance with the following schedule on or before the dates specified therein.

A. In regard to the gasoline loading facility at Clermont, Indiana:

1. August 31, 1978—Triangle shall award contracts for control equipment.
2. February 1, 1979—Triangle shall initiate on-site construction for the control equipment.
3. July 1, 1979—Triangle shall complete on-site construction.
4. July 1, 1979—Triangle shall achieve final compliance with the Indiana Implementation Plan regulation APC-15, Section 4, as approved by the U.S. EPA on May 14, 1973.
5. After July 1, 1979, Triangle shall implement operation and maintenance procedures to maximize the control efficiency of the pollution control equipment.

II. That Triangle, Clermont Terminal, gasoline loading facility shall use the best practicable interim system of emission reduction so as to minimize hydrocarbon emissions; avoid any imminent and substantial endangerment to the health of persons; comply with the requirements of the applicable Implementation Plan insofar as it is able to; and, comply with the following interim requirements:

A. Triangle shall insert fill-pipes to the bottom of the loading compartment in a vertical position. Triangle shall control flow rate so as to minimize hydrocarbon emissions.

B. Triangle shall minimize product spillage.

III. That Triangle, Clermont Terminal, gasoline loading facility, shall comply with the following emission monitoring and reporting requirements:

A. *Emission monitoring.* Triangle shall maintain a record of the amount of gasoline which travels through the loading facility. This shall include the volume and vapor pressure of the gasoline.

B. *Reporting requirements.* 1. No later than fifteen (15) days after any date for achievement of an incremental step of final compliance, specified in this Order, Triangle shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this Order, Triangle shall immediately notify U.S. EPA in writing of the anticipated delay and reasons therefore.

2. A quarterly report shall be sent to the U.S. EPA reporting the progress of the program for installation of the control equipment and information required by paragraph III. A.

3. All submittals and notifications to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

IV. Nothing herein shall affect the responsibility of Triangle to comply with State or local regulations, or other Federal regulations.

V. Triangle is hereby notified that its failure to achieve final compliance by July 1, 1979, at the Clermont Terminal, gasoline loading facility may result in a requirement to pay a noncompliance penalty under Section 120. In the event of such failure, Triangle will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

Dated: December 14, 1978.

Douglas M. Costle
Administrator
U.S. Environmental Protection Agency

WAIVER OF RIGHTS TO CHALLENGE ORDER

Triangle, by the duly authorized undersigned, hereby consents to the provisions of this Order and waives any and all rights under any provisions of law to challenge this Order.

Date ————————————

————————————————————
(Signature of authorized representative of source)

[FR Doc. 78-35706 Filed 12-26-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR PARTS 2 AND 83]

[Gen. Docket No. 78-230]

PROVIDING FOR THE USE OF EMERGENCY POSITION INDICATING RADIOBEACONS (CLASS C) FOR VESSELS OPERATING IN COASTAL WATERS

Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time for reply comments.

SUMMARY: This action extends the time for filing reply comments in this matter. The United States Coast Guard has requested this extension to conduct additional testing of Class C EPIRBs and to comment on the results of these tests.

DATE: Reply comments must be received on or before February 9, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Robert C. McIntyre, Safety and Special Radio Services Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Parts 2 and 83 of the rules to provide for the use of Emergency Position Indicating Radiobeacons (Class C) for vessels operating in coastal waters. Order (See 43 FR 35353, August 9, 1978).

Adopted: December 13, 1978.

Released: December 20, 1978.

1. The U.S. Coast Guard has requested that the time for filing reply comments in this matter be extended for a period of 60 days.

2. The Coast Guard states "Although investigations using prototype models were considered adequate, the comments expressed in response to this Notice of Proposed Rule Making justify additional analyses to ensure that the most effective and acceptable system evolves. In view of the important issue raised in regard to signal environment impacts on channel 16 (156.8 MHz), an additional test program is being initiated immediately. This will require up to 60 days to conduct and respond."

3. The request for extension of time does not comply with the requirements of § 1.46 that such requests be filed 7 days before the filing date. However, in view of the fact that this rulemaking concerns a safety program administered by the USCG and that agency now feels that the comments received raise matters which justify additional analysis of the system, an extension is warranted.

4. For good cause shown, we find the public interest will be served by the extension of the reply comment period from December 11, 1978, to February 9, 1979.

5. Accordingly, pursuant to the authority contained in §§ 0.331 and 1.46 of the Commission's rules, the request of the U.S. Coast Guard is granted and the date for filing reply comments in this proceeding extended to February 9, 1979.

CARLOS V. ROBERTS,
Chief, Safety and Special Radio Services Bureau.

[FR Doc. 78-35969 Filed 12-26-78; 8:45 am]

[6712-01-M]

[47 CFR PART 73]

[BC Docket No. 78-386; RM-3176]

VINITA, OKLA.

Proposed FM Channel

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein, in response to a petition filed by David Leon Boyd and William E. Davis, proposes the assignment of a first Class A FM channel to Vinita, Oklahoma. The proposed station would provide for a first full-time local aural broadcast service to that community.

DATES: Comments must be received on or before February 14, 1979, and reply comments must be received on or before March 7, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Vinita, Oklahoma). Notice of proposed rulemaking.

Adopted: December 14, 1978.

Released: December 21, 1978.

By the Chief, Broadcast Bureau:

1. *Petitioner, Proposal, Comments:*

(a) *Notice of Proposed Rulemaking* is given concerning amendment of § 73.202(b) of the Commission's Rules as it relates to Vinita, Oklahoma. No responses to the petition were received.

(b) Petition for rulemaking[1] was filed on behalf of David Leon Boyd and William E. Davis ("petitioners"), seeking the assignment of Channel 240A to Vinita, Oklahoma, as its first FM assignment.

(c) Channel 240A could be assigned to Vinita in conformity with the minimum distance separation requirements provided the transmitter site is located approximately 12.3 kilometers (7.7 miles) northeast of Vinita. Petitioners state they will file an application to construct an FM broadcast station if the channel is assigned.

(2). *Community Data:*

(a) *Location:* Vinita, seat of Craig County, is located in the northeastern corner of the State, approximately 100 kilometers (62 miles) north of Muskogee, Oklahoma.

(b) *Population:* Vinita—5,847; Craig County—14,722.[2]

(c) *Local Aural Broadcast Service:* Vinita is presently served by daytime-only AM Station KVIN, licensed to PBL Broadcasting Company.

(d) *Economic Data:* Petitioners state that Vinita's economy is dependent largely on agriculture. We are told that there are several small manufacturing plants in the community which also contribute to its economy. Petitioners have submitted detailed demographic information in order to demonstrate the need for a first FM assignment in Vinita. They have also submitted letters in support of the proposed assignment from citizens in the area.

3. Petitioners assert that the proposed station would be the first full-time aural service in Vinita and Craig County. They state that a full-time facility is badly needed since the Vinita area is in the tornado and severe weather area of the country.

4. In view of the apparent need for a first full-time local aural broadcast service in Vinita and Craig County, the Commission proposes to amend the FM Table of Assignments, 73.202(b) of the Commission's Rules, with regard to Vinita, Oklahoma:

City	Channel No.	
	Present	Proposed
Vinita, Oklahoma		240A

5. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 14, 1979, and reply comments on or before March 7, 1979.

7. For further information concerning this proceeding, contact Mildred Nesterak, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission.

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

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

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[1]Public Notice of the petition was given on August 15, 1978, Report No. 1136.

[2]Population figures are taken from the 1970 U.S. Census.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (S33 § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-35970 Filed 12-26-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-385; RM-3123]

SAVANNAH, TENN.

Proposed FM Channel

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a second Class A FM channel to Savannah, Tennessee. The proposed assignment could provide for a station which would render a second full-time aural broadcast service to the community. This action is taken in response to a petition for rulemaking filed by the Tennessee River Broadcasting, Inc.

DATES: Comments must be filed on or before February 12, 1979, and reply comments on or before March 5, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Savannah, Tennessee). *Notice of proposed rule making.*

Adopted: December 12, 1978.

Released: December 21, 1978.

By the Chief, Broadcast Bureau:

1. *Petitioner, Proposal, Comments:*

(a) A petition for rule making [1] was filed on May 2, 1978, by The Tennessee River Broadcasting, Inc. ("petitioner"), proposing the assignment of FM Channel 228A to Savannah, Tennessee, as a second FM assignment to that community. No responses to the petition were received.

(b) The channel can be assigned to Savannah, Tennessee, in conformity with the minimum distance separation requirements provided the transmitter site is located 10 kilometers (6.3 miles) northeast of the community.

(c) Petitioner states that if the channel is assigned, it will file an application seeking authority to construct an FM broadcast station to operate on that assignment.

2. *Community Data;*

(a) *Location;* Savannah, seat of Hardin County, is located in southwestern Tennessee, approximately 160 kilometers (100 miles) east of Memphis, Tennessee, and 173 kilometers (108 miles) southwest of Nashville, Tennessee.

(b) *Population:* Savannah—5,576; Hardin County—18,212.[2]

(c) *Local Aural Broadcast Service:* Savannah is presently served by daytime-only AM Station WORM and Station WORM-FM (Channel 269A).

3. *Economic Data:* Petitioner asserts that Savannah's population has increased 29% between 1960 and 1970, and that Hardin County's population, which was 18,212 in 1970, is now estimated to be more than 20,200.[3] We are informed that Savannah is the transportation and economic center for its portion of southern Tennessee. Petitioner notes that the five major employers in the area are Tennessee River Pulp and Paper Company, Brown Shoe Company, Savannah Manufacturing Company, Sattillo Manufacturing and Kay-Windsor Apparel which employ a combined work force of 1,570 people. Petitioner states that there is no daily newspaper in Savannah or Hardin County. It claims that the public interest would be served by the proposed assignment, increasing available broadcast service to a growing region.

4. *Preclusion Study.* Preclusion does not appear to be an impediment since it would be caused only on the co-channel, and the precluded area contains no communities of greater than 1,000 population.

5. Comments are invited on the proposal to amend the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with regard to the community of Savannah, Tennessee, as follows:

City	Channel No.	
	Present	Proposed
Savannah, Tennessee	269A	228A, 269A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

8. For further information concerning this proceeding, contact Mildred Nesterak, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the

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[1] Public Notice of the petition was given on June 7, 1978, Report No. 1125.

[2] Population figures are taken from the 1970 U.S. Census, unless otherwise indicated.

[3] 1970 Census of Population, *Tennessee, General Population Characteristics*, U.S. Department of Commerce.

Commission or oral presentation required by the Commission.

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

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-35971 Filed 12-26-78; 8:45 am]

[6712-01-M]

[47 CFR; Part 73]

[BC Docket No. 78-384; RM-3177 & RM-3201]

SCOTTVILLE, MICH.

FM Broadcast Stations; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of FM Channel 240A to Scottville, Michigan. The action is taken in response to petitions filed by Eldon Stielstra and Eugene Barre who state that the proposed assignment would provide for a first local aural broadcast service in Scottville.

DATES: Comments must be filed on or before February 12, 1979, and reply comments on or before March 5, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Scottville, Michigan). Notice of proposed rulemaking.

Adopted: December 12, 1978.

Released: December 21, 1978.

By the Chief, Broadcast Bureau:

1. The Commission has under consideration two petitions for rulemaking [1] seeking the amendment of the Commission's Rules, the Table of FM Assignments. One petition was filed by Eldon Stielstra proposing the assignment of FM Channel 240A to Scottville, Michigan; the other petition was filed by Eugene A. Barre, proposing the assignment of FM Channel 240A (or in the alternative, Channels 276A, 280A or 272A) to Scottville. Channel 240A could be assigned in conformity with the minimum distance separation requirements without affecting the present assignments in the FM Table. Each of the petitioners states that he will apply for the channel, if assigned. Several letters from local citizens have been submitted in support of the proposed assignment. No opposition to the proposals has been received.

2. Scottville (pop. 1,202), in Mason County (pop. 22,612), is located approximately 129 kilometers (80 miles) northwest of Grand Rapids, Michigan, near the eastern shore of Lake Michigan.[2] There is no local aural broadcast service in Scottville.

3. In support of their proposals, petitioners assert that Scottville is the center of some of the state's finest recreational and farming regions, with the land immediately surrounding Scottville used for the growing of fruit, vegetables and grain. Petitioners note that the principal industry, Stokely-Van Camp Foods, employs 425 people during the packing season.

4. Both petitioners have proposed Channel 240A. Although one of the petitioners has proposed alternate Class A channels in the event that the Channel 240A assignment could not be made, since Channel 240A could be assigned to Scottville in compliance with all minimum distance separation requirements and without affecting any existing FM assignments, we are proposing it for Scottville.

5. Since Scottville is located within 402 kilometers (250 miles) of the U.S.-Canadian border, the proposed assignment requires coordination with the Canadian Government before it can be adopted.

6. In view of the foregoing information, and the fact that the proposed FM channel could bring a first local aural broadcast service to Scottville, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with respect to Scottville, as follows:

Scottville, Michigan—no channel at present—Channel No. 240A proposed.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements, are contained in the attached Appendix and are incorporated by reference herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

9. For further information concerning this proceeding contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral

[1] Public Notice of Stielstra's petition was given on August 29, 1978, Report No. 1137. Public Notice of Barre's petition was given on September 18, 1978, Report No. 1141.

[2] Population figures are taken from the 1970 U.S. Census.

presentation required by the Commission.

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

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 78-35972 Filed 12-26-78; 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.

[6320-01-M]

CIVIL AERONAUTICS BOARD

AVIANCA AIRLINES

[Docket 33731]

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Burton S. Kolko to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., December 19, 1978.

NAHUM LITT,
Chief Administrative Law Judge.

[FR Doc. 78-36008 Filed 12-26-78; 8:45 am]

[6320-01-M]

BRITISH WEST INDIAN AIRWAYS

[Docket 33733]

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Burton S. Kolko to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., December 19, 1978.

NAHUM LITT,
Chief Administrative Law Judge.

[FR Doc. 78-36010 Filed 12-26-78; 8:45 am]

[6320-01-M]

DOMINICANA AIRLINES

[Docket 33732]

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Burton S. Kolko to Administrative Law Judge Richard J. Murphy.

Dated at Washington, D.C., December 19, 1978.

NAHUM LITT,
Chief Administrative Law Judge.

[FR Doc. 78-36009 Filed 12-26-78; 8:45 am]

[6320-01-M]

[Docket 33363]

FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION

Hearing

The hearing on the applications of Air America, Inc. (Dockets 33686, 33687) and of Air Fleets International, Inc. (Dockets 33285, 33286, 33287) will be held in Room 1003, Hearing Room B, at 1875 Connecticut Avenue, N.W., Washington, D.C. 20428, at 9:00 a.m. as follows:

Air America on 10 January 1979.

Air Fleets International on 24 January 1979.

Dated at Washington, D.C., 19 December 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-36007 Filed 12-26-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ALASKA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alaska Advisory Committee (SAC) of the Commission will convene at 5:30 p.m. and will end at 8:00 p.m. on January 10, 1979, Anchorage Westward Hilton, 3rd at E Street, Portage Room, Anchorage, Alaska.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is to discuss Committee's study of employment and women and minorities in State government.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR. Doc. 78-35913 Filed 12-26-78; 8:45 am]

[6335-01-M]

CONNECTICUT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Connecticut Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and will end at 9:00 p.m. on January 18, 1979, Holiday Inn, Meriden, Connecticut.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-35914 Filed 12-26-78; 8:45 am]

[6335-01-M]

NEBRASKA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nebraska Advisory Committee (SAC) of the Commission will convene at 10:00 am and will end at 2:30 pm on January 27, 1979, 35th Street, Omaha Nebraska 68111.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106.

The purpose of this meeting is to elect SAC officers, ratify the program planning for Fiscal Year 1979 and Fiscal Year 1980, discuss the state agency affirmative action conference and review the subcommittee activity on the Western Nebraska Health Care and Minority Study.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-35915 Filed 12-26-78; 8:45 am]

[6335-01-M]

VERMONT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 9:30 p.m. on January 23, 1979, Tavern Motor Inn, Montpelier, Vermont.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-35916 Filed 12-26-78; 8:45 am]

[6335-01-M]

WYOMING ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Press Conference of the Wyoming Advisory Committee (SAC) of the Commission will convene at 10:30 a.m. and will end at 12:30 p.m. on January 10, 1979, Coach Room B, Hitching Post Inn, 1700 West Lincolnway, Cheyenne, Wyoming 82001.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colorado 80202.

The purpose of this meeting is to discuss education project plans and release SAC report.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-35917 Filed 12-27-78; 8:45 am]

[4310-10-M]
[3510-25-M]

DEPARTMENT OF COMMERCE
Industry and Trade Administration

DEPARTMENT OF THE INTERIOR
Office of Territorial Affairs

RULES FOR THE ALLOCATION OF WATCH QUOTAS FOR CALENDAR YEAR 1979 AMONG PRODUCERS LOCATED IN THE VIRGIN ISLANDS, GUAM AND AMERICAN SAMOA

AGENCY: Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce; Office of Territorial Affairs, Department of the Interior.

ACTION: Final annual rules.

SUMMARY: The rules establish the formula for allocation of calendar year 1979 watch quotas among watch assembly firms in the Virgin Islands and Guam, establish the weights to be attributed to each factor contained in the formula, and provide for the allocation of the American Samoa watch quota. The rules also provide for the allocation of a portion of the quotas in the Virgin Islands and Guam among firms performing specified minimum assembly operations or making minimum wage contributions during a specified base period.

DATE: These rules are effective from January 1 through December 31, 1979, inclusive.

FOR ADDITIONAL INFORMATION CONTACT:

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

Supplementary Information: The Department of Commerce and the Department of the Interior (the "Departments") published proposed production incentives applicable to calendar year 1979 allocation of duty-free watch quotas and invited comments from interested parties in the FEDERAL REGISTER dated June 6, 1978 (43 FR 24566 (1978)). Proposed annual rules for the calendar year 1979 allocation of duty-free watch quotas, inviting public comment, were published in the FEDERAL REGISTER dated September 8, 1978 (43 FR 40048 (1978)).

The Customs Simplification Act of 1954 (Pub. L. 83-768) provided for duty-free entry into the customs territory of the United States of products of the U.S. insular possessions which did not contain foreign materials to the value of more than 50 percent of their total value. The purpose of the 1954 Act was to stimulate the development of light industry in the insular possessions so as to broaden their economic bases. Between 1959 and 1966 the number of watches assembled from foreign components in the insular possessions increased from 5,000 units to over 4 million units, making the insular watch assembly industry the largest to develop under the 1954 Act (which in 1963 was codified into customs law as general headnote 3(a) of the Tariff Schedules of the United States (19 U.S.C. § 1202)).

The Congress recognized it might be appropriate to favor the products of the insular possessions over direct imports "so long as no domestic industry is harmed by the policy" (S. Rep. No. 1679, 89th Cong., 2d Sess. 6(1966)). Concerned about the rapid growth in insular watch shipments and the potential effect on domestic industry, the Congress enacted Pub. L. 89-805 (19 U.S.C. 1202) in 1966 to establish a quota on the number of watches and watch movements which could be entered into the customs territory of the United States any year free of duty under general headnote 3(a). If left unchecked, the Congress reasoned, the duty-free privilege would become "little more than a convenient device for funneling foreign watches into this country."

Under Pub. L. 89-805 the Departments share responsibility for the allocation of each year's quota "on a fair and equitable basis" among producers in each of the possessions. The legislative history of Pub. L. 89-805 clearly indicates that the quota was to be allocated in a manner calculated to reflect and preserve the established character of the industry in the insular possessions and to take into account the cost of labor involved in the assembly of a watch because the labor factor "is a measure of the economic contribution being made by the assembly process, and also is an indication of the degree of assembly work being performed in the islands." The Senate report further indicated that in administering the quota law the Departments "may take into account whatever additional factors they find warranted." The Act specifies that the "allocations made by the Departments are final" and authorizes the Departments "to issue such regulations as they determine necessary to carry out their duties."

In adhering to the intent of the Congress and the purpose of general headnote 3(a) the Departments have since 1967 made quota allocations under formulae which have progressively emphasized labor contributions and, in recent years, corporate income tax payments to the territorial economies.

The Departments' commitment to maximizing the economic contributions to the territories through the exercise of their allocation authorities was reflected in the initial 1967 allocation (32 FR 4178 (1967)). Labor cost, the Departments stated, was "a single common denominator consisting of several factors which together reflect a meaningful contribution to the economy of the insular possession. Furthermore, in making allocations in future years we expect to place increasing emphasis on those factors which foster greater economic contributions to the economies of the insular possessions."

The Departments' allocation formula, in conjunction with the general headnote 3(a) foreign material content limitation, was relatively effective in encouraging firms to engage in meaningful watch movement assembly in the insular possessions, thereby ensuring wage contributions and employment in the economies. Whereas the industry relied almost exclusively on subassemblies (preassembled components) prior to enactment of Pub. L. 89-805, most firms were doing complete or near-complete assembly of the watch movement components by 1975. This was particularly true of the Virgin Islands industry, which receives 87.5 percent of the total quota.*

In recognition of the importance of the watch assembly industry to the economy of the Virgin Islands, Congress passed Pub. L. 94-88 in August, 1975, in order to perserve and restore the then-floundering industry. After peaking in 1973 with shipments of 4.6 million units (Table 1) and employment of 1200 residents, Virgin Islands production dropped to 4 million units in 1974 and 3 million units in 1975, and employment declined 30 percent during the period. The cost of the foreign components had risen by over 60 percent between 1973 and 1975 chiefly as the result of the devaluation of the dollar. This made it increasingly difficult for producers in the insular possessions to meet the 50 percent foreign value limitation (which required a doubling of the foreign costs) and to compete effectively in the United States. The 1975 legislation permitted watch movements assembled in the insular possessions to have up to 70 percent foreign material value upon entry into the customs territory of the United States. Thus watch movements assembled from components costing the producer $4.00, which previously had to be sold for no less than $8.00, could be sold for $5.72 in the United States.

The Departments supported the 1975 legislation. The Department of Commerce, in commenting on the legislation in bill form, stated that "the enactment of this amendment will not diminish the ability of the Department to obtain meaningful economic contributions from the watch assembly firms through the allocation formula. . . ."

Although Pub. L. 94-88 afforded some relief to the Virgin Island watch assembly industry (shipments rose to 4 million units in 1976 and 4.7 million in 1977), the use by some firms of subassemblies also increased, resulting in a decline in their local labor imput. As a result the industry's average wages per movement assembled declined during the period from $1.11 in 1975 to $.91 in 1977, an 18 percent decrease in the average labor expended in the assembly of each watch movement produced in the Virgin Islands (Table 2).

Early in the program the Departments recognized that not every firm might be able to use all of the quota it earned each year under the published allocation formula. Accordingly, in order to maximize the benefits to the insular economies the Departments provided in their rules for the reallocation of quota voluntarily relinquished by such firms or cancelled by the Departments. Since 1968 reallocation has been made by the Departments "in a manner best suited to contribute to the economy of the territories." In recent years, the Departments have calculated the wage and corporate income tax payments for the preceding calendar year of the firms requesting additional quota, and the share each firm received on reallocation was directly proportionate to its share of the total wage and tax contributions of all of the competing firms. Because, prior to 1975, firms making significant wage and tax contributions were among the firms competing for reallocation of quota, the net result of the reallocation process was to reinforce the incentive features, that is, the direct economic benefit factors, in the published allocation formula. The watch quota allocation rules for calendar 1979 are designed to prevent the deterioration of the headnote 3(a) privilege into merely a tariff-avoidance device which fails to satisfy Congressional expectations in enacting the law. As the Chairman of the Senate Committee on Finance stated in the hearing leading to the enactment of Pub. L. 89-805, "I would like to see the Virgin Islands prosper. At the same time I want to be fair to the American people and fair to the islands . . . The thought that occurs to me is that . . . (insular producers) would have to do ore assembling . . . would have to . . . put in the flywheel and do something more to the watch than just screw together a subassembly . . . Now, I personally find very little sympathy with this thing, of letting somebody evade a $3 tariff by screwing on the back of these watches . . . If that is all there is to it, for the life of me, I can't see why we ought to permit that as a loophole to our tariff laws . . . I am interested in helping the Virgin Islands, Guam, Samoa to raise their standard of living and honorably and legitimately provide for the needs of their people." (Hearings on H.R. 8436 Before the Senate Committee on Finance, 89th Cong., 2d Sess. 45-47 (1966)). A recent House Ways and Means Committee report has affirmed the Congressional intent in enacting Pub. L. 89-805 by stating that the "quota was expected to prevent to the development of simple pass through [sic] operations which would allow foreign watches to enter the United States duty-free while providing no significant benefits to the economies of the insular possessions. (S. Rep. No. 1679, 89th Cong., 2d sess. 1966)" (H.R. Rep. No. 1670, 95th Cong., 2d Sess. 5 (1978)).

The increased use of low-labor movements in the insular watch assembly industry (Table 3) was of sufficient concern that the Department of Commerce watch quota staff prepared a staff report on the issue in June 1977. Of principal concern was that as the use of preassembled movements increases, the wage and employment benefits accruing to the territories would likely decline. By letter of September 20, 1977 all watch quota firms were advised that the Departments were considering changes in the allocation rules to ensure that the rules would continue to serve as an incentive for all quota firms to engage in meaningful assembly operations.

After assessing not only all comments received in response to the September 1977 letter but also staff analysis, the Departments published in the June 6, 1978, issue of the FEDERAL REGISTER a notice of proposed production incentives (43 FR 24566 (1978)). On September 8, 1978, the Departments published proposed annual rules for the allocation of watch quota for calendar year 1979 (43 FR 40048; 43 FR 42776 (1978)).

Copies of the proposed annual rules were mailed to all watch quota firms and all persons requesting a copy. Interested persons were invited to provide comments on or before 5:00 p.m., October 16, 1978. Although a preference was indicated for written comments, the notice advised that oral comments could be made and that a written report of such comments would be placed on the public record. In response, the Departments received 6 written submissions containing comments and suggestions totalling 109 pages. No oral comments were received during the 45-day comment period. Several written comments received

*In 1975 three Virgin Islands firms shipped a total of 210,000 movements produced from subassemblies.

after the close of the comment period were not considered. In response to their earlier notice on proposed production incentives, the Departments received 13 submissions containing comments totalling 351 pages. All of these comments are on the public record, and those received within the specified time frames have been carefully considered by the Departments.

DISCUSSION OF COMMENTS

● The principal issues raised by the comments and the Departments' response to them are described below.

EFFECT ON INSULAR EMPLOYMENT

● Some commentors argued that the proposed minimum standards for participation in the proposed incentive portion of the quota could not be met by several of the existing firms and that the employment provided by these firms would therefore be lost to the insular economies. A report commissioned by some low-labor producers and submitted in response to the June 6 proposal was cited to support these claims.

● Others contended that the proposed minimum standards, while a step in the right direction, did not go far enough, and that firms not making significant economic contributions would receive increasingly greater amounts of quota over time, either driving out of business those firms presently making significant contributions to the economy or inducing them to make fewer contributions. They contended that in either event adoption in final form of the rules as proposed would result in significant losses of insular employment.

● One of the firms supporting the rules as proposed stated that "unless something is done about the completely unfair competition of the 2 screw operations," that firm would be forced to convert to assembly techniques using little local labor. On annual shipments of approximately 500,000 units, this conversion, it was stated, would reduce employment in that firm from 70 to 15 persons.*

The net effect of the rules on overall employment cannot be accurately predicted without observation of the impact of the rules on the entire industry's ability to utilize the quota available in calendar year 1979. Further discussion of their probable effect on employment, however, is contained in the next section. These rules will not over time result in higher allocations to firms not making significant contributions. In fact, they will result in gradual reductions in the quotas received by such firms if the firms do not adjust their assembly operations in order to increase their economic contributions to the insular possessions. The rules are designed to increase economic benefits to the territories by increasing employment per unit of production.

THE DOMESTIC MARKET FOR INSULAR WATCHES

● Some commentors stated that firms using the inexpensive, largely preassembled movements have targeted a part of the domestic market not previously open to insular watch firms; and that the increased requirements will make these firms non-competitive. These commentors stated that the labor-intensive or "Swiss style" companies experienced a decline in shipments between 1977 and 1978 and asserted that the low-labor or "specialty movement" companies provide the key for reversing the industry decline. It was contended by these commentors that the chronic underutilization of quota in recent years demonstrates this decline in the "Swiss style" segment of the industry.

● Other commentors claimed that insular firms making greater local labor contributions have lost sales to the largely preassembled movements and that, unless low-labor firms are required to engage in more labor-intensive operations, additional losses will be incurred, with disastrous effects on the overall level of economic contributions to the territories.

● With respect to the contention that labor-intensive companies' shipments are declining, the Departments note that through September 30, 1978, the Virgin Islands labor-intensive producers shipped 2,982,985 units (compared to 2,831,645 units through the same period in 1977) and paid wages subject to FICA taxes of $2,725,474. Through September 30 the low-labor firms shipped 422,167 units (compared to 486,332 units in 1977) and generated a payroll of $234,500. Thus, through the first three quarters of 1978, the labor-intensive firms shipped 87.6 percent of the Virgin Islands total compared with 85.3 percent through the same date in 1977. The labor-intensive firms contributed 92.1 percent of the FICA wages paid and, as of September 30, 1978, were employing 598 workers, compared with 79 workers in the low-labor firms (See table 4 for detailed data on employment and wages in the Virgin Islands watch and watch movement assembly industry in 1977).

These data forecast the probable economic implications for the Virgin Islands if labor-intensive firms were to convert to low-labor production in the territory. Assuming the low-labor producers had shipped 5,000,000 units of the 1977 Virgin Islands quota, with an average per unit wage contribution of 47¢ (which they actually paid in 1977), local residents would have received only $2,350,000 in wages. (See table 5 for the shipments and wage share of the low-labor firms in the Virgin Islands, 1967–1977). The labor-intensive firms, in contrast, paid in 1977 approximately $4,000,000 in wages on shipments of 3.8 million units.

The Departments, moreover, do not consider the underutilization of quota since 1974 as convincing evidence that the labor-intensive segment of the industry, or the industry as a whole, is in decline. The 1974–76 shortfalls were attributable largely to the special circumstances, previously discussed, which were rectified by the 1975 legislation. The effectiveness of this legislation is shown in the fact that in 1976 shipments increased by 32% from the Virgin Islands and 24% overall, and that further increases of 16% and 17%, respectively, were recorded in 1977. Shipments from the Virgin Islands last year, in fact, were the highest in the history of the program, and 1977 shipments from all the insular possessions were second only to 1973

The 1977 shortfall in quota utilization, in the context of the very high level of shipments, rather than evidencing a "decline", reflected primarily an increase in U.S. apparent consumption of watches and watch movements (Table 6) and changes in the composition of U.S. demand. Although the size of the quota in the 1967–76 period increased or decreased at rates between −1% and +6% per year, in 1977 it increased by 29%, exceeding by 7% the aggregate growth of the preceding ten-year period. This increase came largely as the result of the rapid growth of solid state watches in the U.S. watch market, and insular production may not become significantly involved in that portion of the market due to the low tariff rates applicable to solid state imports. If the 1977 quota had increased within the previous historical pattern, utilization of quota in the Virgin Islands in 1977 would have been approximately 89%.

Watches and watch movements assembled in the insular possessions are marketed through a wide range of outlets, including jewelry stores, catalogs and catalog show rooms, mass merchandisers, drug stores, department stores and discount houses. Insular producers have pursued a variety of marketing and pricing strategies within the types of outlets available. Swiss-affiliated or Swiss-owned companies, for example, normally reley on more expensive movements and have

*During the 1977 verification of company records in Guam, the acting U.S. Government Comptroller for Guam, U.S. Department of the Interior, performed a time and motion study on the "two screw" assembly operation. He reported that the assembly process took between 40 and 45 seconds to perform. On the basis of this analysis the Comptroller concluded that it was feasible for one person to assemble 600 units per 8-hour work day.

concentrated sales at the upper end of the insular trade, which is directed predominantly at the low-to-moderate segments of the overall U.S. watch market. These movements retail (usually after additional U.S. processing) in the $40-and-above range. Some insular producers use better quality, more costly components for sales under nationally known brand names and less expensive movements for other sales. Independents sell where the demand is, whether it be for less expensive or more expensive movements, and their output is usually sold under a variety of brand names and in a variety of outlets. Still other producers assemble the lowest cost movements available and retail them in small shops and discount outlets in major urban markets, or supply them to large discount accounts for national distribution.

There is little incentive for insular firms to assemble pin-lever movements or the quartz analog and electronic display solid state movements in view of the $.75 to $.90 duty applicable to these movements upon direct entry from foreign sources into the customs territory of the United States. Moreover, at present wage rates applicable in the insular possessions *, the possessions are unable to compete successfully against these watches with assembly facilities in the Far East where labor costs are considerably lower.

Most producers have concentrated sales in the low end of the 17- or 21-jewel watch market where the specific rates of duty on watches and watch movements offer the greatest advantage over duty-paid imports. A large portion of the insular production (65 to 75 percent annually of all shipments) is of movements for ladies' watches because the tariff schedules provide for higher duties on the smaller size movements; 17-jewel movements suitable or men's watches, for example, are dutiable at $1.80 ($2.30 if automatic), while movements for small ladies' watches less than .6 inch wide are dutiable at $2.70.

Department of Commerce data indicate the average unit value (reflecting primarily wholesale prices) of duty-paid imports of 17-jewel watches and watch movements was $12.22 in 1977 (Table 7). The average value of the Virgin Islands products, which are predominantly 17-jewel watches and watch movements, was $6.92.

The duty-paid import value reflects 17-jewel imports at the high end of the market (in which insular producers normally do not compete), but insular producers can compete reasonably well against the 17-jewel duty-paid imports directed at the low end and middle of the domestic market by the principal suppliers (Japan and Switzerland). This is due not only to the duty differential but to the fact, as well, that the inflationary pressures and currency fluctuations which affect the insular producers using the Swiss or Japanese components also impact on the cost of direct imports of those movements. Thus, in the low and middle segments of the 17-jewel conventional watch market the primary competition for the insular producers of low to moderately price labor-intensive movements are the other insular producers of less expensive low-labor movements.

The Departments believe this competition within the insular industry will continue. They expect the insular industry will retain its relative share of the U.S. market for conventional jewelled timepieces, which they also expect to remain relatively stable and may increase slightly in absolute terms for the foreseeable future. The conventional mechanical watch remains the market's dominant, stable timepiece (*Jewelers, Circular Keystone*, June, 1978). Department of Commerce trade data through July, 1978 when put on an annual basis, show that duty-paid imports of 17-jewel watches and watch movements are up by 16 percent over 1977 (see Table 8). While industry sources and trade publications project that conventional watches will eventually drop to about one-third of total U.S. consumption and may ultimately be replaced by the quartz analog watch as the most popular timepiece, the increase in domestic consumption of all timepieces is expected to sustain a strong and continuing market in 17-jewel conventional watches, expecially in the ladies' conventional watches, which are small and stylish (compared with the solid state watches) and which make up the bulk of the insular production.

Approximately 70% of the 1979 quota for the Virgin Islands will be allocated on the basis of shipments, taxes and wages, and only 30% will be allocated on the basis on minimum number of assembly steps or minimum economic contributions to the territory. No evidence has been placed on the record to support the argument that firms now using the low-labor movements could not through performance of additional assemble operations increase the local labor input by the amount needed to satisfy the provisions relating to that portion of the quota allocated on the basis of minimum number of assemble steps or minimum economic contributions to the territory per unit shipped. The claim that the low-labor firms will have to discontinue operations completely, costing the insular possessions approximately 150 jobs, is also not supported by the record.

MINIMUM ASSEMBLY STEPS OR MINIMUM ECONOMIC CONTRIBUTIONS CRITERIA

● Comments made on features of the rules providing for a portion of the Virgin Islands and Guam quotas to be allocated on the basis of minimum assembly steps or minimum economic contributions include:

That the ratio used for that portion of the 1979 quota to be allocated without reference to the minimum requirements should be uniform for both Guam and the Virgin Islands, and that the ratio proposed for Guam is the one that should be adopted for both territories in the final rules;

That the final rules should specify that the discrete-components and labor-input criteria apply to each unit shipped and not as averageable quantities against aggregated shipments;

That wages attributable to casing activities should be included in satisfaction of the proposed labor-input criteria;

That not only wages attributable to casing activities but also wages for strapping, boxing and other incidental activities as well should be excluded;

That, after taking into account in the formula wages attributable to casing activities, the labor-input proposal should be revised to permit as an alternative a direct economic contribution test of wages plus taxes equalling $1.00 per unit, provided that not less than $0.60 per unit is attributable to wages; and

That the Departments not utilize first-quarter data in determining a firm's eligibility for allocations on the basis of minimum assembly steps or economic contributions in view of the fact that the data could reflect seasonal fluctuations, unless the Departments are satisfied that the data are not distorted and unless the firm certifies it will not subsequently alter its operations.

● The Departments' responses to these comments are as follows:

The Guam industry has historically relied more heavily than the Virgin Islands industry on the preassembled movements and is currently completely reliant on such movements. With no labor-intensive firms competing for the quota in Guam, there is need for the adoption of rules providing effective incentives for the Guam industry's transition away from operations providing minimal wage contributions. Establishing the same ratio for the Virgin Islands, where 82% of the industry's 1977 production consisted of movements assembled from largely unassembled parts, would result in the appearance of uniform treatment but would in actuality constitute different treatment due to the differing circum-

* By federal law the minimum wage in the Virgin Islands is scheduled to increase annually from a rate of $2.65/hr. in January, 1978, to $3.35/hr. by January, 1981.

stances in the two territories. The legislative history to Public Law 89-805, in assigning joint allocation responsibility to the Departments, notes "that all factors important to the proper allocation of quota among *each* possession's producers will be weighed in proper perspective" S. Rep. No. 1679, 89th Cong., 2d Sess. 8(1966) (Emphasis added).

The discrete components criterion *does* apply to each unit to be shipped duty-free into the customs territory of the United States if the firm elects to qualify for allocations under that criterion. The labor-input criterion does *not* apply to each unit shipped but rather to the aggregated shipments as an average amount to be realized. It is the intention of the Departments to provide sufficient flexibility for firms unable or unwilling to rely completely on movements containing at least 26 discrete components to engage in operations which nevertheless, in the aggregate, make economic contributions satisfying the purposes of Pub. L. 89-805.

In taking into consideration wages attributable to casing in the allocation formula and in the economic eligibility criteria, firms will be encouraged to case in the insular possessions (See Table 9 for data relating to casing activity). This would be consistent with the purposes of Public Law 89-805 and the Departments' responsibility to promote substantial economic contributions to the territories. However, in order to ensure such inclusion will not be used to undermine to intent of the economic eligibility criteria, which is to discourage pass-through operations on the movement assembly, that part of the rule addressing the discrete-components and labor-input tests applicable to allocations and reallocations under these provisions has been adjusted.

Establishing an alternative direct-economic-contribution criterion of $1.00 per unit (with not less than $0.60 of that amount attributable to wages) would, if casing wages were also included, provide little stimulus for the industry to make substantial economic contributions to the insular possessions.

Strapping and banding wages will not be taken into consideration in the wage factor because straps and bands are not included in the definition of watches and watch movements under Pub. L. 89-805.

Because the 1976 and 1977 first quarter data verified by the Departments do reveal seasonal fluctuations, firms utilizing the first quarter of 1979 as the base period will be required to demonstrate to the Departments that the average labor-cost increases over 1978 levels reflect changes in assembly practices rather than distortions caused by various factors, such as artificially high wage rates, depressed first quarter shipments, inventory buildup and training expenses. As a condition for receipt of allocations or reallocations based on Subsections 3(a) or 3(b) criteria, firms utilizing either the 1978 or the first quarter 1979 base period will be required to certify to the Departments that they will not alter assembly operations during the remainder of the year in a manner which would result in their failure to satisfy the respective criteria.

ALLOCATION FORMULA FACTORS AND THEIR WEIGHTS

● Some commentors claimed that the portion of the quota to be allocated on the basis of shipments, taxes, and wages in the Virgin Islands and Guam underemphasized the labor factor and further weakened the overall purposes of the rules by including shipments as an element in the formula because shipments were already reflected in wages and taxes, the other elements in the formula. These commentors urged the Departments to eliminate shipments as a formula factor and assign weights of 75 percent and 25 percent to wages and taxes, respectively.

● Another commentor suggested that by crediting only those taxes actually paid to the insular governments, the Departments were interfering with the industrial incentive tax programs of those governments. It was recommended that the Departments amend the tax factor to refer only to "gross income taxes payable." The Departments' responses to these comments are as follows:

● The legislative history expressly mentions "production", that is, shipments of watches and watch movements into the customs territory of the United States, as one factor to be considered in the allocation of quota. The Departments have reduced the weight assigned to the shipments factor from 75 percent in 1967 to 25 percent in 1978, and the proposed weight of 20 percent for 1979 is considered appropriate in terms of this factor's weight relative to the other elements in the formula.

● Revising the tax factor to include gross income taxes *payable* would be inconsistent with the Departments' policy since 1972 to credit only the net income tax contributions to the insular possessions.

REALLOCATION OF QUOTA

● One commentor stated that because the purpose of the reallocation procedure "is to maximize utilization of the quota," any quota available for reallocation should "either be freely available to all producers or be available to any assembly operation which meets the minimum labor or total economic contribution standards" which were proposed by this same commentor, viz., a total economic contribution of $1.00 in wages and income taxes, provided that at least $0.60 is in the form of wages.

● The Departments consider the maximum utilization of the quota desirable but subordinate to the overriding goal of maintaining the industry's economic contributions and avoiding the development of pass through operations inconsistent with headnote 3(a) and Pub. L. 89-805. The Departments believe that the reallocation of quota to producers without regard to their economic contributions to the insular possessions would ignore both of these statutory objectives.

CONCLUSION

The final rules remain substantially as proposed but in order to reflect the above considerations are revised to establish a higher labor-input criterion of $.95, in those instances where the firm engages in casing activities, and a higher assembly criterion of 29 components, including 3 case components, for watches and to specify that any firm electing to qualify for incentive allocations on the basis of its first-quarter wage contributions will bear the burden of demonstrating to the Departments that such data reflect changes in assembly practices. For example, wages resulting from unusual pay increases or from watch movements assembled and not shipped will be dicounted for purposes of calculating compliance with the minimum wage criterion.

Also, specific provision is made for a show-cause order to be issued when firms have not complied or appear not to be complying with the certification required under section 7 of the regulation.

In addition, the following modifications of the proposed rules are made: The substance of Sections 1 and 2 of the proposed rules are incorporated in Sections 1 through 3 of the final rules. Sections 3 through 7 of the proposed rules have been redesignated as Sections 4 through 8 in the final rules. Another minor change in the organization of particular sections and editorial changes not previously discussed includes clarification of the definition of "discrete components" (Subsection 6(b) of the proposed rules) in Subsection 7(b) of the rules.

Based on the entire record in this matter, the Departments find that the annual rules will ensure that the overall purposes of general headnote 3(a) will be satisfied.

The Departments will carefully monitor the effect of these new rules on individual companies within the

watch assembly industry in the insular economies during calendar year 1979. In light of the adjustments which these rules may make necessary careful consideration will be given within the context of the overall purpose of these rules to any petition or appeal pursuant to Section 303.11.

Drafting information: The principal authors of these rules were Richard M. Seppa and Frank W. Creel, Statutory Import Programs Staff, Wallace E. Brown and Daniel C. Hurley, Jr., Office of General Counsel, all of whom are with the Department of Commerce.

Accordingly, the rules for the allocation of watch quotas for calendar year 1979 among producers located in the Virgin Islands, Guam and American Samoa are as follows:

Section 1.(a) A portion of the 1979 Virgin Islands quota determined in accordance with subsection 2(a) below and a portion of the 1979 Guam quota determined in accordance with Subsection 2(b) below will be allocated on the basis of (1) the dollar amount of wages, up to maximum of $14,000 per person, paid by each producer during calendar year 1978 to residents of the territory and attributable to each producer's headnote 3(a) watch and watch movement assembly operations, (2) the dollar amount of income taxes paid by each producer during calendar year 1978 attributable to its headnote 3(a) watch and watch movement assembly operations (excluding penalty payments and income tax refunds and subsidies paid by the territorial governments during calendar year 1978), and (3) the number of units of watches and watch movements assembled in the territory and entered by each producer duty-free into customs territory of the United States during calendar year 1978. (b) In making allocations under this formula, a weight of 60 percent will be assigned to the wage factor, a weight of 20 percent will be assigned to the income tax factor, and a weight of 20 percent will be assigned to the shipment factor.

Section 2. (a) An amount representing that portion of the 1979 Virgin Islands quota equal to the ratio of general headnote 3(a) shipments of watches and watch movements from the territory during 1978 to the total 1978 Virgin Islands quota will be allocated among the producers in the Virgin Islands, in accordance with the allocation factors and weights specified in Section 1.

(b) An amount representing that portion of the 1979 Guam quota equal to 75 percent of the ratio of general headnote 3(a) shipments of watches and watch movements from the territory during 1978 to the total 1978 Guam quota will be associated among the producers in Guam, in accordance with the allocation factors and weights specified in Section 1.

Section 3. The portions of the Virgin Islands and Guam quotas not allocated pursuant to subsections 2(a) and 2(b) respectively, except as specified in Section 4 with respect to Guam, will be allocated among firms meeting the requirements of subsections (a) or (b) of this section. Eligible firms will be allocated quota in accordance with the factors and weights specified in Section 1. Allocations of the portions of the Virgin Islands and Guam quotas under this Section will be made to firms which:

(a) Assembled all watch movements shipped during the base period from unassembled movements having at least 26 discrete components and all watches that is, cased movements, during the base period from at least 29 discrete components, including at least 26 movement components and at least 3 case components; or

(b) Made wage payments during the base period in the territory averaging not less than $.75 per watch movement and $.95 per watch assembled and shipped into the customs territory of the United States.

Section 4. Quota set aside for new firms in Guam under subsection 5(b) shall be subtracted from the quota amount allocable under subsection 2(b), before allocations are made pursuant to that subsection.

Section 5.(a) Applications from new firms are invited for the calendar year 1979 American Samoa quota, because the sole recipient in the territory discontinued operations in calendar year 1977, and a new entrant was not selected under the 1978 new entrant provision (43 FR 4274; 43 FR 10718 (1978)). 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.

(b) Applications from new firms are invited for 150,000 units of the calendar year 1979 Guam quota.

(c) Applicants for new-entrant quotas in Guam or American Samoa must complete applicable sections of Form ITA-334P, copies of which may be obtained from the Statutory Import Programs Staff, Room 6894, U.S. Department of Commerce, Washington, D.C. 20230. Detailed instructions for completing ITA-334P will be provided by the Statutory Import Programs Staff together with copies of the application form.

(d) The Departments will consider new entrant applications only from firms able and willing to certify to the Departments that they can meet the minimum assembly or wage contribution criteria established in Section 3. Following the Secretaries' determination that a qualifying application has been received, an announcement will be published in the FEDERAL REGISTER establishing a closing date for further applications. The closing date shall be 30 days from the date of such notice. In the event no qualifying application is received for the Guam new entrant quota prior to September 1, 1979, and existing Guam quota recipients were able to satisfy the criteria established in Subsection 3(a) or 3(b) during the base period, a portion or all of the Guam quota set aside for new entrants may be reallocated to the 1979 Guam quota recipients in accordance with Subsection 303.5(b) of Title 15 of the Code of Federal Regulations.

Section 6. Reallocation of calendar year 1979 quota which becomes available will be restricted to those firms satisfying the criteria established in subsections 3(a) or 3(b).

Section 7. As used in Section 3 of these rules,

(a) "Wages" means all wages up to $14,000 per person or $3,500 per person, depending upon the base period, paid to residents of the territories employed in a firm's headnote 3(a) watch and watch movement assembly operations. Excluded, however, are wages paid to (i) accountants, lawyers or other professional personnel who may render special services to the firm, (ii) persons assembling non-headnote 3(a) watches and watch movements, (iii) persons engaged in the repair of non-headnote 3(a) watches and watch movements, and (iv) persons engaged in the strapping and packaging of watches. Wages paid to persons engaged in both headnote 3(a) and non-headnote 3(a) assembly and repair activities shall be credited proportionately for their headnote 3(a) activities, provided the firm maintains production and payroll records adequate for the Departments' verification of the headnote 3(a) portion.

(b) "Discrete movement components" means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly). Excluded are dials, dial washers, dial screws, hour wheels, hands, automatic mechanisms and related parts, day-date mechanisms and calendar features, and jewels.

(c) "Base period" refers, in calendar year 1979, to

(i) calendar year 1978, or

(ii) the period January 1, 1979 through March 31, 1979, for firms so electing.

Firms utilizing the first quarter of 1979 as their base period will be required to demonstrate to the Departments that average labor-cost increases over 1978 levels reflect changes in assembly practices rather than distortions caused by factors including artificially high wage rates, depressed first quarter shipments, inventory buildups, and training expenses.

Section 8.(a) All firms must, as a condition for receipt of allocations or reallocations based on Subsections 3(a) or 3(b) criteria, certify to the Departments that they will not alter assembly operations during the remainder of calendar year 1979 in a manner which would result in their failure to satisfy the respective criteria.

(b) If the Departments have reason to believe that a producer has not complied with or is not complying with the certification required by subsection (a) of this Section, they may issue a show-cause order requiring the producer to show cause, within 30 days of receipt of the order, why the duty-free quota to which it would otherwise be entitled should not be cancelled or reduced by the Departments.

(Pub. L. 89-805, 80 Stat. 1521 (19 U.S.C. 1202) as amended; 15 CFR 303)

Issued at Washington, D.C., on December 18, 1978.

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

TABLE 1.—*Available Quotas, Shipments, and Unused Quota*

[Thousands of Units]

Year	VIRGIN ISLANDS (87.5% of Total)			GUAM (8.33% of Total)			AMERICAN SAMOA [1] (4.17% of Total)			Total		
	Quota	Shipments	Unused	Quota	Shipments	Unused	Quota	Shipments	Unused	Quota	Shipments	Unused
1967	4,106	3,562	544	391	341	50	196	0	196	4,693	3,903	790
1968	4,209	3,778	431	401	322	79	201	0	201	4,811	4,100	711
1969	4,316	4,106	210	411	363	48	206	0	206	4,933	4,469	464
1970	4,393	3,825	568	418	320	98	209	0	209	5,020	4,145	875
1971	4,421	3,707	714	421	320	101	211	0	211	5,053	4,027	1,026
1972	4,622	4,387	235	440	348	92	220	230	0	5,282	4,955	327
1973	4,913	4,635	278	468	453	15	234	234	0	5,615	5,322	293
1974	4,874	4,049	825	464	338	126	232	232	0	5,570	4,619	951
1975	4,960	3,046	1,914	472	398	74	237	103	134	5,669	3,547	2,122
1976	5,008	4,013	995	477	222	255	239	164	75	5,724	4,399	1,325
1977	6,476	4,660	1,816	616	357	298	309	129	180	7,401	5,146	2,294
	52,298	43,768	8,530	4,979	3,743	1,236	2,494	1,082	1,412	59,771	48,596	11,178
PERCENTAGE OF QUOTA UTILIZED												
1967		87%			87%			0%			83%	
1968		90%			80%			0%			85%	
1969		95%			88%			0%			91%	
1970		87%			77%			0%			83%	
1971		84%			76%			0%			80%	
1972		95%			79%			100%			94%	
1973		94%			97%			100%			95%	
1974		83%			73%			100%			83%	
1975		61%			84%			43%			63%	
1976		80%			47%			69%			77%	
1977		72%			58%			42%			70%	
		84%			75%			43%			81%	

[1] There was no quota firm in American Samoa in the 1967-71 period.

Source: Departments of Commerce and the Interior.

TABLE 2.—*Virgin Islands Watch Industry Data (Calendar Years 1972 Through 1977)*

	Calendar year					
	1972	1973	1974	1975	1976	1977
1. Annual quota (units)	4,622,000	4,913,000	4,874,000	4,960,000	5,008,000	6,476,000
2. Shipments	4,386,521	4,634,819	4,048,876	3,046,757	4,012,810	4,659,893
3. Movements assembled	4,342,614	4,678,175	4,032,322	3,042,565	4,056,703	4,826,618
4. Wages paid to residents.	$3,653,935	$3,949,015	$3,888,797	$3,370,560	$3,907,010	$4,260,974
5. Wages credited for quota calculation purposes [1]	$3,365,053	$3,731,956	$3,704,051	$3,165,259	$3,706,076	$4,051,193
6. Labor per movement assembled.	0.84	0.84	0.96	1.11	0.96	0.91

TABLE 2.—*Virgin Islands Watch Industry Data (Calendar Years 1972 Through 1977)*—Continued

	Calendar year					
	1972	1973	1974	1975	1976	1977
Total labor						
Creditable labor	$0.77	$0.80	$0.92	$1.04	$0.91	$0.84
7. Net Corporate income taxes [2]	$3,086,524	$4,342,003	$3,177,041	$1,856,943	$1,029,890	$867,464
8. Net gross receipts and excise taxes paid; and net customs duties [3]	$81,518	$107,885	$152,180	$99,821	$1,004,857	$1,157,053
9. Annual sales	$30,283,721	$36,228,295	$34,006,277	$25,489,552	$28,964,339	$32,260,352
10. Number of employees	1,104	1,193	1,000	847	1,007	[4] 928
11. Number of companies	15	17	17	15	14	15

[1] Through 1974 the total amount of wages per employee creditable for quota calculation purposes was the amount of wages subject to FICA taxes. In 1975 and 1976 creditable wages were $13,200 per person, and in 1977 the amount was $14,000 per person.

[2] Excludes corporate income taxes exempted by the Virgin Islands Government.

[3] Through 1975 most firms enjoyed a 90 percent Customs duty exemption and a 100 percent exemption on gross receipts and excise taxes. Beginning in 1976 the percentage exemptions were reduced and the exemption given by each firm tied to its labor input per movement shipped.

[4] Approximately 670 employees in the Virgin Islands industry earned $2,000 or more.

Source: Departments of Commerce and the Interior. Data reported to Departments by the individual companies and verified in the territory by the Departments.

TABLE 3.—*Comparison Between Shipments, Wages, and Wages Per Unit Shipped of Firms Using Preassembled Movements and Those of Other Firms in the Virgin Islands and Guam 1974–1977*

	Low-labor Firms [1]				Remainder of Industry			
	Units Shipped	Adjusted [2] Wages	Wages per Unit	Number of Firms	Units Shipped	Adjusted [2] Wages	Wages per Unit	Number of Firms
1974	446,459	$208,174	$.47	4	3,940,078	$3,812,560	$.97	17
1975	464,577	145,482	.31	3	2,980,585	3,195,384	1.07	15
1976 [3]	921,621	591,152	[4] .64	6	3,202,970	3,145,971	.98	10
1977 [5]	1,204,067	511,604	.42	5	3,779,191	3,651,721	.97	11
Total	3,036,724	1,456,412	$.48		13,902,824	$13,805,636	$.99	

[1] Low-labor firms are firms which use preassembled components on at least 50 percent of their production during the calendar year. The assembly process on "preassembled components" generally involves affixing the barrel and barrel bridge subassemblies to the mainplate subassembly, usually with two or three screws.

[2] Adjusted wages include only wages paid to residents of the territories whose wages are attributable to the firm's headnote 3(a) watch assembly operations. Also excluded are wages paid to any one person in excess of $13,200 per year (1974–76) and in excess of $14,000 in 1977.

[3] Excludes one low-labor firm which did not apply for quota in 1977. Therefore wage data on its 1976 operations were not reported to the Departments. Also excluded are data on one labor-intensive firm which discontinued operations in 1976.

[4] Data include one firm which performed labor-intensive assembly on 43 percent of its total production, and had an average wage input of $.99 on its total production. Deducting this firm's shipments and wages from the 1976 low-labor totals results in wages of $.49 per unit shipped in 1976, and an average of $.42 per unit shipped for the 1974–1977 period.

[5] Excludes data on a firm which commenced operations in the fourth quarter of 1977.

Source: Departments of Commence and the Interior.

TABLE 4.—*1977 Virgin Islands Wage and Employment Data*

Wage bracket		$0–500	500–1,000	1,000–2,000	2,000–5,000	5,000–10,000	10,000+	Cumulative
No. of employees:	Low-labor	44	23	19	42	15	6	149
	Other	108	48	83	274	267	62	842
Total Wages:	Low-labor	10,253	16,982	28,163	155,824	94,232	92,192	397,646
	Other	26,071	34,939	124,152	1,020,282	1,666,867	1,036,530	3,908,841
Average Wages:	Low-labor	233	738	1,482	3,710	6,282	15,365	2,669
	Other	241	728	1,496	3,724	6,243	16,718	4,642
Percent of employees in bracket:	Low-labor	29.5	15.4	12.8	28.2	10.1	4.0	100
	Other	12.8	5.7	9.9	32.5	31.7	7.4	100
Percent of payroll in bracket:	Low-labor	2.6	4.3	7.1	39.2	23.7	23.2	100
	Other	0.7	0.9	3.2	26.1	42.6	26.5	100

RECAPITULATION:	*Low-labor*	*Other*
Average pay per job	$2,669	4,642
Percent of employee who earned less than $2,000	58%	28%
Percent of employees who earned between $2,000 and $10,000	38%	64%

Data derived from W-2's submitted with ITA-Form 334P by all Virgin Islands quota recipients (1978 annual application applicable to calendar year 1977 operations). Approximately 80 employees received wages from more than one firm and therefore are reflected more than once in these tables.

Source: Departments of Commerce and the Interior.

TABLE 5.—*Low-labor firm*[1] *shares of total Virgin Islands industry shipments and wages—1967-1977*

	Number of firms	% of total shipments	% of industry wages[2]
1967	3	8.8	7.9
1968	2	3.0	2.9
1969	3	5.9	5.3
1970	3	4.7	4.6
1971	4	12.1	7.9
1972	3	10.5	8.2
1973	3	3.8	3.1
1974	2	4.2	1.6
1975	1	3.5	1.3
1976[3]	4	20.2	15.1
1977	3	18.3	9.4

[1]See Footnote 1 on table 3.

[2]For the purposes of this chart wages represent payments only to residents of the territory made by every assembly firm. Wages paid to individuals in excess of the wages subject to FICA taxes each year are discounted from this table for low-labor firms and for the remainder of the industry.

[3]Includes data on one firm which engaged in labor-intensive assembly on 43% of its 1976 shipments and averages $.99 labor per movement shipped. Firms using subassemblies exclusively had a $.49 labor per movement shipped in 1976.

Source: Departments of Commerce and the Interior

TABLE 6.—*U.S. Apparent consumption of watches and watch movements and percentage change from preceding year—1967-1977*

Period or year	Apparent domestic consumption	Percentage + or −
1967	43,294	
1968	44,384	+2.5
1969	45,191	+1.8
1970	45,481	+0.6
1971	47,535	+4.5
1972	50,535	+6.3
1973	50,134	−1.0
1974	51,019	+1.8
1975	51,516	+1.0
1976	66,608	+29.3
1977	69,170	+3.8

Source: U.S. Tariff Commission/International Trade Commission.

TABLE 7.—*U.S. Imports of Conventional Watches, 1977*

	Quantity	%	Value	%	Ave. Value
Total Imports	18,432,578		$188,579,728		$10.23
Not over 7 Jewel[1]	14,898,729	80.8	102,577,147	54.4	6.88
8 to 17 Jewel[2]	3,440,499	18.7	71,918,386	38.1	20.90
Over 17 Jewel	93,350	0.5	14,084,195	7.5	150.87

By Principal Sources

	Switzerland		Japan		Hong Kong		807[3]		% of Total Q
	% Q	% V	% Q	% V	% Q	% V	% Q	% V	
Not over 7 Jewel	43.6	35.4	2.5	10.7	18.3	11.6	26.9	35.9	91.3
8 to 17 Jewel[4]	50.0	53.0	32.1	32.6	13.3	10.3	Insig.		95.4
Over 17 Jewel	71.5	91.0	25.7	6.5	0.7	0.4	Insig.		97.2
	45.0	46.3	8.2	18.7	17.3	10.3	21.8	19.6	92.3

U.S. Imports of Conventional Movements

	Quantity	%	Value	%	Ave. Value
Total Imports	4,997,042		40,336,803		$8.07
0-1 Jewel	2,634,670	52.7	15,404,214	38.2	5.85
2-7 Jewel	876,296	17.5	6,398,234	15.9	7.30
8-16 Jewel	22,266	0.4	500,889	1.2	22.50
17 Jewel	1,460,054	29.2	17,843,837	44.2	12.22
Over 17 Jewel	3,756	0.1	189,629	0.5	50.49
		100.0		100.0	

17-Jewel Movement Imports (By Popular Territorial Sizes)

Sizes	Switzerland			Japan			Hong Kong			% of Total Q
	% Q	% V	Ave. Value	% Q	% V	Ave. Value	% Q	% V	Ave. Value	
Not over 0.6	94.4	95.9	$14.25	4.1	2.8	$9.51		N.A.		98.5
0.6 to 0.8	78.7	86.9	11.26	17.4	12.1	6.32		N.A.		96.1
1 to 1.2	84.2	84.8	8.76	10.1	9.4	8.08	3.7	3.2	$7.55	98.0

[1]Bulk 0-1 Jewel Pin levers.

[2]Great Majority 17 jewel—only few specialty movements in odd jewel categories.

[3]807 Imports are articles assembled abroad from, in whole or in part, U.S. components, which have not lost their physical identity nor been enhanced in value except by assembly process (see Schedule 8, Part 1, Subpart B, Tariff Schedules of the United States).

[4]Ave. Value of 17 jewel watches from Switzerland = $22.15, Japan = $21.23, Hong Kong = $16.18, 807 = Insig.

Source: Department of Commerce, IM 146 (U.S. Imports for Consumption and General Imports, TSUSA, Commodity by Country of Origin).

TABLE 8.—*Duty-Paid Imports of Conventional Watches and Watch Movements (1977 and 1978*)*

	1978		1977	
	Quantity	Value	Quantity	Value
Watches (8-17 jewel)[1]				
715.0514	1,233,064	32,187,151	1,668,092	36,155,392
715.0518	408,662	7,172,495	636,877	9,114,569
Totals	1,641,726	39,359,646	2,304,969	45,269,961
Watch movements (17 jewel)				
716.3037	405,694	6,779,435	549,261	7,711,770
716.3137	269,050	3,825,347	485,062	4,950,938
716.3237	2	595	1,607	72,625
716.3337	2,196	47,145	5,186	93,064
716.3437	32,598	366,021	143,648	1,249,393
716.3537	8,981	118,151	14,758	130,317
716.3637	50	4,699	1,790	50,165
717.3037			481	8,417
717.1337	511	10,440	671	25,934
717.3237	405	61,247	1,171	141,615
717.3337	5	1,142		
717.3437	1	835		
717.3537				
717.3637				
718.3037	1,030	62,937	20	1,502
718.3137	22,950	511,844	23,167	584,229
718.3237				
718.3337				
718.3437	161,122	2,173,550	232,265	2,802,009
718.3537	26	984	962	12,599
718.3637	50	4,892	5	260
Totals	904,671	13,969,264	1,460,054	17,843,837
Grand totals	2,546,397		3,765,023	

[1]Tariff Item 715.0514 covers 8-17 jewel conventional watches with precious metal cases and 715.0518 covers 8-17 jewel conventional movements with base metal cases. The great majority of the watches in these two watch categories have 17 jewel movements.

* Thru July, 1978.

Source: Department of Commerce IM 146 (U.S. Imports for Consumption and General Imports, TSUSA, Commodity by Country of Origin).

TABLE 9.—*Casing of Watch Movements (Virgin Islands and Guam) 1972-1977*

	1972	1973	1974	1975	1976	1977
A. Virgin Islands						
Total Cased Movements Shipped	76,839	48,734	40,032	213,831	656,833	601,275
Low-Labor Firms[1]	71,755	42,129		4,068	64,730	107,473
Other Firms	5,084	6,605	40,032	209,763	592,103	493,802
% of Total Shipments Cased	1.75	1.05	0.99	7.02	16.37	13.00
B. Guam						
Total Cased Movements Shipped	43,008	44,756	79,456	43,215	5,481	71,325
Low-Labor Firms	43,008	44,756	79,456	43,215	5,481	71,325
Other Firms						
% of Total Shipments Cased	12.35	9.89	23.53	10.85	4.90	19.96
C. Total Cased Shipments	119,847	93,490	119,488	257,046	662,314	672,600

[1]"Low-labor firms", as used in these tables, refers to those firms which, in any given calendar year, assembled more than half of their total annual shipments from preassembled movements. "Preassembled movements" refers to those movements which, due to the state of their assembly on import into the insular possession, require for completion into a working movement only the assembly of a preassembled barrel subassembly and ratchet wheel onto an otherwise functioning watch movement.

Source: Form ITA-334P (and predecessor forms), U.S. Departments of Commerce and the Interior.

[FR Doc. 78-35511 Filed 12-19-78; 8:45 am]

[3510-25-M]

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 6-78]

CHICAGO REGIONAL PORT DISTRICT

Foreign-Trade Zone No. 22, Chicago, Illinois—Withdrawal of Application for Zone Expansion and Steel Processing Operations

Notice is hereby given that the Chicago Regional Port District, grantee of Foreign-Trade Zone No. 22, Chicago, has requested to withdraw its application for authority to expand its zone for certain steel processing operations. The application was filed with the Foreign-Trade Zones Board on May 26, 1978 (Docket No. 6-78), and a public hearing was held on the matter in Chicago on June 20, 1978. The do-

mestic steel industry had voiced opposition to the proposal.

The request for withdrawal has been accepted by the Board's executive secretary and the proposal is considered closed.

Dated: December 19, 1978.

JOHN J. DA PONTE, JR.,
Executive Secretary,
Foreign-Trade Zones Board.

[FR Doc. 78-35888 Filed 12-26-78; 8:45 am]

[3510-25-M]

[Order No. 140]

Resolution and Order Approving Application for a Foreign-Trade Zone in Multnomah County, Oregon

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

After consideration of the application of the Port of Portland, an Oregon public corporation, filed with the Foreign-Trade Zones Board (the Board) on August 7, 1978, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Multnomah County, Oregon, within the Columbia River Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves an industrial park type zone that envisages the possible construction of buildings by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

GRANT TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN MULTNOMAH COUNTY, OREGON

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Port of Portland, (the Grantee) has made application (filed August 7, 1978), in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Multnomah County, Oregon, within the Columbia River Customs port of entry;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

WHEREAS, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

NOW, THEREFORE, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 45, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their offical duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 18th day of December 1978, pursuant to Order of the Board.

FOREIGN-TRADE ZONES BOARD,

C. L. HASLAM,
Acting Chairman and
Executive Officer.

Attest: JOHN J. DA PONTE, Jr.,
Executive Secretary.

[FR Doc. 78-35889 Filed 12-26-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00400. Applicant: Massachusettes Institute of Technology, 77 Massachusetts Ave., Cambridge, Mass. 02139. Article: 500 kV Metalclad Test Transformer Type TES 510/90BM and accessories. Manufacturer: Messwandler-Bau G.m.b.h., West Germany. Intended use of article: The article is intended to be integrated into and existing Extra-High Voltage test facility at the MIT High Voltage Research Laboratory to allow high voltage research studies under AC as well as DC. These studies are primarily concerned with electrical insulation and high voltage techniques in which electrical breakdown and loss mechanisms are investigated. Initial work with the article will be directed at improving the insulating performance of SF_6 gas-insulated, electric power transmission cables. In addition, the article will be used for educational studies in the field of electrical engineering and physics particularly insulation and electrical discharges.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a 400-500 kilovolt output voltage with a 20-50 kilovolt amperes power rating. The National Bureau of Standards advises in its memorandum dated November 30, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR. Doc. 78-35895 Filed 12-26-78; 8:45 am]

[3510-25-M]

NATIONAL BUREAU OF STANDARDS

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00401. Applicant: National Bureau of Standards, Washington, D.C. 20234. Article: Automatic Inductive ratio-arms bridge, Model A7. Manufacturer: Automatic Systems Laboratories, United Kingdom. Intended use of article: The article is intended to be used to make precise temperature measurements at several locations in a heat-flow calorimeter on a continuous basis for periods of several days, or in the case of half-life determinations for periods of several months. The calorimeter will in turn be used to accurately measure the heat produced in radioactive specimens and to relate these values to electrical standards.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides self-balancing precision measurements having a resolution of one part in 10^7 and an accuracy of ±4 parts in 10^7 on a continuous basis over a long period of time. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated November 22, 1978, that the specifications of the article described above are pertinent to the applicant's intended use. HEW also advises that it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purposes.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 35896 Filed 12-26-78; 8:45 am]

[3510-25-M]

NEW JERSEY INSTITUTE OF TECHNOLOGY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00384. Applicant: New Jersey Institute of Technology, Chemistry Division, 323 High Street, Newark, N.J. 07102. Article: LKB 8721-4 Closed bomb reaction calorimetric assembly and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The foreign article is intended to be used in calorimetric studies of strained bridgehead lactams, such as, 6, 6-dimethy-1-azabicyclo (2.2.2.) octan-2-one which exhibits reduced (or zero) pi resonance stabilization since its amide linkage is severely twisted. The enthalpies of combustion and vaporization will be obtained. This research will be also be extended to include the compounds required in the synthesis of the 6, 6-dimethyl-1-azabicyclo (2.2.2.) octan-2-one parent molecule, 1-Azabicyclo (3.3.1) nonan-2-one which exhibits another unique twisted pi linkage, and 1-azabicyclo (3.2.2.) nonan-2-one which when the ΔH_f values are compared with 6, 6-dimethl-1-azabicyclo (2.2.2.) would provide some quantitation of Wiseman's rule which explains stability and transient nature of its isomers. The foreign article will also be used in education; two courses Chemistry 491/492 Undergraduate Chemistry Research and in Masters and Doctoral Degree Research.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides working temperatures up to 120 degrees centigrade (°C) with a temperature stability better than 0.01°C, an accuracy of ±0.01% and modular compatibility with existing equipment for increased capability. The National Bureau of Standards advises in its memorandum dated November 16, 1978 that (1) the characteristics of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog, or Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-35897 Filed 12-26-78; 8:45 am]

[3510-25-M]

PURDUE UNIVERSITY

Decision on Application for Duty-free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00313. Applicant: Purdue University, ADMS Building, West Lafayette, Ind. 47907. Article: Superconducting 8.5 T solenoid with power supply. Manufacturer: Oxford Instruments, Ltd., United Kingdom. Intended use of article: The article is intended to be used to apply state-of-the art NMR instrumentation for the solution of certain well-defined problems in protein chemistry. The general goals are two-fold: (i) To learn more about the structure and function of particular proteins and (ii) to refine and develop NMR techniques along with other methods of protein chemistry for use in future studies. Five specific problems under investigation are: (1) The active sites of serine proteinases, (2) the mechanisms of interactions between protein proteinase inhibitors and proteinase, (3) the structures of glycoproteins, (4) the mechanism of folding of staphylococcal nuclease, and (5) the mechanism of electron transport in photosynthesis. The article will also be used for educational purposes in the course—Chemistry 696B which is designed as an introduction to the theory of NMR spectroscopy and its applications to biochemical problems.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (February 3, 1978). Reasons: The foreign article provides a field strength of a least 8.5 Tesla with sufficient magnetic field homogeneity to perform high resolution nuclear magnetic resonance experiments. The Department of Health, Education, and Welfare advises in its memorandum dated November 28, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc 78-35898 Filed 12-26-78; 8:45 am]

[3510-25-M]

SAN DIEGO STATE UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00376. Applicant: San Diego State University, 5300 Campanile Drive, San Diego, Calif. 92182. Article: Calorimetric Unit, Model CP-C and Accessories. Manufacturer: Sodev, Inc. Canada. Intended use of article: The article is intended to be used to measure the partial molal heat capacities of various inorganic and organic electrolytes and nonelectrolytes in aqueous solutions at concentrations from 0.05 molal to saturation and at temperatures up to 80°C. The data will be used to check and extend a theory developed for predicting the thermodynamic properties of aqueous electrolytes and other dissolved species up to 300°C. The data obtained up to 80°C, using the flow microcalorimeter, will be combined with our data above 100°C, which is obtained from heat of solution calorimetry, and will be used to calculate the high temperature thermodynamic properties of electrolytes for comparison with the theory.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is a flow heat mixing calorimeter with the capability of measuring the density of a flowing liquid to 1 part in 10^6 over the temperature range of 0-80°C. The National Bureau of Standards advises in its memorandum dated December 8, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-35899 Filed 12-26-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF CHICAGO—AGRONNE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00396. Applicant: University of Chicago Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Ill. 60439. Article: VRT 2121A Reflex Klystron and accessories. Manufacturer: Varian Associates of Canada, Canada. Intended use of article: The article is intended to be used in a "Zebra-stripe" microwave interferometer set up to measure the electron density in Argonne's APEX Tokamak which is being constructed to study plasma wall interaction of fusion type plasma, methods of heating tokamak discharges to ignition and methods of

inducing plasma currents with for field.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a frequency in the range between 130-139 gigahertz. The National Bureau of Standards (NBS) advises in its memorandum dated December 12, 1978 that (1) the capability of the article described above is pertinent to the applicant's research purposes and (2) it knows of no domestic instrument of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-35909 Filed 12-26-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF MICHIGAN

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D. C. 20230.

Docket No. 78-00395. Applicant: University of Michigan, 1024 Chemistry Building, 930 North University Avenue, Ann Arbor, Mich. 48109. Article: Switching Unit, Model 128M and Optional Current Switching Facility for 5 Thermometer. Manufacturer: Automated Systems Lab. Ltd., United Kingdom. Intended use of article: the article is an accessory to an existing Automated AC Bridge manufactured by the same manufacturer which is being used for the study and understanding of the energetic spectrum of matter; the chemical thermodynamic properties of matter including the entropy, enthalpy, tempered Gibbs energy function, etc.; the electronic, structural, as well as the molecular disordering and librational freedom of molecules are both immediate and indirect objectives.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes. The National Bureau of Standards advises in its memorandum dated December 11, 1978 that it knows of no domestic instrument of equivalent scientific value to the article for its intended uses.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which is interchangeable with or can be readily adopted to the instrument with which the foreign article is intended to be used.

The Department of Commerce knows of no other similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Asssistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-35901 Filed 12-26-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF PENNSYLVANIA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00366. Applicant: University of Pennsylvania, 3400 Walnut Street, Franklin Building, Philadelphia, Pa. 19104. Article: NMR Spectrometer, Model WH-360/180 and accessories. Manufacturer: Schweiz Spectrospin AG, Switzerland. Intended use of article: The article is intended to be used for (1) identifying chemical compounds of small molecular weight, (2) determing the structure of macromolecules such as enzymes and nucleic acids in solution, and (3) studying the interaction between enzymes and substrates. Specific examples of the research to be conducted are:

(a) Kinetics of oxygen-18 exchange between inorganic phosphate and water catalyzed by myosin subfragment, using the ^{18}O-shift in ^{31}P NMR.

(b) Determination of membrane potential by use of ^{13}C NMR and a shift reagent to measure ionic-probe concentration gradients across the cell membrane.

(c) H NMR studies of hemoproteins substituted with cobaltous hemes. Many of the users of the facility are postdoctoral fellows or graduate students who learn about the application of NMR to biophysical and biochemical proteins. In addition, the article will be used in classes in biophysics, a course which deals with the application of various techniques, including NMR, to the probing of molecular structure.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (January 21, 1977). Reasons: The foreign article provides operation at a high field strength of 360 megahertz with a magnet field strength of 8.4 Telsa. The Department of Health, Education, and Welfare advises in its memorandum dated November 28, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-35902 Filed 12-26-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF TEXAS SYSTEM CANCER CENTER

Decision on Application for Duty-Free Entry of Scientific article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 78-00361. Applicant: The University of Texas System Cancer Center, 6723 Bertner, Houston, Tex. 77030. Article: Phywe Model ICP 11, Pulse Cytophotometer and accessories. Manufacturer: Phywe Co., West Germany. Intended use of article: The article is intended to be used for research in the areas of *In Vitro* and *In Vitro* cell kinetics. Cultured or human biopsy material will be processed to obtain a single cell suspension, using methods previously developed in this laboratory and published in *Cancer Research* and in *Blood*. Cells will then be fixed in ethanol and stained with 2 fluorochromes, ethidium bromide and mithramycin, specifically for DNA. Additional RN'ase treatment will follow. These measurements serve to identify the cell cycle stage distribution of cultured and human tumor cells as well as to identify aneuploid abnormalities. Both clinical oncology fellows and candidates of the Graduate School of Biomedical Sciences will continue to be involved in the research project, and primary emphasis of the laboratory has been on automated cytology.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a wide band of wavelengths (down to 254 nanometers) in the ultraviolet region of its fluorescence excitation. The Department of Health, Education, and Welfare advises in its memorandum dated November 7, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR. Doc. 78-35903 Filed 12-26-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF WASHINGTON

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A Copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 78-00377. Applicant: University of Washington, Department of Pathology, SM-30, Seattle, Wash. 98195. Article: Impulse Cytophotometer, Model 21 and accessories. Manufacturer: Phywe Ag., West Germany. Intended use of article: The article is intended to be used to study the DNA (deoxyribonucleic acid) content and DNA replication of human and animal cells. Experiments will be conducted to determine whether cancer or other clinical manifestations of aneuploidy (abnormal amounts of DNA/cell) can be diagnosed easily and rapidly with this instrument. A major use of the article will be for the courses Pathology 600, 700 and 800 which are research courses for students working on their master's and doctoral degrees. In addition, the article will be used in the course Pathology 530, Human Cytogenetics, to demonstrate modern instrumental methods of chromosomal analysis.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article can measure DNA contents of less than 0.1 picogram and a coefficient of variation of less than 2 percent. The Department of Health, Education, and Welfare advises in its memorandum dated November 22, 1978 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 35904 Filed 12-26-78; 8:45 am]

[3510-25-M]

EXPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) notice is hereby given that a meeting of the Exporters' Textile Advisory Committee will be held at 10:00 a.m., on January 31, 1979, in Room 4833, U.S. Department of Commerce, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

The Committee, which is comprised of 20 members involved in textile and apparel exporting, advises Department officials concerning ways of increasing U.S. exports of textile and apparel products.

The agenda for the meeting is as follows:

1. Review of Export Data
2. Report on Conditions in the Export Market
3. Recent Foreign Restrictions Affecting Textiles
4. Other Business

A limited number of seats will be available to the public on a first come basis. The public may file written statements with the Committee before or after the meeting. Oral statements may be prepared at the end of the

meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: December 13, 1978.

ROBERT E. SHEPHERD,
Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-36020 Filed 12-26-78; 8:45 am]

[3510-25-M]

ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the electronic Instrumentation Technical Advisory Committee will be held on Wednesday, January, 17, 1979, at 9:30 a.m. in Room 5230, Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, October 21, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20203, telephone: A/C 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical advisory Committee and of any subcommittees thereof is hereby published.

Dated: December 21, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

U.S. DEPARTMENT OF COMMERCE, OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION, ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

NOTICE OF DETERMINATION

In response to written requests of representatives of a substantial segment of the electronic industry, the Electronic Instrumentation Technical Advisory Committee was established by the Secretary of Commerce pursuant to Section 5(c)(1) of the Export Administration Act of 1969, 50 U.S.C. App. 2404 (c)(1)(1976), to advise the Department of Commerce with respect to questions involving (A) technical matters, (B) worldwide availability, and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee, which currently has eleven members representing industry and seven members representing government agencies, will terminate no later than August 29, 1980, unless extended by the Secretary of Commerce or her designee. All members of the Committee have the appropriate security clearances.

The Committee's activities are conducted pursuant to 50 U.S.C. App. 2404(c)(1); the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976); and the Office of Management and Budget Circular A-63 (Revised), Advisory Committee Management, effective May 1, 1974. Section 10 of the Federal Advisory Committee Act as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, provides that advisory committee meetings or portions thereof may be exempt from the open meeting and public participation requirements of the Federal Advisory Committee Act if the President, or the head of the agency to which the advisory committee reports, determines that such meetings or portions thereof may be closed to the public in accordance with 5 U.S.C. 552b(c).

5 U.S.C. 552b(c)(1) provides that agency meetings or portions thereof may be closed to the public where they are likely to disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

Seven Notices of Determination authorizing the closing of meetings, or portions thereof, of the Electronic Instrumentation Technical Advisory Committee and its formal subcommittees, dealing with security classified matters, have been approved in the past.

In order to provide advice to the Department under the terms of its charter, the Committee and formal subcommittees thereof will continue to hold a series of meetings dealing with the matters set forth in the first paragraph of this Determination. These meetings will include discussions of the COCOM control list as it relates to the commodities and technical data under its purview, and with the foreign availability of these commodities and technical data. In addition, the Committee and its formal subcommittees will be preparing recommendations for the Department's consideration relating to the U.S. Government's negotiating position on COCOM-related matters. Much of the information relating to the COCOM control list, as well as proposed changes, is now or will be security classified for national defense or foreign policy reasons, pursuant to Executive Order No. 11652, 3 CFR 339 (1974) or Executive Order No. 12065, 43 FR 28949 (1978). In order for the Committee and its formal subcommittees to provide required advice to the U.S. Government, it will be necessary to provide the Committee and its formal subcommittees with such classified material. Therefore, the series of meetings or portions of meetings of the Committee and of subcommittees thereof that will involve discussions of matters specifically authorized under criteria estab-

lished by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order, must be closed to the public. The remaining series of meetings or portions thereof will be open to the public.

Accordingly, I hereby determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the series of meetings or portions of meetings of the Committee and of any subcommittees thereof, dealing with the aforementioned classified materials shall be exempt, for the period from the date of the signing of this Determination, to August 29, 1980, from the provisions of Section 10 (a)(1) and (a)(3), relating to open meetings and public participation therein, because the Committee and subcommittee discussions will be concerned with matters listed in 5 U.S.C. 552b(c)(1). The remaining series of meetings or portions thereof will be open to the public.

Dated: September 6, 1978.

ELSA A. PORTER,
Assistant Secretary for Administration.

Dated: September 5, 1978.

DANIEL GARBERN,
Acting Assistant General Counsel.

[FR Doc. 78-36035 Filed 12-26-78; 8:45 am]

[3510-25-M]

FOREIGN AVAILABILITY SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, January 16, 1979, at 1:30 p.m. in Room 6029, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977 and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975. On October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

The Subcommittee meeting agenda has four parts:

(1) Opening remarks by the Subcommittee Chairman.
(2) Presentation of papers or comments by the public.
(3) Review of East European and U.S.S.R. computer processing data rates.
(4) New items for Subcommittee consideration.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: December 21, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36037 Filed 12-26-78; 8:45 am]

[3510-25-M]

LICENSING PROCEDURES SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, January 16, 1979, at 9:30 a.m. in Room 6029, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has six parts:

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Further discussion of full information of add-ons to small and/or foreign or computer systems installed several years previously.

4. The status of a blanket or a one year license for shows and displays.
5. Discussion of proposed General License Parts; Maintenance and Repair Parts.
6. Discussion of proposed General License G-supplies.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: December 21, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-36036 Filed 12-26-78; 8:45 am]

[3510-12-M]

National Oceanic and Atmospheric Administration

FOUR MARINE SANCTUARY CANDIDATES

Intent to Prepare Draft Environmental Impact Statements

AGENCY: Sanctuary Programs Office/Coastal Zone Management, NOAA.

ACTION: Notice to interested parties of intent to prepare Draft Environmental Impact Statements (DEISs) on four marine sanctuary candidates.

FOR FURTHER INFORMATION CONTACT:

Dr. Nancy Foster, SPO/CZM, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235, telephone 202/254-7512.

SUMMARY: The Office of Coastal Zone Management announces its intention to prepare draft environmental impact statements on four marine sanctury candidiates—one site off Texas and Louisiana (the Flower Garden Banks), and three sites off California (Point Reyes/Farallon Islands, Monterey Bay and the waters around the northern Channel Islands and Santa Barbara Island).

BACKGROUND: Public workshops have been held on the Flower Garden Banks off Texas and Louisiana, on 5 California sites—offshore San Diego, Point Reyes/Farallon Islands, Monterey Bay, Tanner Cortes Banks, the Santa Barbara Channel and waters around the northern Channel Islands and Santa Barbara Island—and a site at Looe Key off Florida. After each workshop was held, the feasibility of each site as a possible marine sanctuary was determined. Of the candidates listed above, four have been determined feasible and will be the subject of draft environmental statements—the Flower Garden Banks and three of the sites off California, Point Reyes/Farallon Islands, Monterey Bay, and the waters around the northern Channel Islands and Santa Barbara Island. The Tanner Cortes Banks, San Diego and the main Santa Barbara Channel have been deferred. Action on Looe Key, Florida, has been delayed pending the completion of a coral reef study by the South Atlantic and Gulf Coast Regional Fisheries Management Councils.

Consultation with Federal and State Agencies and other interested parties will occur during preparation of the DEIS's. Availability of documents and hearing dates will be announced in the FEDERAL REGISTER.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

[FR. Doc. 78-35891 Filed 12-26-78; 8:45 am]

[3510-12-M]

GRAY'S REEF, GA.

Receipt of Nomination for Marine Sanctuary Designation

AGENCY: Sanctuary Programs Office/Coastal Zone Management.

ACTION: Receipt of Marine Sanctuary Nomination.

SUMMARY: Pursuant to guidelines under Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532), NOAA announces receipt of a marine sanctuary nomination. Information and comments are requested on the feasibility of Gray's Reef, Georgia as a marine sanctuary.

ADDRESS: Send comments and/or information to: Director, Sanctuary Programs Office/CZM, NOAA, Room 280, 3300 Whitehaven St., N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Dr. Nancy Foster, SPO/CZM, NOAA, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, telephone 202/254-7512.

The Office of Coastal Zone Management has received a nomination of Gray's Reef on the Georgia Continental Shelf for a marine sanctuary. Gray's Reef, located 18 nautical miles east of Sapelo Island, Georgia, was nominated by the Georgia Department of Natural Resources, Coastal Resources Division.

The Marine Protection, Research, and Sanctuaries Act authorizes the designation of areas of ocean waters as marine sanctuaries to preserve or restore such areas for their conservation, recreational, ecological or esthetic values, and to adopt reasonable regulations for this purpose.

All interested persons or groups may submit information and/or comments concerning possible marine sanctuary status for this site. A further notice will be published in the FEDERAL REGISTER when NOAA undertakes review to determine feasibility of the site and Federal agencies and the State of Georgia will be specifically notified in conformance with 15 CFR Part 922, published in the FEDERAL REGISTER, on page 23256, June 27, 1974.

A copy of the nomination is available for public review in Room 280, 3300 Whitehaven Street N.W., Washington, D.C. 20235 between the hours of 8:00 a.m.—4:30 p.m., Monday through Friday.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

[FR Doc. 78-35890 Filed 12-26-78; 8:45 am]

[3510-60-M]

National Telecommunications and Information Administration

FREQUENCY MANAGEMENT ADVISORY COUNCIL

Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on January 10, 1979, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street, N.W., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street, N.W.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal government frequency management may be enhanced. The Council consists of 11

members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The agenda items for the meeting will be:

(1) Briefing on current and planned activities of the Electromagnetic Radiation Management Advisory Council (ERMAC) by Dr. John M. Richardson, Chief Scientist, NTIA.

(2) Review and discussion of FCC Report and Order, Docket 20271 (proposals for WARC-79).

(3) FMAC study of the proposed Communications Act of 1978—Administrative Review and Progress Report.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public. Each person will be limited to 10 minutes. More extensive questions or comments should be submitted in writing before January 9th. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request.

Inquiries may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 298, 1325 "G" Street, N.W., Washington, D.C. 20005, telephone 202-724-3307.

Dated: December 21, 1978.

CLOYD C. DODSON,
Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 78-36178 Filed 12-26-78; 8:45 am]

[3510-26-M]

Office of the Secretary

METROPOLITAN STATISTICAL AREAS

Hearing on Second Proposal for Changes in Criteria

AGENCY: Office of Federal Statistical Policy and Standards, Department of Commerce.

ACTION: Notice of Hearing on Second Proposal for Changes in Criteria for Designation and Definition of Metropolitan Statistical Areas.

Notice is hereby given of a public hearing on the second proposal for revising the criteria for establishing the metropolitan statistical areas (formerly known as Stanard Metropolitan Statistical Areas). This hearing is in addition to the one scheduled for December 15, 1978. This revised proposal has been prepared by the Federal Committee on Standard Metropolitan Statistical Areas following the period of public review and comment on the first proposal which was published in the FEDERAL REGISTER for June 22, 1978. The revised criteria proposal was published for public comment in Part V of the FEDERAL REGISTER for November 29, 1978 and in the November 1978 issue of *Statistical Reporter*. Copies are also available from the Office of Federal Statistical Policy and Standards.

The hearing will be held at 9:30 a.m. on Friday, January 26, 1979 in Room B841, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. Persons wishing to be on the agenda should contact the Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 673-7965 by January 24, 1979. Written statements may be presented in lieu of attendance at the hearing. Oral summaries of statements should be limited to 10 minutes.

COURTENAY M. SLATER,
Chief Economist for the Department of Commerce.

[FR Doc. 78-35907 Filed 12-26-78; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

PRIVACY ACT OF 1974

Deletion of Systems of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of systems of records deletions.

SUMMARY: The Office of the Secretary of Defense is deleting three systems of records subject to the Privacy Act of 1974.

DATES: These systems of records shall be deleted as proposed without further notice.

FOR FURTHER INFORMATION CONTACT:

Mr. James S. Nash, Chief, Records Management Division, ODASD(A), Room 5C-315, The Pentagon, Washington, D.C. 20301, telephone: 202-695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records subject to the privacy Act of 1974 (5 U.S.C. 552a), Public Law 93-579, have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 50731) September 28, 1977
FR Doc. 78-25819 (43 FR 42375) September 20, 1978
FR Doc. 78-25819 (43 FR 56703) December 4, 1978
FR Doc. 78-34821 (43 FR 58405) December 14, 1978

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

DECEMBER 20, 1978.

DELETIONS

DIO1

System name: Office of the Assistant Secretary of Defense (Intelligence) Personnel Roster (42 FR 50759, September 28, 1977).

Reason: The requirement for this system of records no longer exists.

DIO2

System name: Key Personnel List (42 FR 50759, September 28, 1977).

Reason: The requirement for this system of records no longer exists.

DIO3

System name: Staff Telephone Listing (42 FR 50759, September 28, 1977).

Reason: The requirement for this system of records no longer exists.

[FR Doc. 78-35943 Filed 12-26-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. G-9279, *et al.*]

AMOCO PRODUCTION CO. ET AL.

Order Directing Refunds

DECEMBER 14, 1978.

These proceedings[1] in Docket Nos. G-9279, *et al.* concern the disbursement of approximately $7.6 million in refunds currently held by 32 producers[2] under the terms of various rate and certificate settlements approved by the Commission during the period from 1964 to 1969. The refunds are owed to 21 purchasers.

In the settlements, the Commission required the producers to retain the monies they had collected in excess of the determined just and reasonable rates pending determination of the disposition of such monies by the purchasers. The Commission gave the producers the option to place the

[1]These proceedings were commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), they were transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2]TIAs listed in Appendix A, attached hereto.

refund monies into escrow accounts or to commingle the funds with their general assets. Commingled funds carry an annual interest rate, specified in the applicable settlement order, which is payable at disbursement. The interest on monies placed in escrow was limited to whatever interest was earned on such monies.

COMMISSION DECISION

The settlement orders governing these dockets are no longer subject to judicial review, and were not affected by subsequent rate and refund determination in area and nationwide rate proceedings.

The issue of a pipeline's equitable entitlement to its suppliers refunds has been settled. By order of March 17, 1975 [3] the Commission announced that it would no longer entertain such claims of entitlement by pipelines. The order was based on the Commission's previous findings in Opinion 540 [4] that neither the letter nor the spirit of the Natural Gas Act required the Commission to allow pipelines to prove entitlement to supplier refunds where the pipelines had prior opportunities to establish such entitlement.

The 1975 order made an exception for those pipelines whose Commission-approved rate settlements preserved a right to make such a claim. Thus any claims of entitlement to refunds by the purchasers in those proceedings must be made pursuant to a provision in the applicable settlement.

As the issues in these proceedings have been resolved, there is no further need for the producers to continue to retain these refunds. Accordingly, we shall direct the producers shown on Appendix A to refund the amounts they hold to the purchasers. Those producers who elected to commingle the refund monies with their general assets shall pay annual interest to date at the rate specified in the applicable settlement order. We shall also require the purchasers to flow-through these refunds and to file with us a proposed disposition of the remainder of the refund monies.

The Commission finds that it is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the refunds directed by this order be disbursed, and that the required reports be filed.

The Commission orders:

(A) Within 30 days from the date of this order, the producers listed in Appendix A, or their escrow agents, shall refund all amounts retained in the dockets listed in Appendix A, plus applicable interest as provided in the applicable settlement order to the respective purchasers. The producers, or their escrow agents, shall also submit to the Commission a report in writing on the amount of refunds made, showing separately the retained monies and the interest thereon, together with a release from the purchaser showing receipt of the monies.

(B) Each purchaser, within 30 days from the date of receipt of the refund money, shall flow-through such amounts in accordance with its various settlements and tariffs and shall submit a refund report together with appropriate releases from its customers.

(C) Each purchaser, within the same 30 day period, shall also submit a report to the Commission showing all amounts that it is retaining and the reason for such retention. If a purchaser claims entitlement to any portion of this money it should also state the reasons for such claim.

By the Commission. Commissioner Holden voted present.

LOIS D. CASHELL,
Acting Secretary.

[3] Area Rate Proceeding, *et al.* (Hugoton-Anadarko Area), Docket No. AR64-1, *et al.*, 53 F.P.C. 821 (1975).

[4] Texas Eastern Transmission Corporation, Docket No. RP66-12, 39 F.P.C. 630, affirmed, *Texas Eastern Transmission Corporation* v. *F.P.C.*, 414 F.2d 344 (5th Cir., 1969), cert. denied, 398 U.S. 928 (1978).

APPENDIX A.—*Refund Money Retained by Producers Under Company-Wide and Other Settlements*

Producer	Docket Nos.	Date of Settlement Order	Purchaser
Amoco Production Company[1]	G-9279, et al.	4/13/66	Colorado Interstate Gas Company
	G-9279, et al.	4/13/66	Tennessee Gas Pipeline Company
	G-9279, et al.	4/13/66	Texas Eastern Transmission Corporation
	G-9279, et al.	4/13/66	United Gas Pipe Line Company
	G-20288	12/30/65	Trunkline Gas Company
	CI64-1154	12/30/65	Trunkline Gas Company
	CI67-1339	8/27/69	Southern Natural Gas Company
A O Industries Inc.[2]	RI65-286	7/3/68	Tennessee Gas Pipeline Company
Atlantic Richfield Company[3]	G-9283, et al.	10/8/64	Florida Gas Transmission Company
	G-9283, et al.	10/8/64	United Gas Pipe Line Company
Austral Oil Company Inc.	G-20089	3/14/66	Trunkline Gas Company
Benedum Trees Oil Company	G-17712, et al.	12/30/65	Texas Gas Transmission Corporation
Champlin Petroleum Company	RI62-233, et al.	6/10/66	Tennessee Gas Pipeline Company
	RI62-233, et al.	6/10/66	Texas Eastern Transmission Corporation
Cities Service Oil Company[4]	G-14101, et al.	12/8/65	Colorado Interstate Gas Company
	G-14101, et al.	12/8/65	Columbia Gas Transmission Corporation
	G-14101, et al.	12/8/65	Natural Gas Pipeline Company of America
Consolidated Oil & Gas Company	RI65-290	4/26/67	Tennessee Gas Pipeline Company
Exxon Corporation[5]	G-9287, et al.	7/8/64	Colorado Interstate Gas Company
	G-9287, et al.	7/8/64	Panhandle Eastern Pipe Line Company
	G-9287, et al.	7/8/64	Southern Natural Gas Company
	G-13732	1/27/64	Texas Eastern Transmission Corporation
F O Oil Corporation	G-17540	12/30/65	Texas Gas Transmission Corporation
Grigsby, Jack W.	RI61-96, et al.	8/6/64	United Gas Pipe Line Company
Gulf Oil Corporation[6]	G-10615, et al.	11/28/66	Lone Star Gas Company
	G-10615, et al.	11/28/66	Michigan Wisconsin Pipe Line Company
	G-10615, et al.	11/28/66	National Fuel Supply Company
	G-10615, et al.	11/28/66	Southern Natural Gas Company
	G-10615, et al.	11/28/66	Texas Gas Transmission Corporation
Hamon, Jake L.	RI61-408, et al.	11/5/65	South Texas Natural Gas Gathering Co.
			United Gas Pipe Line Company
Hunt, Lamar	G-13531, et al.	4/11/68	Texas Eastern Transmission Corporation
Hunt, Lamar Hunt Trust Estate	G-13531, et al.	4/11/68	Texas Eastern Transmission Corporation
Hunt, Nelson Hunt Bunker Trust	G-13531, et al.	4/11/68	Texas Eastern Transmission Corporation
Hunt, Wm. Herbert Trust Estate	G-1353, et al.	4/11/68	Texas Eastern Transmission Corporation
Kerr McGee Corporation	RI63-460	6/3/65	Lone Star Gas Company

APPENDIX A.—*Refund Money Retained by Producers Under Company-Wide and Other Settlements*—Continued

Producer	Docket Nos.	Date of Settlement Order	Purchaser
Monsanto Company	G-18269, et al	12/30/66	Colorado Interstate Gas Company
	G-18269, et al	12/30/66	Michigan Wisconsin Pipe Line Company
	G-18269, et al	12/30/66	Northern Natural Gas Company
	G-18269, et al	12/30/66	Tennessee Gas Pipeline Company
	G-18269, et al	12/30/66	Texas Eastern Transmission Corporation
	G-18269, et al	12/30/66	Transwestern Pipeline Company
	G-18269, et al	12/30/66	United Gas Pipe Line Company
Nicklos Oil and Gas Company	G-20290	3/14/66	Trunkline Gas Company
Pennzoil Producing Company[7]	G-13811, et al	12/23/64	Frank S. Kelly, Jr.
	G-13811, et al	12/23/64	Natural Gas Pipeline Company of America
	G-13811, et al	12/23/54	Southern Natural Gas Company
Phillips Petroleum Company	G-17820	12/30/65	Texas Gas Transmission Corporation
Placid Oil Company	G-13531, et al	4/11/68	Texas Eastern Transmission Corporation
Salmon Corporation	RI66-349	7/2/68	Tennessee Gas Pipeline Company
Sun Oil Company	G-8288, et al	10/1/64	Arkansas Louisiana Gas Company
	G-8288, et al	10/1/64	El Paso Natural Gas Company
	G-8288, et al	10/1/64	Natural Gas Pipeline Company of American
	G-8288, et al	10/1/64	Northern Natural Gas Company
	G-8288, et al	10/1/64	Panhandle Eastern Pipeline Company
	G-8288, et al	10/1/64	Southern Natural Gas Company
	G-8288, et al	10/1/64	Tennessee Gas Pipeline Company
	G-8288, et al	10/1/64	Trunkline Gas Company
	G-8288, et al	10/1/64	United Gas Pipe Line Company
Sunray DX Oil Co.[8]	G-6822, et al	1/29/65	Colorado Interstate Gas Company
	G-6822, et al	1/29/65	El Paso Natural Gas Company
	G-6822, et al	1/29/65	Michigan Wisconsin Pipe Line Company
	G-6822, et al	1/29/65	National Fuel Gas Supply Company
	G-6822, et al	1/29/65	Natural Gas Pipeline Company of America
	G-6822, et al	1/29/65	Northern Natural Gas Company
	G-6822, et al	1/29/65	Panhandle Eastern Pipe Line Company
	G-6822, et al	1/29/65	South Texas Gas Gathering Company
	G-6822, et al	1/29/65	Southern Union Gathering Company
	G-6822, et al	1/29/65	Tennessee Gas Pipeline Company
	G-6822, et al	1/29/65	United Gas Pipe Line Company
The Superior Oil Company	G-17706 & G-17707	12/30/65	Texas Gas Transmission Corporation
Texaco In.	G-8969, et al	12/30/63	Colorado Interstate Gas Company
	G020451, et al.	6/3/65	Lone Star Gas Company
Texas International Petroleum Company[9]	RI65-293	2/14/69	Tennessee Gas Pipeline Company
Turnbull & Zoch Drilling Co.	G-17960	7/25/66	Florida Gas Transmission Company
	RI62-543	7/25/66	
Union Texas Petroleum Co., Division of Allied Chem. Co.	RI62-91	10/26/64	United Gas Pipe Line Company
Warren Petroleum Company	G-20478	6/3/65	Lone Star Gas Company
Wilson, Alvin	RI65-374	11/22/67	Tennessee Gas Pipeline Company

[1]Formerly Pan American Petroleum Corporation.
[2]Formerly Associated Programs, Inc.
[3]Formerly The Atlantic Refining Company.
[4]Formerly Columbian Fuel Corporation.
[5]Formerly Humble Oil & Refining Company.
[6]Formerly British American Petroleum Company.
[7]Formerly Union Producing Company.
[8]Now Sun Oil Company.
[9]Formerly J. C. Trahan Drilling Contractor, Inc.

[FR Doc. 78-35627 Filed 12-26-78; 8:45 am]

[6450-01-M]

Office of Assistant Secretary for International Affairs

PEACEFUL USES OF ATOMIC ENERGY

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "Subsequent Arrangement" under the Agreement for Cooperation Between the United States and Switzerland: Atomic Energy for Civil Uses and the Additional Agreement for Cooperation Between the United States and the European Atomic Energy. Community (Euratom) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves the shipment of spent enriched uranium/aluminum alloy fuels from Europe to the DOE Savannah River facility for reprocessing and storage of recovered uranium. Spent fuel will be returned from the following research reactors:

Reactor and location	Kgs of spent fuel
RHF France	110
BR2 Belgium	36.2
Triton France	16.6
Osiris and EL3 France	170
Pegase France	17.5
Siloe France	132.5
DR2 and DR3 Denmark	35
Ulysee Switzerland	5.4
Minerve France	10
Cabri France	10
Melusine France	10
Saphir France	10

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the subsequent arrangement will not be inimical to the common defense and security of the United States. This arrangement for returning U.S.-origin highly enriched uranium (HEU) to the U.S. is consistent with U.S. non-proliferation policy in that it serves to reduce the amount of HEU abroad.

The subsequent arrangement will take effect no sooner than January 11, 1979.

Dated: December 20, 1978.

For the Department of Energy.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs Internal Programs.

[FR Doc. 78-35918 Filed 12-26-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1030-3; OPP-180172D]

MISSISSIPPI AUTHORITY FOR THE CONTROL OF FIRE ANTS

Proposed Emergency Exemption for Use of Ferriamicide To Control Fire Ants; Extension of Additional Comment Period

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

ACTION: Proposed Emergency Exemptions; Extension of Additional Comment Period.

SUMMARY: EPA is providing a second additional formal opportunity for public comment on a proposed emergency exemption to permit the use of the pesticide Ferriamicide to control fire ants in Mississippi. Notice of the first opportunity for additional formal public comment was published in the FEDERAL REGISTER of October 17, 1978 at page 47774.

DATE: Comments on Mississippi's application are due by January 3, 1979.

ADDRESS: Send comments to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401-East Tower, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy A. Gardner, Product Manager 15 (PM-15), Registration Division, (TS-767), Office of Pesticide Programs, EPA, Room 229-East Tower, telephone (202) 426-9426.

SUPPLEMENTARY INFORMATION: A complete statement of the background relating to EPA's decision to permit additional public comment on the application of the Mississippi Authority for the Control of Fire Ants to use the pesticide Ferriamicide to control fire ants in Mississippi appears in the October 17, 1978 edition of the FEDERAL REGISTER (43 FR 47774). As stated in that notice, EPA's position is that emergency exemptions under § 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are not subject to the notice and comment provisions of 5 U.S.C. § 553. The Agency, however, provided an additional formal comment period on the Mississippi Authority's application.

The additional comment period closed on October 27, 1978. Since that date additional information has been brought to the Agency's attention, and the Agency has decided to provide a second additional opportunity for formal comment. The additional information which has been received has been placed in the public file on this matter, which is located in Room 229-E, 401 M Street, S.W., Washington, D.C. The public file may be inspected during normal business hours.

Any additional comments which interested persons desire to submit on the information in the public file or any other relevant subject must be submitted by January 3, 1979.

Dated: December 21, 1978.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 78-36023 Filed 12-26-78; 8:45 am]

[6560-01-M]

[FRL 1028-8; OPP-66048]

PESTICIDE PROGRAMS

Intent To Cancel Registrations of Certain Pesticide Products

Pursuant to section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), firms listed below have requested that the Environmental Protection Agency (EPA) cancel the registrations of several pesticide products. Such cancellation shall be effective on or before January 26, 1979, unless the registrant or an interested person with the concurrence of the registrant, requests that the registration be continued in effect.

The Agency has determined that the distribution and sale of stocks of these products which were produced on or before the effective date of cancellation would not be inconsistent with the purposes of FIFRA and would not have an unreasonable adverse effect on the environment. Therefore, the distribution and sale of existing stocks of these products shall be permitted until the supply is exhausted or for one year after the effective date of cancellation, whichever occurs earlier, provided that these products shall be used only in a manner consistent with the label and labeling registered with EPA. Production of these products after the effective date of cancellation will be considered a violation of FIFRA.

Requests that the registration of these products be continued may be submitted to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW., Washington, D.C. 20460. Any comments filed regarding this notice of intended cancellation will be available for public inspection in the office of the Process Coordination Branch from 8:30 a.m. to 4:00 p.m. Monday through Friday.

The registrants concerned and the products affected by this action are listed below.

Dated: December 15, 1978.

JAMES M. CONLON,
Deputy Assistant Administrator for Pesticide Programs.

EPA Reg. No.	Product name	Registrant
407-336	Imperial Weed & Grass Killer No. 2	Imperial Chem. Co., PO Box 423, Shenandoah, IA 51601.
407-337	Imperial Weed & Grass Killer No. 1	Do.
464-172	Erbon-4 Nonselective Herbicide	Dow Chemical Co., PO Box 1706, Midland, MI 48640.
464-197	Novon Concentrate	Do.
464-255	Novege Weed & Grass Killer	Do.
464-335	Erbon R Herbicide	Do.
539-149	Sears Grass & Weed Killer	Sears, Roebuck & Co., Sears Tower Dept. 766, Chicago, IL 60684.
539-254	Sears Liquid Edger	Do.
677-242	Swedish Refined White Arsenic Powder.	Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114.
869-61	Green Light Liquid Edger	Green Light Co., PO Box 17985, San Antonio, TX 78217.
869-107	Green Light Com-Pleet	Do.
3417-18	Pala Bleachit	Mission Chemical Co., 4900 Naples St., at Morena Blvd., San Diego, CA 92110.
5135-18	UOP M-90 Algaecide	Water Services Division, Universal Oil Products Co., 700 South Flower St., Burbank, CA 91502.
6459-2	Fluorakil 100	Fellers, Snider, Blankenship, Bailey & Tippens, 2700 First National Center, Oklahoma City, OK 73102.
7393-42	Wonder Gard Edge or Trim Grass & Weed Killer Contains Erbon.	Wonder Chemical Co., PO Box 17988, San Antonio, TX 78217.
8330-3	Scalina #17 White Emulsion Bowl Cleaner.	International Specialty Products, Inc., 2050 North Loop West, Houston, TX 77018.

EPA Reg. No.	Product name	Registrant
34782-2	Ethylene Oxide & Carbon Dioxide Sterling Gas Mixture.	Big Three Industries, Inc., PO Box 3047, Houston, TX 77001.
34782-3	Ethylene Oxide and Dichlorodifluoromethane Mixture.	Do.
34782-4	Ethylene Oxide and Carbon Dioxide Sterilizing Gas Mixture.	Do.

[FR Doc. 78-35702 Filed 12-26-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-870]

EMERGENCY BROADCAST SYSTEM

DECEMBER 21, 1978.

Closed Circuit Test Scheduled for January 9, 1979

A test of the Emergency Broadcast System (EBS) has been scheduled for Tuesday, January 9, 1979 between 2:03:30 and 2:09:30 P.M. Washington, D.C. (EST) time. Only ABC, AP Radio, CBS, IMN, MBS, NBC, and UPI Audio radio network Affiliates will receive the Test Program for the Closed Circuit Test. AP and UPI wire service clients will receive activation and termination messages of the Closed Circuit Test. Television networks are not participating in the Test.

Network affiliates will be notified of the test procedures via their network beginning four days in advance of the test. Test messages will also be run by AP and UPI radio press wire services for four days in advance of the test to insure wide dissemination of the test announcement and schedule.

Final evaluation of the January test is scheduled to be made by the end of February, 1979.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR.

Action by the Commission December 20, 1978. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, White and Brown.

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-35962 Filed 12-26-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

NORTHWEST FINANCIAL CORP.

Formation of Bank Holding Company

Northwest Financial Corporation, Fort Worth, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90 per cent or more of the voting shares of Northwest Bank, Fort Worth, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 16, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 18, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35928 Filed 12-26-78; 8:45 am]

[6210-01-M]

OLD STONE CORP.

Proposed Acquisition of DAC Corporation

Old Stone Corporation, Providence, Rhode Island, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire through its wholly-owned subsidiary, Old Stone Financial Corporation, the voting shares of DAC Corporation, Jacksonville, Florida. DAC has branch offices in Jacksonville, Clearwater, Daytona Beach, Fort Lauderdale, Lakeland, Melbourne, Ocala, Orlando, Pensacola, Tallahassee and Tampa, all in the State of Florida; and in Atlanta, Georgia. Notices of the application were published in newspapers of general circulation in the communications to be served between November 25 and November 30, 1978, except for the Providence, Rhode Island publication which was made on December 18, 1978. Publications were made in Jacksonville, St. Petersburg, Daytona Beach, Fort Lauderdale, Lakeland, Coco Beach, Ocala, Orlando, Pensacola, Tallahassee, and Tampa, all in the State of Florida; in Atlanta, Georgia; and in Providence, Rhode Island.

Applicant states it will engage in the following activities: through DAC Corporation, in the origination for resale of first and second mortgages, and the servicing of such loans; through DAC Computer Services, Inc., providing data processing services for DAC Corporation and its affiliates, and data processing of financial and economic data for the general public; through American Standard Insurance Agency, Inc., Old Stone would act as agent for the sale of credit-related life, and credit-related health and accident insurance; through The Motor Life Insurance Co., Old Stone would engage in underwriting as reinsurer of credit-related life and credit-related accident and health insurance. Old Stone Corporation proposes to engage *de novo*, through DAC, in consumer finance activities. Such activities have been specified by the Board in section 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 section 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 competition or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, 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 Boston.

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 January 20, 1979.

Board of Governors of the Federal Reserve System, December 20, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35929 Filed 12-26-78; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Educaton.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Sec. 10(a)(2)).

DATE: January 25, 1979, 8:00 p.m. to 10:00 p.m., Executive Committee Meeting; January 26, 1979, 8:30 a.m. to 5:00 p.m.; January 27, 1979, 8:30 a.m. to 1:30 p.m.

ADDRESS: The Hotel Washington, 15th at Pennsylvania Ave., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., N.W., Washington, D.C. 20004 (202/376-8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes:

Program Assessment—the Council's 311(d) Project, and the HEW 1979 RFP.
Proposed Rule Making and NOI Hearings.
Supplemental Appropriations—Adult Education Act.
National Program and Financial Report Forms.
Community Schools and Comprehensive Community Education Act of 1978.
NACAE Committee Reports.
Annual Report.

Records shall be kept of all council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C., on December 21, 1978.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc. 78-36038 Filed 12-26-78; 8:45 am]

[4110-85-M]

Office of the Assistant Secretary for Health

HEALTH MAINTENANCE ORGANIZATIONS

Qualified October List

AGENCY: Public Health Service, HEW.

ACTION: Notice, October list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be qualified health maintenance organizations. In addition, the service area of a previously qualified HMO has been revised and a preoperational qualification date for a certain HMO is corrected. This additional information follows the listing of this month's qualified HMOs.

FOR FURTHER INFORMATION CONTACT:

Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, Third floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the FEDERAL REGISTER. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Name, address, service area, and date of qualification.

(Preoperational Qualified Health Maintenance Organization: 42 CFR 110.603(c)).

1. The Toledo Plan/dba Health Plus, (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 4346 Secor Road, Suite 105, Toledo, Ohio 43623. Service area: Lucas County, Perrysburg and Rossford in Wood County and the following zip codes in Ohio: 43601-43624, 43460, 43551, 43566, 43571, 43465, 43558, 43528, 43504, 43560, 43537, and 43542.

Date of qualification: October 31, 1978.

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a)).

1. Community Health Plan of Suffolk, Inc., (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), P.O. Box 778, Stony Brook, New York 11790. Service area: Towns of Babylon, Brookhaven, Huntington, Islip, and Smithtown, and the following zip codes in Eastern Nausau: 11701, 11714, 11724, 11735, 11758, 11762, 11791, 11797, 11803, and 11804.

Date of qualification: October 4, 1978.

2. CoMED Inc. (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 33 Market Street, Morristown, New Jersey 07960. Service area: Counties of Morris, Passiac, Somerset, Sussex, and Warren, New Jersey. Date of qualification: October 27, 1978. (Achieved preoperational qualification on October 6, 1978.)

3. Greater Delaware Valley Health Care, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), Suite 115, Two Radnor Corporate Center, 100 Matsonford Road, Radnor, Pennsylvania 19087. Service area: Delaware County and zip codes in the following counties:

Chester County: 19301, 19312, 19333, 19341, 19342, 19345, 19353, 19355, and 19373.
Montgomery County: 19003, 19004, 19010, 19035, 19041, 19065, 19066, 19072, 19087, and 19096.
Philadelphia County: 19104, 19113, 19131, 19139, 19142, 19143, 19151, and 19153.

Date of qualification: October 30, 1978.

4. Los Padres Group Health (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), P.O. Box 1767, San Luis Obispo, California 93406. Service area: San Luis Obispo County, California. Date of qualification: October 1, 1978. (Achieved preoperational qualification on September 21, 1978 (43 FR 53502.)

(Transitionally Qualified Health Maintenance Organization: 42 CFR 110.603(b))

1. Metro Health Plan, Inc., (Medical Group Model, see Section 1310(b)(1) of the Public Health Service Act), 2921 West Grand Boulevard, Detroit, Michigan 48202. Service area: Counties of Wayne, Oakland, and Macomb, Michigan. Date of qualification: October 17, 1978.

REVISED SERVICE AREA

A service area listed in the annual cummulative list of qulified HMOs and published on April 7, 1978, in the FEDERAL REGISTER (43 FR 14908-13) is revised as follows:

1. Cehtral Essex Health Plan, P.O. Box 371, Orange, New Jersey 07051. Service area:

Change from: Essex County communities of: Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, North Cald-

well, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell, and West Orange.

Change to: Essex County communities of: Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, North Caldwell, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell, West Orange, and the following zip codes in Newark: 07102, 07103, 07104, 07105, 07106, 07107, 07108, 07109, 07110, 07111, 07112, and 07114.

Date revised service area approved—November 1, 1978. Date of qualification: Operationally qualified—January 1, 1977.

HMO PREOPERATIONAL DESIGNATION—CORRECTION

In the August list of qualified HMOs (43 FR 49854-6) a preoperational qualification date was inadvertently listed as August 2, 1978. It should have been August 3 for the following:

Prepaid Health Care, Inc., 1417 South Belcher Road, Clearwater, Florida 33516.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3rd Floor, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified HMOs should be sent to the same office.

Dated: December 18, 1978.

HOWARD R. VEIT,
Director, Office of Health Maintenance Organizations.

[FR Doc. 35892 Filed 12-26-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6661-A, B, C, H]

ALASKA

Alaska Native Claims Selection

On August 20, 1973, as amended, April 23, 1974, as amended, July 17, 1974, as amended and December 13, 1974, as amended, Eklutna, Inc. filed selection applications AA-6661-A, B, C and H, respectively, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), (hereinafter ANCSA), for the surface estate of lands located in the Eklutna area.

The village applications described lands withdrawn by Secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) of the act, *supra.*, specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that have been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)). Section 26 of ANCSA further provides that to the extent that there is a conflict between any provisions of that act and any other Federal laws applicable to Alaska, the provisions of ANCSA shall govern. Therefore, in view of the above, the following State selection applications are hereby rejected as to the lands described below:

State selection A-061179 filed on March 19, 1964, as amended.

T. 15 N., R. 1 W., Seward Meridian, Alaska
Sec. 5, lots 15 and 16;
Sec. 6, lots 1, 3, 4, 5 and 6, SE¼NE¼ SE¼, N½SE¼ SE¼, SW¼SE¼ SE¼, that portion of SE¼SE¼ SE¼ lying northwesterly of PLO 3577;
Sec. 30, NW¼NE¼ NW¼SW¼, NW¼SE¼ NW¼SW¼.

Containing approximately 130.75 acres.

State selection A-061777 filed on October 26, 1964, as amended.

T. 14 N., R. 2 W., Seward Meridian, Alaska
Sec. 2, lot 2, SW¼NE¼, W½SE¼;
Sec. 11, lots 8, 43, 46, 49, 56, 58, 59, 88 and 89;
Sec. 12, lots 5 and 6.

Containing approximately 175.37 acres.

State selection A-055409, filed under the Act of July 28, 1956, on August 22, 1961, as amended, is rejected as to the following lands. These lands were segregated from selection at the time of filing by an application for withdrawal A-054173 (43 CFR 2091.2-5) and therefore were not available for selection by the State of Alaska.

T. 16 N., R. 1 W., Seward Meridian, Alaska
Sec. 23, lots 3 and 4;
Sec. 26, NW¼, N½SW¼, excluding the bed of the Alaska Railroad, one hundred (100) feet each side of the centerline.

Containing approximately 309.51 acres.

In addition, the State of Alaska amended selection A-061777 on June 16, 1972 to include additional public lands. These lands were withdrawn for Native selection by Sec. 11(a)(1) of ANCSA at that time and therefore were not available for selection by the State of Alaska. In view of this, these selections are hereby rejected as to the following described lands:

T. 14 N., R. 2 W., Seward Meridian, Alaska
Sec. 11, lots 9, 22, 23, 24 and 36.

Containing 7.98 acres.

The selection applications of Eklutna, Inc. as to the lands described below are properly filed and meet the requirements of the 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 is considered proper for acquisition by Eklutna, Inc., and is hereby approved for conveyance pursuant to sec. 14(a) of the act:

SEWARD MERIDIAN, ALASKA, SURVEYED

T. 14 N., R. 1 W.
Sec. 5, N½SW¼ NW¼, E½SW¼ SW¼NW¼, SE¼SW¼ NW¼.

Containing 35.00 acres.

T. 15 N., R. 1W.
Sec. 5, lots 15 and 16;
Sec. 6, lots 1, 3, 4, 5 and 6, SE¼NE¼ SE¼, N½SE¼ SE¼, SW¼SE¼ SE¼;
Sec. 30, NW¼NE¼ NW¼SW¼, NW¼SE¼ NW¼SW¼.

Containing 122.75 acres.

T. 16 N., R. 1 W.
Sec. 23, lots 3 and 4;
Sec. 26, NW¼.

Containing 230.51 acres.

T. 14 N., R. 2 W.
Sec. 2, lot 2, SW¼NE¼, W½SE¼;
Sec. 11, lots 8, 9, 22, 23, 24, 36, 43, 46, 49, 56, 58, 59, 88 and 89;
Sec. 12, lots 5 and 6.

Containing 183.35 acres.

T. 16 N., R. 1 E.
Sec. 20, lot 3, N½SW¼ NW¼.

Containing 51.42 acres.

SEWARD MERIDIAN, ALASKA, UNSURVEYED

T. 15 N., R. 1 W.
Sec. 6, that portion of SE¼SE¼SE¼ LYING NORTHWESTERLY OF PLO 3577.

Containing approximately 8.00 acres.

T. 16 N., R. 1 W.
Sec. 26, N½SW¼, excluding the bed of the Alaska Railroad, one hundred (100) feet each side of the centerline.

Containing approximately 78 acres.

T. 16 N., R. 1 E.
Sec. 13, S½S½ and that portion of S½N½SE¼ SOUTH OF THE OLD GLENN HIGHWAY RIGHT-OF-WAY;
Sec. 20, S½SW¼ NW¼, EXCLUDING THE BED OF THE ALASKA RAILROAD, ONE HUNDRED (100) FEET EACH SIDE OF THE CENTERLINE.

Containing approximately 189.30 acres.

T. 16 N., R. 2 E.
Sec. 18, SW¼SW¼ and that portion of NW¼SW¼ south of the old Glenn Highway right-of-way.

Containing approximately 49.6 acres.

This decision approves conveyance of approximately 947.93 acres to Eklutna, Inc. This includes approximately 306.12 acres properly selected by the State of Alaska, making a cumulative total of 3,227.68 acres which does not exceed the 69,120 acres permitted under Sec. 12(a)(1) of ANCSA.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. 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 (Supp. V, 1975));

2. A right-of-way, AA-2559, for a Federal Aid Highway located in lot 2, SW¼NE¼ and W½SE¼ of Sec. 2 and lots 43 and 49 of Sec. 11, T. 14 N., R. 2 W., Seward Meridian. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317);

3. A right-of-way, AA-9101, for a Federal Aid Highway located in lots 23, 24, 36, 46, 56, and 59 of Sec. 11, T. 14 N., R. 2 W., Seward Meridian. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317);

4. A right-of-way, A-062126, for a Federal Aid Highway located in lots 46, 56 and 59 of Sec. 11, T. 14 N., R. 2 W., Seward Meridian. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317);

5. A right-of-way, AA-8095 Parcel 41, located in the SW¼NW¼ of Sec. 20, T. 16 N., R. 1 E., Seward Meridian, for a Federal Aid Highway. Act of August 27, 1958, as amended (72 Stat. 885; 23 U.S.C. 317);

6. The right to itself, its permittees or licensees; the right to enter upon, occupy and use, any part or all of that portion lying within fifty (50) feet of the centerline of the transmission line right-of-way of Power Project No. 350, located in the N½SW¼ of Sec. 26, T. 16 N., R. 1 W., Seward Meridian, for the purposes set forth in and subject to the conditions and limitations of Sec. 24 of the Federal Power Act of June 10, 1928, as amended (41 Stat. 1075; 16 U.S.C. 818);

7. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616 (Supp. V, 1975)), the following public easements referenced by easement identification number (EIN) on the easement maps in case file AA-6661-EE are reserved to the United States and subject to further regulation thereby:

a. (EIN 3 C1, D1, D9, L) An easement for an historic access trail twenty-five (25) feet in width for the Iditarod Trail as it crosses the selected lands. The alignment of this trail is within the right-of-way for the old Glenn Highway. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

b. (EIN 50 C, D) A continuous linear easement twenty-five (25) feet in width upland of an 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 servient 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.

c. (EIN 52 C) The right of the United States to enter upon the lands herein granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

d. (EIN 56 C4) An easement seventy-five (75) feet in width (37½ feet each side of the centerline) for an existing 115KV power transmission line from the Eklutna power plant southerly to the Anchorage substation and traversing Lot 2, Sec. 2, T. 14 N., R. 2 W., Seward Meridian, S½S½, Sec. 13, T. 16 N., R. 1 E., Seward Meridian and SW¼SW¼, Sec. 18, T. 16 N., R. 2 E., Seward Meridian. The usage will be controlled by applicable State of Federal law or regulation.

e. (EIN 57 C4) An easement one hundred (100) feet in width for an existing road, known as the old Palmer highway, within lot 58, Sec. 11, and lots 5 and 6, Sec. 12, T. 14 N., R. 2 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

f. (EIN 58 C4) An easement one hundred fifty (150) feet in width for the existing Glenn Highway in lots 88 and 89, Sec. 11, T. 14 N., R. 2 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978 and published as final rulemaking on November 27, 1978, 43 FR 55326. Conformance will be made at a later date in accordance with the terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Eklutna, Inc. and other Cook Inlet village corporations.

The grant of lands shall be subject to:

1. Issuance of patent confirming the boundary description of the unsurveyed 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 Sec. 6(g) of the Alaska Statehood Act (72 Stat. 339, 341, 48 U.S.C. 111719, 111720)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 703; 43 U.S.C. 1601, 1613 (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. Airport Lease, AA-8578 for the Birchwood Airport, located in Sec. 6, T. 15 N., R. 1 W., Seward Meridian, Alaska, issued to the State of Alaska, Division of Aviation, under the provisions of the Act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970));

5. Recreation and Public Purposes Lease, A-050749, containing approximately 7.98 acres, located in lots 9, 22, 23, 24 and 36, Sec. 11 of T. 14 N., R. 2 W., Seward Meridian, issued to the Anchorage School District under the provisions of the Act of June 14, 1926 (43 U.S.C. 869, 869-4);

6. A right-of-way, AA-8922, one hundred (100) feet wide, (50 feet each side of the centerline) located in the SW¼NW¼ of Sec. 20, T. 16 N., R. 1 E., Seward Meridian, for a transmission line for the Chugach Electric Association, Inc. issued pursuant to the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961);

7. A right-of-way, A-050466, located in the N½SW¼ of Sec. 26, T. 16 N., R. 1 W., Seward Meridian, fifty (50) feet each side of the centerline, for a transmission line for the Matanuska Electric Association, Inc. issued pursuant to the Act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959);

8. A right-of-way, A-054419, one hundred (100) feet wide, (50 feet each side of the centerline) located in the SW¼SE¼ of Sec. 2, T. 14 N., R. 2 W., Seward Meridian, for a transmission line for the Matanuska Electric Association, Inc. issued pursuant to the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959);

9. A right-of-way, A-021429, ten (10) feet each side of the centerline, located in lots 8, 9, 43, 46 and 49 in Sec. 11, T. 14 N., R. 2 W., Seward Meridian; lot 5, Sec. 12, T. 14 N., R. 2 W., Seward Meridian, for an electrical distribution line for the Matanuska Electric Association, Inc. issued pursuant to the Act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959);

10. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Eklutna, Inc. and other Cook Inlet village corporations. A copy of the agreement was recorded in the Anchorage Recording Office on October 25, 1977, Book 240, pages 0741-0753 and in the Palmer Recording Office on September 28, 1977, Book 149, pages 460-472. A copy of the agreement is located in the Bureau of Land Management easement case file for Eklutna, Inc., serialized AA-6661-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 55 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

There is excepted and reserved any element of ownership from the lands in the S½ of Sec. 13, SW¼NW¼ Sec. 20, T. 16 N., R. 1 E., Seward Meridian, the SW¼ of Sec. 18, T. 16 N., R. 2 E., Seward Meridian, Lots 88 and 89, Sec. 11, T. 14 N., R. 2 W., Seward Meridian, including but not restricted to any estate or interest in property, or permit, or other right, transferred by the United States pursuant to the Alaska Communications Disposal Act approved November 14, 1967 (81 Stat. 441-444; 40 U.S.C. 771-792).

There are no inland water bodies considered to be navigable within the lands described.

Conveyance of the remaining entitlement to Eklutna, Inc., shall be made at a later date. When conveyance is granted to Eklutna, Inc., for the surface estate conveyance of the subsurface estate of the lands described above shall be granted to Cook Inlet Region, Inc., pursuant to Sec. 14(f) of ANCSA, and shall be subject to the same conditions as the surface conveyance.

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 ANCHORAGE TIMES. 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 2344, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 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 by mail 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 January 26, 1979 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 Alaska Native Claims Appeal Board.

4. If Eklutna, Inc. or Cook Inlet Region, Inc. objects to any easement which is identified herein for reservation in the conveyance which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. For further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is taken the adverse parties to be served are:

Eklutna, Inc., 840 K Street, Suite 202, Anchorage, Alaska 99501
Cook Inlet Region, Inc., P.O. Box 4-N, Anchorage, Alaska 99509
State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501

JUDITH A. KAMMINS,
Chief, Division of ANCSA Operations.

[FR Doc. 78-35919 Filed 12-26-78; 8:45 am]

[4310-84-M]

[AA-8446-A and AA-8446-B]

ALASKA

Native Claims Selection

DECEMBER 13, 1978.

On November 26, 1974, The Chenega Corporation for the Native village of Chenega, filed selection applications AA-8446-A and AA-8446-B, respectively, as amended, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (Supp. V, 1975)), for the surface estate of certain lands in the Chenega area, including lands within the Chugach National Forest (Proclamation, July 23, 1907, as amended).

The Native village of Chenega was not one of those listed in Sec. 11(b)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 697; 43 U.S.C. 1601, 1610(b)(1) (Supp. V, 1975)) as eligible for lands and benefits, however, Sec. 11(b)(3) of the act provides that:

Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this Act and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from the date of enactment of this Act, determines that—

(A) Twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) The village is not of a modern and urban character, and a majority of the residents are Natives.

On August 27, 1973, the village of Chenega filed an application for a determination of its eligibility as an unlisted village pursuant to Sec. 11(b)(3) of the Alaska Native Claims Settlement Act (85 Stat. 688, 700; 43 U.S.C. 1601, 1610(b)(3) (Supp. V, 1975)). The decision to declare Chenega an eligible village was published in the FEDERAL REGISTER on February 26, 1974 (39 FR 7468 (1974)). An appeal was filed; the Alaska Native Claims Appeal Board affirmed the eligibility of the village of Chenega on September 10, 1974, which was subsequently approved by the Secretary of the Interior on September 24, 1974. The village of Chenega thus is eligible for land and benefits under the Alaska Native Claims Settlement Act. Withdrawal of lands, pursuant to Sec. 11(a) of the Act, was effected through Public Land Order No. 5353, dated July 23, 1973 (F.R. Vol. 3, Pg. 19825).

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulationns 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.

This decision approves approximately 65,263 acres of national forest lands for conveyance to The Chenega Corporation, for a cumulative total of approximately 65,263 acres. This does not exceed the 69,120 acres permitted under Sec. 12(a)(1).

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 66,661.21 acres, is considered proper for acquisition by The Chenega Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

LANDS OUTSIDE CHUGACH NATIONAL FOREST

U.S. Survey No. 1728, situated on the east side of Evans Island, north shore of Evans Bay, Prince William Sound, Alaska.

Containing 3.87 acres.

U.S. Survey No. 2019, situated on Chenega Island, Prince William Sound, Alaska.

Containing 0.34 acre.

That portion of Mineral Survey No. 888, known as the Victor-West Hillside-Hillside-South Hillside and Blue Lode Claims, in Valdez Mining District, Alaska, lying within Sec. 33, T. 1 S., R. 9 E., Seward Meridian.

Containing approximately 15 acres.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 2 N., R. 8 E.
Secs. 3, 4, and 5, those portions lying outside Chugach National Forest;
Sec. 8 (fractional), that portion lying outside Chugach National Forest;
Sec. 9 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey Nos. 2019 and 627;
Sec. 10 (fractional), that portion lying outside Chugach National Forest;
Sec. 16 (fractional), all.

Containing approximately 1,207 acres.

T. 1 S., R. 9 E.
Sec. 27 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey No. 712 and Mineral Survey No. 782;
Sec. 33 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey Nos. 712 and 713 and Mineral Survey Nos. 584, 782 and 888;
Sec. 34 (fractional), that portion lying outside Chugach National Forest, excluding U.S. Survey Nos. 712 and 713 and Mineral Survey Nos. 584, 782 and 970.

Containing approximately 172 acres.

Aggregating approximately 1,398.21 acres outside Chugach National Forest.

LANDS WITHIN CHUGACH NATIONAL FOREST

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 2 N. R. 7 E.
Sec. 1 (fractional), all.

Containing approximately 55 acres.

T. 3 N., R. 7 E.
Sec. 1 (fractional), all;
Secs. 2, 3, and 4, all;
Secs. 9 and 10 (fractional), all;
Secs. 11 and 12, all;
Secs. 13 to 16 (fractional), inclusive, all;
Secs. 22 to 25 (fractional), inclusive, all;
Sec 36 (fractional), all.

Containing approximately 7,303 acres.

T. 4 N., R. 7 E.
Secs. 12 and 13, all;
Secs. 23 and 24, all;
Sec. 25 (fractional), all;
Sec. 26, all;
Secs. 33, 34 and 35, all;
Sec. 36 (fractional), all.

Containing approximately 6,052 acres.

T. 1 N., R. 8 E.
Sec. 11 (fractional), all;
Secs. 14 and 15 (fractional), all;
Secs. 22 to 27 (fractional), inclusive, all;
Sec. 36 (fractional), all.

Containing approximately 2,490 acres.

T. 2 N., R. 8 E.
Sec. 2 (fractional), all;
Secs. 3 and 4, those portions lying within Chugach National Forest;
Sec. 5 (fractional), that portion lying within Chugach National Forest;
Secs. 6 and 7 (fractional), all;
Sec. 8 (fractional), that portion lying within Chugach National Forest;
Sec. 10 (fractional), that portion lying within Chugach National Forest;
Sec. 11 (fractional), all;
Sec. 26 (fractional), excluding ANCSA Sec. 3(e) application AA-14423;
Secs. 30, 31, and 32 (fractional), all;
Sec. 35 (fractional), excluding ANCSA Sec. 3(e) application AA-14423.

Containing approximately 3,419 acres.

T. 3 N., R. 8. E.
Secs. 1 to 20 (fractional), inclusive, all;
Secs. 21 and 22, all;
Sec. 23 (fractional), all;
Sec. 26 (fractional), all;
Secs. 27, 28 and 29 all;
Sec. 30 (fractional), all;
Secs. 31 to 34, inclusive, all;
Sec. 35 (fractional), all;

Containing approximately 13,108 acres.

T. 4 N., R. 8 E.
Secs. 1 to 5 (fractional), inclusive, all;
Sec. 7, all;
Secs. 8 to 14 (fractional), inclusive, all;
Secs. 15 to 19, inclusive, all;
Sec. 20 (fractional), all;
Secs. 21 and 22, all;
Secs. 23 to 26 (fractional), inclusive, all;
Sec. 27, all;
Secs. 28 and 29 (fractional), all;
Sec. 30, all;
Secs. 31 to 36 (fractional), inclusive, all;

Containing approximately 16,118 acres.

T. 1 N., R. 9 E.
Sec. 1 (fractional), excluding U.S. Survey No. 2496;
Sec. 2 (fractional), all;
Secs. 11 to 14 (fractional), inclusive, all;
Sec. 19 (fractional), all;
Sec. 24 (fractional), all;
Secs. 30 to 33 (fractional), inclusive, all;

Containing approximately 2,133 acres.

T. 4 N., R. 9 E.
Secs. 6 and 7 (fractional), all;
Secs. 17, 18 and 19 (fractional), all;

Containing approximately 1,417 acres.

T. 1 N., R. 10 E.
Secs. 6 and 7 (fractional), all;
Sec. 18 (fractional), all;
Sec. 19 (fractional), excluding U.S. Survey No. 1639.

Containing approximately 2,104 acres.

T. 1 S., R. 8 E.
Sec. 1 (fractional), all;
Sec. 12 (fractional), all;
Sec. 13, all;
Secs. 24 and 25 (fractional), all;
Sec. 26 (fractional), excluding U.S. Survey No 1728.

Containing approximately 2,070 acres.

T. 1 S., R. 9 E.

Secs. 3 to 7 (fractional), inclusive, all;
Secs. 8 and 9 all;
Sec. 10 (fractional), all;
Secs. 16 and 17 (fractional), all;
Sec. 18, all;
Secs. 19 and 20 (fractional), all;
Secs. 22 to 26 (fractional), inclusive, all;
Sec. 27 (fractional), that portion lying within Chugach National Forest;
Sec. 30 (fractional), all;
Sec. 33 (fractional), that portion lying within Chugach National Forest;
Sec. 34, that portion lying within Chugach National Forest, excluding Mineral Survey No 970;
Sec. 35, all;
Sec. 36 (fractional), all;

Containing approximately 8,994 acres.

Aggregating approximately 65,263 acres within Chugach National Forest.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. 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

2. Pursuant to Sec. 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 AA-84460EE, are reserved to the United States and subject to further regulation thereby:

a. (EIN 1 D9) A site easement upland of the ordinary high water mark in Sec. 20, T. 4 N., R. 8 E., Seward Meridian, on the southeast shore of Eshamy Lake. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The specific location of the site will be at a point mutually agreeable to The Chenega Corp. and the U.S. Forest Service. The site is for camping, staging and vehicle use.

b. (EIN 1b D9 L) A site easement upland of the ordinary high water mark in Sec. 7, T. 4 N., R. 8 E., Seward Meridian, on the north shore of Eshamy Lake. The site is one (1) acre in size with a twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

c. (EIN 1c D9 L) A site easement upland of the ordinary high water mark in Sec. 12, T. 4 N., R. 7 E., Seward Meridian, on the west shore of Eshamy Lake. The site is one (1) acre in size with a twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

d. (EIN 2 L) A site easement upland of the ordinary high water mark in Sec. 8, T. 4 N., R. 8 E., Seward Meridian, on the east shore of Eshamy Lake. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

e. (EIN 2a D9 L) A two (2) acre fishery management easement upland of the mean high tide line in Sec. 8, T. 4 N., R. 8 E., Seward Meridian, at the mouth of Eshamy Creek. The easement is used by the Alaska Department of Fish and Game, Commercial Fish Division, for fishery management purposes.

f. (EIN 2b D9 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 Eshamy Creek from Eshamy Lake to Eshamy Lagoon. Purpose is to provide for public use of waters having highly significant present recreational use.

g. (EIN 2c L) An easement for a proposed access trail twenty-five (25) feet in width along the south bank of Eshamy Creek from Eshamy Lake to Eshamy Lagoon and to site EIN 3 D9 L. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

h. (EIN 3 D9 L) A one (1) acre site easement upland of the mean high tide line in Sec. 8, T. 4 N., R. 8 E., Seward Meridian, on the south shore of Eshamy Lagoon. The site is for camping, staging and vehicle use.

i. (EIN 4d D9 L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the outlet of a lake in Sec. 33, T. 4 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet downstream from the lake and five hundred (500) feet along the lake shore on each side of the outlet. Additionally, there is an easement on the entire bed of the stream and twenty-five (25) feet on the bed of the lake along the entire waterfront of the linear site easement.

j. (EIN 4e D9 L) A site easement upland of the ordinary high water mark at the inlet of a lake in Sec. 34, T. 4 N., R. 7 E., Seward Meridian. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging and vehicle use.

k. (EIN 4j D9 L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the inlet of a lake in Secs. 33 and 34, T. 4 N., R. 7 E., Seward Meridian, The easement extends, on all banks, one thousand (1,000) feet upstream from the lake and five hundred (500) feet along the lake shore on each side of the inlet. Additionally, there is an easement on the entire bed of the stream and twenty-five (25) feet on the bed of the lake along the entire waterfront of the linear site easement.

l. (EIN 4k D9 L) A linear site easement twenty-five (25) feet in width upland of an

parallel to the ordinary high water mark at the outlet of a lake in Sec. 3, T. 3 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet downstream from the lake and five hundred (500) feet along the lake shore on each side of the outlet. Additionally, there is an easement on the entire bed of the stream and twenty-five (25) feet on the bed of the lake along the entire waterfront of the linear site easement.

m. (EIN 41 D9 L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the inlet of a lake in Sec. 4, T. 3 N., R. 7 E., Seward Meridian. The easement extends, on all banks, one thousand (1,000) feet upstream from the lake and one thousand (1,000) feet along the lake shore on each side of the stream. Additionally, there is an easement on the entire bed of the stream.

n. (EIN 11 L) A one (1) acre site easement upland of the mean high tide line in Sec. 2, T. 4 N., R. 8 E., Seward Meridian, at the narrows between Eshamy Bay and Eshamy Lagoon, The site, which encompasses the Fish and Game protection cabin, is for camping, staging and vehicle use.

o. (EIN 12 L) A one (1) acre site easement upland of the mean high tide line in Sec. 18, T. 4 N., R. 9 E., Seward Meridian, at the head of the bay west of Point Nowell on the west side of Knight Island Passage. The site is for camping, staging and vehicle use.

p. (EIN 17 L) A one (1) acre site easement upland of the mean high tide line in Sec. 31, T. 4 N., R. 8 E., Seward Meridian, on the east side of Ewan Bay. The site is for camping, staging and vehicle use.

q. (EIN 20 L) An easement for an existing access trail twenty-five (25) feet in width from the mouth of Jackpot Creek in Sec. 9, T. 3 N., R. 7 E., Seward Meridian, northeasterly along the Jackpot Creek lake system to public lands in Sec. 2, T. 4 N., R. 7 E., Seward Meridian. This trail will connect easements EIN 21 L, 21a L, 41 D9 L, 4k D9 L, 4e D9 L, 4j D9 L and 4d D9 L. The usage of roads and trails will be controlled by applicable State of Federal law or regulation.

r. (EIN 21 L) A one (1) acre site easement upland of the mean high tide line in Sec. 9, T. 3 N., R. 7 E., Seward Meridian, at the mouth of Jackpot Creek. The site is for camping, staging and vehicle use.

(EIN 21a L) A linear site easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark at the mouth of Jackpot Creek in Sec. 9, T. 3 N., R. 7 E., Seward Meridian. The easement extends, on all banks, five hundred (500) feet upstream from EIN 21 L. Additionally, there is an easement on the entire bed of the stream.

t. (EIN 27 L) A one (1) acre site easement upland of the mean high tide line in Sec. 19, T. 3 N., r. 8 E., Seward Meridian, on the west side of Chenega Island. The site is for camping, staging and vehicle use.

u. (EIN 29 L) A one (1) acre site easement upland of the mean high tide line in Sec. 23, T. 3 N., R. 8 E., Seward Meridian, on the east side of Chenega Island. The site is for camping, staging and vehicle use.

v. (EIN 31 L) A one (1) acre site easement upland of the mean high tide line in Sec. 10, T. 2 N., R. 8 E., Seward Meridian, at the head of Kake Cove. The site is for camping, staging and vehicle use.

w. (EIN 32 L) A one (1) acre site easement upland of the mean high tide line in Sec. 7, T. 2 N., R. 8 E., Seward Meridian, on the shore of the northeast arm of the bay on the south side of Chenega Island. The site is for camping, staging and vehicle use.

x. (EIN 61 D9) A one (1) acre site easement upland of the mean high tide line in Sec. 5, T. 1 S., R. 9 E., Seward Meridian, on the shore of a small cove east of Shelter Bay. The site is for camping, staging and vehicle use.

y. (EIN 62 C) 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 servient 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.

z. (EIN 63 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.

aa. (EIN 65 E) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 1c D9 L at the west end of Eshamy Lake in Sec. 12, T. 4 N., R. 7 E., Seward Meridian, westerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978 and published as final rulemaking on November 27, 1978, 43 FR 55326. Conformance will be made at a later date in accordance with the terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Chugach Natives, Inc., The Chenega Corporation and other Chugach village corporations.

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 offical 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 Sec. 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 Sec. 22(k) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 715; 43 U.S.C. 1601, 1621(k) (Supp. V, 1975)), that, as to the portion of the above-described lands located within the boundaries of a national forest (a) until December 18, 1976, the sale of any timber from such lands is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and (b) until December 18, 1983, such lands shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands;

4. The following third-party interests created and identified by the U.S. Forest Service, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(g) (Supp. V, 1975)):

a. A special use permit issued to the Alaska Department of Fish and Game on March 2, 1960, for the purpose of maintaining a cabin for watchmen and wier tender during the summer months which is located in SW¼SW¼NE¼ Sec. 8 T. 4 N., R. 8 E., Seward Meridian, at the head of Eshamy Lagoon, Prince William Sound.

b. A special use permit issued to the Department of Public Safety, Division of Fish and Wildlife Protection, on March 24, 1975, for the purpose of maintaining a stream-guard cabin which is located in SW¼NW¼SE¼ Sec. 2, T. 4 N., R. 8 E., Seward Meridian, at the entrance of Eshamy Lagoon, Prince William Sound.

c. A special use permit issued to Harold G. Hardin on April 12, 1968, for the purpose of maintaining a residence which is located in SE¼NW¼NE¼ Sec. 26, T. 1 S., R. 8 E., Seward Meridan, on Sawmill Bay, Evans Island, Prince William Sound.

d. A special use permit issued to George L. Kritchen on May 6, 1970, for the purpose of maintaining a warehouse for use in commercial fishing activities which is located in NE¼SE¼NE¼ Sec. 18, T. 4 N., R. 9 E., Seward Meridan, at Point Nowell, Prince William Sound.

e. A special use permit issued to Eleanor Mathews on April 15, 1977, for the purpose of maintaining an industrial cabin connected with the fishing industry which is located in SW¼NE¼NE¼ Sec. 2, T. 4 N., R. 8 E., Seward Meridan, north and east of the entrance to Eshamy Lagoon, Prince William Sound.

f. A special use permit issued to Robert N. and Marsha G. Patrick on December 12, 1972, for the purpose of maintaining a year-long residence to be used in connection with commercial fishing which is located in NE¼NW¼NE¼ Sec. 25, T. 1 S., R. 8 E., Seward Meridan (Lot 3, Crab Bay, Evans Island Group).

g. A special use permit issued to Ernest Lawrence and Irving C. Wedmore on January 9, 1968, for the purpose of maintaining a year-round residence (nonrecreational) and warehouse which is located in SW¼NW¼NE¼ Sec. 26 T. 1 S., R. 8 E., Seward Meridan, on Evans Bay, Evans Island, Prince William Sound.

5. Requirements of Sec. 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 Sec.; and

6. The term and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Chugach Natives, Inc., The Chenega Corporation, and other Chugach 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 the The Chenega Corporation, serialized AA-8446-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.

The Chenega Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date approximately 66,661.21 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 2,458.79 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above will be granted to Chugach Natives, Inc., when conveyance is granted to The Chenega Corporation for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the lands described.

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 both the ANCHORAGE TIMES and THE CORDOVA TIMES. 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, Pouch 7-512, Anchorage, Alaska 99510 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 January 26, 1979 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 Alaska Native Claims Appeal Board.

4. If The Chenega Corporation or Chugach Natives, Inc., objects to any easement which is identified herein for reservation in the conveyance, which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days from receipt of service with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is taken, the adverse parties to be served are:

The Chenega Corporation
c/o Chugach Natives, Inc.
912 East 15th Avenue
Anchorage, Alaska 99501

Chugach Natives, Inc.
912 East 15th Avenue
Anchorage, Alaska 99501

JUDITH A. KAMMINS,
Chief, Division of ANCSA Operations.

[FR Doc.78-35920 Filed 12-26-78; 8:45 am]

[4310-84-M]

[Colorado 24128 h]

NORTHWEST PIPELINE CORP.

R/W Application for Pipeline

DECEMBER 19, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for a 4½" o.d. natural gas pipeline for the Philadelphia Creek Gathering System of approximately 0.066 miles long across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO COUNTY, COLORADO

T. 2 S., R. 101 W., 6th P.M.
Section 9: NW¼NE¼, NE¼SE¼

The above-named gathering system will enable the applicant to collect natural gas in areas through which the pipeline will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) to give all interested parties the opportunity to comment on the application. (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

ANDREW W. HEARD, Jr.,
Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-35984 Filed 12-26-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. NEW YORK COFFEE AND SUGAR EXCHANGE, INC.

Proposed Consent Judgment and Competitive Impact Statement Therein

Notice is given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Southern District of New York in *United States* v. *New York Coffee and Sugar Exchange, Inc.*, Civil No. 77 Civ. 5038.

The Complaint in this action alleges that the Exchange conspired since 1970 to violate Section 1 of the Sherman Act through the method by which it determined daily spot prices for raw sugar. The proposed judgment would prohibit the Exchange from determining and publishing spot prices for raw sugar except in accordance with a method specified in the judgment. Under this method, spot prices would be established in a manner consistent with the antitrust laws and not inherently anticompetitive. They would no longer be set by agreement or consensus among competing and self-interested firms. Instead, opinions would be sought from experts from various levels of the sugar industry, randomly selected each day from prepared rosters, as to prevailing cash values for raw sugar. The average of the figures obtained would then be applied to the weighted average price of transactions on the floor of the Exchange in the near term domestic and/or world futures contracts. The resulting amounts would constitute the spot prices for the day in question.

Public comment is invited within the statutory 60 day time period. Such comment and the Government's response will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, 26 Federal Plaza, New York, New York 10007.

Dated: December 15, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. *New York Coffee and Sugar Exchange, Inc.*, Defendant.

77 Civ. 5038 (RWS).

Filed: December 15, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalities Act (15 U.S.C. 16), and without further notice to either party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendant and by filing that notice with the Court.

2. In the event the plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to the plaintiff or the defendant in this or any other proceeding.

Dated: December 15, 1978.

For Plaintiff: John H. Shenefield, *Assistant Attorney General.* William E. Swope, Charles F. B. McAleer, *Attorneys, Department of Justice.* Ralph T. Giordano, Philip F. Cody, *Attorneys, Department of Justice, Antitrust Division, Room 3630, 26 Federal Plaza, New York, New York 10007, Tel: (212) 264-0390.*

For the Defendant: New York Coffee and Sugar Exchange, Inc., Barrett, Smith, Schapiro, Simon & Armstrong, by Edmund R. Schroeder, a member of the firm. *26 Broadway, New York, New York 10004, Tel: (212) 422-8180.*

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. *New York Coffee and Sugar Exchange, Inc.*, Defendant.

77 Civ. 5038 (RWS).

Filed: December 15, 1978.

FINAL JUDGMENT

The Plaintiff, United States of America, having filed its Complaint on October 17, 1977; the defendant, New York Coffee and Sugar Exchange, Inc., having appeared and filed its answer to the Complaint; and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact and without this Final Judgment constituting any evidence or admission by either party with respect to any such issue;

Now therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon the consent of both parties, it is

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and both parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

A. "The Exchange" means the defendant, New York Coffee and Sugar Exchange, Inc., and each of its subsidiaries, affiliates and committees including the New York Coffee and Sugar Clearing Association, Inc.

B. "Spot quotation or price for raw sugar" means any figure or value which purports to reflect the actual or estimated current cash value of any amount of raw sugar anywhere in the world.

The provisions of this Final Judgment shall apply to the Exchange, its subsidiaries, affiliates, successors and assigns; to each of their respective officers, directors, managers, agents and employees; and to all other persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The Exchange is enjoined and restrained from directly or indirectly determining and publishing a spot quotation or price for raw sugar except in accordance with the terms and conditions set forth in Exhibit A of this Final Judgment. Nothing contained herein, however, shall prohibit the Exchange from continuing to determine and publish settlement prices in connection with the trading of sugar futures contracts on the floor of the Exchange, including delivery notices pursuant to such futures contracts. Nor is the Exchange prohibited from determining or publishing a cash value for raw cane sugar in arbitrating or otherwise resolving any dispute resulting from a default in a futures contract of the Exchange or a commercial contract in the cash market.

V

A. The Exchange is ordered and directed, within one hundred and eighty (180) days after the entry of this Final Judgment, to eliminate from its By-laws, Rules and Regulations any provision which is inconsistent with Section IV of this Final Judgment, including such provisions contained in paragraphs (r) and (s) of Section 16 of its By-laws, Section 45 of its By-laws, and Rule 12.26 of its Sugar Trade Rules.

B. The Exchange is ordered and directed, within thirty (30) days after the entry of this Final Judgment, to disband and eliminate its Spot Domestic Quota Sugar Quotation Committee and its Spot World Sugar Quotation Committee.

VI

A. Within ninety (90) days after the entry of this Final Judgment, the Exchange shall mail to each of its members a complete copy of this Final Judgment.

B. Within one hundred and twenty (120) days after the entry of this Final Judgment, the Exchange shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with paragraph A of this Section VI.

VII

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Exchange made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the regular business hours of the Exchange to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Exchange, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Exchange and without restraint or interference from it, to interview managers, officers, agents or employees of the Exchange, any of whom may have counsel present, regarding any such matters.

B. The Exchange, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section VII Shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by the Exchange to the plaintiff pursuant to this Section and the exchange represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Exchange identifies such material in writing and marks each pertinent page thereof "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give the Exchange ten (10) days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Exchange is not a party.

VIII

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amend-

ment or modification of any of its provisions, for the enforcement of compliance therewith, and the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest.

Dated:————.

————,
United States District Judge.

EXHIBIT A

The following sets forth the terms and conditions under which the Exchange may determine and publish spot quotations or prices for raw sugar:

DEFINITION OF APPLICABLE TRADING PERIOD

As used in this Exhibit A, the phrase "applicable trading period" shall mean the period during the Exchange's trading day extending from 12:00 noon through the close of trading for that day.

DEFINITION OF SPOT QUOTATIONS OR PRICES

The Exchange may determine and publish either or both of two spot quotations or prices for each trading day: one for domestic raw cane sugar and one for world raw cane sugar. The domestic spot quotation or price shall reflect the estimated price per unit, C.I.F. duty paid, of raw can sugar in quantities exceeding 4,500 tons to arrive in the United States at a port of entry north of Cape Hatteras during a period of not less than seven days nor more than sixty days after the day in question.

The world spot quotation or price shall reflect the estimated price per unit, F.O.B. country of origin, of raw cane sugar in quantities exceeding 4,500 tons for shipment from a list of countries of origin including North Brazil and various countries in the greater Caribbean area, during a period within sixty days of the day in question. The list of countries shall be designated by the Board of Managers of the Exchange and may be changed from time to time by the Board in order to reflect prevailing market conditions.

ESTABLISHMENT AND USE OF INDUSTRY ROSTERS

(a) In determining the domestic and world spot quotations or prices, the Exchange shall establish two rosters of individuals knowledgeable in raw sugar trading: One roster consisting of individuals knowledgeable in domestic raw sugar trading and the other consisting of individuals knowledgeable in world raw sugar trading. The individuals on each roster shall be divided into categories representing different segments of the sugar industry and shall include nonmembers as well as members of the Exchange.

With respect to the domestic roster, there shall be five categories as follows:

(i) Individuals associated with firms engaged in the growth of sugar cane and/or the production of raw sugar in the United States, including beet sugar growers and/or processors;

(ii) Individuals associated with raw sugar merchants or operators located in the United States, including foreign trade houses having offices, directly or through subsidiaries or affiliates, in the United States;

(iii) Individuals associated with sugar refiners located in the United States;

(iv) Individuals associated with industrial users of can sugar located in the United States; and

(v) Individuals associated with commission houses [1] located in the United States.

With respect to the world roster, there shall be four categories as follows:

(i) Individuals associated with raw sugar merchants or operators located in the United States, including foreign trade houses having offices, directly or through subsidiaries or affiliates, in the United States;

(ii) Individuals associated with sugar refiners located in the United States;

(iii) Individuals associated with industrial users of cane sugar located in the United States; and

(iv) Individuals associated with commission houses located in the United States.

(b) The Exchange shall approach the principal firms in each of the specified categories and invite them to submit the names of candidates to be included on the rosters. The appointments to each roster shall be made by the Chairman of the Board of Managers of the Exchange with the approval of the Board. An individual may be appointed to both the domestic and world rosters. However, no more than one individual from any firm shall be appointed to any roster, provided that an alternate may be appointed to serve in the absence of another individual from the same firm.

The Exchange shall endeavor to place at least eight individuals (not including alternates) in each category of each roster and, in no event, may any category of either roster consist of less than five individuals (not including alternates).

The names of the individuals, including alternates, selected by the Exchange and the firms with which they are associated will be retained in the Exchange's records subject to the inspection, upon request, of the Antitrust Division of the United States Department of Justice.

(c) On each trading day, an employee of the Exchange [2] shall select by lot the names of five individuals from each roster.

For the domestic roster, such employee shall select the name of one individual from each of the five categories. For the world roster, such employee shall select the name of one individual from each of the four categories and the name of one additional individual from the entire roster at large. The same individual may not be selected, on any trading day, from both the domestic and world rosters.

(d) At some time during each trading day, after 1:00 p.m. but before the commencement of the closing calls in sugar futures, the Exchange employee shall telephone each of the individuals (or their alternates) selected by lot from the domestic and world rosters.

The Exchange employee shall ask each individual selected from the domestic roster for two figures representing his expert opinions of that day's prevailing price differential between the price per unit, C.I.F. duty paid, of raw cane sugar in quantities exceeding 4,500 tons to arrive in the United States at a port of entry north of Cape Hatteras during a period of not less than seven days nor more than sixty days after the day in question and

(i) The price, per unit, of raw cane sugar under the domestic sugar futures contract for the nearest delivery month then trading on the Exchange for that contract, and

(ii) The price, per unit, or raw cane sugar under the world sugar futures contract for the nearest delivery month then trading on the Exchange for that contract.

The Exchange employee shall ask each individual selected from the world roster for a figure representing his expert opinion of that day's prevailing price differential between the price per unit, F.O.B. country of origin, of raw cane sugar in quantities exceeding 4,500 tons for shipment from the aforesaid list of countries of origin including North Brazil and various countries in the greater Caribbean area, during a period within sixty days of the day in question and the price, per unit, of raw cane sugar under the world sugar futures contract for the nearest delivery month then trading on the Exchange for that contract.

(e) No individual selected from either roster shall be informed of the identities or figures of the other individuals selected on that day; nor shall such individual be informed of the average, range or nature of the figures provided by the other individuals selected on the day. This information shall not be publicly disclosed by the Exchange except that the figures provided by such individuals shall be maintained by the Exchange for inspection, upon request, by the Antitrust Division of the Unted States Department of Justice.

(f) The nearest delivery month for the domestic and world futures contracts trading on the Exchange shall be the first one of the following delivery months that follows tha day for which the spot quotation or price is being determined: March, May, July, September and (in the case of the world futures contract) October, or (in the case of the domestic futures contract) November; except that, beginning on the fifth from the last trading day for any of these delivery months, the next on of such months shall be regarded as the nearest delivery month trading on the Exchange. These delivery month designations may be changed, from time to time, by the Board of Managers of the Exchange in order to reflect prevailing market conditions.

COMPUTATION OF ESTIMATED SPOT QUOTATION OR PRICE

As soon as practical after the close of the futures market on the day for which the spot quotations or prices are being determined, the Exchange employee shall compute the domestic and world spot quotations or prices as follows:

(a) With respect to the domestic spot quotation or price, if more than 175 lots have traded on that day,[3] during the applicable trading period, in the nearest delivery month of the domestic sugar futures contract then open for trading (as that month is defined above), the Exchange employee

[1] As used herein, "Commission House" means any firm engaged in raw sugar futures trading, on a monetary commission basis, predominantly on behalf of its customers.

[2] Such employee shall not be associated with any firm active at any level of the sugar industry.

[3] The day for which the domestic spot quotation or price is being determined. This 175 lot figure shall not include transactions against actuals or straddle transactions traded on point differentials.

shall take the figures received from the individuals selected from the domestic roster as to that day's prevailing differential above or below the price of such domestic futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract that average from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in such contract. The resulting amount shall constitute the domestic spot quotation or price for that day.

If that day's volume on the Exchange, during the applicable trading period, in the nearest delivery month of the domestic sugar futures contract then open for trading does not exceed 175 lots, then the Exchange employee shall take the figures received from the individuals selected from the domestic roster as to the differential prevailing above or below the price of the world futures sugar contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that amount to or subtract it from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the world sugar futures contract then open for trading (as that month is defined above). The resulting amount shall constitute the domestic spot quotation or price for that day.

(b) With respect to the world spot quotation of price, the Exchange employee shall take the figures received from the individuals selected from the world roster as to that day's [4] prevailing differential above or below the price of the world sugar futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract it from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the world sugar futures contract then open for trading. The resulting amount shall constitute the world spot quotation or price for that day.

PUBLICATION OF SPOT QUOTATIONS AND PRICES AND OTHER CONSIDERATIONS

(a) As soon as practical after their computation, but not later than the day on which they are computed, the Exchange shall make public the domestic and world raw sugar spot quotations or prices. In doing so, the Exchange shall preface any such quotation or price with the word "Estimated" and shall identify the day to which each quotation or price applies. At the same time, the Exchange shall also make public the weighted average prices of all of that day's[5] transactions, during the applicable trading period, in the nearest delivery months of the domestic and world sugar futures contracts then open for trading, together with the total number of lots transacted that day, during the applicable trading period, in each such contract.

(b) The Exchange shall instruct, in writing, each member of its domestic and world roster not to, directly or indirectly, disclose or discuss his appointment or the figures which he submits to the Exchange employee with anyone associated with any other firm.

(c) The Exchange shall endeavor to replace a substantial number of the individuals on the domestic and world rosters every twenty-four months, and no individual may serve continuously on either roster for more than thirty-six months.

[4] The day for which the world spot quotation or price is being determined.

[5] The day to which the spot quotations or prices in question apply.

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

United States of America Plaintiff, v. *New York Coffee and Sugar Exchange, Inc.*, Defendant. Competitive impact statement relating to proposed consent judgment.

77 Civ. 5038 (RWS).

Filed: December 15, 1978.

This Competitive Impact Statement is filed by the Government pursuant to the requirements of Section 2 of the Act of Congress of December 21, 1974 (15 U.S.C. 16), commonly known as the Antitrust Procedures and Penalties Act. It relates to the proposed consent judgment submitted for entry against the defendant in this civil antiturst suit.

NATURE AND PURPOSE OF THE PROCEEDING

On October 17, 1977, the Government filed a civil antitrust suit against the New York Coffee and Sugar Exchange, Inc. ("The Exchange"), New York, New York, alleging that it had conspired to violate Section 1 of the Sherman Act through its determination and publication of daily spot prices for raw sugar. In its Complaint, the Government asked the Court to declare the Exchange's method for determining such spot prices illegal and to prohibit the Exchange from continuing, maintaining or renewing this method or any other method having a similar illegal purpose or effect.

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

Raw cane sugar is derived from sugar cane grown in various foreign countries and in some parts of the United States.

Sugar cane grown abroad is processed into raw sugar by foreign growers or processors who often sell it to raw sugar merchants for resale to foreign and domestic refiners. Sugar cane grown in the United States is processed into raw sugar by domestic growers or processors who often sell it directly, or through raw sugar merchants, to domestic refiners.

Domestic refiners refine the raw sugar and sell it to retailers for resale to the consuming public or to industrial users for use in the production of other products including food and beverages.

The Exchange is a non-stock membership corporation with about 300 members including officers and executives of major firms operating at various levels of the sugar industry in the United States. The Exchange generally does not buy or sell raw sugar. Rather, it operates a commodity futures exchange through which its members trade in raw sugar and other commodity futures. The Exchange is one of the largest raw sugar futures exchanges in the world.

Prior to the filing of this case, the Exchange for many years had determined daily spot prices for raw sugar sold in the domestic and world markets. These spot prices—published on each trading day of the Exchange—purported to reflect the dollar value of raw cane sugar either delivered to various ports in the Unitd States north of Cape Hatteras (domestic spot price) or F.O.B. and stored at a port in the greater Carribbean area, including North Brazil (world spot price).

The Exchange maintained two separate committees to determine its spot prices. The world committee was composed of representatives of five competing raw sugar merchants. The domestic committee was composed of representatives of two competing domestic sugar refiners and three competing raw sugar merchants in the United States.

On every trading day, the members of each committee would directly or through their committee chairman discuss with each other by telephone the setting of the spot price for that day. After a majority consensus was achieved, the spot prices were relayed to the Exchange which then publicly announced them. Usually, the domestic and world spot prices were set solely on the basis of the collective and consensual discretion and judgment of the members of each committee.

The Exchange's spot prices had a direct and immediate effect on the actual prices of raw and refined sugar at most levels of the domestic and international sugar industry. Thus, for example, foreign and domestic growers and processors often sold raw sugar under contracts which set the purchase price by reference to the average of the spot price for a designated period. Raw sugar merchants entered similar contracts. In addition, domestic sugar refiners often independently set the prices of their refined sugar with reference to the spot prices.

In filing this action, the Government did not intend to necessarily challenge the concept of spot prices, however determined or established. Rather, the Goverment specifically attacked the particular method by which the Exchange set its spot prices. The Government believes, among other things, that the determination of spot prices solely on the basis of agreement and consensus among representatives of competing and self-interested firms constitutes illegal price tampering and is so inherently anticompetitive as to violate Seciton 1 of the Sherman Act.

On November 3, 1977, the Exchange voluntarily discontinued determining and publishing daily spot prices. It has not resumed doing so.

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment permits the Exchange to determine and publish spot prices for raw sugar only in accordance with a specified method which is consistent with the antitrust laws and not inherently anticompetitive.

Under this method, the Exchange would establish two rosters of individuals knowledgeable in the trading of raw sugar: one roster consisting of individuals knowledgeable in domestic sugar trading and the other of individuals knowledgeable in world sugar trading. Each roster would be divided into categories representing different segments of the sugar industry. The domestic roster would have five categories; the world roster would have four. Appointments to the rosters would be made by the Exchange after it had invited the principal firms in each category to submit the names of knowledgeable candidates. Each category would consist of

at least five individuals from different firms.

Every trading day, an impartial employee of the Exchange would select at random an individual from each category of the two rosters.[1] Each would be separately asked for his expert opinion of that day's prevailing differential between the price of raw sugar in the cash market and the price of raw sugar under the domestic and/or world futures contract for the nearest delivery month then trading on the Exchange.

The Exchange employee would then eliminate the highest and lowest figures received from each roster, compute the average of the remaining figures, and add or subtract those averages from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the near term domestic or world futures contract.* The resulting amounts would constitute the domestic and world spot prices for that day.

Under this method, therefore, spot prices would no longer be set by agreement or consensus among competing or self-interested firms. Nor is there any real danger that the spot prices would be intentionally set to the advantage of one or more firms and the concomitant disadvantage of competitors.

Each randomly selected roster member would, for the most part, be active at a different level of the sugar industry. Different groupings of these individuals would likely be selected each day. Each would be separately asked only for his expert opinion of that day's differential. None would be advised of any other opinion. Indeed, the Exchange would be required to instruct each roster member not to discuss his opinion with any other member. In addition, the highest and lowest opinions submitted by the randomly selected members of each roster would be discarded. Moreover, the average of the remaining opinions would be related to the average weighted price of that day's transactions, during the applicable trading period, in the near term domestic or world contract. Such transactions are voluminous and are conducted on the floor of the Exchange by open and active competitive trading. The randomly selected individuals would not know at the time they separately gave their opinions, the average near term weighted price for that day.

The Exchange would also be required to endeavor to replace a substantial number of the individuals on the domestic and world rosters every 24 months. No individual could serve continously for more than 36 months.

The Government recognizes that spot prices set under the method described in the proposed judgment (or under any method) would not likely be a precise and exact determination of the current value of raw sugar. Rather, they would only be an estimation of prevailing cash values. Consequently, any spot prices published by the Exchange would have to be preceded by the word "estimated."

[1] With respect to the world roster, an additional individual would be randomly selected from the entire roster at large.

* The applicable trading period would include all transactions in the near term domestic or world futures contract during the period 12:00 Noon through the close of trading for that day. References would be made to the near term domestic contract only if 175 lots or more were transacted in that contract during the applicable trading period.

The Exchange would also be required to publish the weighted average prices of each day's transactions, during the applicable trading period, in the near term domestic and world futures contracts together with the total number of transactions in these contracts during such period.

Under the proposed judgment, the Exchange would be required to mail a complete copy of the final judgment to each of its members.

COMPETITIVE EFFECTS OF THE PROPOSED CONSENT JUDGMENT

The proposed judgment is designed to prevent a recurrence of any of the anticompetitive and illegal activities alleged in the Complaint. Any spot prices determined and published by the Exchange will be in accordance with a specified method which is consistent with the antitrust laws and not inherently anticompetitive.

ALTERNATIVE REMEDIES CONSIDERED BY THE GOVERNMENT

The Government considered the possibility of seeking relief which would prohibit the Exchange from determining spot prices under any method. This approach was rejected, however, since there appears to be a legitimate need in the sugar industry for some benchmark to current cash values of raw sugar.

The Government also considered the possibility of requiring the Exchange to determine its spot prices under a purely mechanical method. This, too, was rejected. Such a method would not be feasible in the context of the present sugar industry.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. Section 16(a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation between the Government and the Exchange which provides that the Government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16), any person wishing to comment upon the proposed judgment may, for a 60-day period prior to the effective date, submit written comments to the United States Department of Justice, Attention Ralph T. Giordano, Chief, New York Office, Antitrust Division, 26 Federal Plaza, New York, New York 10007. Such comments and the Government's response to them will be filed with the Court and published in the FEDERAL REGISTER. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

OTHER MATERIALS

There are no materials or documents which the Government considered determinative in formulating the proposed consent judgment. Therefore, none is being filed with this competitive impact statement.

Dated: December 15, 1978.

RALPH T. GIORDANO,
PHILIP F. CODY,
Attorneys, Department of Justice, Antitrust Division, 26 Federal Plaza, New York, New York 10007, Telephone: 212-264-0390.

[FR Doc. 78-35709 Filed 12-26-78; 8:45 am]

[4410-01-M]

"UNITED STATES" v. "WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK INC., ET AL".

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Southern District of New York in *United States of America* v. *Wholesale Tobacco Distributors of New York Inc.*, Civil No. 77 Civ. 805. The complaint in this action alleges that beginning at least as early as 1965 the defendants and unnamed co-conspirators conspired to raise, fix, and stabilize the wholesale prices at which cigarettes were sold in New York City.

The proposed judgment would enjoin each of the defendants for a period of 25 years from entering into any agreement with any cigarette wholesaler to raise, fix, stabilize, or maintain price or other terms or conditions at which cigarettes are offered for sale; establishing or determining dates for any change in price at which cigarettes are offered for sale; or, establishing the amount or range of amount by which the price of cigarettes offered for sale shall be changed. The defendants, under the decree, are prohibited from communicating to any direct jobber of cigarettes the actual or proposed prices or changes in prices for any cigarettes offered for sale, and the actual or proposed dates for any changes in the price of cigarettes offered for sale.

The defendants will be permitted, however, to communicate such pricing information as is necessary to the *bona fide* purchase or sale of cigarettes between and among wholesalers, or the announcing of any price or proposed price change to any subjobber or retailer of cigarettes. Additionally,

the defendant Wholesale Tobacco Distributors of New York Inc. may assist in the enforcement of federal, state, and local laws and regulations prohibiting the hijacking or bootlegging of cigarettes or the counterfeiting of tax stamps. Thus, any wholesaler may communicate pricing information to the Managing Director of the Wholesale Tobacco Distributors of New York Inc. solely for dissemination to federal, state or local law enforcement authorities. The Managing Director of the Wholesale Tobacco Distributors of new York Inc. may not, however, communicate such pricing information to any other wholesaler.

The defendant Wholesale Tobacco Distributors of New York Inc. is prohibited from having any meeting of its members at which the prices of cigarettes offered for sale are communicated in any way by its officers, directors, agents, employees or members.

The defendant Wholesale Tobacco Distributors of New York Inc. is required by the consent judgment to conform its rules, regulations, bylaws, practices and policies to the terms of the judgment and to furnish a copy of the Final Judgment to each of its members, both within ninety (90) days from the date of its entry. Then within one hundred twenty (120) days of entry, the amended bylaws, rules, and regulations will be served upon plaintiff, filed with the Court and furnished to each member.

Public comment is invited within the statutory 60 day time period. Such comment and response thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, 26 Federal Plaza, New York, New York 10007.

Dated: December 18, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. *WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC.; METROPOLITAN TOBACCO CO., INC.; VALLEY STREAM DISTRIBUTORS CO., INC.; MODERN TOBACCO COMPANY INC.; J. ROSENBERG & SONS TOBACCO AND CONFECTIONERS, INC.; SANDERS-LANGSAM TOBACCO CO., INC.; WILLIAM BLOOMROSEN & SON, INC.; JOS. A. SCHRAGER, INC.; NU SERVICE TOBACCO CO., INC.; and GLOBE WHOLESALE COMPANY, Defendants.*

Civil Action No. 77 Civ. 805 (CMM)
Filed: December 18, 1978

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall not in any manner prejudice any consenting party in this or any other proceeding.

Dated: December 18, 1978.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General.* William E. Swope, Charles F. B. McAleer, Ralph T. Giordano, *Attorneys, Department of Justice, Antitrust Division.* Robert A. McNew, Donald Ferguson. *Attorneys, Department of Justice, Antitrust Division.*

For the Defendants: Wholesale Tobacco Distributors of New York Inc.; Modern Tobacco Company, Inc.; J. Rosenberg & Sons Tobacco and Confectioners, Inc.; Sanders-Langsam Tobacco Co., Inc.; Nu Service Tobacco Co., Inc.; Globe Wholesale Company; and Jos. A. Schrager, Inc. Albert H. Blumenthal, Esq., *Phillips, Nizer, Benjamin, Krim & Ballon.* Metropolitan Tobacco Co., Inc., John Kirby, Esq., *Mudge Rose Guthrie & Alexander.* Valley Stream Distributors Co., Inc., Charles J. Rappaport, Esq., *Gandin, Schotsky & Rappaport.* William Bloomrosen & Son, Inc., Milton Bloomrosen, *President, William Bloomrosen & Son, Inc.*

U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. *WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK, INC.; METROPOLITAN TOBACCO CO., INC.; VALLEY STREAM DISTRIBUTORS CO., INC.; MODERN TOBACCO COMPANY, INC.; J. ROSENBERG & SONS TOBACCO AND CONFECTIONERS, INC.; SANDERS-LANGSAM TOBACCO, CO., INC.; WILLIAM BLOOMROSEN & SON, INC.; JOS. A. SCHRAGER, INC.; NU SERVICE TOBACCO CO., INC.; and GLOBE WHOLESALE COMPANY, Defendants.*

Civil Action No. 77 Civ. 805 (CMM).
Filed: December 18, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on February 17, 1977, and the defendants hereto, by their respective attorneys, having appeared and filed their Answers to the Complaint denying the material allegations thereof and raising certain affirmative defenses; and plaintiffs and defendants by their respective attorneys having consented to entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without adjudication of any issue of fact or law in connection herewith, and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter herein and over the parties hereto. The Complaint states a claim against the defendants upon which relief may be granted under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

A. "Person" means any individual, association, cooperative, partnership, corporation or other business or legal entity.

B. "Member" means any person who is a member of defendant Wholesale Tobacco Distributors of New York, Inc.

C. "Direct Jobber" means an entity which purchases cigarettes directly from any cigarette manufacturer, is licensed by the state to affix tax stamps to the cigarette packages, and is engaged in the sale of such cigarettes to retailers and to subjobbers who resell to retailers.

D. "Subjobber" means any person who purchases cigarettes from a direct jobber and then resells them to a retailer.

III

The provisions of this Final Judgment applicable to a defendant shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors, assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall require as a condition of the sale or other disposition of all, or substantially all, of the assets used by the defendant in the distribution of cigarettes, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve upon the Plaintiff its consent to be bound by this Final Judgment within thirty (30) days prior to the transfer of ownership.

V

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing directly or indirectly any agreement, understanding, plan or program with any other direct jobber or subjobber to:

(1) Raise, fix, stabilize or maintain prices or other terms or conditions at which cigarettes are offered for sale.

(2) Establish or determine dates for any change in price at which cigarettes are offered for sale.

(3) Establish the amount or range of amount by which the price of cigarettes offered for sale shall be changed.

VI

Each defendant is enjoined and restrained from communicating directly or indirectly to any direct jobber information concerning:

(1) The actual or proposed prices or changes in price for any cigarettes offered for sale.

(2) The actual or proposed dates for any changes in the prices of cigarettes offered for sale.

Provided, however, That nothing contained in this paragraph shall restrict the communication of information necessary to the *bona fide* purchase or sale of cigarettes between and among direct jobbers and/or subjobbers, or the announcement by any direct jobber and/or subjobber of any price or proposed price changes to any subjobber or retailer of cigarettes; and, further provided, that for the purpose of assisting in the enforcement of Federal, State and local laws and regulations prohibiting the hijacking or bootlegging of cigarettes or the counterfeiting of tax stamps, nothing contained in this paragraph shall restrict the communication of pricing information by any direct jobber or subjobber to the Managing Director of defendant Wholesale Tobacco Distributors of New York, Inc. solely for dissemination to Federal, State or local law enforement authorities upon the condition that such information shall not be communicated by the Managing Director to any other direct jobber or subjobber.

VII

The defendant Wholesale Tobacco Distributors of New York, Inc. is enjoined from having any meeting, conference or seminar of its members at which the prices of cigarettes offered for sale are discussed or communicated in any way by its officers, directors, agents, employees or members.

VIII

For a period of five (5) years from the date of entry of this Final Judgment, the defendant Wholesale Tobacco Distributors of New York, Inc. is ordered to file an affidavit with plaintiff every six (6) months certifying that it has complied with the provisions of Section VII of this Final Judgment.

IX

Each defendant direct jobber is ordered and directed to furnish within ninety (90) days from the date of this Final Judgment a copy thereof to each of its officers and directors and to each of its agents and employees having any responsibility for sales or pricing of cigarettes.

X

Defendant Wholesale Tobacco Distributors of New York, Inc. is ordered and directed:

A. To furnish within ninety (90) days from the date of this Final Judgment a copy thereof to each of its members.

B. Within ninety (90) days from the date of entry of this Final Judgment to conform its rules, regulations, by-laws, practices and policies to the terms of this Final Judgment.

C. Within one hundred and twenty (120) days from the date of entry of this Final Judgment to serve upon the Plaintiff and file with the Court a true copy of its by-laws, rules and regulations as amended.

D. Within one hundred and twenty (120) days from the date of entry of this Final Judgment to furnish a copy of its by-laws, rules and regulations as amended to each of its members.

XI

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to such Defendant at its principal office be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such Defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such Defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview any officers, directors, agents, partners, or employees of such Defendant, any of whom may have counsel present, regarding any such matters.

B. Each Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by any defendant to plaintiff pursuant to this Section and such defendant represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant identifies such material in writing and marks each pertinent page thereof "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure", then plaintiff shall give such defendant ten (10) days notice prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which such defendant is not a party.

XII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

XIII

This Final Judgment will expire on the Twenty-fifth Anniversary from the date of its entry and with respect to any particular provision on any earlier date specified.

XIV

Entry of this Final Judgment is in the public interest.

Dated:

UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. *WHOLESALE TOBACCO DISTRIBUTORS OF NEW YORK INC.; METROPOLITAN TOBACCO COMPANY, INC.; VALLEY STREAM DISTRIBUTORS CO., INC.; MODERN TOBACCO COMPANY, INC.; J. ROSENBERG & SONS TOBACCO AND CONFECTIONERS, INC.; SANDERS-LANGSAM TOBACCO CO., INC.; WILLIAM BLOOMROSEN & SON, INC.; JOS. A. SCHRAGER, INC.; NU SERVICE TOBACCO CO., INC.; GLOBE WHOLESALE COMPANY, Defendants.*

Civil Action No. 77 Civ. 805 (CMM)

Filed: December 18, 1978

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), hereby submits this Competitive Impact Statement relating to the proposed Consent Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE OF THE PROCEEDINGS

The United States, on February 17, 1977, filed a civil antitrust action under Section 4 of the Sherman Act (15 U.S.C. 4) alleging that the above named defendants and unnamed co-conspirators from at least as early as 1965 had combined and conspired in violation of Section 1 of the Sherman Act (15 U.S.C. 1) to raise, fix, and stabilize the wholesale prices at which cigarettes were sold in New York City.

Entry by the Court of the proposed Consent Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings within the twenty-five years next ensuing, which may be needed to interpret, modify or enforce the Judgment or to punish violations of any of the provisions of the Judgment.

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATIONS

The defendants include the largest direct jobbers of cigarettes in New York City. The combined sales of cigarettes by the defendants in New York City in 1975 exceeded $150 million and accounted for approximately 45 percent of all cigarettes sales by direct jobbers in New York City during that year. Cigarettes are manufactured at facilities located outside the State of New York, and are purchased by the defendants and shipped regularly and continuously in interstate commerce from other states into the State of New York for sale by the defendants in New York City.

For the purpose of forming and effectuating the combination and conspiracy, the defendants and co-conspirators communicated to one another at meetings of the defendant Wholesale Tobacco Distributors of New York Inc., in telephone conversations, and

on other occasions, intention to raise the wholesale prices at which cigarettes are sold in New York City; jointly established in some cases the specific amount and in others the range by which such prices were to be increased; and jointly established a date on which such increases were to become effective. The Complaint alleges further that, as a result of the conspiracy, the wholesale prices of cigarettes in New York City have been fixed, raised, and maintained at artificial and non-competitive levels; purchasers of cigarettes have been deprived of free and open competition; and competition in the sale of cigarettes has been restrained.

III

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have stipulated that the proposed Consent Judgment, in the form negotiated by and among the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation among the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

A. PROHIBITED CONDUCT

The proposed Judgment will prohibit each of the defendants from entering into any agreement with a direct jobber or subjobber of cigarettes to raise, fix, stabilize, or maintain prices or other terms or conditions at which cigarettes are offered for sale; establishing or determining dates for any change in prices at which cigarettes are offered for sale; establishing the amount or range of amount by which the price of cigarettes offered for sale shall be changed. The defendants will be enjoined from communicating to any direct jobber of cigarettes the actual or proposed prices or changes in price for any cigarettes offered for sale; and, the actual or proposed dates for any changes in the price of cigarettes offered for sale.

The defendants will be permitted, however, to communicate such information as is necessary to the *bona fide* purchase or sale of cigarettes between and among direct jobbers and/or subjobbers, or the announcing by any direct jobber and/or subjobber any price or proposed price changes to any subjobber or retailer of cigarettes. Additionally, the defendant Wholesale Tobacco Distributors of New York Inc. may assist in the enforcement of federal, state, and local laws and regulations prohibiting the hijacking or bootlegging of cigarettes or the counterfeiting of tax stamps. Thus, any direct jobber may communicate pricing information to the Managing Director of the Wholesale Tobacco Distributors of New York Inc. solely for dissemination to federal, state or local law enforcement authorities. The Managing Director of the Wholesale Tobacco Distributors of New York Inc. may not, however, communicate such pricing information to any other direct jobber or subjobber.

The defendant Wholesale Tobacco Distributors of New York Inc. is prohibited from having any meeting of its members at which the prices of cigarettes offered for sale are communicated in any way by its officers, directors, agents, employees or members.

The defendant Wholesale Tobacco Distributors of New York Inc. is required by the Consent Judgment to conform its rules, regulations, by-laws, practices and policies to the terms of the Judgment and to furnish a copy of the Final Judgment to each of its members, both within ninety (90) days from the date of its entry. Then within one hundred twenty (120) days of entry, the amended by-laws, rules, and regulations will be served upon plaintiff, filed with the Court and furnished to each member.

Each defendant direct jobber is required to furnish within ninety (90) days of entry a copy of the Final Judgment to each of its officers and directors as well as each of its agents and employees having any responsibility for sales or pricing of cigarettes.

B. SCOPE OF THE PROPOSED JUDGMENT

The proposed Judgment applies to each defendant, its officers, directors, agents, employees, subsidiaries, successors, assigns and to those persons in active concert or participation with any of them who shall receive actual notice of this Final Judgment by personal service or otherwise. For a period of five (5) years from the date of entry, each defendant shall require as a condition of sale of all or substantially all of its assets used in the distribution of cigarettes, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party is required to file with the Court and serve upon plaintiff within thirty (30) days prior to the transfer of ownership its consent to be so bound.

The defendants are bound by the prohibitions of the proposed Judgment for a period of twenty-five (25) years from the date of its entry and thereafter the Judgment shall terminate and cease to be effective.

The Judgment applies to each defendant's activities wherever they may occur.

C. EFFECT OF THE PROPOSED JUDGMENT ON COMPETITION

The relief encompassed in the proposed Consent Judgment is designed to prevent any recurrence of the conduct alleged in the Complaint. The prohibitive language of the Judgment should ensure that no future agreements or combinations between or among the defendants; between any defendant and a direct jobber, or between any defendant and a subjobber, to fix, raise, maintain or stabilize the wholesale price of cigarettes will be arranged.

The Judgment provides methods for determining defendants' compliance with the terms of the Judgment. The Department of Justice, through duly authorized representatives, may interview officers, employees and agents of each defendant regarding its compliance with the Judgment. Representatives of the Department are also given access, upon reasonable notice, to examine each defendant's records for possible violations of the Judgment and to request defendants to submit reports to the Department of Justice on matters contained in the Judgment.

It is the opinion of the Department of Justice that the proposed Consent Judgment provides fully adequate provisions to prevent continuance or recurrence of violations of the antitrust laws charged in the complaint. In the Department's view, disposition of the lawsuit without further litigation is appropriate in that the proposed Judgment provides all the relief which the Department sought in its Complaint, and the additional cost of litigation necessarily involved if the issues were litigated would not result in any additional relief. Accordingly, the public interest is best benefitted by the proposed consensual disposition of the action.

IV

ALTERNATIVE REMEDIES CONSIDERED BY THE ANTITRUST DIVISION

The defendants initially proposed a Consent Judgment which the Antitrust Division concluded would not ensure that the conspiracy charged in the Complaint would not continue or recur. The Division responded to the defendants' proposed Judgment with a counter-proposal from which the final Consent Judgment was negotiated.

The primary point of difference that was ultimately compromised between the parties related to the communication of price information between direct jobbers. The defendants responded to the Division's prohibition, except for *bona fide* sales between direct jobbers, by stating that communication of pricing information was necessary to combat bootleggers and hijackers of cigarettes as well as those who would counterfeit cigarette tax stamps. Defendants reasoned that they could not assist law enforcement agencies by providing information on unreasonably low cost retail selling prices unless they could check the legitimate direct jobbers to determine at what price they were selling to the suspected retailer.

The Division suggested that the Managing Director of defendant Wholesale Tobacco Distributors of New York Inc. could perform the investigative tasks required and still refrain from passing competitive pricing information from one direct jobber to another. The defendants agreed with the Division's proposed solution to the problem and the second proviso in paragraph VI was included in the Final Judgment.

The defendants initially demanded that the scope of the Final Judgment be limited to their activities in New York City. However, the defendants admitted that some of them, in addition to operating in New York City, operated outside of the city and in other states. Accordingly, defendants withdrew their objection to the extended coverage.

V

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGATION

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered as well as costs and reasonable attorney fees. Entry of the proposed Consent Judgment in this proceeding will neither impair nor assist the bringing of any such private actions. Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)) this Consent Judgment has no *prima facie* effect in any lawsuits which may be pending or hereafter brought against the defendants.

VI

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to Ralph T. Giordano, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10007, within the sixty (60) day period provided by the Act. These comments and the Department's response to them, will be filed with the Court and published in the FEDERAL REGISTER. All comments received will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of the proposed Judgment is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VII

ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

The alternative to the proposed Judgment was a full trial of the issue on the merits and on relief. The Antitrust Division considers the substantive language of the Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations charged in the Complaint.

VIII

OTHER MATERIALS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) were considered in formulating this proposed Judgment. Consequently, none are submitted pursuant to such Section 2(b).

Dated: December 18, 1978.

Robert A. McNew, Donald Ferguson, *Attorneys, Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10007.*

[FR Doc. 78-35985 Filed 12-26-78;8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ABNORMAL OCCURRENCE EVENT

Loss of Containment Integrity

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences using the criteria in a Policy Statement published in the FEDERAL REGISTER on February 24, 1977 (42 FR 10950). Appendix A (Example II.A.2) of the Policy Statement notes that a major degradation of the primary containment boundary can be considered an abnormal occurrence. The following description of the events also includes the remedial actions taken.

Date and Place. On July 26, 1978, the Northeast Nuclear Energy Company (NNECO) reported to the NCR an event at Millstone Unit No. 2, a pressurized water nuclear plant located in New London County, Connecticut. On September 8, 1978, the Public Service Electric and Gas Company (PSE&G) reported a similar event at Salem Unit No. 1, a pressurized water nuclear plant located in Salem County, New Jersey.

Nature and Probable Consequences. The events reported at Millstone Unit No. 2 and Salem Unit No. 1 involved loss of automatic valve closure capability for certain large sized isolation valves in the containment ventilation systems while the valves were open for containment purging operations. Such loss of closure capability significantly degraded both the containment and the ECCS capability for extended time periods (hours to days) in some cases while the units were operating at power. The automatic closure feature was lost because the signals which are intended to initiate automatic closure under certain accident conditions were either bypassed or overridden and therefore ineffective. Normal purging activities do not require the negating of any automatic closure signals.

No radiological accidents occurred during these periods and therefore these safety features were not challenged. However, if a design basis Loss of Coolant Accident (LOCA) had occurred under these conditions, the offsite consequences would have increased above those anticipated with the automatic containment isolation valve closure feature operable. In addition, as described below, the performance of the Emergency Core Cooling Systems (ECCS) may have also been degraded due to a decrease in the pressure buildup inside the containment during the accident. Specifically, two of many safety features at nuclear power plants are the containment systems and the emergency core cooling systems (see Figure 1). The containment systems include a large thick-walled building or vessel surrounding the reactor and its primary coolant system which is designed to be a leak tight enclosure to limit accidental releases of radioactivity to the environment. The emergency core cooling systems (ECCS) are designed to automatically supply water to the reactor core to mitigate the consequences of postulated accidents where the normal cooling water is lost.

Containment buildings are designed with ventilation, or purging, systems which can add fresh air and exhaust the containment atmosphere to maintain the temperature, humidity, pressure and the radioactivity levels within acceptable limits. These systems must be isolated to provide for containment integrity, when needed. For this purpose, each purge inlet and outlet pipe has two isolation valves, as do the other containment penetrations. These valves, which are permitted to be opened for purging during normal plant operation, are designed to automatically close in a very short time period, if needed for containment isolation. At many of the operating nuclear power plants, the normal containment purge systems use large pipes—ranging from two feet to more than five feet in diameter.

PRESSURIZED WATER REACTOR

CONTAINMENT VENTILATION SYSTEMS

(SIMPLIFIED DIAGRAM)

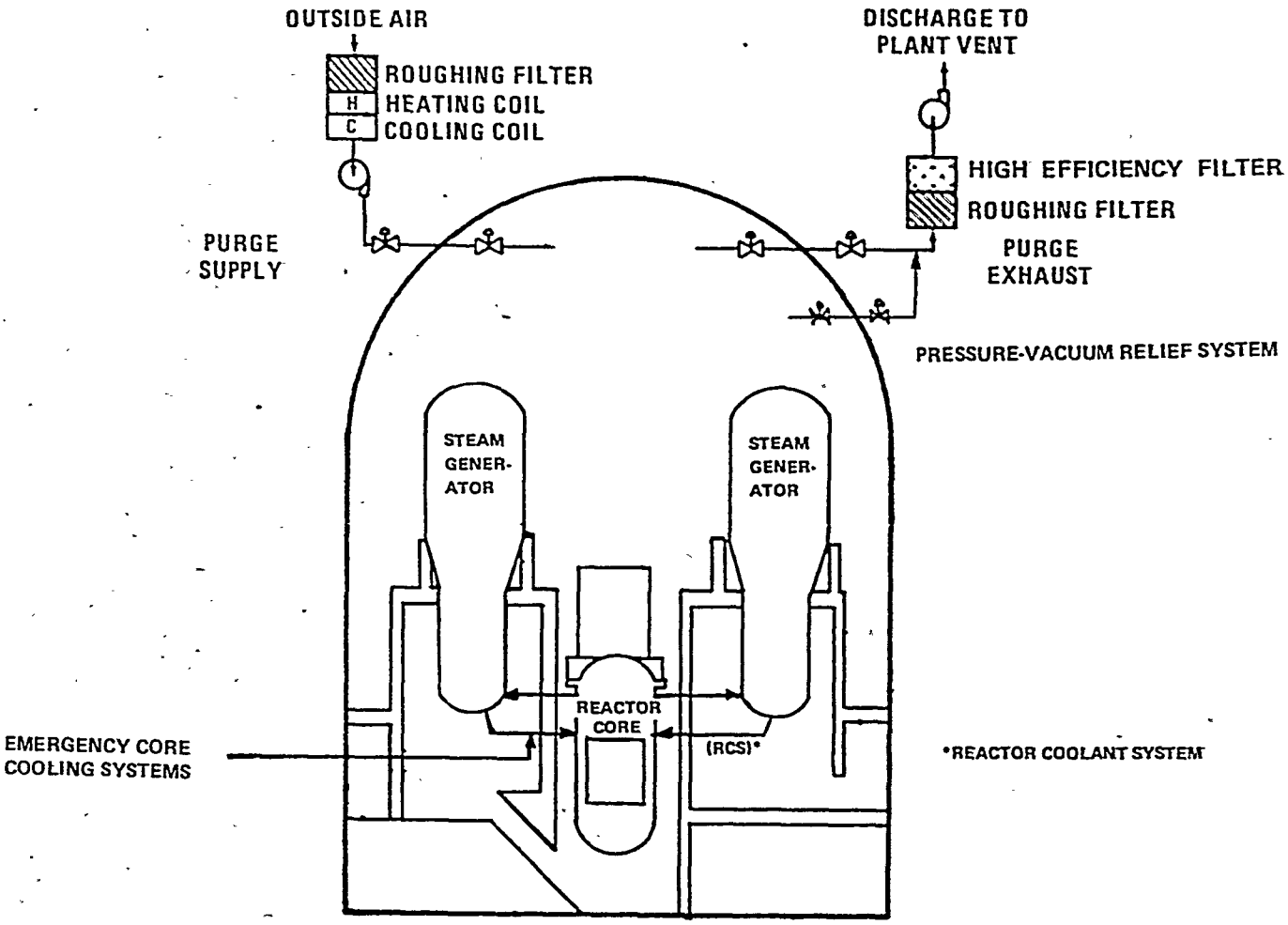

FIGURE 1

Purging does not occur continually at these plants (i.e., the containment isolation valves are normally closed). As mentioned earlier, when containment isolation valves are opened for purging, the automatic valve closure signals are normally operable. A containment isolation actuation signal, such as the containment high radiation signal, would then initiate rapid closing of the valves well within the valve closure times included in the design basis assumptions. The off-site consequences of any radioactive releases to the environs would be as "realistically" evaluated in the Environmental Impact Statement. However, in the unlikely event of a postulated design basis loss of coolant accident (LOCA) while purging with these containment valves open and their closure signals inoperative, the containment would have an unacceptably high leakage rate of radioactivity to the environment. This increased containment leakage rate would also result in a reduced containment pressure buildup during the postulated accident which, in turn, could degrade the ECCS performance. Parametric calculations indicate that the low containment pressure would result in a calculated reduction in core reflood rate and heat removal capability and would lead to higher calculated fuel cladding temperatures.

If the LOCA occurred while purging with the value closure signals negated, although operator action may result in a decrease in the radioactive release to the environs, it is unlikely that operator action could be taken in time to close the valves to prevent degraded ECCS performance since (1) blowdown would be complete and peak containment pressure would be reached in approximately one to two minutes, and (2) there would be no indication to the operator that the valve closure signals had been bypassed. The only means the operator would have had to identify the valve status would be the valve position indication. Even if the operator were to take manual action, it is questionable whether the valves would be able to close against the postulated blowdown flow rate through the penetrations several minutes following the accident. However, if the operator were to manually close the valves within seconds following the accident, it is unlikely that the pressure buildup would be sufficient to result in blowdown forces that would affect the closure capability of the valves.

The details of the two reported events were:

Millstone Unit No. 2 Event. During a review of operating procedures on July 25, 1978, the licensee discovered that since May 1, 1978, intermittent containment purge operations had been conducted with the isolation signals to the redundant containment isolation valves in the purge inlet and outlet (48 inch butterfly valves) manually overridden and inoperable. The isolation signals were manually overridden to purge the containment with a "high radiation" signal present—see further details below. (This high radiation signal was actually a low value set to initiate actions in a conservative manner.) The manual override circuitry not only defeated the "high radiation" actuation signal to close these valves, but also bypassed all other isolation signals to these valves.[1] The operator had no indication that this bypass condition existed and, consequently, was not aware that operator action would be required to close the valves in the event of an accident.

From May 1 to July 25, 1978 (about 2,000 hours), the containment of Millstone Unit No. 2 was purged to reduce radioactivity levels, for interim periods ranging from 5 minutes to 31 hours, with purging occurring for approximately 9% (180 hours total) of the total time period. For each purge, the levels of radioactivity released to the environment were monitored and were within Technical Specification requirements. However, the regulations and specifically the plant Technical Specifications both require the containment isolation valves in lines that open directly to the containment atmosphere be capable of automatic closure during purging or other operations, or such lines must be acceptable on some other defined basis to mitigate the potential consequences of postulated design basis accidents.

Salem Unit No. 1 Event. On September 8, 1978, the NRC was advised that, as a matter of routine, Salem Unit No. 1 has been "venting" the containment through the containment ventilation system valves to reduce pressure. In certain instances, this venting has occurred with the containment "high particulate" radiation monitor isolation signal overridden to the purge valves (36 inch diameter valves) and pressure-vacuum relief vent valves (10 inch diameter valves). Override of the containment isolation signal was accomplished by resetting the train A and B reset buttons.[2] Under these circumstances, six valves in the containment vent and purge systems could be opened with a high particulate isolation signal present. This override was performed after verifying the actual containment particulate radiation levels were acceptable for venting. The licensee, after further investigation of this practice, determined that the reset of the particulate alarm also bypasses the containment isolation signal to the purge valves and the vent valves and, therefore, these valves would also not have automatically closed as required in the event of a signal to initiate emergency core cooling.

The licensee had modified its procedures to preclude venting of the containment through the purge valves when the containment "high particulate" alarm exists.

Cause or Causes. The events resulted from procedural inadequacies and design deficiencies. While the containment atmospheres were properly sampled and the purging (venting) discharges that actually occurred were within regulatory requirements, the procedures did not adequately address the operability of the isolation valves and the limitations on negating the closure signals. The requirements for having the valves capable of closing automatically were not discussed, nor were the related Technical Specifications referenced, in the procedures. Although not a requirement, to do so is good practice. Design deficiencies contributed to the event in that (1) bypassing one safety signal also bypassed other safety signals, and (2) the use of this bypass was not annunciated in the control room.

ACTION TAKEN TO PREVENT RECURRENCE

LICENSEES

Northeast Nuclear Energy Company (NNECO). The immediate corrective action taken by NNECO, at Millstone Unit No. 2, was to close, deenergize and administratively remove the containment purge valves from service (tag out). Future NNECO actions include the development of procedure revisions and submission of proposed changes to the Millstone Unit No. 2 Technical Specifications. These changes would allow somewhat higher containment radiation monitor setpoints, still based on remaining well within allowable effluent release limits, which will permit containment purging over a wide range of normal containment conditions without overriding the "high radiation" signal or any other signal.

Public Service Electric and Gas Company (PSE&G). The immediate corrective action taken by PSE&G at Salem Unit No. 1, was to stop venting when override of the valve closure signals is involved. In addition, PSE&G initiated design changes such that the isolation valves will be closed automatically by a signal actuating the

[1] To manually override a safety actuation signal, the operator cycles the valve control switch to the closed position and then to the open position. This action energizes a relay which overrides the safety signal and allows manual operation independent of any safety actuation signal. This circuitry is designed in this manner to permit reopening of certain valves after an accident to allow manual operation of safety equipment.

[2] These buttons reset the logic circuits (train A and train B) associated with containment isolation.

emergency core cooling systems even if the containment radiation monitor alarms are overridden.

NRC. The NRC has previously reviewed the practice of purging containment during operation and, in 1975, revised its licensing program for new plants by restricting purging during operation.

In a related instance in May, 1976, Commonwealth Edison Company reported that they had stopped the practice of purging containment during operation at Zion Stations having determined that a safety analysis had not been performed to assess the affect of purge valve closure time upon ECCS performance. Preliminary calculations by Commonwealth Edison Company indicated that containment pressure would fall below that assumed for the design basis loss of coolant accident and that the existing analysis therefore not conservative. The NRC review of this event concluded that the effect of purging upon ECCS performance was generic to many operating reactors. However, the significance of this event for public health and safety was determined to be minor when evaluated on more realistic bases, i.e., automatic valve closure times on the order of 5 to 10 seconds, with peak pressure in containment being reached on the order of 1-2 minutes. This item was therefore given relatively low priority for resolution.

Now based on an assessment of these events, the NRC believes that tighter controls are warranted on purging and venting operations to assure containment integrity at these two and other nuclear power plants.

In addition to reviewing the licensees' corrective actions for these events the NRC staff is reviewing the generic implications for other facilities.

All operating reactor licensees, whose Technical Specifications do not prohibit purging during operation, are being requested to commit to stop purging during operation or to provide a basis why purging during operation should be permitted. The staff basis for allowing limited purging through fast closing valves during operation will be a demonstration of the capability of the valves to close under postulated accident conditions and a Technical Specification limitation of 90 hours per year for purging during operation. The staff basis for allowing unlimited purging through fast closing valves during operation will require: (1) demonstration of the capability of the valves to close under postulated accident conditions, (2) an assessment demonstrating the acceptability of purging during operation upon emergency core cooling system performance, (3) containment purge and isolation instrumentation, and control circuit designs which conform to the appropriate safety standards (IEEE Standard 279-1971), and (4) an assessment demonstrating acceptability of the radiological consequences of the design basis loss of coolant accident initiated during purge operations.

Also, all licensees are being requested to review all safety actuation signal circuit designs which incorporate a manual override, or negating, feature to insure (1) that override of a single safety actuation signal does not bypass other safety actuation signals, and (2) that the use of the manual override feature is appropriately ennunciated in the control room. Licensees will be required to report the results of their review and their corrective actions for any non-conforming circuits.

In addition, all licensees are being advised of the necessity for proper management controls for the use of manual override of safety signals during non-emergency conditions. NRC will, through their inspection program, assure that licensees have initiated appropriate follow-up action.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

Dated at Washington, D.C. this 20th day of December, 1978.

[FR Doc. 78-35949 Filed 12-26-78; 8:45 am]

[7590-01-M]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-05, "Radiological Protection During Operation of Nuclear Power Plants," has been developed. The Working Group, consisting of Mr. E. Hladky, Czechoslovak Socialist Republic; Mr. P. Jeanson, France and Mr. Lionel Lewis (Duke Power Company), United States of America, developed the initial draft of this Safety Guide from an IAEA collation during a meeting on May 16-27, 1977. The initial Working Group draft was modified by the IAEA Technical Review Committee in subsequent meetings, and we are soliciting comments on the modified November 28, 1978 draft. Comments on this draft received by February 9, 1979 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Md. this 18th day of December 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director,
Office of Standards Development.

[FR Doc. 78-35946 Filed 12-26-78; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-245 and 50-336]

NORTHEAST NUCLEAR ENERGY CO., ET AL

Issuance of Amendments To Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 56 and 45 to Provisional Operating License No. DPR-21 and Facility Operating License No. DPR-65, respectively, to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Units Nos. 1 and 2, located in the Town of Waterford, Connecticut. The amendments are effective as of their date of issuance.

The amendments revise the Appendix A Technical Specifications for Unit No. 2 only by:

- changing the refueling water storage tank sump recirculation actuation setpoint;
- revising the engineered safety features response times;
- modifying the incore detector operability requirement to be more definitive and to remove unnecessary requirements;
- correcting the required number of redundant meteorological monitoring instruments;
- modifying the action requirements for operability of the control room chlorine detectors;
- defining "immediate" in certain ACTION statements and revising other specified time intervals;
- correcting the pressure at which the safety injection tank isolation valves must be operable;
- increasing the amount of TSP required to neutralize the containment sump;
- changing the wording to indicate that specific doorways in the enclosure building have only one door;
- requiring verification of proper operation of the diesel generator under simulated emergency conditions; and
- adding surveillance requirements for ECCS throttled valves.

The amendments revise the Appendix A Technical Specifications for both Units 1 and 2 by:

- changing adminstrative controls to reflect current orgainizational structure; and
- providing greater flexibility regarding entry into high radiation areas.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated July 21, October 4, 12, and 18, November 14, 16, and 21, and December 13, and 15, 1977, and January 12 and 24, February 23, and March 20 and 21, 1978, (2) Amendments Nos. 56 and 45 to Licenses Nos. DPR-21 and DPR-65, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 8th day of December 1978.

For The Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4 Division of Operating Reactors.

[FR Doc. 78-35947 Filed 12-26-78; 8:45 am]

[7590-01-M]

NUCLEAR ENGINEERING CO., INC.

[Docket No. 27-39]

In the matter of NUCLEAR ENGINEERING COMPANY, INC., (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site).

It is ordered that oral argument be scheduled in this proceeding commencing at 12:30 p.m. on Thursday, January 4, 1979. This argument will be held at the Public Hearing Room, 5th Floor, East-West Towers, 4350 East-West Highway, Bethesda, Maryland 20014.

The matters to which argument is to be directed are both parts of Applicant's motion to compel filing of a draft environmental impact statement. Also to be discussed is the scheduling of a prehearing conference.

The time allotted to the parties is forty-five (45) minutes each to Applicant's and NRC Staff's attorneys, and thirty (30) minutes each to the intervenors' attorneys.

Dated at Bethesda, Maryland This 19th day of December 1978.

For The Atomic Safety And Licensing Board.

ANDREW C. GOODHOPE,
Chairman.

[FR. Doc. 78-35942 Filed 12-26-78; 8:45 am]

[7590-01-M]

[Docket No. 50-278]

PHILADELPHIA ELECTRIC CO. ET AL.

Issuance of Amendment to Facility Operating License

The U. S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Facility Operating License No. DPR-56 issued to Philadelphia Electric Company, Public Service Electric Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station, Unit No. 3 (the facility) located in Peach Bottom, York County, Pennsylvania. The amendment is effective as of its date of issuance.

The amendment consists of changes in the Technical Specifications to revise, on an interim basis, the maximum allowable time permitted for the Reactor Core Isolation Cooling System (RCIC) to be out-of-service.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 13, 1978, (2) Amendment No 49 to License No. DPR-56, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document room, 1717 H Street, N.W., Washington, D. C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of December 1978.

For The Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-35948 Filed 12-26-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-443A and 50-444A]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE, ET AL.

Receipt of Attorney General's Advice and Time For Filing Of Petitions to Intervene On Antitrust Matters

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, the following additional advice from the Attorney General of the United States, dated December 19, 1978, with respect to a construction permit application for Seabrook Nuclear Power Station, Units No. 1 and No. 2:

You have requested our further advice pursuant to Section 105c of the Atomic Energy Act of 1954, as amended, in regard to the above-captioned application. The Department previously rendered advice respecting this application on December 4, 1973 and November 13, 1975. We understand that the Massachusetts Municipal Wholesale Electric Company (MMWEC) and Maine Public Service Company propose to participate with the Public Service Company of New Hampshire and several other licensees in the Seabrook Nuclear Power Station, Units No. 1 and No. 2. Under the participation plan, MMWEC would obtain a 139.99 megawatt share (or a 5.86238% ownership interest) of the facility, while Maine Public Service Company would acquire a 34.82 megawatt share (or a 1.50009% ownership interest). Both of these applicants underwent successful antitrust review by the Department, as reported in my letter of August 27, 1977, in connection with the Millstone Nuclear Power Station, Unit No. 3, NRC Docket No. 50-423A. MMWEC also underwent affirmative antitrust review, as communicated in my letter of April 20, 1978, in connection with the Pilgrim Nuclear Generating Station, Unit No. 2, NRC Docket 50-471A.

Our review of the information submitted for the proposed additional participants, as well as other relevant information, has disclosed no basis upon which to change our previous conclusion that no antitrust hearing will be required regarding this nuclear facility.

Any person whose interest may be affected by this proceeding may, pursuant to section 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by January 26, 1979, either (1) by delivery to the NRC Docketing and Service Branch at 1717 H Street, NW, Washington, DC or (2) by mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

For the Nuclear Regulatory Commission.

JEROME SALTZMAN,
Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

[FR Doc. 78-35941 Filed 12-26-78; 8:45 am]

[7590-01-M]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT: RANCHO SECO NUCLEAR GENERATING STATION

EXEMPTION

I.

The Sacramento Municipal Utility District (the licensee), is the holder of Facility Operating License No. DPR-54 which authorizes the operation of the nuclear power reactor known as Rancho Seco Nuclear Generating Station (the facility) at steady state reactor power levels not in excess of 2772 megawatts thermal (rated power). The facility consists of a Babcock and Wilcox Company (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Sacramento County, California.

II.

In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 8, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR Part 50.46 and Appendix K. The evaluation indicated that with the limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On April 12, 1978, B&W informed the Commission that it had determined that in the event of a small break Loss of Coolant Accident (LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2200F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Rancho Seco Nuclear Generating Station has an ECCS configuration which consists of two HPI trains. Each train has an HPI pump and the train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. (There is also a third HPI pump installed.) The two parallel HPI trains are connected but are kept isolated by manual valves (known as the crossover valves) that are normally closed. Upon receiving a safety injection signal the HPI pumps are started and valves in the four injection lines are opened. Assuming loss of offsite power and the worst single failure (failure of diesel to start) only one HPI pump would be available and two of the four injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about half of the output of one high pressure pump) could flow out the break. Therefore, for the worst combination of break location and single failure, only one-half of the flow rate of a single high pressure ECCS pump would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

Following discovery of this problem, B&W stated that they had analyzed a spectrum of small breaks in the pump discharge line and had determined that to meet the limits of 10 CFR 50.46, operator action was required to open the two manually operated crossover valves and to manually align the two motor driven isolation valves which had failed to open. This would allow the flow from the one HPI pump to feed all four reactor coolant legs. B&W assumed that 30% of the flow would be lost through the break and 70% would refill the core. By letters dated April 14 and 21, 1978, supplemented by discussions with the staff, the licensee committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limit-

ing single failure, manual action would be taken to begin opening these valves within five minutes and have them fully opened and an adequate flow split obtained within 10 minutes after initiation of the event. To facilitate this operation, the licensee committed to maintain one of the series-connected, manually operated crossover valves normally open. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We therefore concluded that the modeling of operator action used in the analyses was a reasonable approximation of the operator action that actually will be taken, provided specific procedures were prepared and followed to assure such action.

By letter dated July 18, 1978, B&W submitted a summary of analyses of this event. This summary described the methods used and the results obtained for small breaks in the pump discharge piping for a reactor power of 2772 Mwt, which is the rated power level of Rancho Seco. The results provided in this summary were obtained using the B&W ECCS Evaluation Model with two modifications. These modifications, which involve use of a two node inner vessel simulation and phase distributional multipliers for bubble rise in all control volumes within the reactor vessel, were described in a B&W letter to the staff, dated May 26, 1978, and have been reviewed and approved by the staff.

By letter dated July 18, 1978, the licensee stated that he had reviewed the B&W submittal of July 18, 1978, and had found the conclusions acceptable and applicable to Rancho Seco. Based on this review, the licensee requested authorization to operate Rancho Seco at 100% full power (2772 Mwt).* In a submittal dated July 7, 1978, the licensee also confirmed that procedures for operator action consistent with the assumptions of the B&W analyses had been implemented, that drills had been conducted which verified that the required operations could readily be completed in less time than assumed in the B&W analyses and that all five operating shifts had been trained in the procedures. Representatives of the Commission's regional office state that they have verified the licensee's implementation of the procedures and have inspected the licensee's training records to verify that training in the procedures was conducted. Based on the above, we concluded that the procedures implemented by the licensee relative to operator action in the event of a small break are acceptable. In addition, in his letter dated April 21, 1978, the licensee committed to submit by July 21, 1978, a proposal for any long-term modification (to eliminate the need for prompt operator action) considered appropriate.

Regarding the licensee's request for authorization to operate the facility at full power (2772 Mwt), we reviewed the B&W submittal of July 18, 1978, which presented the results of analyses performed for reactor coolant pump discharge line break sizes 0.15, 0.10, 0.085, 0.07, 0.055 and 0.04 ft^2 at a reactor power level of 2772 Mwt. Based on these results, B&W stated that with operator action consistent with that modeled in the analyses, a 0.07 ft^2 discharge line break is the most limiting case. In this case, core uncovery occurs for about 410 seconds and the conservatively calculated peak clad temperature is approximately 1092°F. This temperature is well below the limit specified in 10 CFR 50.46(b).

Based on our review of these analyses, we found that the calculations supported the conclusion that 0.07 ft^2 discharge line break was the most limiting case. The analyses submitted used a simplified input to the FOAM code for the distribution of steam sources which the licensee described as conservative. However, these analyses did not provide adequate justification that this approach was clearly conservative. Accordingly, we could not conclude that operation of Rancho Seco at 2772 Mwt would be fully in conformance with 10 CFR 50.46. On the other hand, for operation of this facility at power levels up to 2772 Mwt, the ECCS performance calculations for limiting small break did indicate that this break had a very substantial margin on peak clad temperature below the limits of 10 CFR 50.46(b) if operator action consistent with that assumed in the analyses was properly taken. Therefore, because of this very substantial margin on peak clad temperature, the NRC staff concluded that operation of Rancho Seco at power levels of up to 2772 Mwt in accordance with the operating procedures previously identified would not endanger life or property or the common defense and security. The license conditions previously imposed by Order of April 26, 1978, were therefore modified to: (1) require submission of a reevaluation of ECCS cooling performance wholly in conformance with 10 CFR 50.46., except for the credit for completion of operator action within 10 minutes after initiation of the event; (2) limit the maximum steady state reactor core power level to 2772 Mwt; (3) require operation in accordance with procedures described in the licensee's letters of April 14, 1978, as supplemented by letters dated April 21 and July 7, 1978 (except that the maximum time for completion of operator action was 10 minutes); and (4) require submission as soon as possible of a description and safety evaluation of a proposed plant modification which would eliminate reliance on prompt operator action. These conditions were added to the Rancho Seco license by Order for modification of License dated July 21, 1978. Since that time, B&W has provided in their letter of August 11, 1978 additional information concerning the simplified input used in the FOAM code portion of the ECCS performance analyses submitted July 18, 1978. The staff has reviewed this additional information and on the basis of its review has concluded that the small break LOCA analyses which used this simplified FOAM code input method are acceptably conservative and in conformance with the performance criteria of 10 CFR 50.46 and Appendix K to Part 50. As noted previously, however, these analyses assume completion of the local operator action as described in the licensee's letters of April 14, 21 and July 7, 1978, within ten minutes following the initiation of the event.

The original concern in this matter derived from an unexpected but nevertheless inadequate assessment of a spectrum of breaks. This deviation from 10 CFR 50.46 has been ameliorated on a temporary basis by the actions discussed herein. However, continued reliance on prompt operator action to perform the required steps to assure plant safety over a period of years into the future is undesirable and should be remedied as promptly as possible. To this extent, the original defect still remains until modifications are made to eliminate the reliance on prompt operator actions. To remedy this defect the license, in accordance with license Condition 4 of the present Order, submitted on July 20, 1978, a description and safety evaluation of a proposed plant modification which would eliminate reliance on the prompt operator action noted above. Additional information concerning the proposed modification has been supplied by the licensee's letters of October 9, November 22 and December 4, 1978. In addition, in his letters of November 22 and December 4, 1978, the licensee committed to complete implementation of this proposed modification prior to Rancho Seco operation in Cycle 4. Justification for this implementation schedule was provided in the licensee's letter of December 4, 1978.

The licensee, in his letter of November 22, 1978, also requested an exemption from the provisions of 10 CFR 50.46 until such modifications were implemented.

*In a previous licensing action related to this matter the maximum power level of Rancho Seco had been limited to 2080 Mwt by the Commission's Order for Modification of License dated April 26, 1978.

With respect to this request for an exemption, we note that the conclusions drawn in our Order of July 21, 1978 remain valid and have been further supported by our subsequent conclusions regarding the acceptability of the simplified input used in the FOAM code. Accordingly, we conclude that operation of Rancho Seco at power levels up to 2772 Mwt in accordance with the referenced procedures for operator action until modifications are completed to achieve full compliance with 10 CFR 50.46 will not endanger life or property or the common defense and security.

We have reviewed the modification proposed by the licensee to eliminate reliance on prompt operator action. This modification consists of replacement of the AC motors presently installed on the valve operators for the four high pressure injection valves and the reactor coolant normal makeup valve, with similarly qualified DC motors. Because Rancho Seco has four Class 1 battery banks, the proposed change allows the injection and makeup valve operators to be powered from reliable power sources different from those used for the high pressure injection pumps. Accordingly, a single failure would not disable both a pump and its associated injection valves. The licensee has presented a single failure analysis which demonstrates that in the presence of a small break LOCA, no single failure combined with a loss of offsite power would prevent supply of an adequate total flow of cooling water. The licensee will also provide modifications which will limit the degree of opening of the injection valves upon receipt of a high pressure injection signal. This is being done to assure a proper flow split between the four injection lines and to prevent pump runout. The licensee has committed to perform tests to verify that these criteria are met. The licensee has also provided a battery loading analysis which adequately demonstrates the ability of the battery banks to accommodate this addition load. Therefore, based on our review of the licensee's submittal we conclude that upon installation of the modification, as proposed, and upon completion of testing to verify attainment of the flow split assumed in the B&W analysis of July 18, 1978, the emergency core cooling system will fully conform to the requirements of 10 CFR 50.46.

Thus, while the ECCS for Rancho Seco does not fully comply with our requirements, appropriate actions have been taken to remedy the defect in a timely manner, and to mitigate the consequences of a small break LOCA, should such an accident occur prior to implementation of acceptance modifications. As a condition of granting an exemption, adherence to prescribed operator actions and implementation of the proposed modifications prior to operation in Cycle 4 are being made conditions of the facility operating license. These conditions will remain in force only for the interval of time about one year until the proposed modifications of the ECCS are completed. The public interest is served by issuing this exemption for Rancho Seco in that in the absence of an exemption, shutdown of the facility would be required. Loss of this block of generating capacity could adversely affect electric system reliability and thus possibly adversely affect the public.

III.

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Sacramento City-County Library, Sacramento, California.

(1) Letters from J. J. Mattimoe to R. W. Reid, Chief, Operating Reactors Branch No. 4, dated April 17 and 21, 1978.

(2) Order for Modification of License, Docket No. 50-312, dated July 21, 1978.

(3) Letters from J. H. Taylor to S. A. Varga, Chief, Light Water Reactors Branch No. 4, dated May 26, July 18 and August 11, 1978.

(4) Letters from J. J. Mattimoe to R. W. Reid, Chief, Operating Reactors Branch No. 4, dated July 7 and 18, October 7, November 22 and December 4, 1978.

IV.

WHEREFORE, in accordance with the Commission's regulations as set forth in 10 CFR 50.12, the licensee is hereby granted an exemption from the provisions of 10 CFR Part 50, Paragraph 50.46(a). With respect to Rancho Seco this exemption supersedes the Order for Modification of License dated July 21, 1978, and the license is hereby conditioned as follows:

(1) Until implementation of the modifications defined in (2) below, the facility shall be operated in accordance with the procedures for operator action described in the licensee's letter dated April 14, 1978 as supplemented by letters dated April 21 and July 7, 1978, except that the maximum time for completion of operator action shall be 10 minutes after initiation of the event, and

(2) Authorization to operate the facility in the absence of implementation of the modifications to eliminate reliance on prompt operator action, as described in the licensee's letters of July 20, October 9, and November 22, 1978 is limited to Cycle 3.

Dated at Bethesda, Maryland, this 15th day of December 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-35949 Filed 12-26-78; 8:45 am]

[7590-01-M]

TRANSNUCLEAR

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated this day December 19, 1978 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

EXPORT LICENSE APPLICATIONS SOURCE AND SPECIAL NUCLEAR MATERIAL IN KILOGRAMS

Name of Applicant, Date of Application, Date Received, Application Number	Material Type	Total Element	Total Isotope	End-Use	Country of Ultimate Destination
Transnuclear, 12/07/78, 12/08/78, XSNMO1428.	93.3% Enriched Uranium.	3.810	3.55	Fuel for Astra reactor, Seibersdorf.	Austria
Transnuclear, 12/07/78, 12/08/78, XSNMO1329.	93.3% Enriched Uranium.	21.554	20.110	Fuel elements for FRJ-2 Reactor.	W. Germany
Transnuclear, 12/07/78, 12/08/78, XSNMO1430.	3.40 Enriched Uranium	10,581	360	Fuel for Doel 2 reload	Belgium
Westinghouse Elect., 11/17/78/ 12/12/78, XSNMO1431.	3.3 Enriched Uranium	325,822	8,845	Fuel for Maanshan Units 1 and 2.	Rep. of China
Mitsui and Co., 12/08/78, 12/13/78, XSNMO1432.	3.95 Enriched Uranium	26,902	756	Fuel for Hamaoka Unit II—Reload 2.	Japan

[FR Doc. 78-35951 Filed 12-26-78; 8:45 am]

[7590-01-M]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which revised the Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment incorporates provisions in the Technical Specifications required for (1) operation of Yankee-Rowe with the refueled Core XIV, (2) performance of subsequent steam generator inspections in accordance with the added Section 3/4.4.10 "Steam Generators", and (3) inclusion of four manual containment isolation valves in Table 3.6-1.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated November 30, 1976 (Proposed Change No. 119, Supplement 1), September 8, 1978 (Proposed Change No. 163) and October 30, 1978 (Proposed Change No. 164), and supplements thereto dated November 10, 1978, two (2) letters dated November 21, 1978, and a letter dated November 27, 1978, (2) Amendment No. 54 to License No. DPR-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of December, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-35950 Filed 12-26-78; 8:45 am]

[3110-01-M]

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 December 18, 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; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF ENERGY

Low Income Weatherization CETA Labor Availability Survey, CS 133, single time, 1,000 community action agencies, 1,000 responses; 1,000 hours, Hill, Jerrerson B., 395-5867.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Producers' Questionnaire for Inv. 303-TA-6 and 7, leather wearing apparel, single time, 30 producers of certain leather wearing apparel, 30 responses; 240 hours, Geiger, Susan B., 395-5867.

DEPARTMENT OF COMMERCE

Industry and Trade Administration, Industrial Diamond and Small Diamond Dies, U.S. Consumption and Trade in 1978, ITA 992, single time, 750 consumers and reclaimers, 750 responses; 750 hours, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education, Cigarette Smoking Among Teenagers: A Dual Survey, NIE 206 A and B, single time, Random sample of 4,275 adolescents aged 12-19, 4,275 responses; 1,261 hours, Office of Federal Statistical Policy and Standard, 673-7956.

Center for Disease Control, 1979 Survey of National Attitudes Toward Immunization, single time, 3,000 individuals over 18 in U.S. population, 3,000 responses; 1,560 hours, Richard Eisinger, 395-3214.

DEPARTMENT OF JUSTICE

Offices, Boards, Division, Department of Justice Metallurgical Coal Survey, ATR 168, single time, 30 coal producers, 30 responses; 15 hours, Laverne V. Collins, 395-3214.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Public Health Service, 1979 Health Interview Survey Smoking Supple-

ment/Reinterview Questionnaire, other (see SF-83), households rep. civ. noninstitutionalized pop. of U.S., 40,000 responses; 29, 517 hours, Office of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration, Screening Activities and Arrest Reports, FAA 1650-7, FAA 1650-8, monthly, airport operators, 6,960 responses; 89,917 hours, Geiger, Susan B., 395-5867.

EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of Census, Quarterly Survey of Residential Alterations and Repairs, QHS 730, QHS 731, quarterly, owners or managers of rental properties in QHS., 6,400 responses; 1,067 hours, C. Louis Kincannon, 395-3211.

Bureau of Census, confectionery (manufacturer's net sales by type of confectionery) (manufacturer's net sales), M2OC.1, M2OC.2, monthly, manufacturers of confectionery, 3,960 responses; 1,980 hours, C. Louis Kincannon, 395-3211.

Bureau of Census, steel mill shapes and forms, (receipts, use, and inventories), M33H, monthly, consumers of steel mill shapes and forms, 3,000 responses; 500 hours, C. Louis Kincannon, 395-3211.

Bureau of Census, export sales and orders, M4-A, monthly, manufacturers of durable goods for export, 3,000 responses; 1,500 hours, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, framingham heart study exam 14 code sheet, decks 401 through 405 and 407, ISNIH-HL-22, single time, participants of ongoing longitudinal study, 1,000 responses; 2,000 hours, Office of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit, application for land development mortgage insurance, FHA 3551, on occasion, sponsors of land development projects, 1,000 responses; 500 hours, Strasser, A., 395-6132.

DEPARTMENT OF INTERIOR

Bureau of Land Management, application and license to mine coal (free use), 3130-3, on occasion, applicants license to mine coal, 100 responses; 17 hours, Ellett, C. A., 395-6132.

Bureau of Land Management, application to lease geothermal resources, 3200-8, on occasion, applicants to lease resources, 2,000 responses; 1,000 hours, Ellett, C. A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-35952 Filed 12-26-78; 8:45 am]

[7715-01-M]

POSTAL RATE COMMISSION

[Docket No. MC78-2]

THIRD-CLASS DISCOUNT PROPOSAL, 1978

Expanded Issues

ISSUED: DECEMBER 21, 1978.

On September 8, 1978, the United States Postal Service (Postal Service), pursuant to section 3623 of the Postal Reorganization Act (39 U.S.C. 3623), filed a Request with the Postal Rate Commission for a Recommended Decision on Establishing a Third-Class Carrier Route Presort Subclass. This filing has been assigned Docket No. MC78-2.

Notice of the filing was published in the FEDEAL REGISTER on September 18, 1978 (43 FR 41440-41).

Twenty-five parties have been granted status in the proceeding, either as intervenors or limited participators.

On October 18, 1978, the Officer of the Commission (OOC) filed a Petition to Expand the Proceedings in Docket No. MC78-2 to include two additional proposals: (1) To establish a per-piece and a per-pound rate structure for third-class bulk catalogs and circulars.

In addition, on October 26, 1978, the National Easter Seal Society, The National Foundation/March of Dimes, The Amercian Lung Association and the St. Jude's Children Research Hospital (NESS, *et al.*) filed a petition to enlarge the scope of these proceedings to include consideration of a presortation discount for third class nonprofit bulk rate mail.

By Order Nos. 219 and 221, issued November 22, 1978 and November 24, 1978, respectively, the Commission granted the OOC's and NESS *et al.'s* petitions to enlarge the scope of the proceeding.[1]

It is the desire of the Commission that all interested persons be given adequate notice of the enlarged proceeding and that those parties who have not previously intervened have the opportunity to do so.

Therefore, notice is hereby given that any party desiring to be heard with reference thereto and to become a party to the proceeding, or to participate as party in any hearing thereon, should file a petition for leave to intervene. Petitions for leave to intervene must be filed with the Secretary, Postal Rate Commission, Washington, D.C. 20268, on or before January 4, 1979, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to section 20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not petitioner requests a hearing or, in lieu thereof, a conference; and futher, whether or not the petitioner intends to participate actively in the hearing. Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before January 4, 1979, file a written request for leave to be heard as a "limited participator," pursuant to section 19a of the Commission's rules of practice (39 CFR 3001.19a). In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to section 19b of the Commission's rules (39 CFR 3001.19b).

The request of the Postal Service for a recommended decision on establishing a third-class carrier route presort subclass, and all docket orders and filings in MC 78-2, are on file with the Commission and are available for public inspection during regular business hours.

By the Commission.

DAVID F. HARRIS,
Secretary.

THIRD-CLASS DISCOUNT PROPOSAL, 1978

[Order No. 219; Docket No. MC78-2]

ORDER GRANTING THE OOC'S MOTION TO ENLARGE SCOPE OF PROCEEDINGS

ISSUED: NOVEMBER 22, 1978.

On October 18, 1978, the Officer of the Commission (OOC) filed a petition to expand the proceedings in Docket No. MC78-2 to include two additional proposals. These proposals are to (1) establish a per-piece and a per-pound rate structure for third-class bulk mail and (2) merge the rate structures for third-class bulk catalogs and circulars. The Postal Service and an aggregation of third-class mailers,[1] hereafter collectively referred to as ATCMU, *et al.*, oppose the OOC's petition. Upon review of the petition of the OOC and the answers in opposition to the OOC's motion, we have decided to expand this docket to include the OOC's proposals.

In Docket No. MC76-3, the Commission had before it both of these proposals as well as three discount proposals similar to the Postal Service's proposal in Docket No. MC78-2. In each of the recommended decisions addressing these Docket No. MC76-3

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[1] *See* attachments to this Notice.

[1] The third-class mailers who jointly oppose the OOC's petition are Associated Third Class Mail Users; Association of American Publishers; Direct Mail/Marketing Association, Inc.; Mail Advertising Service Association (International), Inc.; and Mail Order Association of America.

proposals, the Commission recognized that the various proposals had merit but were unsuitable for immediate adoption because of a lack of data to develop rates.[2] Consequently the Commission recommended against the proposals and the Governors adopted this Commission's recommendations.

In Docket No. R77-1, the OOC proposed that the Commission re-examine the two proposals that are the subject of his petition here. By Order No. 186, issued December 12, 1977, the Commission severed these proposals from Docket No. R77-1, primarily to insure the issuance of an opinion in Docket No. R77-1 within 10 months as required by 39 U.S.C. 3624(c).

As evident from Order No. 186, it was contemplated at the time of issuance of the order that petitions would be filed shortly after the rate case for reconsideration of the proposals.[3] At the time we issued the order severing these proposals, we were, of course, aware that the OOC had filed direct testimony which focused principally upon rate design, *i.e.*, the problems associated with establishing a controlled circulation rate that was lower than bulk third-class mail in all weight increments. However, the Commission's tentative and recommended decisions in Docket No. MC76-3 on these two proposals focused upon the absence of probative cost data. Thus, consistent with our tentative decision addressing the per-piece, per-pound proposal in Docket No. MC76-3, we recommended deferral by Order No. 186 in order to afford the parties an opportunity to develop evidence relating to cost causation, *i.e.*, the determination of which costs for third-class bulk mail are traceable to a piece rate and which costs are traceable to a rate based on weight.

ATCMU, *et al.* contends that the cost data are still unavailable and therefore the OOC's proposal should remain outside this docket. Implicitly, ATCMU argues the only method to obtain the requisite accurate cost data would be through empiric studies, such as time and motion studies.[4] This position is not supported by either Order No. 186 or the Commission's decision in Docket No. MC76-3. In fact, to the contrary it is the Commission's view that as an expert body, it will not be foreclosed from considering proposals as being supported by accurate data when the data rests upon reasoned analyses, predicated upon a combination of elements such as proxies, empiric data and hypotheses.[5]

We find the other objections raised by the Postal Service and ATCMU, *et al.* are not of sufficient magnitude to overcome the obvious advantages of consolidating into one docket proposals involving the same rates, herein third-class bulk rates. ATCMU, *et al.* suggests that the OOC should petition to open a new docket for consideration of his proposals. This would be a needless exercise. We would consolidate the proposals anyway, to permit the efficient assessment of the impact of each proposal on the other, as for example, the influence of the Postal Service's proposed discount upon the OOC's proposed per-piece rate.[6]

The Postal Service and ATCMU, *et al.* also claim that the inclusion of the OOC's proposals would delay the rendering of a decision on the Postal Service's discount proposal or otherwise cause the proceeding to be conducted with such expedition that full and fair consideration of the proposals will not be possible.

These arguments are not persuasive. Unlike rate cases, such as Docket No. R77-1, the Postal Service is empowered to implement the discount proposal on a temporary basis 100 days after filing pursuant to 39 U.S.C. 3641(e). This power to place into effect the proposed discount 100 days after filing nullifies the claim of ATCMU, *et al.* that the expansion of these proceedings will cause a delay that will prevent implementation of a carrier route subclass which "will be beneficial to USPS and to mail users" (Answer of ATCMU, *et al.*, p. 6).

In any event, we do not foresee any significant delay arising from expanding these proceedings to include the OCC's proposals. As indicated above, the gravity of a delay is not great in view of the Postal Service's power to implement its discount proposal on a temporary basis. If any party is of the opinion that the extant procedural schedule will not allow adequate time for a full and fair hearing on the OOC's proposals, it may petition the presiding officer for appropriate modifications of the procedural schedule. If the presiding officer finds merit in any such petition, he may modify the procedural schedule accordingly. At present, it is our view that the extant procedural schedule allows sufficient latitude to make any modifications necessary in order to provide a full and fair hearing and still reach the conclusion of the proceedings by May 1, 1979, as originally planned.

The Commission orders:

The OOC's petition to enlarge the scope of these proceedings is granted.

By the Commission.

DAVID F. HARRIS,
Secretary.

THIRD-CLASS DISCOUNT PROPOSAL, 1978

[Order No. 221; Docket No. MC78-2]

ORDER GRANTING MOTION TO ENLARGE SCOPE OF THE PROCEEDINGS TO INCLUDE CONSIDERATION OF A DISCOUNT FOR THIRD-CLASS NONPROFIT BULK RATE MAIL

ISSUED NOVEMBER 24, 1978.

On October 26, 1978, the National Easter Seal Society, The National Foundation/March of Dimes, the American Lung Association and the St. Jude Children's Research Hospital (hereinafter NESS, *et al.*) filed a petition to enlarge the scope of these proceedings[7] to include consideration of a presortation discount for third-class nonprofit bulk rate mail. In support of its motion the parties cite Commission Order Nos. 179 (September 23, 1977) and 186 (December 12, 1977). Those orders arose out of Docket No. R77-1 and involve the deferral of various related third-class classification issues because of the exigency involved in meeting the 10-month statutory deadline for rate cases (*See* 39 U.S.C. 3624(c)). In Order No. 186 the Commission stated that after the completion of Docket No. R77-1, it would entertain petitions to commence an omnibus proceeding to consider all the deferred third-class issues.

NESS, *et al.* argue that Docket No. MC78-2 is the ideal vehicle in which to consider their proposal. They state that the data submitted by the Service in this docket are directly relevant to considerations of a carrier-route presort discount for third-class nonprofit mail, and that dealing with all of third-class mail at the same time would maximize economy and minimize confusion for mailers.

Petitioners also allege that denial of the instant motion would constitute discrimination against third-class nonprofit mail and a preference to third-class regular rate mail, citing 39 U.S.C. 403(c). This would occur because there is no alternative forum in which to hear the proposal and the cost of service principles upon which the discount is based are equally applicable to third-class nonprofit mail.

The Postal Service is the only party opposing the motion. It does so both on substantive and procedural grounds. Procedurally, the Service claims that this docket is not the omnibus proceeding contemplated by the Commission in Order No. 186 since such a proceding would require exploration of data and issues totally unrelated to its proposal in this docket. It refers to its answer to the OOC's motion to enlarge the issues[8] where it contended that expanding the issues would delay the proceedings.

On substantive grounds, the Service raises two issues: (1) Whether the Commission has the authority to revise the Congressionally-established categories of mail entitled to preferred rates under 39 U.S.C. 3626; and (2) that consideration of the NESS, *et al.* proposal would be unfair to the majority of nonprofit mailers who could not meet the presort requirements and would be forced to pay higher rates in order to meet the Service's revenue requirements.[9] On the first issue, the Service suggests that the splitting of the third-class nonprofit subclass may well be beyond the Commission's authority and, in any case, runs contrary to Congressional and Commission policy to simplify the mail classification schedule. The second issue is raised by the Service because, unlike third-class regular rate mail which makes a contribution to institutional costs, nonprofit mail only pays its attributable costs. While the Service expects to maintain the same revenues for third-class bulk regular rate

[2] *See* Transmittal of Twelve Opinions and Recommended Decisions to the Governors of the Postal Service, December 22, 1977, Appendix E, p. 15; Appendix I, pp. 10-11; Opinion and Recommended Decision After Exceptions to Tentative Decision Denying Proposals for Varying Discounts on Presorted Third-Class Bulk Mail, June 21, 1978, p. 48.

[3] *See* PRC Order No. 186, pp. 7-8.

[4] Our review of the projected outputs from various components of the Docket No. MC76-5 study program indicates that the empiric cost data to develop a per-pound, per-piece rate structure will not be forthcoming from the study program.

[5] *See* Opinion and Recommended Decision After Exceptions Denying the Officer of the Commission's Proposals to (1) Eliminate Single-Piece Third-Class and (2) Expand Parcel Post to Include Pieces Weighing Less Than One Pound, June 19, 1978, p. 26.

[6] In this regard we request, if warranted, that the OOC present alternative schedules, one with the proposed presort discount and the other without the presort discount.

[7] In Order No. 219 (November 22, 1978), the Commission granted the OOC's motion to expand the issues in this case to include, *inter alia*, consideration of adopting a per-piece and per-pound rate structure.

[8] *See* page 1, fn. 1, *supra*. Considerations of delay have been adequately dealt with in Order No. 219 and need not be repeated here.

[9] The Service also claims that NESS *et al.* do not represent these mailers.

mail on account of the incremental revenues from new volume, any reduction in rates for nonprofit carrier route presorted mail would require an increase in the rates for that nonprofit mail not presorted to carrier routes.

Upon consideration of all the arguments, the Commission has decided to grant the motion.

When the Commission issued Order No. 186, it had no assurance that the Service would be filing a third-class presort discount proposal with the Commission. Therefore, it was contemplated that, as relevant data became available through the study program in Docket No. MC76-5, the Commission would entertain proposals for a third-class presort discount for both regular-rate and nonprofit mail, as well as any other relevant rate structure changes involving third-class. It was expected that such a proceeding could start up shortly after Docket R77-1 was completed. We do not see how the filing under consideration in this case could nullify the opportunities for other parties to petition for alternative changes, such as the ones discussed by the Commission in Order No. 186. When the Commission severed various issues from Docket R77-1 because of the need for expedition, it promised a future forum for those issues. From a procedural point of view, the Service has raised no arguments which would cause us to deny to NESS *et al.* the opportunity to litigate its proposals in this docket.

Concerning the Commission's authority to realign the preferred rate subclasses, that issue was raised in Docket No. MC76-2,[10] concerning the OOC's proposal to merge some of the second-class preferred rate categories. The Commission analyzed the legislative history, the policies of the Act, and the wording of the relevant statutes, and found—as a legal matter—that the wording of 39 U.S.C. 3626 does not bar a merger of the preferred rate categories.[11] Although our previous opinion is not dispositive of this issue, this legal question should not be a bar to Commission consideration of an otherwise relevant issue. Of course, after the development of a complete record, the Commission still might find that it does not have the requisite authority to effectuate the proposal in question.

We find that the Service's argument with respect to the "unfairness" of the proposal to small nonprofit mailers to be unpersuasive. The notion that some mailers may pay higher rates as a result of granting a presort discount to nonprofit third-class mail is neither startling nor without precedent. In Docket No. R77-1, the Commission recommended, and the Governors adopted, a multi-tiered second-class rate structure keyed to level of presortation.[12] Under this rate structure, mailers who cannot meet the presort requirements perforce must pay rates which are highet than they would have been under the former rate structure which contained no presort discounts. We found such a result consistent with our cost of service principles, and absent some other considerations which were not extant in R77-1, we would continue to find merit in such a rate structure.

In the same vein, however, we would caution the parties concerning their evidentiary presentations in this case. Before the Commisssion could grant the NESS, *et al.* proposal, the record wound have to contain substantial evidence to support it. Such evidence would likely include a reasonable estimate of the number of peices of third-class nonprofit mail that would be eligible for a presort discount. We do not know whether the Service has such data, but it may be incumbent upon the proponents of this proposal to conduct a thorough study of the third-class nonprofit market in order to obtain this information. The Commission orders:

The petition of NEES *et al.* to enlarge the scope of these proceedings is granted.

By the Commission.

DAVID F. HARRIS,
Secretary.

[FR Doc. 78-35927 Filed 12-26-78; 8:45 am]

[10]Recommended Decision Concerning Certain Proposals of the Officer of the Commission to Simplify the Classification Structure of Second-Class Mail and the Proposal of the Agricultural Publishers Association to Provide a Rate Preference for the Editorial Portion of Agricultural Publications, Docket No. MC76-2 (March 30, 1978).

[11]However, based on the facts, such a merger was not recommended.

[12]PRC Op. R77-1, pp. 303-32 (May 12, 1978).

[7910-01-M]

RENEGOTIATION BOARD

EXCESSIVE PROFITS AND REFUNDS

Interest Rate

Notice is hereby given that, pursuant to section 105(b)(2) of the Renegotiation Act of 1951, as amended, the Secretary of the Treasury has determined that the rate of interest applicable, for the purposes of said section 105(b)(2) and section 108 of such act, to the period beginning January 1, 1979 and ending on June 30, 1979, is 9⅞ per centum per annum.

Dated: December 20, 1978.

GOODWIN CHASE,
Chairman.

[FR Doc. 78-35973 Filed 12-26-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[PROPOSED LICENSE No. 09/09-0235]

UNIVERSAL INVESTMENT CORP.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 (1978) by Universal Investment Corporation, 110 E. Ann Street, Carson City, Nevada 89701, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. et seq).

The proposed officers, directors and principal stockholders are:

Marlow D. Gregers, President, General Manager, Director, 12.5%, 240 Redwood Drive, Pasadena, California 91105.

Beryl B. Stolper, Secretary, Director, 50%, 1000 Kerrigan Drive, Oakland, California 94605.

Roger DuCharme, Vice President, Director, 917 N. Carson Street, Carson City, Nevada 89701.

There will be no additional ten or more percent shareholders.

The SBIC will begin operations with an initial capitalization of $400,000. They contemplate a plan of operation which centers on a diversified investment policy. The Applicant, a Nevada corporation, intends to primarily make investments in small business concerns located in the State of Nevada.

Matters involved in SBA's consideration of the application include (1) the general business reputation and character of the proposed owners and management, (2) the reasonable prospects for successful operation of the new SBIC under such management (including adequate profitability and financial soundness, in accordance with the Act and Regulations), and (3) whether the proposed licensing action would be in furtherance of the purpose of the Act.

Notice is hereby given that any person may, not later than January 11, 1979, submit to SBA in writing comments on the proposed SBIC to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W. Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Carson City, Nevada.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 18, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-35963 Filed 12-26-78; 8:45 am]

[8025-01-M]

[Application No. 04/04-5155]

UNIVERSAL LENDING OF AMERICA, INC.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Universal Lending of America, Inc. (applicant) with the Small Business Investment Administration pursuant to 13 CFR 107.102 (1978).

The officers, directors and stockholders are as follows:

Paul Backman, President & 17% Stockholder, 8950 N.W. 22nd Ct., Pembroke Pines, Florida 33024.

Jesse Small, Secretary, Treasurer & 50% Stockholder, 2490 Park Road, Hallandale, Florida 33009.
Vivian Elmini, Vice President, 3915 Grant Street, Hollywood, Florida 33021.
Lewis Levey, 33% Stockholder, 850 N.E. 179th Terrace, North Miami Beach, Florida 33162.

The applicant will maintain its principal place of business at 2450 Hollywood Boulevard, Hollywood, Florida 33006. It will begin operations with $300,000 of private capital derived from the sale of 300 shares of stock to the persons shown above. It is anticipated that the capitalization will be increased to $500,000 within one year from the date of issuance of the license by the purchase of additional stock by the present stockholders.

The applicant will conduct its operations in the Greater Hollywood and Broward County areas.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than January 11, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Hollywood, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: December 18, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-35964 Filed 12-26-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1542; Amendment No. 1]

OKLAHOMA

Declaration of Disaster Loan Area

The above numbered Declaration (see 43 FR 52567), is amended by adding the following counties:

County, natural disaster(s) and date(s)

Adair, Drought, 6/1/78-11/1/78.
Cherokee, Drought, 6/1/78-11/1/78.
Craig, Drought, 6/1/78-11/1/78.
Deleware, Drought, 6/1/78-11/1/78.
Mayes, Drought, 6/1/78-11/1/78.
Noble, Drought, 6/1/78-11/1/78.
Nowata, Drought, 6/1/78-11/1/78.
Ottawa, Drought, 6/1/78-11/1/78.
Payne, Drought, 6/1/78-11/1/78.
Rogers, Drought, 6/1/78-11/1/78.
Tulsa, Drought, 6/1/78-11/1/78.
Wagoner, Drought, 6/1/78-11/1/78.
Washington, Drought, 6/1/78-11/1/78.

and adjacent counties within the State of Oklahoma as a result of natural disasters as indicated. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on May 3, 1979, and for economic injury until the close of business on August 3, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 18, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-35965 Filed 12-26-78; 8:45 am]

[8025-01-M]

[License No. 01/01-0290]

NEW ENGLAND CAPITAL RESOURCES CORP.

Surrender of License

Notice is hereby given that New England Capital Resources Corporation (NECR) 50 Washington St., South Norwalk, Conn. 06854, a Massachusetts Corporation, has surrendered its License No. 01/01-0290, issued by the Small Business Administration on September 29, 1978.

NECR has complied with all conditions prescribed by SBA for the surrender of its License. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the Regulations adopted thereunder, the surrender of the License of NECR is hereby accepted and it is no longer Licensed to operate as a Small Business Investment Company.

(Catalogue of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 18, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-35966 Filed 12-26-78; 8:45 am]

[8025-01-M]

AMISTAD DOT VENTURE CAPITAL, INC.

[Application No. 02/02-5358]

Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Amistad DOT Venture Capital, Inc. (applicant) with the Small Business Administration pursuant to 13 C.F.R. 107.102 (1978).

The officers, directors and stockholders of the applicant are as follows:

Percy E. Sutton, Chairman of the Board and President, 10 West 135th Street, New York, New York 10037.

Pierre M. Sutton, Vice President, Secretary, Treasurer, Director, 333 East 81st Street, New York, New York 10028.

Sylvia E. Schoultz, Assistant Secretary, Director, 246 West 150th Street, New York, New York 10039.

Inner City Broadcasting, Corporation, 100% Common Stockholder, 801 Second Avenue, New York, New York 10019.

Applicant will maintain its principal place of business at 801 Second Avenue, New York, New York 10019 and will begin operations with $500,000 of private capital derived from the sale of 5000 shares of common stock to the Inner City Broadcasting Corporation. In addition to the initial private capital being provided by the above mentioned stockholder and subject to SBA approval, the applicant expects to increase its paid-in capital with funds from the Minority Business Resource Center of the Federal Railroad Administration, Department of Transportation.

The applicant will conduct its operations nationwide from its principal place of business in the State of New York and from a branch office in the District of Columbia. Although applicant does not intend to restrict its investments to small business concerns in any particular industry, it does intend to make a concerted effort to finance small business concerns which are in the communications industry and the transportation industry in addition to concerns in the electronics industry.

As a small business investment company to be licensed pursuant to Sec-

tion 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than (15 days from the date of publication of this notice), submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small business Investment Companies.)

Dated: December 20, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-36014 Filed 12-26-78; 8:45 am]

[8025-01-M]

MANSFIELD CAPITAL CORPORATION

[Proposed License No. 01/01-0295]

Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an Application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), under the name of Mansfield Capital Corporation (Applicant), for a license to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of Vermont and it will commence operations with a capitalization of $350,000, which amount is to be raised through the sale of 100 percent of the Applicant's issued and outstanding shares of Common Stock, No Par Value, to Stevens-Farrington, Inc., a New Hampshire corporation, which is wholly owned by Stephen H. Farrington, President, Treasure and Director of the Applicant. Stevens-Farrington, Inc., will have no other assets or liabilities other than its shares of stock in the Applicant and will conduct no other business.

The Applicant will have its principal place of business at Mountain Road, Stowe, Vermont 05672, and it intends to conduct operations primarily in the States of Vermont, Massachusetts, New Hampshire and Maine.

The Officers and Directors of the Applicant will be:

Stephen H. Farrington, President, Treasurer and Director, Notch Brook, Stowe, Vermont.

Bruce Nourjian, Vice President, Secretary and Director, Shaw Hill, Moscow, Vermont.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and SBA Regulations.

Notice is hereby given that any person may not later than (15 days after the date of publication of this Notice), submit written comments on the Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice shall be published by the Applicant in a newspaper of general circulation in Burlington, Vermont.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Dated: December 20, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-36013 Filed 12-26-78; 8:45 am]

[8025-01-M]

SEAFIRST CAPITAL CORPORATION

[Proposal No. 10/10-0166]

Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 104.102 (1978)), by Seafirst Capital Corporation, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and stockholders are:

NAME AND ADDRESS, TITLE AND RELATIONSHIP, AND PERCENT OF OWNERSHIP

William D. Pettit, Jr., President and Director, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Steven G. Blanchard, Vice President and Manager, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Richard D. Bonesteel, Secretary, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Philip L. Wright, Treasurer, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98106.

G. Eric Pucher, Assistant Secretary, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Charles Gleiser, Assistant Treasurer, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

H. Lee Carter, Director, 1001 Fourth Avenue, Seattle, Washington 98154.

James B. Gilchrist, Director, 1001 Fourth Avenue, Seattle, Washington 98154

William R. Jennings, Director, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Georgene Lee, Director, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Seafirst Mortgage Corporation, Sole Shareholder, 100%, Securities Building, Third Avenue and Stewart Street, Seattle, Washington 98101.

Seafirst Mortgage Corporation is the wholly owned subsidiary of Seattle-First National Bank which is a wholly owned subsidiary of Seafirst Corporation, a publicly held one-bank holding company.

The Applicant proposes to begin operations with a capitalization of $2,500,000 and will be a source of equity capital and long term loan funds for qualified small business concerns. The Applicant intends to render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than (15 days from the date of publication of this Notice), submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441

"L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Seattle, Washington.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 20, 1978.

PETER F. MCNEISH.
Deputy Associate Administrator for Investment.

[FR Doc. 78-36015 Filed 12-26-78; 8:45 am]

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

NATIONAL ADVISORY COMMITTEE ON UNIFORM TRAFFIC CONTROL DEVICES

Open Meeting

Pursuant to Executive Order 11671, the Federal Highway Administration (FHWA) announces the meeting dates and relevant information for the Annual Meeting of the National Advisory Committee on Uniform Traffic Control Devices. The meeting will be held January 10-12, 1979, at the Springfield Hilton, Springfield, Va., as follows:

Wednesday, January 10—Executive Committee Meeting, 7:30 p.m.
Thursday, January 11—Technical Subcommittee Meeting, 8-5 p.m., Research Subcommittee Meeting, 7:30-9:30 p.m.
Friday, January 12—General Session, 8-5 p.m.

Attendance by the public will be limited to space available. For further information contact Robert E. Conner, Executive Director, Office of Traffic Operations, Federal Highway Administration, Washington, D.C. 20590, code 202-426-0411.

Purpose. This Committee reviews currently approved standards, guides, and warrants for traffic control devices including signs, signals, and pavement markings contained in the Manual on Uniform Traffic Control Devices. They recommend revisions of such standards, propose new ones to meet new developments and improvements and provide advice to the Federal Highway Administrator to the end that the Manual shall be at all times, and as far as practicable, a complete and up-to-date presentation of best practices.

Agenda. Technical items proposed for review and discussion at meetings of the respective Subcommittees include the following:

SUBCOMMITTEE ON SIGNS

(a) Clarification of sign legends, PARKING, STANDING, STOPPING.
(b) Spacing of Chevron alignment signs.
(c) Development of a symbol for POLICE sign legend.
(d) Development of a symbol for motorcycles or trail bikes.
(e) TASK FORCE ACTIVITIES AND REPORTS:
1. Sign Symbols
2. Placement of Signs at Intersections
3. Recreational and Motorist Service Signs
4. Placement of Warning Signs
5. CB-9 Monitored Sign
6. R.R. Warning Signs

SUBCOMMITTEE ON SIGNALS

(a) Flashing Red Signals for Median Crossovers, IV-9.
(b) Red Arrow for No Right Turns, Sg-98.
(c) Prohibition of Straight Ahead Green Arrow, Sg-112.
(d) Left Turn Dispalys for Permissive Left Turns, Sg-113.
(e) Alternatives to Full Signalization at School Pedestrian Crossings, Sg-44.
(f) Nonilluminated Pedestrian Signal, Sg-115.
(g) TASK FORCE REPORTS
1. Signal Indications, Sequences and Phasing
2. Pedestrian Signal Indications
3. Traffic Control Devices Handbook, Part IV
4. Signal Location and Intensity
5. Signal Warrants

SUBCOMMITTEE ON MARKINGS

(a) Colors for Bridge Object Markers.
(b) Use of Narrow Edgelines.
(c) Mandatory Edgelines on Rural Highways.
(d) Evaluation of Drivers Eye Height for Highway Design.
(e) Use of Delineators on Freeway Tangents.
(f) Use and Spacing of Raised Pavement Markers.
(g) Marking Patterns for Freeway Lane Drops.
(h) Use of Dotted Lines Through Entrance/Exit Ramps.
(i) Mandatory Use of Centerline Markings.
(j) Color of Delineators at Freeway Off-Ramps.

SUBCOMMITTEE ON CONSTRUCTION & MAINTENANCE

(a) Detour Design Criteria, VI-6.
(b) Maintained Visibility Levels of Channelizing Devices, VI—7.
(c) Handbook, Part VI.
(d) Design of Safety Vests, Cn-35.
(e) Barricade Warning Lights Specification (ITE).
(f) Flourescent Colors (Red-Orange).
(g) Design of Flaggers Paddle.

SUBCOMMITTEE ON GRADE CROSSINGS

(a) Handbook for Part VIII.
(b) Warning Signs on Roads Parallel to a Railroad.
(c) Black Border on Crossbuck Sign.
(d) Stop Signs at Railroad Crossings.
(e) Federal Rules for Developing Uniform Warrant Criteria.

RESEARCH SUBCOMMITTEE

(a) Use of Strobe Lights at Railroad/Highway Grade Crossings.
(b) Use of Color Purple for Variable Message Signs.
(c) Detour Design Criteria.
(d) Steady and Flashing Downward Yellow Arrow Lane Control.
(e) Reports on Federally-Coordinated Program Progress.
(f) Experimentation with Tourist Information Sign Legends.
(g) Transportation Research Board Cooperation.

The agenda for the General Session, January 12, includes the following:

(a) Call to Order—Executive Director
(b) Opening Remarks—NAC Chairman
(c) Reports of Officers
(d) Reports and Recommendations of Technical Subcommittees.
(e) Reports and Comments from Members and Other Participants.

Additional items may be added to the agenda items noted with the approval of the Subcommittee Chairmen and within allotted time.

Issued on: December 21, 1978.

J. J. CROWLEY,
Director, Office of Traffic Operations.

[FR Doc. 78-35930 Filed 12-26-78; 8:45 am]

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

DEBT MANAGEMENT ADVISORY COMMITTEES

Meetings

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that meetings will be held in Washington on January 30 and 31, 1978, of the following debt management advisory committees:

American Bankers Association Government Borrowing Committee
Public Securities Association
U.S. Government and Federal Agencies Securities Committee

The agenda for the American Bankers Association Government Borrowing Committee meetings provides for working sessions on January 30 and a report to the Secretary of the Treasury and Treasury staff on January 31.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meetings provides for working sessions on January 30 and a report to the Secretary of the Treasury and the Treasury staff on January 31.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 190, revised, I hereby determine that these meetings are concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees are utilized by this Department at meetings called by representatives of the Office of the Secretary. When so utilized they are recognized to be advisory committees under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such these debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the advice provided in reports of these committees, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of the meetings of these committees and for providing annual reports setting forth a summary of their activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: December 20, 1978.

ANTHONY M. SOLOMON,
Under Secretary for Monetary Affairs.

[FR Doc. 78-35980 Filed 12-26-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

BURLINGTON NORTHERN INC.

[Exception Under Section (a), Paragraph (1), Part (v), Second Revised Service Order No. 1332; Exception No. 8]

Decided December 15, 1978.

To: Burlington Northern Inc.

By the Board.

The Texas Mexican Railway Company (TM) has purchased fifty (50) new boxcars which will be delivered to Burlington Northern Inc. (BN), at Minneapolis, Minnesota, for movement to the TM. TM has allowed BN to load these cars at Minneapolis, Minnesota, for movement to the TM. Reduced loadings of these cars on the BN to destinations as directed by TM means the BN will hold some of the cars beyond the 60 hours permitted in Section (a)(2)(ii) of this order prior to placing of cars for loading.

Order. Pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(v) of Second Revised Service Order No. 1332, Burlington Northern Inc., is authorized to assemble and hold up to fifty (50) new Texas Mexican Railway Company (TM) boxcars for loading as directed by TM, regardless of the provisions of Section (a)(2)(ii) of this order.

These cars shall become fully subject to all provisions of Second Revised Service Order No. 1332 when loading is completed and instructions for forwarding are received from the shippper.

Effective December 15, 1978.

Expires January 12, 1979.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-35858 Filed 12-26-78; 8:45 am]

[7035-01-M]

[Notice No. 145]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before January 26, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative in named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-77869, filed October 12, 1978. Transferee: BARLOW TRUCK LINES, INC., Route 2, Warrensburg, MO 64093. Transferor: FARRIS TRUCK LINE, P.O. BOX 224, Faucett, MO 64448. Applicants' representative: Tom B. Kretsinger, Esq., Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought by transferee to purchase the operating rights of transferor, as set forth in Permit No. MC-138557 (SUB No. 3), issued to Walt Keith Trucking, Inc., and acquired by transferor herein pursuant to MC-F-12977, approved October 18, 1977 and consummated December 14, 1977, as follows: *Meat, meat products, and meat by-products, and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 MCC 209 and 766, (except hides and commodities in bulk, in tank vehicles), from the facilities of Dubuque Packing Co., at or near Denison, IA to points in that part of the United States in and east of MN, IA, NE, KS, OK, and TX, under a continuing contract or contracts with World Wide Meats. Transferee presently holds no authority from this Commission. Application has been filed under Section 210a(b).

No. MC-FC-77950, filed December 8, 1978. Transferee: SAWYER CORP., 3761 Wolf Road, Saginaw, MI 48605. Transferor: Walter F. Hutfilz and James A. Hutfilz, d.b.a. Walter F. Hutfilz, 2850 Bay Road, Saginaw, MI 48604. Applicants' representative: Karl L. Gotting, Attorney, 1200 Bank of Lansing Building, Lansing, MI. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-139820 (SUB No. 1), issued June 12, 1975, as follows: *Gypsum rock,* crushed, ground or pulverized, in bulk, in dump vehicles, from the facilities of the United States Gypsum Company at or near Alabaster, MI to points in IN and OH (except points in Ashtabula, Cuyahoga, Lake, Summit, Muskingum, Licking, Franklin, Wayne, Geauga, Lorain, and Portage Counties, OH). Transferee presently holds authority from this Commission under No. MC-138383. Application has not

been filed for temporary authority under Section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-35856 Filed 12-26-78; 8:45 am]

[7035-01-M]

SOUTHERN PACIFIC TRANSPORTATION CO.

[Exception under Section (a), Paragraph (1), Part (v) second revised service order No. 1332; exception No. 7, amt No. 1]

Decided December 15, 1978.

To: Southern Pacific Transportation Company.

By the Board.

Upon further consideration of Exception No. 7 (Southern Pacific Transportation Company), and good cause appearing therefor:

It is ordered,

Exception No. 7 to Second Revised Service Order No. 1332 is amended to:

Expire December 31, 1978.

Issued at Washington, D.C., December 15, 1978.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-35858 Filed 12-26-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 1, 1978.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 11, 1979. FSA No. 43646, Korea Marine Transport Co., Ltd. No. 100, intermodal rates on general commodities, between rail carriers' terminals at U.S. Atlantic and Gulf Coast Ports, on the one hand, and Ports in Japan and Korea, in Trans-Pacific Freight Conference of Japan/Korea, Agent, Tariff No. 1, ICC 1, and Pacific Westbound Conference, Agent, Tariff No. 8-A, ICC 4, to become effective January 14, 1979. Grounds for relief—all water competition.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-36018 Filed 12-26-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATION FOR RELIEF

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 11, 1979. FSA No. 43644, Southwestern Freight Bureau, Agent's No. B-791, as amended, rates on paraxylene and xylene (xyol) and kindred articles, from stations in Southwestern Territory to stations in Southern Territory, in Supplements 7 and 93 to its Tariffs 11-J and SW/S 123-P, ICC 5348 and 5152, respectively to become effective January 18, 1979. Grounds for relief—rate relationship.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 78-36017 Filed 12-26-78; 8:45 am]

[7035-01-M]

[No. MC-C-8619; No. 36745]

PETITION FOR INVESTIGATION—BUS TERMINAL OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

In the matter of Transport of New Jersey; Asbury Park-New York Transit Corporation; Decamp Bus Lines; Hudson Bus Transportation Company, Inc.; Hudson Transit Lines, Inc.; Lakeland Bus Lines, Inc.; Lincoln Transit Commpany; Manhattan Transit Company; Maplewood Equipment Company; New York-Keansburg-Long Branch Bus Company, Inc.; North Boulevard Transportation Company; Somerset Bus Company, Inc.; Suburban Transit Corporation; and Port Authority of New York and New Jersey—investigation of operations and practices.

AGENCY: Interstate Commerce Commission.

ACTION: Institute investigation and consolidate proceedings.

SUMMARY: Request to institute an investigation into the conditions surrounding the use of the mid-Manhattan bus terminal for interstate motor bus operations granted. Proceedings are consolidated. Scheduled for prehearing conference on January 8, 1979, in New York, N.Y.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Harvey Gobetz, Washington, D.C. 20423, (202) 275-7693.

SUPPLEMENTARY INFORMATION: Petitioning motor bus carriers Trailways, Inc., Safeway Trails, Inc., Trailways of New England, Inc., American Bus Lines, Inc., and Continental Edwards Motor Transit Co. as well as numerous individuals working near or using the mid-Manhattan bus terminal have requested that an investigation be instituted to inquire into the manner and method by which motor bus operators serving New York City are compelled to use this terminal and the facilities of the Port Authority of New York and New Jersey. Petitioners asserted that fees paid for use of the terminal are too high and are extortionate in nature and that the facilities are unsafe. The problems associated with the terminal allegedly threaten the continuation of adequate motor bus service.

In an earlier notice (42 FR 67592) interested parties were invited to comment on the following issues: (1) the impact of the method and manner of the terminal's operations upon the interstate motor bus service, (2) the propriety of restrictions limiting motor bus termianal operations to the Port Authority's facility, (3) the charges paid by petitioners for the use of the facility and burdens those charges place upon petitioners' financial outlook, (4) the Commission's jurisdiction, and (5) the appropriate relief. Upon review of these comments it has been determined that an investigation into these matters should be instituted in docket No. 36745.

Docket No. MC-C-8619 was instituted on the Commission's own motion by order served June 16, 1975. Because these investigations involve similar issues which are susceptible of mutual resolution, and because it is in the interest of the Commission and the public to conserve time and resources, the proceedings have been consolidated. A pre-hearing conference has already been scheduled for January 8, 1979, in New York, N.Y.

Dated December 15, 1978.

By the Commission, Division 1, Commissioners Brown, Gresham, and Clapp.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-36016 Filed 12-26-78; 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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[6740–02–M]

1

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 58895, December 18, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 20, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

ER-16—ER78-511, Public Service Company of Oklahoma.

KENNETH F. PLUMB,
Secretary.

[S-2595-78 Filed 12-22-78; 11:22 am]

[6735–01–M]

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

DECEMBER 22, 1978.

TIME AND DATE: 10 a.m., December 21, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following additional agenda item: 1. *Mine Safety and Health Administration (MSHA)* v. *George A. Harvel*, Docket No. DENV 77-40-P (petition for discretionary review). It was determined by unanimous vote of all five Commissioners that Commission business required that this item be added on the December 21 agenda and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION:

Don Terry, 202-653-5644.

[S-2597-78 Filed 12-22-78; 12:08 pm]

[7550–01–M]

3

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 pm., Wednesday, January 3, 1978.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: (1) Ratification of Board actions taken by notation voting during the month of December, 1978. (2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions are available from the Executive Secretary following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; telephone 202-523-5920.

Date of Notice: December 22, 1978.

[S-2596-78 Filed 12-22-78; 11:22 am]

[7600–01–M]

4

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published December 26, 1978—S-2583-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: December 28, 1978 at 9:30 a.m.

CHANGES IN THE MEETING: The meeting for December 28, 1978 has been rescheduled to January 5, 1979, at 9:30 a.m.

Dated: December 22, 1978.

[S-2594-78 Filed 12-22-78; 11:22 am]

[8010–01–M]

5

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [43 FR 58898, December 18, 1978].

STATUS: Open/closed meetings.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 12, 1978.

CHANGES IN MEETING: Deletion/addition of items.

The following item will not be considered at the open meeting scheduled for Thursday, December 21, 1978 at 10 a.m.:

Consideration of a request by the Firestone Tire & Rubber Company that the Commission review the Division of Corporation Finance's determination concerning a shareholder proposal submitted to the Company by Mr. Edward C. Calvert. For further information, please contact William E. Morley at, 202-755-1240.

The following additional items will be considered at the closed meeting scheduled for Thursday, December 21, 1978, immediately following the open meeting at 10 a.m.:

Institution of injunctive action.
Settlement of injunctive actions.

Commissioners Loomis, Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

DECEMBER 20, 1978.

[S-2598-78 Filed 12-22-78; 12:41 pm]

federal register

WEDNESDAY, DECEMBER 27, 1978

PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

■

BOARD OF CONTRACT APPEALS, ESTABLISHING PROCEDURES FOR NATIONAL HOUSING ACT CONTRACTS

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 20]

[Docket No. R-78-596]

BOARD OF CONTRACT APPEALS, ESTABLISHING PROCEDURES FOR NATIONAL HOUSING ACT CONTRACTS

AGENCY: HUD Board of Contract Appeals.

ACTION: Proposed Rule.

SUMMARY: This rule sets forth procedures for handling bid protests arising under National Housing Act Contracts involving HUD-acquired properties. The proposed rule is needed to assure administrative review procedures for bidders whose bid protests are not within the jurisdiction of the Comptroller General.

DATES: Comments received on or before January 26, 1979 will be considered prior to publication of a final rule.

ADDRESSES: Send written comments to Rules Docket Clerk, Room 5218, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Michael F. Burke, Chairman, Board of Contract Appeals, 451 Seventh Street, SW., Washington, D.C. 20410 (202-755-6318).

SUPPLEMENTARY INFORMATION: The Comptroller General has stated that the General Accounting Office (GAO) is without jurisdiction to decide bid protests arising from procurements under the National Housing Act. Present HUD regulations provide for a dissatisfied bidder to appeal to the GAO; however, if the protest arises under a National Housing Act Contract, the bidder will not receive the benefit of a decision on the merits of the case from GAO. The effect of the current regulations is to deny such bid protesters rights usually available to protesters under other contracts with the Government.

Although protesters may seek relief in the courts, generally court action takes more time and is more expensive than appealing to the GAO, or an administrative tribunal. In addition, it is unclear whether, and to what extent, relief would be available from the courts. The Scanwell doctrine (*Scanwell Laboratories, Inc.* v. *Shaffer*, 424 F2d 859 (1970)), affording judicial relief to bid protesters, has not been uniformally accepted by other courts. In any case, small and minority businesses, which are mainly involved in National Housing Act contracts, could not afford the time and money involved in court action. Thus, an administrative review is essential in order not to eliminate judicial review of Contracting Officers' decisions on bid protests.

The proposed rule will provide the public with a fair and impartial appeal forum, which is consistent with and analogous to administrative review by the GAO, and with established procedures available to contractors dealing with most other Government agencies.

The Department has determined that this proposed rule will not have a significant impact upon the quality of the environment. A Finding of Inapplicablity respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, Washington, D.C. 20410.

Interested persons may participate in this rulemaking by submitting comments to the Office of the Rules Docket Clerk, at the address listed above. Comments received by January 26, 1979 will be considered in the formulation of a final rule. Copies of all written comments will be available for examination by the public in the Office of the Rules Docket Clerk.

In consideration of the foregoing, 24 CFR Part 20 is proposed to be amended by adding a new Subpart C as follows:

Subpart C—Bid Protest Procedures for National Housing Act Contracts

Sec.
20.15 Protests Against Award.
20.16 Definitions.
20.17 Filing of Protest.
20.18 Time for filing.
20.19 Notice of protest, submission of procuring activity report and time for filing of comments on report.
20.20 Withholding of Award.
20.21 Furnishing of information protests.
20.22 Time for submission of additional information.
20.23 Decision by HUDBCA.
20.24 Request for reconsideration.

Subpart C—Bid Protest Procedures for National Housing Act Contracts

§ 20.15 Protests Against Award.

The following identifies the responsible agents and sets forth procedural requirements for handling protests regarding the award of National Housing Act Contracts. Protests involving the award of any other procurement or sales contract by the Department of Housing and Urban Development is governed by the procedures outlined in 41 CFR 24-2.407-8.

§ 20.16 Definitions.

(a) "National Housing Act Contract" as used in this Subpart means a contract entered into by the Department of Housing and Urban Development for goods and services for the management, repair, improvement, alteration, demolition, maintenance, operation, rental, or sale or other disposition of real and related property conveyed to or otherwise in the custody of the Secretary, including properties held by HUD as mortagee-in-possession, which are entered into pursuant to the National Housing Act, 12 U.S.C. 1701 et seq., as amended, and regarding which the General Accounting Office will not decide bid protests.

(b) "Days" as used in this Subpart means working days of the Federal Government excluding Saturdays, Sundays, and Federal Holidays as specified in 5 U.S.C. 6103.

(c) The term "file" or "submit" as used in this Subpart refers to the date of transmission except as indicated in §§ 20.18 and 20.19 of this subpart.

(d) "Procuring/Disposal Activity" as used in this Subpart means the Office of Property Disposition in Washington, D.C. for National or other procurements by that office pursuant to the National Housing Act or Area and Service Offices for decentralized or other procurements by those offices pursuant to the National Housing Act.

(e) "Adverse agency action" is any action or inaction on the part of a procuring activity which is prejudicial to the position taken in a protest filed with that procuring activity. Such "adverse agency action" may include but is not limited to: a decision on the merits of the protest; a procurement action such as the award of a contract or the rejection of a bid despite the pendency of a protest; or procuring activity acquiescence in or active support of continued and substantial contract performance.

(f) "An interested party" shall mean any person, business, nonprofit or municipal entity which has received a solicitation (Invitation for Bids or Request for Proposals) on the procurement or sale in question.

§ 20.17 Filing of Protest.

(a) An interested party may protest the award or proposed award of a National Housing Act Contract for procurement or sale entered into by the Department. Protests must be in writing to the Contracting Officer of the procuring activity, or in writing to the Department of Housing and Urban Development Board of Contract Appeals (hereinafter, "HUDBCA").

(b) Interested parties are urged to seek resolution of their complaints ini-

tially with the Contracting Officer of the procuring activity. The Contracting Officer shall act on any protest filed with the procuring activity unless it is known that a protest has been filed concurrently with the HUDBCA. Where a protest is filed directly with the procuring activity, full consideration shall be given to the protest with the protester notified in writing of the final decision within twenty (20) days from the date of receipt of the protest by the procuring activity.

Where the Contracting Officer makes a determination to award a contract, notwithstanding a protest, such a determination to proceed with award shall be approved by the head of the procuring activity and the Office of General Counsel, after informing the HUDBCA. In such situations, the Office of General Counsel shall complete its review of the proposed award within five (5) working days of notification. In instances of extreme emergency, where the Contracting Officer has determined that award of the contract is required within twenty four (24) hours for the protection of life or for a similar reason, the Office of General Counsel shall complete its review of the proposed award within twenty four (24) hours of notification. Notification in such emergency situations may be by telephone to the General Counsel's designee, provided that the reasons for utilizing the emergency procedure are subsequently submitted in writing. If a decision by the Office of General Counsel is not transmitted to the Contracting Officer within the twenty four hour period, the Contracting Officer may award the contract provided that there has been approval by the head of the procuring activity. If the Office of General Counsel determines that the contract shall not be awarded, a final decision will be arrived at jointly between the General Counsel's designee and the head of the procuring activity.

(c) Protests filed with the HUDBCA must be in writing and addressed to the Department of Housing and Urban Development, Board of Contract Appeals, 451 Seventh Street, S.W., Room 150, Washington, D.C. 20410. To expedite handling within the HUDBCA, the address should include: "Attn: Bid Protest."

(d) The initial protest filed with the HUDBCA shall:

(1) Include the name and address of the protester;

(2) Identify the procuring activity and the number of the solicitation and/or contract;

(3) Contain a statement of the grounds for the protest; and

(4) Specifically request a ruling by the HUDBCA.

A copy of the protest shall be sent to the Contracting Officer and a copy shall also be sent to the Office of General Counsel, U.S. Department of Housing and Urban Development, Washington, D.C. 20410 and the communication to the HUDBCA should so indicate. The grounds for protest filed with the HUDBCA must be fully supported to the extent feasible. See § 20.18(d) of this subpart with respect to time for filing any additional statement required in support of an initial protest.

(e) No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, and direct.

§ 20.18 Time for filing.

(a) If a protest has been filed initially with the procuring activity, any subsequent protest to the HUDBCA filed within 10 days of formal notification of, or actual or constructive knowledge of, initial adverse agency action will be considered provided the initial protest to the procuring activity was filed in accordance with the time limits prescribed in paragraph (b) of this Subpart. In any case, a protest will be considered if filed with the HUDBCA within the time limits prescribed in paragraphs (b)(1) and (b)(2) of this Subpart.

(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in subparagraph (b)(1), bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

(3) The term "filed" as used in this section means receipt in the procuring activity or in the HUDBCA, as to case may be. Protesters are cautioned that protests should be transmitted or delivered in the manner which will assure earliest receipt. Except as provided in paragraph (c) of this Subpart, any protest received in the HUDBCA after the time limits prescribed in this section shall not be considered unless it was sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, prior to the final date for filing a protest as specified herein. the only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. The only acceptable evidence to establish the date of transmission by mailgram shall be the automatic date indication appearing on the mailgram. If the postmark in the case of mail or the automatic date indication in the case of a mailgram is illegible, the protest shall be deemed to have been filed late.

(c) The HUDBCA, for good cause shown, or where it determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely.

(d) If an additional statement in support of the initial protest is required by the HUDBCA, one copy shall be mailed or otherwise furnished to the HUDBCA, a copy shall be mailed or otherwise furnished to the General Counsel and a copy shall be mailed or otherwise furnished to the Contracting Officer of the procuring activity not later than 5 days after receipt of notification from the HUDBCA of the need for such additional statement.

§ 20.19 Notice of protest, submission of procuring activity report, and time for filing of comments on report.

(a) The HUDBCA shall notify the procuring activity and the Office of General Counsel by telephone and in writing within one day of the receipt of a protest, requesting the activity to give notice to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The activity shall be requested to furnish in accordance with applicable procurement regulations copies of the protest documents to such parties with instructions for them to communicate further directly with the HUDBCA.

(b) Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government activity which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document and the allegedly proprietary information must be so identified wherever it appears.

Although the Government will make every effort to honor the protester's legend in responding to a Freedom of Information Act request for materials covered by the legend; the Government will independently determine whether disclosure of any such material is necessary in light of the requirements of the Freedom of Information

Act and the public interest and the Government will disclose any and all material covered by the protester's legend if the Government determines that such disclosure is required by the Act or the public interest.

(c) The HUDBCA shall request the Office of General Counsel, in conjunction with the procuring activity, to submit a complete report on the protest (hereinafter "procuring activity report") to the HUDBCA as expeditiously as possible (generally within 30 working days) in accordance with applicable procurement regulations and to furnish a copy of the report to the protester and other interested parties.

Such report should include:

(1) A copy of the protest;

(2) A copy of the bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(3) A copy of the invitation for bids, including the specifications or portions thereof, relevant to the protest;

(4) A copy of the abstract of bids or relevant portions thereof;

(5) Any other documents which are relevant to the protest; and

(6) A statement setting forth findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest. If the award was made after receipt of the protest, the report will include the determination required.

(d) Comments on the procuring activity report shall be filed with the HUDBCA within 10 days after receipt of the report, with a copy to the Office of General Counsel, the procuring activity, and to other interested parties. Any rebuttal a protester or interested party may care to make shall be filed with the HUDBCA within 5 days after receipt of comments to which rebuttal is directed, with a copy to the Office of General Counsel and the procuring activity, the protester, and interested parties as the case may be. Unsolicited procuring activity rebuttals shall be considered if filed within five (5) days after receipt by the Office of General Counsel and the procuring activity of the comments to which rebuttal is directed.

(e) The failure of a protester or any interested party to comply with the time limits stated in this section may result in resolution of the protest without consideration of the comments untimely filed.

§ 20.20 Withholding of award.

When a protest has been filed before award, the procuring activity will not make an award prior to resolution of the protest except under the following circumstances:

(1) The items or services being procured are urgently required; or

(2) Delivery or performance will be unduly delayed by failure to make award promptly; or

(3) A prompt award will otherwise be advantageous to the Government.

If award is made pursuant to (1) through (3) above, the Contracting Officer shall document the file to explain the need for immediate award, and shall give written notice of the decision to proceed with award to the HUDBCA and others concerned. Whenever possible such notice shall be given prior to award. In all cases, the decision to proceed with the award prior to resolution of the protest shall be approved by the head of the procuring activity and the Office of General Counsel. In such situations, Office of General Counsel review shall be subject to the limitations specified in § 20.17(b).

§ 20.21 Furnishing of information on protests.

The HUDBCA shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by interested parties or procuring activities, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of 10 days.

§ 20.22 Time for submission of additional information.

Any additional information requested by the HUDBCA from the protester or interested parties shall be submitted no later than 5 days after the receipt of such request. If it is necessary to obtain additional information from the procuring activities, the HUDBCA will request that such information be furnished as expeditiously as possible.

§ 20.23 Decision by HUDBCA.

(a) The HUDBCA establishes a goal of 25 days for issuing a decision on a protest after receipt of all information submitted by all parties. Decisions by the HUDBCA shall be final and binding on the Department and all parties thereto.

(b) All protests shall be decided upon the written record submitted to the HUDBCA and such additional information as may be requested by the HUDBCA. The HUDBCA will not conduct conferences or hearings in connection with protest actions, except in complex cases at the HUDBCA's discretion.

(c) Decisions rendered by the HUDBCA under these regulations shall include powers to:

(1) Order improperly awarded contracts to be terminated for the convenience of the Government;

(2) Prohibit the awarding of a contract;

(3) Award bid preparation costs to any bidder whose bid has been rejected because of arbitrary or capricious Departmental action or bad faith on the part of the Department and only when such rejection has resulted in the bidder being denied the contract.

§ 20.24 Request for reconsideration.

(a) Reconsideration of a decision of the HUDBCA may be requested by the protester, any interested party who submitted comments during consideration of the protest and any procuring activity involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) Request for reconsideration of a decision of the HUDBCA shall be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this Subpart means receipt in HUDBCA.

(c) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

§ 20.25 Effect of judicial proceedings.

The HUDBCA may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in the HUDBCA's decision.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d); United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).)

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., December 6, 1978.

PATRICIA ROBERTS HARRIS,
Secretary, Department of Housing and Urban Development.

[FR Doc. 78-35691 Filed 12-26-78; 8:45 am]

federal register

WEDNESDAY, DECEMBER 27, 1978

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

ENVIRONMENTAL CRITERIA AND STANDARDS

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[24 CFR Part 51]

[Docket No. R-78-595]

Environmental Criteria and Standards

AGENCY: Department of Housing and Urban Development

Action: Notice of proposed rulemaking.

SUMMARY: HUD proposes to add a new Part 51 to Title 24 of the CFR, and includes Subpart A—General Provisions and Subpart B—Noise Abatement and Control.

Subpart B will establish Departmental standards, requirements, and guidelines on noise abatement and control, replacing and revising the noise policies, standards and procedures previously set forth in HUD Circular 1390.2, which will be cancelled when this proposed regulation becomes effective.

DATES: Interested persons may submit written data and views to the Department by January 26, 1979. Each person submitting a comment should include name and address and refer to the document by the docket number indicated in the heading and give reasons for any recommendations. Comments will be considered before final action if taken on the proposed rule.

ADDRESSEES: Comments should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W. Washington, D.C. 20410. Copies of all comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above.

FURTHER INFORMATION: For further information contact James F. Miller or Louise Thompson, Office of Environmental Quality, 755-6201.

SUPPLEMENTARY INFORMATION: The proposed Subpart B represents a conversion of the HUD Circular 1390.2 to regulation format, changes the noise descriptor to be used in applying HUD standards, and changes implementing procudures to provide more flexibility. In addition to publishing the new Subpart, the Department proposes to issue a revised "Noise Assessment Guidelines" to provide an assessment methodology to complement the policy and standards.

The Department issued an Environmental Impact Statement for public comment in 1971, prior to adoption of the interim noise standards. The proposed regulations do not modify the current policy sufficiently so that a new Environmental Impact Statement would be required. A Finding of Inapplicability has been prepared in accordance with the Department's environmental procedures. A copy of this Finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

The Secretary of Housing and Urban Development is proposing to issue the following regulations.

Subpart A—General Provisions

Sec.
51.1 Purpose.
51.2 Authority.
51.3 Responsibilities.
51.4 Program Coverage.
51.5 Coordination With Environmental Clearance Requirements.
51.6 [Reserved]

Subpart B—Noise Abatement and Control

51.100 Purpose and Authority.
51.101 General Policy.
51.102 Responsibilities.
51.103 Standards.
51.104 Special Requirements.
51.105 Exceptions.
51.106 Implementation.
APPENDIX

Subpart A—General Provision

§ 51.1 Purpose.

The Department of Housing and Urban Development is providing program Assistant Secretaries and administrators and field offices with environmental standards, criteria and guidelines for determining project acceptability and necessary mitigating measures to insure that activities assisted by the Department achieve the goal of a suitable living environment.

§ 51.2 Authority.

This Part implements the Department's responsibilities under the following statutes:

(a) The National Housing Act of 1934 (Pub. L. 73-479) which was enacted "to encourage improvements in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes," thus providing the basis for HUD's Minimum Property Standards (MPS) which have evolved as required by legislation over the past 44 years.

(b) The Housing Act of 1949 (Pub. L. 81-171) which sets forth the national goal of "a decent home and a suitable living environment for every American family," affirmed by the Housing and Urban Development Act of 1968 (Pub. L. 90-448).

(c) The Department of Housing and Urban Development Act of 1965 (Pub. L. 89-174) which provides that the Secretary may make such rules and regulations as may be necessary to carry out functions, powers, and duties, and sets forth, as a matter of national purpose, the sound development of the Nation's communities and metropolitan areas.

(d) The National Environmental Policy Act of 1969 (Pub. L. 91-190) which directs Federal agencies to develop procedures to carry out the purposes of the Act.

(e) Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) which, under Title IV, directs that Federal programs and projects serve the objectives of appropriate land use for housing, commercial, industrial, governmental, institutional, and other purposes to achieve sound and orderly development of all areas, both urban and rural.

§ 51.3 Responsibilities.

(a) *Assistant Secretary for Community Planning and Development.* The Assistant Secretary for Community Planning and Development shall be responsible for administering environmental regulations, and shall provide oversight, interpretation and guidance, and shall update the regulations as required. The Assistant Secretary shall also maintain liaison with other Federal agencies on matters of environmental policy implementation.

(b) *Assistant Secretary for Policy Development and Research.* The Assistant Secretary for Policy Development and Research shall undertake research and demonstration studies necessary for the technical development of environmental standards, criteria, and implementing techniques as a basis for the development and implementation of environmental regulations. The Assistant Secretary shall also maintain liaison with Federal agencies on related technical matters.

(c) *Other Assistant Secretaries, Administrators, and the General Counsel.* Other Assistant Secretaries, Administrators, and the General Counsel shall:

(1) Incorporate adopted environmental regulations by reference into program regulations, guidance documents, and administrative forms and procedures;

(2) Evaluate the effects of, and compliance with Departmental environmental regulations policy and report significant issues and problems to the Assistant Secretary for Community Planning and Development; and

(3) Identify program areas under their jurisdiction in which additional environmental regulations are needed, and refer them to the Assistant Secretary for Community Planning and Development.

(d) *Regional Administrators, Area Office Managers and Service Office Supervisors.* Regional Administrators, Area Office Managers and Service Office Supervisors shall assure that adopted environmental regulations are implemented in relation to program decisions and recommendations. They shall also monitor projects to assure that mitigation measures are implemented.

§ 51.4 Program coverage.

Environmental standards shall apply to all HUD actions except where special provisions and exemptions are contained in each Subpart.

§ 51.5 Coordination with environmental clearance requirements.

Environmental standards shall be implemented prior to commitment in the decision-making process and, where environmental clearances are required, the decision points shall be identical. Compliance with HUD environmental standards shall be addressed in the environmental clearance process.

Subpart B—Noise Abatement and Control

§ 51.100 Purpose and authority.

(a) *Purpose.* The Department of Housing and Urban Development finds that noise is a major source of environmental pollution which represents a threat to the serenity and quality of life in population centers and that noise exposure may be a cause of adverse physiological and psychological effects as well as economic losses.

It is the purpose of this Subpart to:

(1) Call attention to the threat of noise pollution;

(2) Encourage the control of noise at its source in cooperation with other Federal departments and agencies;

(3) Encourage land use patterns for housing and other noise sensitive urban needs that will provide a suitable juxtaposition between them and major noise sources;

(4) Generally prohibit HUD support for new construction of noise sensitive uses on sites having unacceptable noise exposure;

(5) Provide policy on the use of structural and other noise attenuation measures where needed; and

(6) Provide policy to guide implementation of various HUD programs.

(b) *Authority.* Specific authorities for noise abatement and control are contained in:

(1) The Noise Control Act of 1972 (Pub. L. 92-574) which directs Federal agencies to administer their programs in ways which reduce noise pollution.

(2) The General Services Administration, Federal Management Circular 75-2: *Compatible Land Uses at Federal Airfields* prescribes the Executive Branch's general policy with respect to achieving compatible land uses on either public or privately owned property at or in the vicinity of Federal airfields.

(3) Section 1113 of the Housing and Urban Development Act of 1965 (Pub. L. 89-117) directs the Secretary "* * * to determine feasible methods of reducing the economic loss and hardships suffered by homeowners as a result of the depreciation in the value of their properties following the construction of airports in the vicinity of their homes, including a study of feasible methods of insulating such homes from the noise of aircraft."

§ 51.101 General policy.

(a) It is HUD's general policy to provide minimum national standards applicable to HUD programs to protect citizens against the encroachment of noise into their communities and places of residence.

(1) *Comprehensive planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment in HUD assisted comprehensive planning, as follows:

(i) Particular emphasis shall be placed on the importance of compatible land use planning in relation to airports, highways and other sources of high noise.

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land as required in 24 CFR Part 600, including the noise policy. When there are proposed deviations from HUD environmental standards, the planning agency shall provide a statement so indicating and identify and discuss measures to achieve conformity and noise impact mitigation.

(iii) Reconnaissance studies, and, where justifiable, in depth studies for noise control and abatement are considered allowable costs.

(2) *Community Development Block Grants.* Recipients of community development block grants under the Housing and Community Development Act of 1974 (Pub. L. 93-383), as amended by the Housing and Community Development Act of 1977 (Pub. L. 95-128), must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Grant recipients shall address deviations from the standards in their environmental reviews as required in 24 CFR Part 58.

Where CDBG activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the CDBG grantee risks denial of the HUD assistance unless the HUD standards are met. Therefore, it is advisable that CDBG grantees adhere to HUD policies. Environmental studies, including noise assessments, are allowable costs.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with Unacceptable noise exposures and is discouraged for projects with Normally Unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, college housing, mobile home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, new communities, redevelopment, and the provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance programs which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance provided that has the effect of restoring facilities substantially as they existed prior to the disaster.

(4) *HUD support for existing construction.* HUD considers environmental noise exposure a marketability factor in determining the amount of insurance and other assistance for buildings already constructed; however, noise exposure by itself will not result in the denial of HUD support for the resale and purchase of otherwise acceptable existing buildings. Buildings already constructed which are or have been occupied and which are exposed to noise but located in an otherwise suitable living environment, may be approved for insurance or other assistance.

(5) *HUD support of modernization and rehabilitation.* For modernization projects located in all noise exposed areas, HUD shall encourage noise attenuation features in alterations. For major or substantial rehabilitation projects in the Normally Unacceptable and Unacceptable noise zones, HUD actively shall seek to have project sponsors incorporate noise attenuation features, given the extent and nature of the rehabilitation being undertaken and the level or exterior noise exposure. In Unacceptable noise zones, HUD shall strongly encourage conversion of noise-exposed sites to land uses compatible with the high noise levels.

(6) *Other land uses.* Until HUD establishes noise exposure levels for other uses, land uses not covered by this section shall, where feasible, be evaluated in a manner consistent with the policies contained in this part.

(7) *Research, guidance and publications.* HUD shall maintain a continuing program designed to provide new knowledge of noise abatement and control to public and private bodies, to develop improved methods for anticipating noise encroachment, to develop noise abatement measures through

land use and building construction practices, and to foster better understanding of the consequences of noise. It shall be HUD's policy to issue guidance documents periodically to assist HUD personnel in assigning an acceptability category to projects in accordance with noise exposure standards, in evaluating noise attenuation measures, and in advising local agencies about noise abatement strategies. The guidance documents shall be updated periodically in accordance with advances in the state-of-the-art.

(8) *Construction equipment, building equipment and appliances.* HUD shall encourage the use of quieter construction equipment and methods in population centers, the use of quieter equipment and appliances in buildings, and the use of appropriate noise abatement techniques in the design of residential structures with potential noise problems.

(9) *Exterior noise goals.* It is a HUD goal that exterior noise levels do not exceed a day-night average sound level of 55 decibels. This level is recommended by the Environmental Protection Agency as a goal for outdoors in residential areas. The levels recommended by EPA are not standards and do not take into account cost or feasibility. For the purposes of this regulation and to meet other program objectives, sites with a day-night average sound level of 65 and below are Normally Acceptable and are allowable (see Standards in § 51.103(c)).

(10) *Interior noise goals.* It is a HUD goal that the interior auditory environment shall not exceed a day-night average sound level of 45 decibels. Attenuation measures to meet these interior goals shall be employed where feasible. Emphasis shall be given to noise sensitive interior spaces such as bedrooms. Minimum attenuation measures are prescribed in § 51.104(a).

(11) *Acoustical privacy in multifamily buildings.* HUD shall require the use of building design and acoustical treatment to afford acoustical privacy in multifamily buildings pursuant to requirements of the Minimum Property Standards.

§ 51.102 Responsibilities.

(a) *Authority to approve projects.* (1) Decisions on proposed projects with Normally Acceptable noise exposures shall be delegated to the program personnel within field offices, including projects where increased noise levels are considered Normally Acceptable because of non-acoustic benefits under § 51.105(a). Field office program personnel may also approve projects in Normally Unacceptable noise exposed areas where adequate sound attenuation is provided and where the project does not require an Environmental impact Statement under § 51.104(b).

(2) Other approvals in Normally Unacceptable noise exposed areas require the concurrence of the Regional Administrator.

(3) Requests for approvals of projects with Unacceptable noise exposures shall be referred to the Assistant Secretary for Community Planning and Development for approval pursuant to § 51.104(b).

(4) In cases where the Regional Administrator determines that an important precedent or issue is involved, such cases shall be referred with recommendations to the Assistant Secretary for Community Planning and Development.

(b) *Surveillance of noise problem areas.* Appropriate field staff shall maintain surveillance of potential noise problem areas and advise local officials, developers, and planning groups of the unacceptability of sites because of noise exposure at the earliest possible time in the decision process. Every attempt shall be made to insure that applicants' site choices are consistent with the policy and standards contained herein.

(c) *Notice to applicants.* At the earliest possible stage, HUD program administrators shall:

(1) Determine the suitability of the acoustical environment of proposed projects;

(2) Notify applicants of any adverse or questionable situations; and

(3) Assure that prospective applicants are apprised of the standards contained herein so that future site choices will be consistent with these standards.

(d) *Technical assistance.* Technical assistance in the measurement, estimation, interpretation, or prediction of noise exposure is available from the Office of Community Planning and Development and the Office of Policy Development and Research. Field office questions shall be forwarded through the Regional Office to the Assistant Secretary for Community Planning and Development or his designee.

(e) *Interdepartmental coordination.* Regional Administrators shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Veterans Administration. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

§ 51.103 Criteria and standards.

These standards apply to all programs as indicated in § 51.101.

(a) *Measure of external noise environments.* The magnitude of the external noise environment at a site is determined by the value of the day-night average sound level produced as the result of the accumulation of noise from all sources contributing to the external noise environment at the site. Day-night average sound level, abbreviated as DNL and symbolized as L_{dn}, is the 24-hour average sound level, in decibels, obtained after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m. Mathematical expressions for average sound level and day-night average sound level are stated in the Appendix.

(b) *Loud impulsive sounds.* When loud impulsive sounds, such as explosions or sonic booms, are experienced at a site, the day-night average sound level produced by the loud impulsive sounds alone shall have 8 decibels added to it in assessing the acceptability of the site (see Appendix). Alternatively, the C-weighted day-night average sound level (L_{Cdn}) may be used without the 8 decibel addition, as indicated in Section 51.106(a)(3).

Methods for assessing the contribution of loud impulsive sounds to day-night average sound level at a site and mathematical expressions for determining whether a sound is classed as "loud impulsive" are provided in the Appendix.

(c) *Exterior standards.* The degree of acceptability of the noise environment at a site is determined by the sound levels external to buildings or other facilities containing noise sensitive uses. The standards shall usually apply at a location 2 meters (6.5 feet) from the building housing noise sensitive activities in the direction of the predominant noise source. Where the building location is undetermined, the standards shall apply at the lot line nearest to the predominant noise source. The standards shall also apply at other locations where it is determined that quiet outdoor space is required in area ancillary to the principal use on the site.

The noise environment inside a building is considered acceptable if (a) the noise environment external to the building complies with these standards, and (b) the building is constructed in a manner common to the area or, if of uncommon construction, has at least the equivalent noise attenuation characteristics.

SITE ACCEPTABILITY STANDARDS

	Day-Night Average Sound Level (in decibels)	Special Approvals and Requirements
Normally Acceptable	Not exceeding 65 dB(1)	None
Normally Unacceptable	Above 65 dB but not exceeding 75 dB.	Special Approvals (2) Environmental Review (3) Attenuation (4)
Unacceptable	Above 75dB	Special Approvals (2) Environmental Review (3) Attenuation (5)

NOTES: (1) Normally Acceptable threshold may be shifted to 70 dB in special circumstances pursuant to Section 51.105(a).

(2) See Section 51.104(b) for requirements.

(3) See Section 51.104(b) for requirements.

(4) 5 dB additional attenuation required for sites above 65 dB but not exceeding 70 dB and 10 dB additional attenuation required for sites above 70 dB but not exceeding 75 dB. (See Section 51.104(a).)

(5) Attenuation measures to be submitted to the Assistant Secretary for CPD for approval on a case-by-case basis.

§ 51.104 Special requirements.

(a) *Noise attenuation.* Noise attenuation measures are those required in addition to attenuation provided by buildings as commonly constructed in the area, and requiring open windows for ventilation. Measures that assist in the reduction of external noise at a site shall be used wherever feasible in preference to the incorporation of additional noise attenuation in buildings. Building designs and construction techniques that provide more noise attenuation than typical construction may be employed also to meet the noise attenuation requirements.

(1) *Normally Unacceptable noise zone.* Approvals in this zone require 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels.

(2) *Unacceptable noise zone.* Noise attenuation measures require the approval of the Assistant Secretary for Community Planning and Development. (See § 51.104(b)(2).)

(b) *Special Approvals and Environmental Review Requirements.* Environmental clearances shall be conducted pursuant to the requirements of HUD's Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality (38 FR 19182 as amended). The Special Clearance and Environmental Impact Statement (EIS) threshold requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) *Normally Unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require a Special Environmental Clearance except an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use in this noise zone.

(ii) When an EIS is required, the concurrence of the Regional Administrator is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

(iii) All other projects in the Normally Unacceptable zone require a Special Environmental Clearance, except where an EIS is required for other reasons pursuant to HUD environmental policies.

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in an Unacceptable Noise Zone shall be submitted through the Regional Administrator to the Assistant Secretary for Community Planning and Development for approval. The Assistant Secretary may waive the EIS requirement in cases where noise is the only environmental issue and no outside sensitive activity will take place on the site. In such cases, a Special Environmental Clearance is required.

§ 51.105 Exceptions.

(a) *Flexibility for non-acoustic benefits.* Where it is determined that program objectives cannot be achieved on sites meeting the acceptability standard of 65 decibels, the Normally Acceptable Zone may be shifted to L_{dn} 70 on a case-by-case basis if all the following conditions are satisfied:

(1) The project does not require an Environmental Impact Statement under provisions of section 104(b)(1) and noise is the only environmental issue.

(2) The project has received a Special Environmental Clearance and has received the concurrence of the Environmental Clearance Officer.

(3) The project meets other program goals to provide housing in proximity to employment, public facilities and transportation.

(4) The project is in conformance with local goals and maintains the character of the neighborhood.

(5) The project sponsor has set forth the reasons why noise attenuation measures cannot be accomplished and the reasons are acceptable to HUD.

(6) Other sites which are not exposed to noise above L_{dn}65 and which meet program objectives are generally not available.

The above factors shall be documented and made part of the project file.

§ 51.106 Implementation.

(a) *Use of available data.* HUD field staff shall make maximum use of noise data prepared by others when such data are determined to be current and adequately projected into the future and are in terms of the following:

(1) *Sites in the vicinity of airports.* The noise environment around airports is described sometimes in terms of Composite Noise Rating, abbreviated as CNR, or by Noise Exposure Forecasts, abbreviated as NEF. The noise environment for sites in the vicinity of airports for which day night average sound level data are not available may be evaluated from CNR of NEF analyses using the following conversions to DNL:

$$DNL \approx CNR - 35$$

$$DNL \approx NEF + 35$$

(2) *Sites in the vicinity of highways.* Highway projects receiving Federal aid are subject to noise analyses under the procedures of the Federal Highway Administration.

Where such analyses are available they may be used to assess sites subject to the requirements of this standard. The Federal Highway Administration employs two alternate sound level descriptors: (a) The A-weighted sound level not exceeded more than 10 percent of the time for the highway design hour traffic flow, symbolized as L_{10}; or (b) the equivalent sould level for the design hour, symbolized as L_{eq}. The day night average sound level may be estimated from the design hour L_{10} or L_{eq} values by the following relationships, provided heavy trucks do not exceed 10 percent of the total traffic flow in vehicles per 24 hours and the traffic flow between 10 p.m. and 7 a.m. does not exceed 15 percent of the average daily traffic flow in vehicles per 24 hours:

$$DNL \approx L_{10} \text{ (design hour)} - 3 \text{ decibels}$$
$$DNL \approx L_{eq} \text{ (design hour) decibels}$$

(3) *Sites in the vicinity of installations producing loud impulsive*

sounds. Certain Department of Defense installations produce loud impulsive sounds from artillery firing and bombing practice ranges. Noise analyses for these facilities sometimes encompass sites that may be subject to the requirements of this standard. Where such analyses are available they may be used to establish the acceptability of sites under this standard.

The Department of Defense uses day-night average sound level based on C-weighted sound level, symbolized L_{Cdn}, for the analysis of loud impulsive sounds. Where such analyses are provided, the 8 decibel addition specified in 51.103(b), is not required, and the same numerical values of day-night average sound level used to determine site suitability for non-impulsive sounds apply to the L_{Cdn}.

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised data become available for airports (civil or military) and military installations they shall first be referred to the Assistant Secretary for Community Planning and Development for review, evaluation and decision on appropriateness for use by HUD. For other areawide acoustical data, Headquarters review is required only where existing areawide data are being utilized and where such data have been changed to reflect changes in the measurement methodology or underlying source noise assumptions. Requests for Headquarters determination on usage of new areawide data shall be submitted through the Regional Office (Environmental Clearance Officer) and shall include the following:

(i) Maps showing old, if applicable, and new noise contours, along with brief description of data source and methodology.

(ii) Impact on existing and prospective urbanized areas and on development activity.

(iii) Impact on HUD-assisted projects currently in processing.

(iv) Impact on future HUD program activity. Where a field office has determined that immediate approval of new areawide data is necessary and warranted in limited geographic areas, the request for Headquarters approval should state the circumstances warranting such approval. Actions on proposed projects shall not be undertaken while new areawide noise data are being considered for HUD use except where the proposed location is affected in the same manner under both the old and new noise data.

(b) *Site assessments.* Compliance with the standards contained in § 51.103(c) shall, where necessary, be determined using noise assessment guidelines, handbooks, technical documents and procedures issued by the Department.

(c) *Variations in site noise levels.* In many instances the noise environment will vary across a site, with portions of the site being in a Normally Acceptable noise environment and other portions in a Normally Unacceptable noise environment. The standards in Section 51.103(c) shall apply only to the portions of a building or buildings and ancillary noise sensitive open space that occupy those portions of the site that exceed the limits for an acceptable acoustical environment.

(d) *Noise measurements.* Where noise assessments result in a finding that the site is borderline or questionable, or is controversial, noise measurements may be performed. Where it is determined that noise measurements are required, such measurements will be conducted in accordance with methods and measurement criteria established by the Department. Locations for noise measurements will depend on the location of noise sensitive uses that are nearest to the predominate noise source (see section 103(c)).

(e) *Projections of noise exposure.* To the extent possible, assessments or measurements of noise exposures shall be projected for at least the next 10 years with respect to applications and projects under review.

(f) *Reduction of site noise by use of berms and/or barriers.* If it is determined by adequate analysis that a berm and/or barrier will reduce noise at a housing site, and if the barrier is existing or there are assurances that it will be in place prior to occupancy, the environmental noise analysis for the site may reflect the benefits afforded by the berm and/or barrier.

In the environmental review process under Section 51.104(b), the location height and design of the berm and/or barrier shall be evaluated to determine its effectiveness, and impact on design and aesthetic quality, circulation and other environmental factors.

APPENDIX

DEFINITION OF ACOUSTICAL QUANTITIES

1. *Sound Level.* The quantity in decibels measured with an instrument satisfying requirements of American National Standard Specification for Sound Level Meters S1.4-1971. Fast time-averaging and A-frequency weighting are to be used, unless others are specified. The sound level meter with the A-weighting is progressively less sensitive to sounds of frequency below 100 hertz (cycles per second), somewhat as is the ear. With fast time averaging the sound level meter responds particularly to recent sounds almost as quickly as does the ear in judging the loudness of a sound.

2. *Average Sound Level.* Average sound level, in decibels, is the level of the mean-square A-weighted sound pressure during the stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Day-night average sound level, abbreviated as DNL, and symbolized mathematically as L_{dn} is defined as:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{86400} \left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10} dt + \int_{0700}^{2200} 10^{L_A(t)/10} dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10} \right) \right] dt$$

Time t is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. $L_A(t)$ is the time varying value of A-weighted sound level, the quantity in decibels measured by an instrument satisfying requirements of American National Standard Specification for Sound Level Meters S1.4-1971.

3. *Loud Impulsive Sounds.* When loud impulsive sounds such as sonic booms or explosions are recurring and are anticipated contributors to the noise environment at a site, the contribution to day-night average sound level produced by the loud impulsive sounds shall have 8 decibels added to it in assessing the acceptibility of a site.

A loud impulsive sound is defined for the purpose of this regulation as one for which:

(i) The sound is definable as a discrete event whose loudness audibly increases to a maximum and then decreases in a total time interval of approximaely one second or less to the ambient background level that exists without the sound; and

(ii) The maximum sound level (obtained with slow averaging time and A-weighting of a sound level meter whose characteristics comply with ANSI S1.4-1971) exceeds the sound level prior to the onset of the event by at least 6 decibels; and

(iii) The maximum sound level obtained with fast averaging time of a sound level meter exceeds the maximum value obtained with slow averaging time by at least 4 decibels.

In accordance with section 7(o)(4) of the Department of HUD Act, section 324 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued at Washington, D.C., November 20, 1978.

JAY JANIS,
Acting Secretary,
Department of Housing
and Urban Development.

[FR Doc. 35692 Filed 12-26-78; 8:45 am]

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WEDNESDAY, DECEMBER 27, 1978

PART IV

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

SECURITIES AND EXCHANGE COMMISSION

OIL AND GAS PRODUCING ACTIVITIES

Financial Accounting and Reporting Practices Requirements

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6006; 34-15416; 35-20836; IC-10530; AS-257]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities

AGENCY: Securities and Exchange Commission.

ACTION: Amended rules.

SUMMARY: The Commission is adopting various amendments to its accounting and reporting requirements for oil and gas producers. These amendments: (1) Increase the conformity of rules relating to the successful efforts method of accounting to the provisions of Statement No. 19 of the Financial Accounting Standards Board; (2) revise certain definitions to correspond to those adopted by the Department of Energy for its Financial Reporting System; (3) provide an exemption from the disclosure requirements for diversified companies who meet specified criteria; and (4) clarify the application of the rules to cost-of-service regulated companies.

EFFECTIVE DATE: The rules published in this release shall be effective initially for fiscal years ending after December 25, 1978 that are contained in filings that include fiscal years ending after December 25, 1979. Certain portions are effective for purposes of the disclosure requirements of Regulation S-K for filings that include fiscal years ending after December 25, 1978.

FOR FURTHER INFORMATION CONTACT:

James L. Russell, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-0222).

SUPPLEMENTARY INFORMATION: In Accounting Series Release No. 253 ("ASR No. 253"),[1] published on August 31, 1978, the Commission amended Regulation S-X, which governs the form and content of financial statements, to add new § 210.3-18, establishing accounting and disclosure requirements for oil and gas producing companies. These rules apply to filings pursuant to the federal securities laws and to reports of energy information that are subject to the requirements of the Energy Policy and Conservation Act of 1975 ("EPCA"). ASR No. 253 specified the form of successful efforts accounting to be used by companies following that method (a method identical to that contained in Statement of Financial Accounting Standards No. 19, "Financial Accounting and Reporting by Oil and Gas Producing Companies" ("FAS 19"), published in December 1977 by the Financial Accounting Standards Board).

In ASR No. 253, the Commission noted that the rules it was adopting were intended to meet certain objectives, including the following: (1) Conformity of the prescribed successful efforts method to the related provisions of FAS 19; (2) consistency with the Financial Reporting System under development by the Department of Energy ("DOE"); and (3) consistency of the revised definition of proved oil and gas reserves with other published definitions. The Commission requested comments as to whether these objectives had been met. In response to comments received on these aspects of the rules, the Commission has determined to make certain technical amendments to the adopted rules.

Further, the Commission has determined it appropriate to add certain exemptive provisions to the rules. These provisions exempt companies whose oil and gas producing activities do not exceed specified criteria from the disclosure requirements of § 210.3-18(k) for purposes of filings under the federal securities laws. This release also clarifies the circumstances under which § 210.3-18 may be deemed not to apply to rate-regulated companies.

Since these amendments are intended simply to dispense with technical inconsistencies in the adopted rules, or to provide limited exemptions from the rules under certain circumstances, and in light of the extensive public rule-making proceeding which led to the adoption of the rules, the Commission has determined that noticing these amendments for comment would be of little or no value. Therefore, the Commission for good cause finds that notice and public procedure on these amendments is unnecessary, as provided by section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)).

AMENDMENTS TO THE RULES

A number of technical amendments to § 210.3-18 are being made in response to requests that maximum conformity with the descriptive material and interpretive guidance of FAS 19 be achieved:

The definition of "exploratory well" in § 210.3-18(a)(10) has been revised to include the wording used in FAS 19. In addition, definitions have been provided in § 210.3-18(a) for "acquisitions of properties," "exploration costs," "development costs," and "production costs." These definitions incorporate into the rules a portion of the information that was stated in ASR No. 253 under "Description of the Rules." In particular, the definitions clarify the accounting for the different classifications of costs, and discuss the relationship of production or lifting costs (as well as depreciation, depletion and amortization) to the determination of the inventory cost of oil and gas.

Subparagraph (b)(5) has been added to specify the accounting for reimbursable costs of geological and geophysical studies, as contained in FAS 19.

Subparagraph (e)(3) has been revised to (1) adopt the wording of FAS 19 with respect to aggregation, for purposes of computing amortization, of large numbers of royalty interests whose acquisition costs are not individually significant; (2) include restoration costs among the costs to be considered in determining amortization and depreciation rates; and (3) permit amortization of joint oil and gas production to be based on the dominant mineral.

The phrase "as incurred" has been removed from the heading of paragraph (f). Also, dry hole and bottom hole contributions have been included among the examples of costs to be charged to expense.

Paragraph (g) has been amended to clarify that the accounting standards specifically prohibit "the deferral of costs of exploratory wells that find some oil and gas reserves merely on the chance that some event totally beyond the entity's control will occur."

Subparagraph (k)(5)(xii) now states specifically that the amount at which a receivable related to a retained production payment is recorded should include consideration of imputed interest.

Subparagraph (k)(2) has been modified to require disclosure of gross and net capitalized costs as of the end of each period for which "a complete set of (annual or interim) financial statements is presented," rather than as of the end of each period for which a balance sheet is presented. This will make it consistent with the corresponding requirement of FAS 19.

[1] Securities Act Release No. 33-5966 (43 FR 40688).

A discussion of initial retroactive application of the rules, similar to that contained in FAS 19, has been included in this release under "Effective Date."

DEFINITION OF PROVED RESERVES

ASR No. 253 adopted the definition of proved oil and gas reserves that was contained in DOE's Form EIA-23, "Annual Survey of Domestic Oil and Gas Reserves." A number of comment letters pointed out that this definition differs somewhat from that contained in DOE's Form EIA-28, "Energy Company Financial Reporting System" ("FRS"). Since the FRS is intended to collect information pursuant to EPCA for purposes of developing a national energy data base, most commentators urged that the definition of proved reserves adopted by the Commission conform to that contained in FRS.

Accordingly, the definitions of "proved oil and gas reserves," "proved developed oil and gas reserves," and "proved undeveloped reserves" set forth in § 210.3-18(a) of Regulation S-X have been modified to correspond to those contained in Form EIA-28. Although there does not appear to be any substantive difference between the definitions, this conformity should eliminate any possible ambiguity concerning their use. However, the Commission's definition of proved oil and gas reserves continues to contain a discussion of the term "existing economic and operating conditions," to specify that current prices include consideration of changes in existing prices provided only by contractual arrangements.

Several commentators requested clarification as to whether the "current prices" used in determining estimates of proved reserves (and also in computing estimated future net revenue pursuant to paragraph (k)(5) of § 210.3-18) may incorporate price increases allowed by Federal Energy Regulatory Commission national and area rate opinions or by the Natural Gas Policy Act of 1978, if such price increases have been specifically incorporated into gas contracts. The Commission believes that consideration of such gas price escalations is appropriate only to the extent that amounts are fixed and determinable. Specifically, no recognition should be given to potential price increases related to uncertain events such as an "annual inflation factor."

EXEMPTION FROM DISCLOSURE REQUIREMENTS

A number of comment letters included a request that an exemption be provided from the disclosure requirements of § 210.3-18(k) for registrants whose oil and gas producing activities are not significant in relation to their total operations. The Commission has concluded that such an exemption is appropriate and has amended § 210.3-18(k) to provide an exemption (for filings under the federal securities laws) from the disclosure requirements of that paragraph for registrants whose revenues, income and assets relating to oil and gas producing activities are less than 10 percent of the corresponding consolidated amounts for each of the two most recent fiscal years. For purposes of the asset criterion, proved oil and gas properties are to be measured on the basis of "the present value of estimated future net revenues," rather than historical cost. This exemption does not affect the general applicability of the financial accounting standards of § 210.3-18.

APPLICATION OF RULES TO REGULATED COMPANIES

The rules for financial accounting and reporting practices of oil and gas producers adopted in ASR No. 253 did not specifically address the application of those requirements to regulated activities. The addendum to APB Opinion No. 2, "Accounting for the Investment Credit,"[2] states that "differences may arise in the application of generally accepted accounting principles as between regulated and nonregulated businesses, because of the effect in regulated businesses of the rate-making process," and discusses the application of generally accepted accounting principles to regulated businesses. The Commission recognizes that the oil and gas producing activities of some companies may be subject to regulatory requirements for rate-making purposes. Accordingly, the introduction to § 210.3-18 has been amended to specify that, when oil and gas properties are regulated for rate-making purposes on an individual-company-cost-of-service basis, companies may give recognition to the effect of rate-making considerations on costs to be capitalized and on the basis for amortization. However, the Commission intends to reassess this matter upon completion of the Financial Accounting Standards Board's project involving reconsideration of the Addendum to APB Opinion No. 2.

INDEXING

The indexing within paragraphs (a)(1), (k)(4), and (k)(5) has been revised to conform to that contained in the FEDERAL REGISTER's publication of ASR No. 253 (43 FR 40688).

EFFECTIVE DATE

The rules contained in § 210.3-18 are effective for fiscal years ending after December 25, 1978, that are contained in filings that include fiscal years ending after December 25, 1979, although earlier application is encouraged. Certain portions of § 210.3-18 are also effective for purposes of the disclosure requirements of Regulation S-K for filings that include fiscal years ending after December 25, 1978.

Accounting changes adopted to conform to the provisions of these rules are to be made retroactively by restating the financial statements of prior periods. Financial statements for the fiscal year in which these rules are first applied should disclose the nature of the accounting changes and their effect on income before extraordinary items, net income, and related per share amounts for each period restated.

Retroactive application of the provisions of § 210.3-18 may require the use of estimates and approximations. A provision that would not have a significant effect on prior years' financial statements need not be retroactively applied. Further, retroactive application of some provisions of these rules may require the use of estimates of a type not previously made; information that may have become available some time after the year being restated may be taken into account in making those estimates, except that estimates of quantities of oil and gas reserves that had been made in prior years need not currently be revised in retrospect.

COMMISSION ACTION

The Commissioner hereby amends 17 CFR Part 210 by revising § 210.3-18. This section as amended is set forth below:

§ 210.3-18 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

This section prescribes financial accounting and reporting standards for registrants with the Commission engaged in oil and gas producing activities in filings under the Federal securities laws and for the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States, pursuant to section 503 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6383) ("EPCA") and section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) ("ESECA"), as amended by section 505 of EPCA. The application of this section to those oil and gas producing operations of companies regulated for ratemaking purposes on an individual-company-cost-of-service basis may, however, give appropriate recognition to differences arising be-

[2] This opinion was published in December 1962 by the Accounting Principles Board, which then existed as the standard-setting body of the American Institute of Certified Public Accountants.

cause of the effect of the ratemaking process.

Exemption. Any person exempted by the Department of Energy from any record-keeping or reporting requirements pursuant to section 11(c) of ESECA, as amended, is similarly exempted from the related provisions of this section in the preparation of accounts pursuant to EPCA. This exemption does not affect the applicability of this section to filings pursuant to the Federal securities laws.

DEFINITIONS

(a) *Definitions.* The following definitions apply to the terms listed below as they are used in this section:

(1) *Oil and gas producing activities.* (i) Such activities include:

(A) The search for crude oil, including condensate and natural gas liquids, or natural gas ("oil and gas") in their natural states and original locations.

(B) The acquisition of property rights or properties for the purpose of further exploration and/or for the purpose of removing the oil or gas from existing reservoirs on those properties.

(C) The construction, drilling and production activities necessary to retrieve oil and gas from its natural reservoirs, and the acquisition, construction, installation, and maintenance of field gathering and storage systems—including lifting the oil and gas to the surface and gathering, treating, field processing (as in the case of processing gas to extract liquid hydrocarbons) and field storage. For purposes of this section, the oil and gas production function shall normally be regarded as terminating at the outlet valve on the lease or field storage tank; if unusual physical or operational circumstances exist, it may be appropriate to regard the production functions as terminating at the first point at which oil, gas, or gas liquids are delivered to a main pipeline, a common carrier, a refinery, or a marine terminal.

(ii) Oil and gas producing activities do not include:

(A) The transporting, refining and marketing of oil and gas.

(B) Activities relating to the production of natural resources other than oil and gas.

(C) The production of geothermal steam or the extraction of hydrocarbons as a by-product of the production of geothermal steam or associated geothermal resources as defined in the Geothermal Steam Act of 1970.

(D) The extraction of hydrocarbons from shale, tar sands, or coal.

(2) *Proved oil and gas reserves.* Proved oil and gas reserves are the estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions, i.e., prices and costs as of the date the estimate is made. Prices include consideration of changes in existing prices provided only by contractual arrangements, but not on escalations based upon future conditions.

(i) Reservoirs are considered proved if economic producibility is supported by either actual production or conclusive formation test. The area of a reservoir considered proved includes (A) that portion delineated by drilling and defined by gas-oil and/or oil-water contacts, if any, and (B) the immediately adjoining portions not yet drilled, but which can be reasonably judged as economically productive on the basis of available geological and engineering data. In the absence of information on fluid contacts, the lowest known structural occurrence of hydrocarbons controls the lower proved limit of the reservoir.

(ii) Reserves which can be produced economically through application of improved recovery techniques (such as fluid injection) are included in the "proved" classification when successful testing by a pilot project, or the operation of an installed program in the reservoir, provides support for the engineering analysis on which the project or program was based.

(iii) Estimates of proved reserves do not include the following: (A) Oil that may become available from known reservoirs but is classified separately as "indicated additional reserves"; (B) crude oil, natural gas, and natural gas liquids, the recovery of which is subject to reasonable doubt because of uncertainty as to geology, reservoir characteristics, or economic factors; (C) crude oil, natural gas, and natural gas liquids, that may occur in undrilled prospects; and (D) crude oil, natural gas, and natural gas liquids, that may be recovered from oil shales, coal, gilsonite and other such sources.

(3) *Proved developed oil and gas reserves.* Proved developed oil and gas reserves are reserves that can be expected to be recovered through existing wells with existing equipment and operating methods. Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of primary recovery should be included as "proved developed reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(4) *Proved undeveloped reserves.* Proved undeveloped oil and gas reserves are reserves that are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units that are reasonably certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir.

(5) *Proved properties.* Properties with proved reserves.

(6) *Unproved properties.* Properties with no proved reserves.

(7) *Proved area.* The part of a property to which proved reserves have been specifically attributed.

(8) *Field.* An area consisting of a single reservoir or multiple reservoirs all grouped on or related to the same individual geological structural feature and/or stratigraphic condition. There may be two or more reservoirs in a field that are separated vertically by intervening impervious, strata, or laterally by local geologic barriers, or by both. Reservoirs that are associated by being in overlapping or adjacent fields may be treated as a single or common operational field. The geological terms "structural feature" and "stratigraphic condition" are intended to identify localized geological features as opposed to the broader terms of basins, trends, provinces, plays, areas-of-interest, etc.

(9) *Reservoir.* A porous and permeable underground formation containing a natural accumulation of producible oil and/or gas that is confined by impermeable rock or water barriers and is individual and separate from other reservoirs.

(10) *Exploratory well.* A well drilled to find and produce oil or gas in an unproved area, to find a new reservoir in a field previously found to be productive of oil or gas in another reservoir, or to extend a known reservoir. Generally, an exploratory well is any well that is not a development well, a service well, or a stratigraphic test well as those items are defined below.

(11) *Development well.* A well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive.

(12) *Service well.* A well drilled or completed for the purpose of supporting production in an existing field. Specific purposes of service wells include gas injection, water injection,

steam injection, air injection, saltwater disposal, water supply for injection, observation, or injection for insitu combustion.

(13) *Stratigraphic test well.* A drilling effort, geologically directed, to obtain information pertaining to a specific geologic condition. Such wells customarily are drilled without the intention of being completed for hydrocarbon production. This classification also includes tests identified as core tests and all types of expendable holes related to hydrocarbon exploration. Stratigraphic test wells are classified as (i) "exploratory-type," if not drilled in a proved area, or (ii) "development-type," if drilled in a proved area.

(14) *Acquisition of properties.* Costs incurred to purchase, lease or otherwise acquire a property, including costs of lease bonuses and options to purchase or lease properties, the portion of costs applicable to minerals when land including mineral rights is purchased in fee, brokers' fees, recording fees, legal costs, and other costs incurred in acquiring properties.

(15) *Exploration costs.* Costs incurred in identifying areas that may warrant examination and in examining specific areas that are considered to have prospects of containing oil and gas reserves, including costs of drilling exploratory wells and exploratory-type stratigraphic test wells. Exploration costs may be incurred both before acquiring the related property (sometimes referred to in part as prospecting costs) and after acquiring the property. Principal types of exploration costs, which include depreciation and applicable operating costs of support equipment and facilities and other costs of exploration activities, are:

(i) Costs of topographical, geographical and geophysical studies, rights of access to properties to conduct those studies, and salaries and other expenses of geologists, geophysical crews, and others conducting those studies. Collectively, these are sometimes referred to as geological and geophysical or "G&G" costs.

(ii) Costs of carrying and retaining undeveloped properties, such as delay rentals, ad valorem taxes on properties, legal costs for title defense, and the maintenance of land and lease records.

(iii) Dry hole contributions and bottom hole contributions.

(iv) Costs of drilling and equipping exploratory wells.

(v) Costs of drilling exploratory-type stratigraphic test wells.

(16) *Development costs.* Costs incurred to obtain access to proved reserves and to provide facilities for extracting, treating, gathering and storing the oil and gas. More specifically, development costs, including depreciation and applicable operating costs of support equipment and facilities and other costs of development activities, are costs incurred to:

(i) Gain access to and prepare well locations for drilling, including surveying well locations for the purpose of determining specific development drilling sites, clearing ground, draining, road building, and relocating public roads, gas lines, and power lines, to the extent necessary in developing the proved reserves.

(ii) Drill and equip development wells, development-type stratigraphic test wells, and service wells, including the costs of platforms and of well equipment such as casing, tubing, pumping equipment, and the wellhead assembly.

(iii) Acquire, construct, and install production facilities such as lease flow lines, separators, treaters, heaters, manifolds, measuring devices, and production storage tanks, natural gas cycling and processing plants, and central utility and waste disposal systems.

(iv) Provide improved recovery systems.

(17) *Production costs.* (i) Costs incurred to operate and maintain wells and related equipment and facilities, including depreciation and applicable operating costs of support equipment and facilities and other costs of operating and maintaining those wells and related equipment and facilities. They become part of the cost of oil and gas produced. Examples of production costs (sometimes called lifting costs) are:

(A) Costs of labor to operate the wells and related equipment and facilities.

(B) Repairs and maintenance.

(C) Materials, supplies, and fuel consumed and supplies utilized in operating the wells and related equipment and facilities.

(D) Property taxes and insurance applicable to proved properties and wells and related equipment and facilities.

(E) Severance taxes.

(ii) Some support equipment or facilities may serve two or more oil and gas producing activities and may also serve transportation, refining, and marketing activities. To the extent that the support equipment and facilities are used in oil and gas producing activities, their depreciation and applicable operating costs become exploration, development or production costs, as appropriate. Depreciation, depletion, and amortization of capitalized acquisition, exploration, and development costs are not production costs but also become part of the cost of oil and gas produced along with production (lifting) costs identified above.

SUCCESSFUL EFFORTS METHOD

(b) *Costs to be capitalized if the successful efforts method of accounting is followed.* The costs of the following assets involved in oil and gas producing activities are to be capitalized when incurred:

(1) *Mineral interests in properties.* Including (i) fee ownership or a lease, concession, or other interest representing the right to extract oil or gas subject to such terms as may be imposed by the conveyance of that interest; (ii) royalty interests, production payments payable in oil or gas, and other nonoperating interests in properties operated by others; and (iii) those agreements with foreign governments or authorities under which a reporting entity participates in the operation of the related properties or otherwise serves as "producer" of the underlying reserves (as opposed to being an independent purchaser, broker, dealer, or importer). Properties do not include other supply agreements or contracts that represent the right to purchase, rather than extract, oil and gas.

(2) *Wells and related equipment and facilities.* Including: (i) Costs incurred to drill and equip those exploratory wells and exploratory-type stratigraphic test wells that have found proved reserves and (ii) development costs, i.e., costs incurred to obtain access to proved reserves and provide facilities for extracting, treating, gathering, and storing the oil and gas, including the drilling and equipping of development wells and development-type stratigraphic test wells (whether those wells are successful or unsuccessful) and service wells.

(3) *Support equipment and facilities used in oil and gas producing activities.* Items such as seismic equipment, drilling equipment, construction and grading equipment, vehicles, repair shops, warehouses, supply points, camps, and division, district, or field offices.

(4) *Uncompleted wells, equipment and facilities.* Including costs incurred to: (i) Drill and equip wells that are not yet completed and (ii) acquire or construct equipment and facilities that are not yet completed and installed.

(5) *Geological and geophysical studies.* G&G studies may be conducted on a property owned by another person, in exchange for an interest in the property if proved reserves are found or to be reimbursed if proved reserves are not found. In such cases, the G&G costs shall be accounted for as a receivable when incurred and, if proved reserves are found, they shall become the cost of the proved property acquired.

(c) *Assessment of unproved properties if the successful efforts method of accounting is followed.* Unproved

properties shall be assessed periodically to determine whether they have been impaired. A property would likely be impaired, for example, if a dry hole has been drilled on it and the reporting entity has no firm plans to continue drilling. Also, the likelihood of partial or total impairment of a property increases as the expiration of the lease term approaches if drilling activity has not commenced on the property or on nearby properties. Information that becomes available after the end of the period covered by the financial statements but before those financial statements are issued shall be taken into account in evaluating conditions that existed at the balance sheet date.

(1) If the results of the assessment indicate impairment, a loss shall be recognized by providing a valuation allowance. Impairment of individual unproved properties whose acquisition costs are relatively significant shall be assessed on a property-by-property basis, and an indicated loss shall be recognized by providing a valuation allowance. When a reporting entity has a relatively large number of unproved properties whose acquisition costs are not individually significant, it may not be practical to assess impairment on a property-by-property basis, in which case the amount of loss to be recognized and the amount of the valuation allowance needed to provide for impairment of those properties shall be determined by amortizing those properties, either in the aggregate or by groups, on the basis of the experience of the entity in similar situations and other information about such factors as the primary lease terms of those properties, the average holding period of unproved properties, and the relative proportion of such properties on which proved reserves have been found in the past.

(2) A property shall be reclassified from unproved properties to proved properties when proved reserves are discovered on or otherwise attributed to the property. Occasionally, a single property such as a foreign lease or concession covers so vast an area that only the portion of the property to which the proved reserves relate—determined on the basis of geological structural features or stratigraphic conditions—should be reclassified from unproved to proved. For a property whose impairment has been assessed individually, the net carrying amount (acquisition cost minus valuation allowance) shall be reclassified to proved properties; for properties amortized by providing a valuation allowance on a group basis, the gross acquisition cost shall be reclassified.

(d) *Surrender or abandonment of properties if the successful efforts method of accounting is followed.* When an unproved property is surrendered, abandoned, or otherwise deemed worthless, capitalized acquisition costs relating thereto shall be charged against the related allowance for impairment to the extent an allowance has been provided; if the allowance previously provided is inadequate, a loss shall be recognized. Normally, no gain or loss shall be recognized if only an individual well or individual item of equipment is abandoned or retired or if only a single lease or other part of a group of proved properties consituting the amortization base is abandoned or retired as long as the remainder of the property or group of properties continues to produce oil or gas. Instead, the asset being abandoned or retired shall be deemed to be fully amortized, and its costs shall be charged to accumulated depreciation, depletion, or amortization. When the last well on an individual property (if that is the amortization base) or group of properties (if amortization is determined on the basis of an aggregation of properties with a common geological structure) ceases to produce and the entire property or property group is abandoned, gain or loss shall be recognized. Occasionally, the partial abandonment or retirement of a proved property or group of proved properties or the abandonment or retirement of wells or related equipment or facilities may result from a catastrophic event or other major abnormality. In those cases, a loss shall be recognized at the time of abandonment or retirement.

(e) *Amortization of capitalized costs if the successful effects method of accounting is followed.* (1) Capitalized acquisition costs of proved properties shall be amortized using the unit-of-production method on the basis of total estimated units of proved oil and gas reserves.

(2) Capitalized costs of exploratory wells and exploratory-type stratigraphic test wells that have found proved reserves and capitalized development costs shall be amortized (depreciated) using the unit-of-production method on the basis of total estimated units of proved developed reserves. However, it may be more appropriate, in some cases, to depreciate natural gas cycling and processing plants by a method other than the unit-of-production method.

(3) Amortization, using the unit-of-production method as required by subparagraphs (1) and (2) of this paragraph, may be computed either on a property-by-property basis or on the basis of some reasonable aggregation of properties with a common geological structural feature or stratigraphic condition, such as a reservoir or field. When a reporting entity has a relatively large number of royalty interests whose acquisition costs are not individually significant, they may be aggregated, for purpose of computing amortization, without regard to commonality of geological structural features or stratigraphic conditions; if information is not available to estimate reserve quantities applicable to royalty interests owned, a method other than the unit-of-production method may be used to amortize their acquisition costs. If significant development costs (such as the cost of an off-shore production platform) are incurred in connection with a planned group of development wells before all of the planned wells have been drilled, it will be necessary to exclude a portion of those development costs in determining the unit-of-production amortization rate until the additional development wells are drilled. Similarly, it will be necessary to exclude, in computing the amortization rate, those proved developed reserves that will be produced only after significant additional development costs are incurred, such as for improved recovery systems. However, in no case should future development costs be anticipated in computing the amortization rate. Estimated dismantlement, restoration, and abandonment costs and estimated residual salvage values shall be taken into account in determining amortization and depreciation rates. For those properties or groups of properties containing both oil reserves and gas reserves, the units of oil and gas used to compute amortization shall be converted to a common unit of measure on the basis of their approximate relative energy content (without considering their relative sales values). However, if the relative proportion of gas and oil extracted in the current period is expected to continue throughout the remaining productive life of the property, unit-of-production amortization may be computed on the basis of one of the two minerals only; similarly, if either oil or gas clearly dominates both the reserves and the current production (with dominance determined on the basis of relative energy content), unit-of-production amortization may be computed on the basis of the dominant mineral only. Unit-of-production amortization rates shall be revised whenever there is an indication of the need for revision but at least once a year; those revisions shall be accounted for prospectively as changes in accounting estimates.

(f) *Costs to be charged to expense if the successful efforts method of accounting is followed.* Costs incurred in oil and gas producing activities other than those described in paragraph (b) of this section shall be charged to expense. Examples include geological and geophysical costs, costs of carrying and retaining undeveloped proper-

ties, dry hole and bottom hole contributions, the costs of drilling those exploratory wells and exploratory-type stratigraphic test wells that do not find proved reserves (see paragraph (g) of this section), and the cost of oil and gas produced.

(g) *Accounting for the costs of exploratory wells and exploratory-type stratigraphic test wells if the successful efforts method of accounting is followed.* The costs of drilling exploratory wells and the costs of drilling exploratory-type stratigraphic test wells shall be capitalized as part of the reporting entity's uncompleted wells, equipment, and facilities pending determination of whether the well has found proved reserves. If the well has found proved reserves, the capitalized costs of drilling the well shall become part of the entity's wells and related equipment and facilities (even though the well may not be completed as a producing well); if, however, the well has not found proved reserves, the capitalized costs of drilling the well, net of any salvage value, shall be charged to expense. The determination of whether proved reserves are found is usually made on or shortly after completion of drilling the well, and the capitalized costs shall either be charged to expense or be reclassified as part of the costs of wells and related equipment and facilities at that time. Information that becomes available after the end of the period covered by the financial statements but before those financial statements are issued shall be taken into account in evaluating conditions that existed at the balance sheet date. Occasionally, an exploratory well or an exploratory-type stratigraphic test well may be determined to have found oil and gas reserves, but classification of those reserves as proved cannot be made when drilling is completed. In those cases, one of three subparagraphs set forth below shall apply. Subparagraphs (1) and (2) are intended to prohibit, in all cases, the deferral of the costs of exploratory wells that find some oil and gas reserves merely on the chance that some event totally beyond the entity's control will occur, e.g., on the chance that the selling prices of oil and gas will increase sufficiently to result in classification of reserves as proved that are not commercially recoverable at current prices.

(1) Exploratory wells that find oil and gas reserves in an area requiring a major capital expenditure, such as a trunk pipeline, before production could begin. On completion of drilling, an exploratory well may be determined to have found oil and gas reserves, but classification of those reserves as proved depends on whether a major capital expenditure can be justified which, in turn, depends on whether additional exploratory wells find a sufficient quantity of additional reserves. In that case, the cost of drilling the exploratory well shall continue to be carried as an asset pending determination of whether proved reserves have been found only as long as both of the following conditions are met: (i) The well has found a sufficient quantity of reserves to justify its completion as a producing well if the required capital expenditure is made, and (ii) drilling of the additional exploratory wells is under way or firmly planned for the near future. Otherwise, the exploratory well shall be assumed to be impaired, and its costs shall be charged to expense.

(2) All other exploratory wells that find oil and gas reserves. In the absence of a determination as to whether the reserves that have been found can be classified as proved, the costs of drilling such an exploratory well shall not be carried as an asset for more than one year following completion of drilling. If, after that year has passed, a determination that proved reserves have been found cannot be made, the well shall be assumed to be impaired, and its costs shall be charged to expense.

(3) Exploratory-type stratigraphic test wells that find oil and gas reserves. On completion of drilling, such a well may be determined to have found oil and gas reserves, but classification of those reserves as proved depends on whether a major capital expenditure (usually a production platform) can be justified which, in turn, depends on whether additional exploratory-type stratigraphic test wells find a sufficient quantity of additional reserves. In that case, the cost of drilling the exploratory-type stratigraphic test well shall continue to be carried as an asset pending determination of whether proved reserves have been found only as long as both of the following conditions are met: (i) The well has found a quantity of reserves that would justify its completion for production had it not been simply a stratigraphic test well, and (ii) drilling of the additional exploratory-type stratigraphic test wells is under way or firmly planned for the near future. Otherwise, the exploratory-type stratigraphic test well shall be assumed to be impaired, and its costs shall be charged to expense.

(h) *Mineral property conveyances and related transactions if the successful efforts method of accounting is followed.* (1) Certain transactions, sometimes referred to as conveyances, are in substance borrowings repayable in cash or its equivalent and shall be accounted for as borrowings. The following are examples of such transactions:

(i) Entities seeking supplies of oil or gas sometimes make cash advances to operators to finance exploration in return for the right to purchase oil or gas discovered. Funds advanced for exploration that are repayable by offset against purchases of oil or gas discovered, or in cash if insufficient oil or gas is produced by a specified date, shall be accounted for as a receivable by the lender and as a payable by the operator.

(ii) Funds advanced to an operator that are repayable in cash out of the proceeds from a specified share of future production of a producing property, until the amount advanced plus interest at a specified or determinable rate is paid in full, shall be accounted for as a borrowing. The advance is a payable for the recipient of the cash and a receivable for the party making the advance. Such transactions, as well as those described in subparagraph (5)(i) of this paragraph, are commonly referred to as production payments. The two types differ in substance, however, as explained in subparagraph (5)(i) of this paragraph.

(2) In the following types of conveyances, gain or loss shall not be recognized at the time of conveyance:

(i) A transfer of assets used in oil and gas producing activities (including both proved and unproved properties) in exchange for other assets also used in oil and gas producing activities.

(ii) A pooling of assets in a joint undertaking intended to find, develop, or produce oil or gas from a particular property or group of properties.

(3) In the following types of conveyances, gain shall not be recognized at the time of the conveyance:

(i) A part of an interest owned is sold and substantial uncertainty exists about recovery of the costs applicable to the retained interest.

(ii) A part of an interest owned is sold and the seller has a substantial obligation for future performance, such as an obligation to drill a well or to operate the property without proportional reimbursement for that portion of the drilling or operating costs applicable to the interest sold.

(4) If a conveyance is not one of the types described in subparagraphs (2) and (3) of this paragraph, gain or loss shall be recognized unless there are other aspects of the transaction that would prohibit such recognition under accounting principles applicable to enterprises in general.

(5) In accordance with subparagraphs (2) through (4) of this paragraph, the following types of transactions shall be accounted for as indicated in each example. No attempt has been made to include the many variations of those arrangements that occur, but subparagraphs (2) through (4) of this paragraph shall, where applicable, determine the accounting for those other arrangements as well.

(i) Some production payments differ from those described in subparagraph (1)(ii) of this paragraph in that the seller's obligation is not expressed in monetary terms but as an obligation to deliver, free and clear of all expenses associated with operation of the property, a specified quantity of oil or gas to the purchaser out of a specified share of future production. Such a transaction is a sale of a mineral interest for which gain shall not be recognized because the seller has a substantial obligation for future performance. The seller shall account for the funds received as unearned revenue to be recognized as the oil or gas is delivered. The purchaser of such a production payment has acquired an interest in a mineral property that shall be recorded at cost and amortized by the unit-of-production method as delivery takes place. The estimated oil or gas reserves and production data shall be reported, in accordance with paragraph (k) of this section, as those of the purchaser of the production payment and not of the seller.

(ii) An assignment of the operating interest in an unproved property with retention of a nonoperating interest in return for drilling, development and operation by the assignee is a pooling of assets in a joint undertaking for which the assignor shall not recognize gain or loss. The assignor's cost of the original interest shall become the cost of the interest retained. The assignee shall account for all costs incurred as specified by paragraphs (b) through (g) of this section and shall allocate none of those costs to the mineral interest acquired. If oil or gas is discovered, each party shall report its share of oil and gas reserves and production, in accordance with paragraph (k) of this section.

(iii) An assignment of a part of an operating interest in an unproved property in exchange for a "free well" with provision for joint ownership and operation is a pooling of assets in a joint undertaking by the parties. The assigner shall record no cost for the obligatory well; the assignee shall record no cost for the mineral interest acquired. All drilling, development, and operating costs incurred by either party shall be accounted for as provided in paragraphs (b) through (g) of this section. If the conveyance agreement requires the assignee to incur geological or geophysical expenditures instead of, or in addition to, a drilling obligation, those costs shall likewise be accounted for by the assignee as provided in paragraphs (b) through (g) of this section. If reserves are discovered, each party shall report its share of reserves and production, in accordance with paragraph (k) of this section.

(iv) A part of an operating interest in an unproved property may be assigned to effect an arrangement called a "carried interest" whereby the assignee (the carrying party) agrees to defray all costs of drilling, developing, and operating the property and is entitled to all of the revenue from production from the property, excluding any third party interest, until all of the assignee's costs have been recovered, after which the assignor will share in both costs and production. Such an arrangement represents a pooling of assets in a joint undertaking by the assignor and assignee. The carried party shall make no accounting for any costs and revenue until after recoupment (payout) of the carried costs by the carrying party. Subsequent to payout the carried party shall account for its share of revenue, operating expenses, and (if the agreement provides for subsequent sharing of costs rather than a carried interest) subsequent development costs. During the payout period the carrying party shall record all costs, including those carried, as provided in paragraphs (b) through (g) of this section, and shall record all revenue from the property including that applicable to the recovery of cost carried. The carried party shall report as oil or gas reserves, in accordance with paragraph (k) of this section, only its share of proved reserves estimated to remain after payout, and unit-of-production amortization of the carried party's property cost shall not commence prior to payout. Prior to payout the carrying party's reserve estimates and production data, reported in accordance with paragraph (k) of this section, shall include the quantities applicable to recoupment of the carried costs.

(v) A part of an operating interest owned may be exchanged for a part of an operating interest owned by another party. The purpose of such an arrangement, commonly called a joint venture in the oil and gas industry, often is to avoid duplication of facilities, diversify risks, and achieve operating efficiencies. Such reciprocal conveyances represent exchanges of similar productive assets, and no gain or loss shall be recognized by either party at the time of the transaction. In some joint ventures which may or may not involve an exchange of interests, the parties may share different elements of costs in different proportions. In such an arrangement a party may acquire an interest in a property or in wells and related equipment that is disproportionate to the share of costs borne by it. As in the case of a carried interest or a free well, each party shall account for its own cost under the provisions of this section. No gain shall be recognized for the acquisition of an interest in joint assets, the cost of which may have been paid in whole or in part by another party.

(vi) In a unitization all of the operating and nonoperating participants pool their assets in a producing area (normally a field) to form a single unit and in return receive an undivided interest (of the same type as previously held) in that unit. Unitizations generally are undertaken to obtain operating efficiencies and to enhance recovery of reserves, often through improved recovery operations. Participation in the unit is generally proportionate to the oil and gas reserves contributed by each. Because the properties may be in different stages of development at the time of unitization, some participants may pay cash and others may receive cash to equalize contributions of wells and related equipment and facilities with the ownership interests in reserves. In those circumstances, cash paid by a participant shall be recorded as an additional investment in wells and related equipment and facilities, and cash received by a participant shall be recorded as a recovery of cost. The cost of the assets contributed plus or minus cash paid or received is the cost of the participant's undivided interest in the assets of the unit. Each participant shall include its interest in reporting reserve estimates and production data.

(vii) If the entire interest in an unproved property is sold for cash or cash equivalent, recognition of gain or loss depends on whether, in applying paragraph (c) of this section, impairment had been assessed for that property individually, or by amortizing that property as part of a group. If impairment was assessed individually, gain or loss shall be recognized. For a property amortized by providing a valuation allowance on a group basis, neither gain nor loss shall be recognized when an unproved property is sold unless the sales price exceeds the original cost of the property, in which case gain shall be recognized in the amount of such excess.

(viii) If a part of the interest in an unproved property is sold, even though for cash or cash equivalent, substantial uncertainty usually exists as to recovery of the cost applicable to the interest retained. Consequently, the amount received shall be treated as a recovery of cost. However, if the sales price exceeds the carrying amount of a property whose impairment has been assessed individually in accordance with paragraph (c) of this section, or exceeds the original cost of a property amortized by providing a valuation allowance on a group basis, gain shall be recognized in the amount of such excess.

(ix) The sale of an entire interest in a proved property that constitutes a separate amortization base is not one

of the types of conveyances described in paragraphs (h)(2) and (h)(3) of this section. The difference between the amount of sales proceeds and the unamortized cost shall be recognized as a gain or loss.

(x) The sale of a part of a proved property, or of an entire proved property constituting a part of an amortization base, shall be accounted for as the sale of an asset, and a gain or loss shall be recognized, since it is not one of the conveyances described in paragraphs (h)(2) and (h)(3) of this section. The unamortized cost of the property or group of properties a part of which was sold shall be apportioned to the interest sold and the interest retained on the basis of the fair values of those interests. However, the sale may be accounted for as a normal retirement under the provisions of paragraph (d) of this section with no gain or loss recognized if doing so does not significantly affect the unit-of-production amortization rate.

(xi) The sale of the operating interest in a proved property for cash with retention of a nonoperating interest is not one of the types of conveyances described in paragraphs (h)(2) and (h)(3) of this section. Accordingly, it shall be accounted for as the sale of an asset, and any gain or loss shall be recognized. The seller shall allocate the cost of the proved property to the operating interest sold and the nonoperating interest retained on the basis of the fair values of those interests.

(xii) The sale of a proved property subject to a retained production payment that is expressed as a fixed sum of money payable only from a specified share of production from that property, with the purchaser of the property obligated to incur the future costs of operating the property, shall be accounted for as follows: If satisfaction of the retained production payment is reasonably assured, the seller of the property, who retained the production payment, shall record the transaction as a sale, with recognition of any resulting gain or loss. The retained production payment shall be recorded as a receivable, at an amount reflecting appropriate consideration of imputed interest thereon. The purchaser shall record as the cost of the assets acquired the cash consideration paid plus the present value of the retained production payment, which shall be recorded as a payable. The oil and gas reserve estimates and production data, including those applicable to liquidation of the retained production payment, shall be reported by the purchaser of the property. If satisfaction of the retained production payment is not reasonably assured, the transaction is in substance a sale with retention of an overriding royalty that shall be accounted for in accordance with subparagraph (5)(xi) of this paragraph.

(xiii) The sale of a proved property subject to a retained production payment that is expressed as a right to a specified quantity of oil or gas out of a specified share of future production shall be accounted for in accordance with subparagraph (5)(xi) of this paragraph

FULL COST METHOD

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(Provisions of paragraph (i) are contained in Accounting Series Release No. 258 dated December 19, 1978.)

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INCOME TAXES

(j) *Income taxes.* Comprehensive interperiod income tax allocation by the deferred method shall be followed for intangible drilling and development costs and other costs incurred that enter into the determination of taxable income and pretax accounting income in different periods. The excess of statutory depletion over cost depletion for income tax purposes shall be accounted for as a permanent difference in the period in which the excess is deducted for income tax purposes.

DISCLOSURE REQUIREMENTS

(k) *Disclosure of quantities of proved oil and gas reserves and historical financial data.* The following data shall be disclosed in the body of the financial statements, in the notes thereto, or in a separate schedule or other presentation that is an integral part of the financial statements.

Exemption. This paragraph shall not apply to filings under the federal securities laws by any registrant meeting all of the conditions described below for each of the two most recent fiscal years, based on its annual consolidated financial statements:

(i) Gross revenues from sales or transfers of oil and gas (as defined in subparagraph (4)(ii) of this paragraph) do not exceed 10 percent of total revenues;

(ii) Income after taxes (but before extraordinary items) from oil and gas producing activities, including amounts applicable to investees accounted for under the equity method, does not exceed 10 percent of consolidated income before extraordinary items; and

(iii) The "Present Value of Estimated Future Net Revenues" (see subparagraph (6)(ii) of this paragraph), including amounts attributable to investees accounted for under the equity method, plus the net capitalized costs of unproved properties, do not exceed 10 percent of total assets.

(1) *Disclosure of method of accounting.* The reporting entity shall disclose on the face of its balance sheet that it is adhering to the successful efforts method of accounting or the full cost method of accounting.

(2) *Disclosure of capitalized costs.* The aggregate amount of capitalized costs relating to oil and gas producing activities and the aggregate amount of the related accumulated depreciation, depletion, amortization, and valuation allowances shall be reported as of the end of each period for which a complete set of (annual or interim) financial statements is presented, with separate presentation for each geographic area for which quantities of proved reserves are presented in accordance with paragraph (k)(5) of this section. If the capitalized costs of unproved properties are significant, aggregate amounts shall be reported separately for capitalized costs related to unproved properties and capitalized costs related to proved properties. Capitalized costs of support equipment and facilities may be disclosed separately or included, as appropriate, with capitalized costs of proved and unproved properties.

(3) *Disclosure of costs incurred in oil and gas producing activities.* The financial statements shall disclose the amounts of each of the following types of costs for each year for which an income statement is required (whether those costs are capitalized or charged to expense at the time they are incurred):

(i) Property acquisition costs (disclose separately the costs of acquiring proved properties, if significant).

(ii) Exploration costs.

(iii) Development costs.

(iv) Production (lifting) costs.

Exploration, development, and production costs include depreciation of support equipment and facilities used in those activities rather than the expenditures to acquire support equipment and facilities. Production (lifting) costs do not include depreciation, depletion, and amortization of capitalized acquisition, exploration, and development costs. If some or all of those costs are incurred in foreign countries, the amounts shall be disclosed separately for each of the geographic areas for which reserve quantities are disclosed in accordance with paragraph (k)(5) of this section and for any other foreign geographic area in which significant costs have been incurred without discovery of significant proved reserves. Also, disclose the aggregate amount of depreciation, depletion, amortization, and valuation provisions relating to oil and gas producing activities, presented separately for each of these geographic areas. If

the reporting entity's share of the oil and gas reserves of its investee companies accounted for by the equity method is reported in conformity with paragraph (k)(5) of this section, disclosure shall also be made of the investor's share of its investee's capitalized costs and costs incurred in oil and gas producing activities.

(4) *Revenues from producing oil and gas.* (i) For each full fiscal year for which an income statement is required, disclose, for each geographic area for which reserve quantities are disclosed in accordance with paragraph (k)(5) of this section, the net revenues from oil and gas production related to each of the following, if significant: (A) Proved developed oil and gas reserves, (B) reserves applicable to long-term supply or similar agreements with foreign governments in which the entity acts as producer (see paragraph (k)(5) of this section), and (C) the entity's proportional interest in reserves of investees accounted for by the equity method.

(ii) Net revenues shall be computed by subtracting production (lifting) costs from gross revenues that are determined in accordance with the provisions of this subparagraph, as presented below. The following accounting practices shall be applied in determining gross revenues from sales or transfers of production of oil and gas:

(A) Sales to unaffiliated entities shall be included in gross revenues at the amount received in sales transactions attributable to net working interests, royalty interests, oil payments interests (see paragraph (h) of this section), net profits interests, etc., of the reporting entity. Production or severance taxes should not be deducted in determining gross revenues. Royalty payments and net profits disbursements should be excluded from gross revenues.

(B) Sales and transfers to unconsolidated affiliated persons and to other operations (such as refineries, chemical plants, etc.) of the reporting entity shall be separately disclosed and accounted for in the same manner as described in subparagraph (4)(ii)(A) of this paragraph except that such sales and transfers shall be valued at estimated market prices based on the prices of comparable products using posted field prices, if applicable, or amounts estimated to represent prices equivalent to those that could be obtained in a competitive arm's-length market environment, giving recognition to transportation costs, quality differences, and arrangements with and regulation by governments.

(5) *Disclosure of estimated quantities of proved oil and gas reserves.* Net quantities of proved reserves and proved developed reserves of crude oil (including condensate and natural gas liquids) and natural gas shall be reported as of the beginning and the end of each fiscal year for which an income statement is required. "Net" quantities of reserves include those relating to the operating and non-operating interests in properties as defined in paragraph (b)(1) of this section. Quantities of reserves relating to royalty interests owned shall be included in "net" quantities if the necessary information is available; if reserves relating to royalty interests owned are not included because the information is unavailable, that fact and the reporting entity's share of oil and gas produced for those royalty interests shall be reported for each year for which a complete set of financial statements is presented. "Net" quantities shall not include reserves relating to interests of others in properties owned by the reporting entity.

(i) Changes in the net quantities of proved reserves of oil and of gas during each fiscal year for which an income statement is required shall be reported. Changes resulting from each of the following shall be shown separately, with appropriate explanation of significant changes:

(A) *Revisions of previous estimates.* Revisions represent changes in previous estimates of proved reserves, either upward or downward, resulting from new information (except for an increase in proved acreage) normally obtained from development drilling and production history or resulting from a change in economic factors.

(B) *Improved recovery.* Changes in reserve estimates resulting from application of improved recovery techniques shall be separately shown if significant. If not significant, such changes shall be included in revisions of previous estimates.

(C) *Purchases of minerals-in-place.*

(D) *Extensions, discoveries, and other additions.* Additions to proved reserves that result from extension of the proved acreage of previously discovered (old) reservoirs through additional drilling in periods subsequent to discovery and discovery of new fields with proved reserves or of new reservoirs of proved reserves in old fields.

(E) *Production.*

(F) *Sales of minerals in-place.*

(ii) If the reporting entity's proved reserves of oil and gas are located entirely within its home country, that fact shall be disclosed. If some or all of its reserves are located in foreign countries, the disclosures of net quantities of reserves of oil and gas and changes in them (as required above) shall be separately reported for the entity's home country (if significant reserves are located there) and each foreign geographic area in which significant reserves are located. Foreign geographic areas are individual countries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

(iii) Net quantities disclosed shall not include oil or gas subject to purchase under long-term supply, purchase, or similar agreements and contracts, including such agreements with foreign governments or authorities. However, quantities of oil and gas subject to such agreements with foreign governments or authorities as of the end of each fiscal year for which an income statement is required, and the net quantity of oil or gas received under the agreements during each such year, shall be separately disclosed if the reporting entity participates in the operation of the properties in which the oil or gas is located or otherwise serves as the "producer" of those reserves, as opposed, for example, to being an independent purchaser, broker, dealer, or importer.

(iv) In determining the reserve quantities to be reported:

(A) If consolidated financial statements are issued, 100 percent of the net reserve quantities attributable to the parent company and 100 percent of the net reserve quantities attributable to its consolidated subsidiaries (whether or not wholly owned) shall be included.

(B) If the financial statements include investments that are proportionately consolidated, reserve quantities shall include a proportionate share of the investee's net oil and gas reserves.

(C) If the financial statements include investments that are accounted for by the equity method, the investee's net proved oil and gas reserves shall not be included in the disclosures of reserves. However, the reporting entity's share of the investee's net proved oil and gas reserves shall be separately reported as of the end of each fiscal year for which an income statement is required.

(v) If important economic factors or significant uncertainties affect particular components of proved reserves, explanations shall be provided. Examples include unusually high expected development or lifting costs; the necessity to build a major pipeline or other major facilities before production of the reserves can begin; or contractual obligations to produce and sell a significant portion of reserves at prices that are substantially below those at which the oil and gas could otherwise be sold in the absence of the contractual obligation.

(vi) In reporting reserve quantities and changes in them, oil reserves (which include condensate and natural gas liquids) shall be stated in barrels, and gas reserves in cubic feet.

(6) *Disclosure of future net revenues from estimated production of proved oil and gas reserves.* In conjunction

with the disclosure of changes in net quantities of estimated proved reserves of crude oil (including condensate and natural gas liquids) and natural gas as required by paragraph (k)(5) of this section, the following information shall be disclosed in financial statements for each geographic classification for which quantities of oil and gas are disclosed:

(i) For each of the following categories: (A) Proved oil and gas reserves, (B) proved developed oil and gas reserves, (C) proved oil and gas applicable to long-term supply or similar agreements with foreign governments in which the entity acts as producer, and (D) the entity's share of proved oil and gas reserves of investees accounted for by the equity method, an amount (the "Estimated Future Net Revenues"), in the aggregate, computed by applying current prices of oil and gas (with consideration of price changes only to the extent provided by contractual arrangements) to estimated future production of proved oil and gas reserves as of the date of the latest balance sheet presented, less estimated future expenditures (based on current costs) to be incurred in developing and producing the proved reserves, and assuming continuation of existing economic conditions. Present separately the amounts applicable to each of the first three succeeding fiscal years, and the remainder in a single amount. Indicate the basis used to compute current prices and current costs.

(ii) The present value of the Estimated Future Net Revenues (the "Present Value of Estimated Future Net Revenues"), as of the end of each fiscal year for which an income statement is required, computed using the Estimated Future Net Revenues and a discount factor of ten percent. In addition, disclose the portions of the Present Value of Estimated Future Net Revenues, at such balance sheet dates, attributable to each of the following components of proved oil and gas reserves: (A) Proved reserves added in years prior to the current year; and (B) proved reserves added during the current year, with amounts attributable to application of improved recovery techniques or purchases of reserves in-place disclosed separately, if significant (which in this case shall generally be considered to be amounts greater than ten percent of total proved reserves added during the current year).

(iii) The Present Value of Estimated Future Net Revenues, computed as set forth at paragraph (k)(6)(i) of this section, attributable to each of the following, stated separately: (A) Proved developed reserves of oil and gas, (B) proved reserves of oil and gas applicable to long-term supply agreements with foreign governments in which the entity acts as producer, and (C) the entity's share of proved reserves of oil and gas of investees accounted for by the equity method.

(iv) Any additional information of which management is aware and which it believes is necessary to prevent the above information from being misleading.

(v) Information relating to the disclosure of future net revenues from estimated production of proved oil and gas reserves pursuant or supplemental to the requirements of this section shall be deemed not to be an untrue statement of a material fact; a statement false or misleading with respect to any material fact; an omission to state a material fact necessary to make a statement not misleading; or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or an artifice to defraud; as those terms are used in the Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935, or rules and regulations thereunder, unless such information: (A) Was prepared without a reasonable basis; or (B) was disclosed other than in good faith.

* * * * *

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78l, 78m, 78o(d), 78w), of the Securities Exchange Act of 1934; sections 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)) of the Investment Company Act of 1940; and section 503 (42 U.S.C. 6383) of the Energy Policy and Conservation Act of 1975.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 19, 1978.

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[8010-01-M]

[Release Nos. 33-6007; 34-15417; 35-20837; IC-10531; AS-258]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

Oil and Gas Producers—Full Cost Accounting Practices

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rules that establish uniform requirements for financial accounting and reporting practices of oil and gas producers following the full cost method of accounting. The Commission has previously published, in Accounting Series Release No. 253, accounting measurement standards for the successful efforts method of accounting. Proposed rules for full cost accounting were published concurrently with that release. The rules being adopted contain modifications based upon evaluation of written comments.

EFFECTIVE DATE: The rules published in this release shall be effective initially for fiscal years ending after December 25, 1979.

FOR FURTHER INFORMATION CONTACT:

James L. Russell or Rita J. Gunter, *Office of the Chief Accountant*, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-0222).

SUPPLEMENTARY INFORMATION: In Accounting Series Release No. 253 ("ASR No. 253"),[1] issued on August 31, 1978, the Commission announced its conclusions concerning financial accounting and reporting standards for oil and gas producing companies. Among these was the determination that the development of new measurement standards was necessary in order to achieve meaningful reporting of earnings and financial position for companies in that industry. These new standards should provide for recognition in financial statements of proved oil and gas reserves as assets and changes in proved reserves in earnings. In consideration of the need to establish standards for reserve valuations and to achieve an acceptable degree of

[1] Securities Act Release No. 33-5966 (43 FR 40688).

reliability, a series of steps covering several years was outlined seeking the development of "reserve recognition accounting." During this interim period, the Commission concluded that companies should be permitted to continue to follow either of the two traditional historical-cost accounting methods. Rules relating to the application of successful efforts accounting (which conformed to the standards of Statement No. 19 of the Financial Accounting Standards Board) were adopted in ASR No. 253, together with definitions, tax accounting standards, and disclosure requirements applicable to all oil and gas producers.[2] Proposed rules that would add § 210.3-18(i) to Regulation S-X to govern the application of full cost accounting for companies following that method were published concurrently in Release No. 33-5968 (43 FR 40724), August 31, 1978.

In that release, the Commission stated that its intention was to develop a practical approach for applying the full cost method of accounting that would be logically consistent and would not differ substantially from existing practice. Comments on the proposal were received from 48 persons, including oil and gas producers, accounting firms, and financial analysts. These comments have been considered by the Commission and various changes are reflected in the rules presently being adopted.

COMMENTS AND CHANGES

COSTS TO BE AMORTIZED

Most letters commenting on the rules proposed in Release No. 33-5968 addressed the issue of whether all capitalized costs should be subject to immediate amortization. It was generally acknowledged that companies with ongoing exploration programs typically have a recurring level of preproduction costs (in relation to the total investment in the cost center), consisting of the cost of undeveloped leases and the related carrying and evaluation costs. This normal inventory of preproduction costs should be included in the cost center for amortization purposes as the costs are incurred, and any additional reserves should be taken into consideration upon discovery on a prospective basis. This method of accounting should result in a reasonable and consistent allocation of costs over a period of time.

However, there was general disagreement with the proposed requirement that the capitalized costs of all undeveloped leases and uncompleted wells and facilities be amortized. It was pointed out that situations may arise in which major expenditures are required prior to production, such as unusually large investments in off-shore leases, major development projects, or secondary and tertiary recovery projects. While previous methods of determining the exclusion of costs from the amortization base have varied among companies, the principle of excluding major costs of this nature was felt by these commentators to be generally accepted. Failure to exclude such costs, it was argued, would result in an unrealistic overstatement of the amortization provision in the early lives of the properties. Exclusion from the amortization base was further supported by the assertion that costs incurred should be considered to be at least equal to the value of the asset at the time of the initial investment. Although certain projects will ultimately be abandoned, it was argued that impairments should be recognized when they occur, and should not be anticipated by premature amortization of the costs. Costs of projects that ultimately prove to be productive should become subject to amortization at the time that this evaluation is determined and the related proved reserves are included in the amortization base.

The Commission considers these arguments to have merit and has modified the rules to provide that the costs of unusually significant acquisitions of unproved properties and major development projects may be excluded from the capitalized costs to be amortized. Specifically, amortization of the costs of unproved properties that are unusually significant (such as the costs of acquiring and evaluating major offshore leases) may be deferred until a determination is made as to whether proved reserves are attributable to the properties, subject to periodic assessment of whether impairment has occurred. Also, the costs of major development projects may be excluded from amortization in cases where unusually significant costs must be incurred prior to a determination of the quantities of proved reserves attributable to the properties under development. Examples of such projects include the installation of an offshore drilling platform from which development wells are to be drilled and improved recovery programs undertaken in expectation of significant additions to proved reserves.

Because of the various judgments involved in assessing significance, the rules do not contain a specific test to determine whether an investment is "unusually significant." However, the Commission has instructed its staff to investigate existing practices and determine whether it is necessary to publish a guideline in this area, such as the percentage of total unamortized capitalized costs that must be exceeded if a major investment project is to be excluded from amortization. It should also be noted that the rules require separate disclosure on the balance sheet of the amount of preproduction costs that are not being amortized and a description of the current status of the projects involved, including an estimate of when the costs will be included in the amortization computation and, to the extent possible, the potential future impact on the amortization rate.

Several commentators questioned the appropriateness of including estimated future development costs in the costs to be amortized, since additions to proved reserves could be expected from major development expenditures that would not be reflected in the amortization computation. The Commission believes that future development costs should be included; the exclusion of the costs of major development projects from the amortization base until reserves can be evaluated should eliminate situations where an inappropriate allocation of costs to current production would result.

BASIS OF AMORTIZATION

Release No. 33-5968 proposed that unit-of-production amortization of capitalized costs be computed either on the basis of physical units of oil and gas (converted to a common unit of measure according to their relative energy content) or monetary units of net revenue. Several commentators recommended that only the use of physical units should be permitted; this would be consistent with the requirements for amortization of costs in cases of joint production of oil and gas under the Commission's successful efforts rules. Other commentators expressed agreement with the proposal to permit use of revenue units, since this computation utilizes the same basic information as amortization computations involving physical units, while automatically compensating for differences in the relative sales prices of the reserves. These commentators also pointed out that a method based on energy content ignores the fact that prices of oil and gas in today's regulated market environment do not necessarily correspond to their relative energy content.

However, the commentators favoring revenue units generally indicated that the computation should be based on gross revenues rather than net revenues. The use of net revenues, it was argued, requires estimates of future costs and introduces distortions when unusually high or low operating expenses are incurred in individual years. On the other hand, the relevant information for gross revenues is readily attainable, since current production is already recorded in dollars as

[2] Various technical amendments to these definitions and rules have been adopted by the Commission in Accounting Series Release No. 257, dated December 19, 1978 and published concurrently with this release.

revenues, and reserve reports frequently indicate reserves in terms of dollars based on current prices.

The Commission believes that there should be consistency in the methods used by companies following the full cost method of accounting. Further, the Commission believes that the use of physical units in terms of energy content (BTU's) as the amortization basis has the greatest conceptual merit in a market environment in which the relative prices of oil and gas approximate their relative energy content. However, the fact that substantial production is currently subject to pricing regulations may result in significant differences in amortization under the BTU method as compared to amortization based on sales values. Accordingly, the final rules prescribe the use of the physical units method unless the use of such method, because of existing pricing regulations, would cause an amortization provision that would be inconsistent with the current prices being received. In those instances, the gross revenue method may be used as the basis for computing amortization rates.

LIMITATION ON CAPITALIZED COSTS

A majority of commentators expressed reservations concerning the proposal that the cost center ceiling be based on the present value of future net revenues from estimated production of proved oil and gas reserves. It was stated that future net revenues should not be discounted for purposes of the ceiling limitation, that other classifications of reserves in addition to proved reserves should be considered, or that anticipated price increases should be included. The primary concern expressed by these commentators was that the proposed ceiling computation, in certain cases, would result in write-offs that would reduce net capitalized costs below the actual realizable value of the properties.

The Commission continues to believe that the aggregate of (1) the present value of proved reserves and (2) the lower of cost or fair market value of unproved properties is an appropriate basis for determining the limitation on capitalized costs. However, the rules have been revised to specify that the costs of significant investments in unproved properties and development projects are to be considered separately for purposes of the ceiling computation.

If application of the rules, as a result of an unusual event or transaction such as a major purchase of proved properties, would require a writedown when the fair value of the properties in a cost center clearly exceeds the unamortized costs, the registrant may request an exemption from the general rule. In such cases, the registrant should be prepared to demonstrate that the additional value clearly exists beyond reasonable doubt.

Finally, the rules specifiy that the cost center ceiling is to be computed giving consideration to income tax effects. Comments were received indicating that such income tax effects would be difficult to estimate and, in most cases, would not have a significant effect on the ceiling computation. However, the Commission believes that unusual tax relationships may exist in certain instances, as a result of the expiration of operating loss carryforwards, changes in tax rates, etc. In these circumstances, it will be necessary to consider tax effects in computing the ceiling limitation.

MINERAL PROPERTY CONVEYANCES

The rules dealing with mineral property conveyances specify that a sale of oil and gas reserves shall be accounted for as an adjustment of capitalized costs, unless the adjustment causes a significant alteration of the relationship between remaining capitalized costs and proved reserves attributable to the cost center. Guidance has been added that a significant alteration would not normally be expected to result from a sale involving less than 25 percent of the total reserve quantities of the cost center.

Paragraph (i)(6)(i) of the proposed rules would have required, in cases where the recognition of gain or loss on a sale of oil and gas properties is appropriate, that capitalized costs be allocated between reserves sold and reserves retained on the same basis used to compute amortization. Several commentators pointed out that the value of proved reserves sold and retained could differ significantly as the result of price regulations or quality differences. The sales price might also reflect values other than proved reserves, such as probable reserves or unproved leases, which should also be considered in the cost allocation. The rules as adopted provide that costs should be allocated between cost center assets sold and retained in the manner described in the proposed rules except where estimated relative fair values should be used in order to reflect other substantial economic differences between the properties sold and those retained.

The accompanying rules also clarify the Commission's intent that income from sales of unproved properties or from drilling arrangements should be recognized only in unusual situations where the cash consideration received exceeds the total cost of the properties plus any exploration and development costs to be subsequently incurred. Otherwise, income from sales of unproved properties or from drilling arrangements with respect to properties should be credited to the cost center, and any related costs should be capitalized as part of that cost center. In this way, drilling arrangement income is recognized as a reduction of overall costs of oil and gas reserves. The accounting for drilling arrangements should reflect the substance of the transactions, regardless of the form of the underlying agreements, including consideration of guarantees of performance or indebtedness.

DISCLOSURES

The Commission's proposed rules called for the disclosure by geographic area of (1) the approximate amount of capitalized costs that would have been charged to expense had the successful efforts method of accounting been followed, and (2) the approximate amount of costs incurred that would have been charged to expense under the successful efforts method. Many commentators objected to this proposed requirement as an unreasonable and unnecessary burden. It was also seen by these persons as inconsistent with the basic conclusions of ASR No. 253 with respect to the severe limitations of both historical-cost methods in permitting investors and government policy-makers to "gain an understanding of the operations of individual companies or to compare the operations of different companies." A small minority, however, expressed the view that the "as if" disclosures were essential for comparing the financial position and operating results of companies using alternative accounting methods during the period of implementation of reserve recognition accounting. Those in favor of the supplemental disclosures would, in addition, expand the requirement to include disclosure of pro forma net income.

The Commission has decided to defer temporarily any final action on this proposed disclosure requirement until it considers various questions that have been raised with respect to accounting changes and preferability of accounting methods in this industry. Therefore, the accompanying rules do not contain a requirement for supplemental disclosures based on successful efforts accounting, and this disclosure rule proposal remains outstanding.

CONSOLIDATED FINANCIAL STATEMENTS

Release No. 33-5968 stated that a company following the full cost method would be required to apply that method to all of its operations, including those of its subsidiaries and of investees accounted for by the equity method. Commentators pointed out that the requirement regarding

equity investees could present substantial difficulties. If an equity investee were following the successful efforts method, the information necessary to convert a company's investment would not be available on a timely basis in many situations. The Commission has reconsidered this proposal and has eliminated the requirement that the investor's accounting method be applied to its equity investees. However, the final rules specify that a registrant must apply its accounting method to the operations of its subsidiaries.

A number of commentators also requested clarification of other requirements as they apply to companies within a consolidated group. Paragraph (i)(3)(v) requires that amortization rates be determined on a consolidated basis even though this may result in a consolidated amortization provision that is not equal to the sum of the expenses for the individual members of the consolidated group. This same concept applies to the determination of the limitation on capitalized costs within cost centers.

RETROACTIVE RESTATEMENT

Several persons suggested that general guidance be provided for the retroactive application of the full cost rules, because of the number of estimates and judgments necessary in making such restatements. Accordingly, a discussion of the initial application of the rules is included in this release. Specifically, any provision of the rules that would not have a significant effect on prior years' financial statements need not be retroactively applied. Estimates of quantities of oil and gas reserves made in prior years for purposes of amortization computations shall not currently be revised in retrospect. Furthermore, if unamortized costs capitalized within a cost center do not exceed the ceiling limitation when the rules are initially applied, it is not necessary to determine whether there may have been an excess in prior years.

OTHER MATTERS

Several comment letters contained suggestions that cost centers of more than one country may be appropriate in certain cases (e.g., U.S. and Canada, or contiguous offshore areas such as the North Sea). However, oil and gas reserves in different countries are not always interchangeable, either in kind or in monetary value, because of varying energy and tax laws, market conditions, property rights, and national economic policies. Therefore, the requirement for establishing cost centers on a country-by-country basis (including related offshore areas) has been retained.

In order to conform to comparable rules for the successful efforts method, paragraph (i)(3)(iv) has been added to acknowledge that, in some cases, depreciation of natural gas cycling and processing plants may appropriately be computed by a method other than unit-of-production.

Finally, a number of commentators expressed concern with the applicability of the proposed rules to properties regulated for rate-making purposes on an individual-company-cost-of-service basis. Among the technical amendments to its rules on financial accounting and reporting by oil and gas producers adopted by the Commission in Accounting Series Release No. 257 is a provision that appropriate recognition may be given to differences in capitalized costs and in the basis for amortization arising because of the effect of the rate-making process. This applies to both the successful efforts and the full cost rules. However, the Commission believes that the disclosure requirements of § 210.3-18(k) are relevant to rate-regulated companies, and therefore has not exempted them from these disclosure requirements.

EFFECTIVE DATE AND INITIAL APPLICATION

The provisions of § 210.3-18 are effective for fiscal years ending after December 25, 1978, that are contained in filings that include fiscal years ending after December 25, 1979, although earlier application is encouraged. Accounting changes adopted to conform to these rules are to be made retroactively by restating the financial statements of prior periods. Financial statements for the fiscal year in which these rules are first applied should disclose the nature of the accounting changes and their effect on income before extraordinary items, net income, and related per share amounts for each period restated.

Retroactive application of the provisions of these rules requires the use of estimates and approximations. A provision that would not have a significant effect on prior years' financial statements need not be retroactively applied. Further, retroactive application of some provisions of these rules may require the use of estimates of a type not previously made; information that may have become available some time after the year being restated may be taken into account in making those estimates, except that estimates of quantities of oil and gas reserves that had been made in prior years shall not currently be revised in retrospect.

For reporting entities following the full cost method of accounting, retroactive application of § 210.3-18(i)(4), "Limitations on capitalized costs," shall be applied as follows:

(a) If unamortized costs capitalized within a cost center do not exceed the cost center ceiling as of the beginning of the fiscal period in which the rules are initially adopted, then no provisions shall be made for past periods when application of the rules based on information known during those periods might have resulted in unamortized capitalized costs being in excess of the cost center ceiling.

(b) If unamortized costs capitalized within a cost center exceed the cost center ceiling as of the beginning of the fiscal year in which the rules are initially adopted, then this excess shall be recognized retroactively through a charge to expense in the periods in which the excess initially arose.

COMMISSION ACTION

The Commission hereby amends 17 CFR Part 210 by the addition of new paragraph (i) to § 210.3-18, as set forth below:

§ 210.3-18 Financial accounting and reporting for oil and gas producing activities pursuant to the federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(i) *Application of the full cost method of accounting.* A reporting entity that follows the full cost method shall apply that method to all of its operations and to the operations of its subsidiaries, as follows:

(1) *Determination of cost centers.* Cost centers shall be established on a country-by-country basis.

(2) *Costs to be capitalized.* All costs associated with property acquisition, exploration, and development activities (as defined in paragraph (a) of this section) shall be capitalized within the appropriate cost center. Any internal costs that are capitalized shall be limited to those costs that can be directly identified with acquisition, exploration, and development activities undertaken by the reporting entity for its own account, and shall not include any costs related to production, general corporate overhead, or similar activities.

(3) *Amortization of capitalized costs.* Capitalized costs within a cost center shall be amortized on the unit-of-production basis using proved oil and gas reserves, as follows:

(i) Costs to be amortized shall include (A) all capitalized costs, less accumulated amortization, other than the cost of properties described in paragraph (ii) below; (B) the estimated future expenditures (based on current costs) to be incurred in developing proved reserves; and (C) estimated dismantlement and abandonment costs, net of estimated salvage values.

(ii) The cost of unusually significant investments in unproved properties and major development projects may

be excluded from capitalized costs to be amortized, subject to the following:

(A) Costs of acquiring and evaluating unproved properties may be excluded only if the costs incurred are unusually significant in relation to the aggregate costs to be amortized (e.g., the costs of acquiring major offshore leases). All costs of acquiring such properties and related exploration costs shall be excluded from the amortization computation until it is determined whether or not proved reserves are attributable to the properties. Until such a determination is made, the properties shall be assessed individually to ascertain whether impairment has occurred (see paragraph (c) of this section). If the results of the assessment indicate impairment, the amount of the impairment shall be added to the costs to be amortized.

(B) Costs of major development projects may be excluded from amortization only if unusually significant development costs must be incurred prior to ascertaining the quantities of proved reserves attributable to the properties under development (e.g., the installation of an offshore drilling platform from which development wells are to be drilled, the installation of improved recovery programs, and similar major projects undertaken in the expectation of significant additions to proved reserves). In such cases, a portion of the development costs identified with such a project may be excluded from the costs to be amortized until the proved reserves added as a result of the project are ascertainable or until it is determined that impairment has occurred.

(iii) Amortization shall be computed on the basis of physical units, with oil and gas converted to a common unit of measure on the basis of their approximate relative energy content, unless economic circumstances (related to the effects of regulated prices) indicate that use of units of revenue is a more appropriate basis of computing amortization. In the latter case, amortization shall be computed on the basis of current gross revenues (excluding royalty payments and net profits disbursements) from production in relation to future gross revenues, based on current prices (including consideration of changes in existing prices provided only by contractual arrangements), from estimated production of proved oil and gas reserves. The effect of a significant price increase during the year on estimated future gross revenues shall be reflected in the amortization provision only for the period after the price increase occurs.

(iv) In some cases it may be more appropriate to depreciate natural gas cycling and processing plants by a method other than the unit-of-production method.

(v) Amortization computations shall be made on a consolidated basis, including investees accounted for on a proportionate consolidation basis. Investees accounted for on the equity method shall be treated separately.

(4) *Limitation on capitalized costs:* (i) For each cost center, capitalized costs, less accumulated amortization and related deferred income taxes, shall not exceed an amount (the cost center ceiling) equal to the sum of: (A) The present value of future net revenues from estimated production of proved oil and gas reserves as defined in paragraph (k)(6) of this section; plus (B) the cost of properties not being amortized pursuant to paragraph (i)(3)(ii) of this section; plus (C) the lower of cost or estimated fair value of unproved properties included in the costs being amortized; less (D) income tax effects related to differences between the book and tax basis of the properties involved.

(ii) If unamortized costs capitalized within a cost center, less related deferred income taxes, exceed the cost center ceiling, the excess shall be charged to expense and separately disclosed during the period in which the excess occurs. Amounts thus required to be written off shall not be reinstated for any subsequent increase in the cost center ceiling.

(5) *Production costs.* All costs relating to production activities, including workover costs incurred solely to maintain or increase levels of production from an existing completion interval, shall be charged to expense as incurred.

(6) *Mineral property conveyances and related transactions.* The provisions of paragraph (h) of this section, "Mineral property conveyances and related transactions if the successful efforts method of accounting is followed," shall apply also to those reporting entities following the full cost method except as follows:

(i) *Sales and abandonments of oil and gas properties.* Sales of oil and gas reserves in place and abandonments of properties shall be accounted for as adjustments of capitalized costs, with no gain or loss recognized, unless such adjustments would significantly alter the relationship between capitalized costs and proved reserves of oil and gas attributable to a cost center. A significant alteration would not ordinarily be expected to occur for sales involving less than 25 percent of the reserve quantities of a given cost center. If gain or loss is recognized for such a sale, total capitalized costs within the cost center shall be allocated between the reserves sold and reserves retained on the same basis used to compute amortization, unless there are substantial economic differences between the properties sold and those retained, in which case capitalized costs shall be allocated on the basis of the relative fair values of the properties.

(ii) *Purchases of reserves.* Purchases of oil and gas reserves in place ordinarily shall be accounted for as additional capitalized costs within the applicable cost center; however, significant purchases of production payments or properties with lives substantially shorter than the composite productive life of the cost center shall be accounted for separately.

(iii) *Drilling arrangements.* Consistent with the provisions of paragraph (h) of this section, no income shall be recognized from sales of unproved properties or participation in various forms of drilling arrangements involving oil and gas producing activities (e.g., carried interest, turnkey wells, management fees, etc.) if the sales of unproved properties or drilling arrangements related thereto, in substance, will provide for the receipt or retention of an economic interest in any form in the properties. Circumstances in which income may be recognized are limited to situations where (A) the cash consideration received from the sale of unproved properties or drilling arrangements involving oil and gas producing activities exceeds the total cost of the properties plus any exploration and development costs to be subsequently incurred, or (B) the cash compensation represents reimbursement for amounts currently charged to expense. In the case of partnership or joint venture operations undertaken by the entity that involve more than one property, the determination of whether the cash compensation exceeds the cost of the properties shall be made based on the entity's participation in the total operations of the partnership or joint venture, rather than on a property-by-property basis. If the cash consideration received represents reimbursement for organization, offering, general and administrative expenses, etc., such compensation may be recognized as income only to the extent that costs have been currently incurred and charged to expense.

(7) *Disclosures.* Reporting entities that follow the full cost method of accounting shall disclose all of the information required by paragraph (k) of this section; with each cost center considered as a separate geographic area, except that reasonable groupings may be made of cost centers that are not significant in the aggregate. In addition:

(i) For each cost center for each year that an income statement is required, disclose the total amount of amortization expense (per equivalent physical unit of production if amortization is computed on the basis of physical units or per dollar of gross revenue

from production if amortization is computed on the basis of gross revenue).

(ii) State separately on the face of the balance sheet the aggregate of the capitalized costs of unproved properties and major development projects that are excluded, in accordance with paragraph (i)(3) of this section, from the capitalized costs being amortized. Provide a description in the notes to the financial statements of the current status of the significant properties or projects involved, including the anticipated timing of the inclusion of the costs in the amortization computation and, to the extent possible, the potential future impact on the amortization rate. In addition, indicate the nature of the costs by category and the approximate date on which costs were first incurred with respect to each such property or project.

* * * * *

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; sections 12, 13, 15(d), and 23(a) (15 U.S.C. 78l, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; section 5(b), 14, and 20(a) (15 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)) of the Investment Company Act of 1940; and section 503 (42 U.S.C. 6383) of the Energy Policy and Conservation Act of 1975.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact that these rules might have on competition and has concluded that to the extent the rules impose burdens on competition, such burdens are necessary and appropriate in furtherance of the purposes of the securities laws.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 19, 1978.

[FR Doc. 78-35868 Filed 12-26-78; 8:45 am]

[8010-01-M]

[Release Nos. 33-6008; 34-15418; 35-20838; IC-10532]

PART 229—STANDARD INSTRUCTIONS FOR FILING UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

Disclosure of Oil and Gas Reserves and Operations; Amendments to Regulation S-K

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending certain disclosure forms and regulations to standardize and improve its disclosure requirements relating to oil and gas reserves and operations. The amendments incorporate into Regulation S-K requirements for disclosure of: (1) The present value of future net revenues from estimated production of proved oil and gas reserves; (2) any favorable or adverse event since the end of the most recent fiscal year which is believed to have caused a significant change in the proved reserves; (3) the average sales price and average production cost per unit of oil and gas produced; and (4) historical information concerning the number of productive and dry wells drilled. The amendments expand the disclosure of the net quantities of proved reserves from "as of a reasonably current date" to a period of five years and expand the types of companies which are required to disclose information concerning the estimated availability of oil and gas from principal sources. An exemption from these disclosure requirements has been provided for registrants whose oil and gas activities do not exceed specified criteria. The requirement in the temporary instruction to Item 2(b) of Regulation S-K (proposed as Note 2) that certain data be provided as non-financial statement information only for the fiscal year ending after December 25, 1978, and on or before December 25, 1979, also is being adopted.

EFFECTIVE DATE: Effective for fiscal years ending after December 25, 1978, for initial filings made on or after January 29, 1979. However, as provided in the text of this release under "Effective Date," certain filings need not comply with the temporary instruction until June 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard B. Smith, Office of Engineering (202/376-2391); J. Rowland Cook, Office of Disclosure Policy and Proceedings (202/755-1750); Joseph H. Schmitt, Division of Corporation Finance (202/376-2380); or James L. Russell, Office of the Chief Accountant (202/755-0222), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 31, 1978, the Commission published for comment proposed amendments to certain disclosure forms promulgated under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq., as amended by Pub. L. 94-29 (June 4, 1975)) and 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)).[1] The proposals were published in conjunction with a separate release adopting rules relating to financial accounting for oil and gas producing activities[2] to achieve uniformity and integration with those accounting rules and to provide more meaningful disclosure regarding oil and gas reserves and operations.

This release summarizes the amendments proposed in Release No. 33-5967, the comments received on the proposed amendments[3] and the action taken with respect thereto.

A. DISCUSSION OF COMMENTS AND THE FINAL RULES

REGULATION S-K, ITEM 2(a)—INSTRUCTION 3

This instruction as adopted requires that, in the case of an extractive enterprise, material information should be given as to production, reserves, locations, developments, and the nature of the registrant's interest. If individual properties are of major significance to any industry segment, more detailed information concerning these matters should be furnished as well as maps which disclose location data of the significant properties. Under regulations existing prior to the adoption of these amendments, Instruction 3 of Item 2(a) of Regulation S-K required that the more detailed information should include, if appropriate, the results of development in the area and significant geological structures and formations.

The Commission believed that the phrase "significant geological struc-

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[1] Securities Act Release No. 5967 (August 31, 1978), (43 FR 40720), ("Release No. 33-5967").

[2] Securities Act Release No. 5966 (August 31, 1978), (43 FR 40688) ("Release No. 33-5966"). Those rules also apply in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States for purposes of filing with the Department of Energy ("DOE") reports of energy information that are subject to the requirements of the Energy Policy and Conservation Act of 1975, 89 Stat. 871.

[3] Comments were received from 53 commentators. The comments are available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549. Requests should refer to File No. S7-752.

tures and formations" was unduly restrictive and proposed in Release No. 33-5967 that more useful information could be obtained if the discussion included any "significant geological data." Several commentators believed that any disclosure of the results of development in the area and significant geological data (and apparently significant geological structures and formations as the rule previously required) would cause premature public disclosure of valuable competitive information, as in the case of a very large discovery with unleased offset acreage which will subsequently be included in a competitive lease sale. In addition, it was asserted that disclosure in such situations would make valuable information available to prospective competitors (particularly foreign companies who might not have to reciprocate) without compensation to those who have expended large sums of money for its development.

It was not the Commission's intention that registrants be required to disclose proprietary information to their competitors. Accordingly, the Commission has deleted the proposed requirement that the results of development in the area and significant geological data be disclosed. However, the Commission still believes that when individual properties are of major significance to an industry segment more detailed information concerning production, reserves, locations, developments and the nature of the registrant's interest should be disclosed.

REGULATION S-K, ITEM 2(a)—INSTRUCTION 4

The first sentence of the proposed amendment to Instruction 4 has been revised to indicate more clearly when the staff of the Office of Engineering, Division of Corporation Finance, should be consulted about submissions of supplemental information concerning estimates of reserves. This codifies existing practices of the Office of Engineering which may review the full report of the engineer or other expert who estimated the reserves whether or not that report is specifically referred to in the document. Some commentators indicated that they should not be required to supply the full report since it contains confidential information and it may be subject to the Freedom of Information Act.[4] However, the Office of Engineering has been requesting the full report as supplemental information for many years and the Commission codified this existing practice on May 12, 1976.[5] Normally, the registrant and its engineers or other experts will discuss the full report at a meeting with the staff of the Office of Engineering. At the conclusion of the meeting, the registrant usually retains possession of the report. If the registrant submits the full report by mail, the staff of the Office of Engineering will generally return it to the registrant at the completion of their review. Therefore, these full reports will usually not be kept in the possession of the Commission for any extended period. In this regard, the instruction has been modified to clearly indicate that the registrant may request the return of the full report. However, the registrant should realize that, absent an exemption,[6] the full report may be subject to a request under the Freedom of Information Act while that report is in the possession of the staff.

Nonetheless, the Commission believes that it is necessary for its staff to have the option to review this report in order to make sure that the appropriate procedures were used in determining the estimates of proved reserves and that such estimates are reasonable. The registrant is urged to consult with the staff of the Office of Engineering prior to filing in order to determine if any supplemental information will have to be furnished to the staff and, if so, what type of information is to be furnished. This procedure should help expedite review of the registrant's document.

Instruction 4 also requires that if the estimates of proved reserves of oil and gas are represented as being based on estimates prepared or reviewed by independent consultants, those independent consultants should be named in the document.[7] The Commission believes that identification of the independent consultant(s) is important to an evaluation by investors of the reserve information. This instruction applies to all extractive enterprises whose reserves are represented as being based on estimates prepared or reviewed by independent consultants. Although Release No. 33-5967 proposed that this instruction apply only to estimates of proved reserves of oil and gas, the Commission believes that it would not cause an undue burden and that it would conform to present administrative practice to extend this instruction to extractive enterprises other than oil and gas enterprises.

Release No. 33-5967 proposed that a summary letter from any independent consultant who prepared or reviewed estimates of proved oil and gas reserves be included in the document. Several commentators indicated that the summary letter required disclosure of items which were meaningless and were not disclosed elsewhere in the document, i.e., proved developed producing and proved developed non-producing reserves and the estimated productive life of the reserves. In addition, other commentators questioned whether the Commission was proposing that the present value of future net revenues be determined by an independent consultant if that consultant estimated the reserves.

The Commission did not propose and is not requiring that independent consultants prepare or review estimates of proved reserves of oil and gas. Nor is the Commission requiring that independent consultants determine the present value of future net reserves if those independent consultants prepare or review the estimates of proved reserves. The Commission believes that the comments about the usefulness of the letter have some merit, especially since independent accountants will be expressing an opinion on financial information which includes estimates of proved reserves of oil and gas beginning with fiscal years ending after December 25, 1979. Therefore, the proposed requirement for such a letter has been deleted from the adopted Instruction 4.

REGULATION S-K, ITEM 2(b)—INSTRUCTION 1

Instruction 1 of Item 2(b) provides that limited partnerships or joint ventures under certain conditions are not required to include the information specified by Item 2(b). This exemption is the same as adopted in Release No. 33-5706.

REGULATION S-K, ITEM 2(b)—INSTRUCTION 2

Instruction 2 of Item 2(b), through a cross-reference to Regulation S-X, 17 CFR 210.3-18(k), provides an exemption from the disclosure requirements of Item 2(b) for registrants whose rev-

[4] 5 U.S.C. 552.

[5] See, Securities Act Release No. 5706 (May 12, 1976) (41 FR 21764) ("Release No. 33-5706") announcing the adoption of amendments to Forms S-1 and S-7 and publication of an amendment to Guide 28 of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933, and the adoption of amendments to Forms 10 and 10-K and publication of amendments to Guide 2 of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934 relating to the disclosure of estimates of oil and gas reserves. *See also, Securities Act Release No. 5893 (December 23, 1977)* (42 FR 65554) incorporating the diclosure required by Release No. 33-5706 with Regulation S-K.

[6] For example, see 17 CFR 200.80(b)(9) which considers geological and geophysical information and data, including maps, concerning wells to be nonpublic matters.

[7] Section 7 of the Securities Act presently requires that the expert be named, but the Exchange Act has no comparable provision. The Commission under the general rulemaking authority granted by section 23(a) of the Exchange Act has amended Regulation S-K to require that such an expert be named in documents filed under the Exchange Act.

enue, income, and assets relating to oil and gas producing activities are less than ten percent of the corresponding consolidated amounts. For purposes of the asset criterion, proved oil and gas properties are to be measured on the basis of "the present value of estimated future net revenues" rather than historical cost. Several commentators requested that such guidelines be established for determining when oil and gas operations are material. The Commission agrees that guidance would be beneficial to registrants in order to determine when the disclosure of oil and gas operations is appropriate.

REGULATION S-K, ITEM 2(b)—INSTRUCTION 3

Instruction 3 of Item 2(b) states that the definitions in Regulation S-X, § 210.318(a) shall apply to Item 2(a) with respect to oil and gas operations and to Item 2(b). This more clearly indicates the intent of the Commission. The cross-reference in the proposed rules (included as part of paragraph (b)(1)) appeared to limit the definitions of terms, such as proved reserves, to paragraph (b)(1). This was not the intent of the Commission and the cross-reference in this instruction as adopted clarifies this.

REGULATION S-K, ITEM 2(b)—INSTRUCTION 4

Instruction 4 of Item 2(b) states that disclosure of estimates of probable or possible reserves and any estimated value thereof shall not be disclosed in any document publicly filed with the Commission. Prior to the adoption of the amendment to Regulation S-K, Instruction 2 to Item 2(b) stated "Estimates of future recoverable oil and gas shall be limited to proved developed and proved undeveloped future net recoverable reserves." Although this statement was not included in the proposed disclosure requirements of oil and gas reserves and operations in Release No. 33-5967, the Commission intended no substantive change in the disclosure practices concerning such reserves. However, since in the past an occasional document has contained information concerning probable or possible reserves when originally filed, the Commission believes that an affirmative statement reflecting the present practice is appropriate. The reason the Commission does not permit disclosure of these reserves is that estimates of probable or possible reserves and any value thereof are not sufficiently reliable to be included in any publicly filed document and disclosure of this information may be misleading to investors.[8]

REGULATION S-K, ITEM 2(b)—TEMPORARY INSTRUCTION

The disclosure requirements of the temporary instruction apply only for the fiscal year ending after December 25, 1978, and on or before December 25, 1979, thereafter the information required to be filed by this instruction will be disclosed as part of the financial statements pursuant to Regulation S-X, § 210.3-18(k). The temporary instruction requires disclosure of the following: (1) Capitalized costs as of the end of such fiscal year (paragraph i); (2) costs incurred in oil and gas producing activities for such fiscal year (paragraph ii); (3) revenues from producing oil and gas for such fiscal year (paragraph iii); (4) estimated quantities of proved reserves (and changes therein), of proved developed reserves, of quantities applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer, and the registrant's share of proved reserves of its investees accounted for by the equity method for such fiscal year (paragraph iv); and (5) information on future net revenue from estimated production of proved oil and gas reserves including information concerning the present value of the estimated future net revenues as of the end of such fiscal year or for such fiscal year, as applicable (paragraph v).

Paragraphs (i), (ii), (iii) are adopted as proposed in Release No. 33-5967. However, paragraph (iv) has been modified to indicate more clearly that the period of time for which data specified by Regulation S-X, § 210.3-18(k)(5) is to be disclosed is just the 1978 fiscal year. This modification is not intended as a substantive change from paragraph (iv) as proposed in Release No. 33-5967.

Paragraph (iv) to the temporary instruction contains, among other things, instructions for disclosure of reserves when there has been a recent takeover or nationalization by a foreign government or when a foreign government restricts the disclosure of estimated reserves under its governmental authority. These instructions applied to the disclosure of estimates of proved reserves under regulations existing prior to the adoption of these amendments and will apply to the disclosure of these estimates when the most recent annual financial statements included in the documents are for fiscal years ending after December 25, 1979. As proposed in Release No. 33-5967, the instructions would not have applied to the fiscal year ending after December 25, 1978, and on or before December 25, 1979. The Commission believes that there is no reason for not applying these instructions to this interim period and has, therefore, adopted them. The instruction with regard to updating reserve information has also been included for this interim period since any event which is believed to have caused a significant change in proved reserves should be brought to the attention of investors.

Several commentators suggested that the safe harbor provision of Regulation S-X, § 210.3-18(k)(6) apply to the disclosure of future net revenues from estimated production of proved oil and gas reserves for the period ending after December 25, 1978, and on or before December 25, 1979. The Commission agrees that the safe-harbor concept embodied in Regulation S-X, § 210.3-18(k)(6) should be applied to the information disclosed under the temporary instruction and, therefore, has incorporated the safe-harbor provision as part of paragraph (v) of the temporary instruction.

A number of commentators expressed concern with the Commission's proposal to require disclosure of the present value of estimated future net revenues from production of proved reserves. They stressed the uncertainties inherent in estimating quantities of proved reserves and the need for judgment in projecting rates of production and the timing of development expenditures. Some also indicated that the valuation methodology based on current prices and costs and a ten percent discount rate would not necessarily provide a meaningful indication of the current value of proved reserves. Similar arguments were made previously in response to the Commission's original proposals for such disclosures and were discussed in detail in Release No. 33-5966. In that release, the Commission expressed its conclusion that the usefulness of this supplemental information outweighs the limitations associated with the subjective nature of the data and the necessary use of a uniform valuation methodology. The Commission continues to believe that development of this information is essential if signficant improvement in financial reporting for the oil and gas producing industry is to be achieved.

Most of the commentators, however, focused their attention on the specific proposal to require the disclosure of estimated quantities and present values of oil and gas in the "Description of Property" section of filings covering the fiscal year ending after

[8] See *Sunray DX Oil Co.* v. *Helmerich & Payne, Inc.*, 398 F. 2d 447, 451 (1968) which stated the following in arriving at its opinion that failure to disclose information concerning probable oil reserves of off-shore tracts in a proxy statement did not constitute a violation of Section 14(a) of the Exchange Act: Any statement concerning "oil reserves" other than in the category of the "proved" could certainly be misleading to any investor other than one who is an expert in the industry.

December 25, 1978, and on or before December 25, 1979. They believed the relatively late imposition of such a requirement for calendar year 1978 filings would place an unreasonable burden on registrants. There would not be ample time, it was argued, for the proper development of methods and procedures on an objective and cost effective basis. It was pointed out that the preparation of estimates of reserves valuations will require experimentation and testing to establish the validity of the techniques being used, as well as the development of new computer programming. This substantial time commitment would be in addition to the burden of modifying accounting systems and records for changes required by the retroactive adoption of the specified form of successful efforts or full cost accounting. It was also pointed out that companies must devote a significant effort to complying with the requirements of the Natural Gas Policy Act of 1978 and with the Department of Energy's Financial Reporting System for which 1977 reports are due on February 1, 1979.

In addition to the time burdens, a number of commentators expressed the belief that disclosure of reserve information and operating data would be inappropriate at this time. Although the information called for in the proposed rules would not be required to be examined by independent accountants, it would be subject to audit for purposes of 1979 financial statements. It was argued that this could result in subsequent revisions to the initial disclosures. Also, the disclosure of 1978 data on capitalized costs, costs incurred, revenues, etc., might have to be restated in the following year for the effects of the retroactive adoption of the required accounting changes.

For these reasons, many commentators urged that the disclosures of reserve quantities and values and of operating data be postponed for one year. Alternatively, they recommended only partial application of the requirements, e.g., that only reserve quantities be disclosed, that the requirement apply only to domestic operations, or that smaller companies be exempted. Others requested that the disclosures be treated on an "experimental" basis, submitted directly to the Commission and not as part of the 10-K filing.

The Commission has given careful consideration to these comments and is fully aware that a significant commitment of resources will be required in order to develop the information specified by the new rule. However, the Commission considers this reserve information to be of such significance to a complete presentation of the financial position of oil and gas producers that every effort should be made to make it available to investors as soon as practicable. Furthermore, experience in the preparation and reporting of reserve information is critical to the timely consideration of reserve recognition accounting. Limitations to the applicability of the reporting requirements would reduce the quantity and comprehensiveness of the data, thereby limiting the experience upon which to assess the methodology that has been prescribed and to ascertain the most meaningful form of presentation.

The Commission realizes, however, that for some registrants it might be an undue burden to compile the information required by the temporary instruction to Item 2(b) during the first quarter of 1979. As to documents under the Securities Exchange Act of 1934 required to be filed prior to June 30, 1979, and as to registration statements under the Securities Act of 1933 which become effective before such date, registrants may either comply with the disclosure requirements of the temporary instruction, or with those disclosure requirements relating to estimates of proved reserves existing prior to these amendments. However, any registrant who elects to delay in filing the information required by the temporary instruction in a document filed under the Exchange Act must file such information by amendment no later than June 30, 1979.[9] The Commission encourages each registrant to make every attempt to include the information required by the temporary instruction at the time the document is required to be filed.

REGULATION S-K, ITEM 2(b)(1)

This paragraph, which does not take effect until the fiscal year ending after December 25, 1979, expands the present disclosure requirements of Item 2(b)(1) to reflect certain estimates of proved reserves on a five year basis rather than "as of a reasonably current date." The information disclosed serves as a summary of the estimates of proved reserves presented in the financial statements pursuant to Regulation S-X, § 210.3-18(k)(5) and as a comparison with the presentation under Item 2(b)(3) of oil and gas produced. Paragraph (b)(1) also requires disclosure of the present value of estimated future net revenues for each of the net quantities of reserves presented. These provisions are adopted as proposed in Release No. 33-5967.

Instruction (a) to this item indicates the geographic areas for which net quantities of reserves of oil and gas and the present value of estimated future net reserves are to be disclosed. It is also adopted as proposed in Release No. 33-5967.

Instruction (b) to this item has been clarified to indicate that disclosure should be given of the effect on ownership of reserves of any takeover or nationalization by foreign governments of properties owned by the registrant which has occurred "within the last fiscal year." Although the basic provision was adopted in the amendments announced in Release No. 33-5706, some commentators were unclear as to whether the discussion was based on historical information or was a prediction of a future event. The instruction as adopted clearly indicates that the discussion should be based on historical information. However, it should be noted that, if there exists a reasonable possibility of a risk of takeover or nationalization of properties owned by the registrant in that foreign country, appropriate disclosure of that risk should be made in the document.

Instruction (c) to this item has been modified to include those situations when any foreign government requires the disclosure of reserves other than proved. This codifies existing practices of the Office of Engineering, Division of Corporation Finance, which requires the document to identify the country, cite the law or regulation which requires such disclosure, and indicate that the reserve estimates for that geographic area include reserves other than proved.

Instruction (d) to this item has been modified to indicate that the statement as to whether any event has caused a significant change in the estimated proved reserves may be based on the belief of the registrant.

REGULATION S-K, ITEM 2(b)(2)

This paragraph requires disclosure of any other federal authority or agency with whom estimates of proved oil and gas reserves have been filed and an explanation for differences between such estimates and the estimates included in the document. This information need not be disclosed if the difference between the total reserve estimate included in the Commission filing and the total reserve estimate filed with the authority or agency does not exceed five percent. The Commission has deleted the requirement for disclosure of reserve estimates filed with foreign governmental authorities since it believes such information usually is not material to an investment decision.

[9] However, the April 30, 1979, deadline for written comments on Securities Act Release No. 5969 (43 FR 40726), the "Proposed Supplemental Earnings Summary," is not being extended. The Commission stresses the need for timely comments on this supplemental disclosure in order that final rules can be developed in time for 1979 financial statements.

REGULATION S-K, ITEM 2(b)(3)

This paragraph requires disclosure for each of the last five years of (1) oil and gas produced; and (2) oil and gas received under long-term or similar agreements with foreign governments or authorities in which the registrant acts as producer. This provision is adopted as proposed in Release No. 33-5967.

The average sales price per unit of oil produced and of gas produced and the average production cost per unit of production are required to be disclosed for the last five fiscal years. Several commentators indicated that it would be an undue burden to obtain this information for years ending prior to December 25, 1978. The Commission believes that this comment has some merit and, therefore, will not require registrants to disclose the information for fiscal years ending prior to December 25, 1978. However, the Commission encourages registrants to disclose this information for periods ending prior to December 25, 1978, if obtaining such information would not be an undue burden on them.

Instructions (a), (b), and (d) to this item are adopted as proposed in Release No. 33-5967. The discussion of "production of natural gas" in Instruction (c) has been modified to indicate that recovered gas-lift gas and reproduced gas should not be included in production until sold.

Instruction (e) to Item 2(b)(3) indicates that units of production shall be expressed in common units of production with oil or gas converted to a common unit of measure on the basis of its approximate relative energy content or by the gross revenue method, depending on the method of accounting used.

REGULATION S-K, ITEM 2(b)(4)

This paragraph requires disclosure of productive wells and developed acres. Some of the commentators expressed confusion as to what type of acreage was to be disclosed under this paragraph and under Item 2(b)(5). The Commission adopted the terminology "developed acres" in order to be consistent with disclosure required by DOE in Form EIA-28.[10]

Instructions (a) and (d) to this item are adopted as proposed in Release No. 33-5967. The Commission has clarified in Instructions (b) and (c) to paragraph (b)(4) that the only type of interest which is to be used in determining gross and net wells and acres is a "working interest." Instruction (e) has been added to this item to clarify the meaning of "productive wells" as that term is used to define "developed acres."

[10] 43 FR 27056.

REGULATION S-K, ITEM 2(b)(5)

This paragraph requires disclosure of undeveloped acreage and, as indicated above, is consistent with disclosure required by EIA-28. Since some commentators were confused by the definitions for "undeveloped acreage" which were proposed in Release No. 33-5967, the Commission has adopted definitions which it believes to be consistent with Form EIA-28 and industry practice.

REGULATION S-K, ITEM 2(b)(6)

This paragraph requires disclosure of productive and dry exploratory and development wells drilled during the last five fiscal years. As with Item 2(b)(3)(ii), several commentators indicated that it would be an undue burden to obtain this information for periods ending prior to December 25, 1978. Therefore, the Commission will not require that this historical information be disclosed for fiscal years ending prior to December 25, 1978.

Many commentators objected to the proposal in Release No. 33-5967 of disclosure of net drilling footage of exploratory and development wells. They believed that the disclosure of such information did not justify the burden of compliance. After reconsideration of the benefits to be derived from this disclosure, the Commission has decided to delete the proposal.

REGULATION S-K, ITEM 2(b)(7)

This paragraph requires disclosure of the present activities of the registrant. Several commentators questioned whether "wells temporarily suspended" should be disclosed here or under Item 2(b)(6) as part of wells drilled. The Commission believes that wells temporarily suspended should be included under Item 2(b)(7) as part of wells in process of drilling. These wells would not be included under Item 2(b)(6) since that information is limited to wells "completed" as that term is defined in Instruction (d) to Item 2(b)(6). In order to eliminate any confusion, however, the Commission has indicated in Item 2(b)(7) that wells in process of drilling include "wells temporarily suspended."

REGULATION S-K, ITEM 2(b)(8)

This paragraph requires that registrants who are obligated to supply fixed and determinable quantities of oil and gas in the future under existing contracts or agreements provide: (1) Certain information concerning the availability of oil and gas to the registrant; (2) the registrant's delivery commitments of oil and gas; and (3) the steps taken by the registrant to insure available reserves and supplies are sufficient to meet such commitments.

Several commentators recommended that the proposed disclosure requirements in Release No. 33-5967 be limited to obligations arising under warranty contracts (i.e., the producer is obligated to make good on a particular commitment) and not include obligations under deliverability contracts (i.e., producers are obligated to deliver oil and gas only if production is operationally feasible).

The Commission is of the view that this paragraph should not be limited to warranty contracts since there are other types of contracts or agreements which obligate the registrant to provide fixed and determinable quantities of oil or gas in the future. However, the Commission believes that this paragraph should not apply to those contracts or agreements which specify that indefinite quantities of oil or gas are to be provided by the registrant. Therefore, this paragraph as adopted has been revised to indicate that the registrant need only disclose the required information if the registrant is obligated to provide fixed and determinable quantities of oil or gas in the future. Such required information includes the total quantities of oil and gas which are subject to delivery commitments. With respect to this disclosure, the term "customers' requirements" which appeared in conjunction with the term "commitment" in Release No. 33-5967 and which was originally adopted in Release No. 33-5706 has been deleted since the term "commitment" is consistent with industry practice and adequately indicates what information is to be disclosed, i.e., fixed and determinable quantities of reserves and supplies committed to a customer under terms of a purchase contract.

A few commentators indicated that compliance with a literal reading of the proposed paragraph would result in disclosure of every sales and purchase contract, regardless of the contract's significance. It was not the intention of the Commission to require disclosure of insignificant contracts and, therefore, the proposed paragraph has been modified, where appropriate, to indicate that only significant contracts are to be disclosed and that only total amounts need be given.

Proposed Item 2(b)(8)(iii)(B) has been revised to include those reserves or supplies subject to curtailments. This modification clarifies the intent of the Commission and codifies existing practices.

B. CERTAIN FINDINGS

As required by Section 239(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments, adopted herein would have on competition and has concluded that they impose no sig-

nificant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these amendments to investors and registrants.

C. EFFECTIVE DATE

These amendments are effective for documents filed with the Commission when the most recent annual financial statements included in the documents are for fiscal years ending after December 25, 1978 and if the filing is initially made on or after January 29, 1979.

Notwithstanding the effective date of these amendments, registrants who are required to file documents under the Exchange Act prior to June 30, 1979, are not required to disclose information required by the temporary instruction to Item 2(b) at the time the document is required to be filed. However, such information must be filed by amendment to the document no later than June 30, 1979. Registrants who file documents under the Securities Act which become effective prior to June 30, 1979, are not required to disclose this information. Any document which does not contain this information at the time the document is required to be filed under the Exchange Act or at the time the document becomes effective under the Securities Act should contain estimates of reserves as explained under the temporary instruction. In addition, the text of the Regulation in Items 2(b)(1), 2(b)(3)(ii) and 2(b)(6) provides that historical information need not be provided for fiscal years ending prior to December 25, 1978. Notwithstanding the effective date of these mandatory requirements, registrants are urged to comply with these new provisions as soon as possible.

D. TEXT OF AMENDMENTS

The Commission hereby amends Item 2 of Regulation S-K, Part 229 of Title 17, by revising Instruction 3 and adding Instruction 4 to paragraph (a) and by revising paragraph (b) as set forth below:

§ 229.20 Information required in document.

* * * * *

ITEM 2. DESCRIPTION OF PROPERTY

(a) (No change).

Instructions to Item 2(a). 1. (No change).

2. (No change).

3. In the case of an extractive enterprise, material information should be given as to production, reserves, locations, developments, and the nature of the registrant's interest. If individual properties are of major significance to an industry segment: (i) More detailed information concerning these matters should be furnished; and (ii) appropriate maps should be used to disclose location data of significant properties except in cases for which numerous maps would be required.

4. (i) If reserve estimates are referred to in the document, the staff of the Office of Engineering, Division of Corporation Finance, of the Commission should be consulted. That office may request that a copy of the full report of the engineer or other expert who estimated the reserves be furnished as supplemental information and not as part of the filing. Upon request and where consistent with the protection of investors and with the Freedom of Information Act, 5 U.S.C. 552, the supplemental information will be returned to the registrant.

(ii) If the estimates of reserves, or any estimated valuation thereof, are represented as being based on estimates prepared or reviewed by independent consultants, those independent consultants should be named in the document.

[end of instructions to Item 2(a)]

(b) If oil and gas operations are material to the registrant's and its subsidiaries' business operations or financial position, disclose the following under appropriate captions (in tabular form if practicable, and with cross references, where applicable, to related information disclosed in financial statements):

GENERAL INSTRUCTIONS

Instruction 1: Limited partnerships or joint ventures that conduct, operate, manage, or report upon oil and gas drilling or income programs which acquire properties either for drilling and production, or for production of oil, gas or geothermal steam or water are not required to include the information specified by this Item 2(b).

Instruction 2: No information need be given in answer to this Item 2(b) if the registrant qualifies for the exemption provided in Regulation S-X, § 210.3-18(k), except that for the fiscal year ending after December 25, 1978, and on or before December 25, 1979, the availability of the exemption need be based only on the most recent fiscal year.

Instruction 3: The definitions in Regulation S-X, § 210.3-18(a) shall apply to Item 2(a) with respect to oil and gas operations, and to this Item 2(b).

Instruction 4: Estimates of probable or possible reserves and any estimated value thereof shall not be disclosed in any document publicly filed with the Commission.

[end of general instructions to Item 2(b)]

Temporary Instruction to Item 2(b): This temporary instruction shall apply only for the fiscal year ending after December 25, 1978, and on or before December 25, 1979. For such fiscal year, registrants shall disclose (in lieu of the information required by Item 2(b)(1) below) the following:

(i) The capitalized costs specified by Regulation S-X, § 210.3-18(k)(2), as of the end of such fiscal year.

(ii) The costs incurred in oil and gas producing activities specified by Regulation S-X, § 210.3-18(k)(3) for such fiscal year.

(iii) The revenues from producing oil and gas specified by Regulation S-X, § 210.3-18(k)(4) for such fiscal year.

(iv) The data specified by Regulation S-X, § 210.3-18(k)(5) ("Disclosure of estimated quantities of proved oil and gas reserves") for such fiscal year. The instructions to Item 2(b)(1) shall apply to this paragraph (iv).

(v) The information on future net revenue from estimated production of proved oil and gas reserves specified by Regulation S-X, § 210.3-18(k)(6) as of the end of such fiscal year or for such fiscal year, as applicable. This information shall be subject to the "safe harbor" provision of Regulation S-X, § 210.3-18(k)(6).

For purposes of paragraphs (i), (ii), and (iii) of this temporary instruction, the accounting measurements standards reflected in the registrant's financial statements for such fiscal year shall apply.

Registrants who are required to file documents under the Securities Exchange Act of 1934 prior to June 30, 1979, are not required to disclose the information required by this temporary instruction at the time the document is required to be filed. However, such information must be filed by amendment to the document no later than June 30, 1979. Registrants who file documents under the Securities Act of 1933 which become effective prior to June 30, 1979, are not required to disclose this information in such documents. Any document which does not contain the information at the time the document is required to be filed under the Securities Exchange Act of 1934 or at the time the document becomes effective under the Securities Act of 1933 should contain as of a reasonably current date estimates of the following: (1) Proved oil and gas reserves; (2) proved developed oil and gas reserves; and (3) oil and gas applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer. The instructions to Item 2(b)(1) shall apply to the disclosure of these reserve estimates.

This temporary instruction shall be deleted from this Item 2(b) when the rules in Regulation S-X, § 210.3-18 become effective for financial statements.

[end of temporary instruction to Item 2(b)]

2(b)(1)(i) As of the end of each of the last five fiscal years, (but not for fiscal years ending prior to December 25, 1978), estimated net quantities of: (A) Proved oil and gas reserves; (B) proved developed oil and gas reserves; (C) oil and gas applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer; and (D) the registrant's share of reserves of investees accounted for by the equity method.

(ii) For each of the net quantities reported, the present value of estimated future net revenues, computed in accordance with Regulation S-X, § 210.3-18(k)(6).

The following instructions apply to this Item 2(b)(1).

(a) If these reserves are located entirely within the registrant's home country, that fact shall be disclosed. If some or all of the reserves are located in foreign countries, the disclosure of net quantities of reserves of oil and gas and present value of estimated future net revenues (as required above) shall be separately reported for the entity's home country (if signifcant reserves are located there) and each foreign geographic area in which significant reseves are located. Foreign geographic areas are individual countries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

(b) Disclosure shall be given of the effect on ownership of reserves of any takeover or nationalization within the most recent fiscal year by foreign governments of properties

owned by the registrant, including any change of a property interest into a long-term supply, purchase, or similar agreement.

(c) If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proved, the registrant should notify the Office of Engineering, Division of Corporation Finance, of the Commission. If the required information is not disclosed or if categories of reserves other than proved are disclosed for these reasons, the document should identify the country, cite the law or regulation which restricts or requires such disclosure, and indicate that the reported reserve estimates or amounts do not include figures for the named country or that the reserve estimates include reserves other than proved.

(d) If no major discovery or other favorable or adverse event that is believed to have caused a significant change in the estimated proved reserves has occurred since the end of the most recent fiscal year, a statement to that effect shall be made; otherwise, an explanation of any such discovery or event should be provided, including, to the extent reasonable, an estimate of the proved oil and gas reserves associated with such discovery or event.

[end of instructions to Item 2(b)(1)]

2(b)(2) Any estimates of total, proved net oil or gas reserves filed with or included in reports to any other federal authority or agency since the beginning of the last fiscal year (or a statement that there were none), together with the name of the authority or agency and an explanation of the reasons for differences, if any, between such estimates and the estimates included in the document. This requirement shall not apply if the difference between the total reserve estimate included in the Commission filing and the total reserve estimate filed with the federal authority or agency does not exceed five percent. However, a statement that the difference does not exceed five percent shall also be included.

[end of Item 2(b)(2)]

2(b)(3)(i) Net quantities of oil (including condensate and natural gas liquids) and of gas produced for each of the last five fiscal years and the net quantities of each received during each of these years applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer, by areas no larger than the geographic areas used for estimated reserves in Item 2(b)(1) above.

(ii) For each of the last five fiscal years (but not for fiscal years ending prior to December 25, 1978), by the same geographic areas for which production data are required: (A) The average sales price (including transfers) per unit of oil produced and of gas produced; and (B) the average production cost (lifting cost) per unit of production.

The following instructions apply to this Item 2(b)(3):

(a) Generally, net production should include only production that is owned by the registrant and produced to its interest, less royalties and production due others. However, in special situations (e.g., foreign production) net production before royalties may be provided if more appropriate. If "net before royalty" production figures are furnished, the change from the common usage of "net production" should be noted.

(b) Any part of natural gas liquids production obtained through or from processing plant ownership rather than through leasehold ownership should be reported separately, if material.

(c) Production of natural gas should include only marketable production of gas on an "as sold" basis. Production will include dry, residue, and wet gas, depending on whether liquids have been extracted before the registrant passed title. Flared gas, injected gas, and gas consumed in operations should be omitted. Recovered gas-lift gas and reproduced gas should not be included until sold.

(d) The transfer price of oil and gas produced shall be determined in accordance with Regulation S-X, § 210.3-18(k)(4).

(e) The average production cost per unit of production shall be computed using production costs disclosed pursuant to Regulation S-X, § 210.3-18(k)(3). Units of production shall be expressed in common units of production with oil or gas converted to a common unit of measure on the basis used in computing amortization (relative energy content or gross revenue method). See Regulation S-X, § 210.3-18 (e)(3) or (i)(3)(iii), whichever is appropriate.

[end of instructions of Item 2(b)(3)]

2(b)(4) As of a reasonably current date or as of the end of the most recent fiscal year, the total gross and net productive wells, expressed separately for oil and gas, and the total gross and net developed acres (i.e., acres spaced or assignable to productive wells) by the geographic areas for which production data are required pursuant to Item 2(b)(3) above.

The following instructions apply to this Item 2(b)(4):

(a) For purposes of this paragraph, one or more completions in the same bore hole shall be counted as one well. A footnote shall disclose the number of wells with multiple completions. If one of the multiple completions in a given well is an oil completion, the well shall be classified as an oil well.

(b) A gross well or acre is a well or acre in which a working interest is owned. The number of gross wells is the total number of wells in which a working interest is owned.

(c) A net well or acre is deemed to exist when the sum of fractional ownership working interests in gross wells or acres equals one. The number of net wells or acres is the sum of the fractional working interests owned in gross wells or acres expressed as whole numbers and fractions thereof.

(d) For those unusual situations in which gross and net data cannot be supplied, alternative disclosure should be furnished that adequately describes the registrant's productive wells and developed acreage.

(e) Productive wells are producing wells and wells capable of production.

[end of instructions to Item 2(b)(4)]

2(b)(5) As of a reasonably current date or as of the end of the most recent fiscal year, the amounts of undeveloped acreage; both leases and concessions, if any, expressed in both gross and net acres by appropriate geographic area, together with an indication of acreage concentrations, and, if material, the minimum remaining terms of leases and concessions. Undeveloped acreage is considered to be those lease acres on which wells have not been drilled or completed to a point that would permit the production of commercial quantities of oil and gas regardless of whether or not such acreage contains proved reserves. Undeveloped acreage should not be confused with undrilled acreage Held By Production under the terms of a lease.

[end of Item 2(b)(5)]

2(b)(6) For each of the last five fiscal years (but not for fiscal years ending prior to December 25, 1978), by appropriate geographic areas: (a) The number of net productive and dry exploratory wells drilled; and (b) the number of net productive and dry development wells drilled.

The following instructions apply to this Item 2(b)(6):

(a) A dry well (hole) is an exploratory or a development well found to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

(b) A productive well is an exploratory or a development well that is not a dry well.

(c) The number of wells drilled refers to the number of wells (holes) completed at any time during the fiscal year, regardless of when drilling was initiated.

(d) The term "completion" refers to the installation of permanent equipment for the production of oil or gas, or, in the case of a dry hole, to the reporting of abandonment to the appropriate agency.

[end of instructions to Item 2(b)(6)]

2(b)(7) Present activities, such as the number of wells in process of drilling (including wells temporarily suspended), waterfloods in process of installation, pressure maintenance operations, and any other related operations of material importance by appropriate geographic areas. This description of present activities should be provided for an "as of" date as close to the date of filing the document as reasonably possible or as of the end of the most recent fiscal year. The disclosure of wells in the process of being drilled should include only those wells actually being drilled at the "as of" date and should be expressed in terms of both gross and net wells. The disclosure should not include wells planned but not commenced, unless there are factors which make such information material.

[end of Item 2(b)(7)]

2(b)(8) If the registrant is obligated to provide a fixed and determinable quantity of oil or gas in the future under existing contracts or agreements, material information concerning the estimated availability of oil and gas from any principal sources.

(i) Such information shall be furnished as to current and future reserves and supplies, and shall: (A) Identify the principal sources of oil and gas to be relied upon and the total available amounts expected to be received from each principal source and from all sources combined; (B) disclose the total quantities of oil and gas which are subject to delivery commitments; and (C) indicate steps taken to insure available reserves and supplies are sufficient to meet such commitments. Such future information shall be provided for an appropriate period of one to five years.

(ii) The term "availability" is used herein to mean an estimate of that quantity of oil and gas which can be produced from current proved developed reserves using presently installed equipment under existing economic and operating conditions and an estimate of amounts that can be delivered to the registrant under long-term contracts

or agreements on a per-day, per-month, or per-year basis. This term is not intended to have the same meaning as "deliverability" as used by the Federal Energy Regulatory Commission in FPC Form No. 15.

(iii) The registrant should develop disclosure based upon the facts and circumstances of its particular situation, including disclosure by appropriate geographic areas. Such disclosure should be in a form understandable to investors and should include, but not be limited to description of the following factors: (A) Significant supplies dedicated or contracted to the registrant; (B) any significant amounts of reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and interruptable contracts; (C) any priority allocations or price limitations imposed by federal or state regulatory agencies, as well as other factors beyond the control of the registrant which may affect the ability of the registrant to meet its contractual obligations (detailed discussions of price regulation need not be furnished); (D) any other factors beyond the control of the registrant, such as other parties having control over the drilling of new wells, competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies which may affect the ability of the registrant to acquire additional reserves and supplies, or to maintain or increase the availability of reserves and supplies; and (E) any impact on the registrant's earnings and financing needs resulting from its inability to meet short or long-term contractual obligations. See Guide 22 of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 and Guide 1 of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934.

(iv) If within the last five years the registrant has been unable to meet any significant delivery commitments, describe the circumstances concerning such events and the impact on the registrant.

[end of Item 2(b)(8)]

AUTHORITY

These amendments are adopted pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)) of the Securities Act of 1933; sections 12, 13, 14, 15(d) and 23(a) (15 U.S.C. 78l, 78m, 78o(d) and 78w) of the Securities Exchange Act of 1934.

The Commission finds that any changes in the amended rules adopted from those published in Securities Act Release No. 5967 have already been generally subject to comment and are either technical in nature or less burdensome than previous requirements so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 19, 1978.

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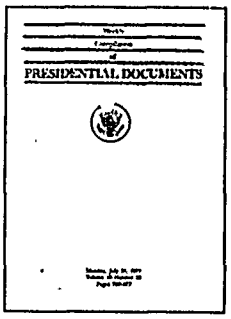

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