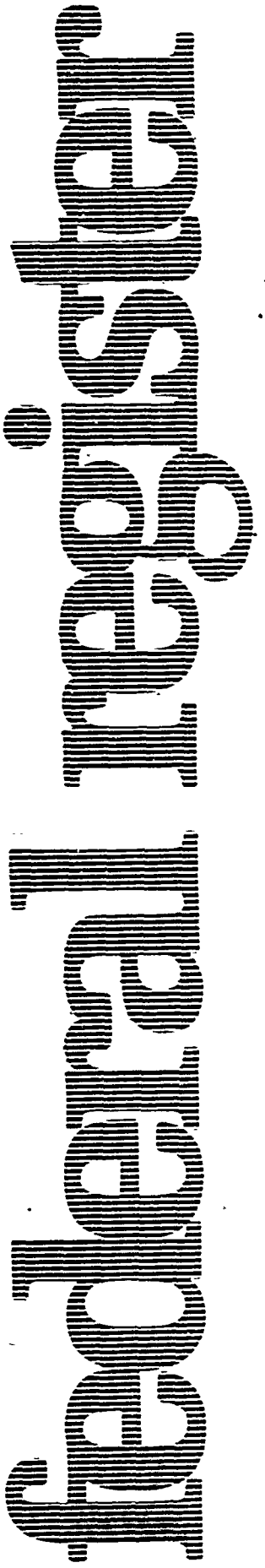
5-29-79
Vol. 44 No. 104
PAGES 30663-31004



Tuesday
May 29, 1979

Highlights

30663 **Sugars, Sirups, and Molasses** Presidential proclamation amending Proclamation 4610

30812 **Minority Small Business** SBA designates eligible minority groups of socially and economically disadvantaged individuals under certain programs

30672 **Small Business and Capital Ownership Development Program** SBA issues rules for assistance of businesses owned by socially and economically disadvantaged individuals

30809 **Improving Government Regulations** WRC issues final report for implementing E.O. 12044

30988 EPA also issues final report (Part XI of this issue)

30783 **Nuclear Power** NRC Notice of Deficiencies in Piping Design Affecting Five Plants

30788 NRC orders preservation of all records on the Three Mile Island accident

30978 **Energy Conservation** DOE/CSA proposes new furnace test procedures; comments by 6-28-79 (Part IX of this issue)

30946 **Housing** HUD issues rules on uniform relocation assistance and real property acquisition; effective 6-28 and 9-24-79 (Part VIII of this issue)

CONTINUED INSIDE

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Highlights

30892 **Flood Damage Reduction** DOD/Engineers proposes use of nonstructural measures in planning; comments by 7-30-79 (Part IV of this issue)

30684 **Consumer Credit Protection Act** Labor/W&H issues interpretative rule regarding garnishment of wages; effective 5-29-79

30690 **Electronic Fund Transfers** FRS proposes revised procedure for notification of loss or theft; comments by 6-25-79

30982 **Electric and Hybrid Vehicle Program** DOE proposes planning grant program; comments by 7-20-79, public hearing 6-26-79 (Part X of this issue)

30694 **Foreign Indirect Cargo Carriers** CAB proposes simplified registration procedures; comments by 7-6-79, reply comments by 7-23-79

31000 **Summer Youth Recreation Program** CSA issues rules describing the program for FY 1979; effective 6-28-79 (Part XII of this issue)

30762 **Federal Employees** GSA gives notice of procedure for permanent part-time employment; comments by 7-30-79

30813 **Sunshine Act Meetings**

Separate Parts of This Issue

30820 **Part II, OPM**
30836 **Part III, OPM**
30892 **Part IV, DOD/Engineers**
30898 **Part V, Commerce/NTIA**
30924 **Part VI, SEC**
30943 **Part VII, State**
30946 **Part VIII, HUD**
30978 **Part IX, DOE/CSA**
30982 **Part X, DOE**
30988 **Part XI, EPA**
31000 **Part XII, CSA**

Contents

Federal Register
Vol. 44, No. 104
Tuesday, May 29, 1979

The President
PROCLAMATIONS
30663 Sugars, sirups, and molasses, quota allocation (Proc. 4663)

Executive Agencies

Aging, Federal Council
NOTICES
30765 Meetings

Agriculture Department
See Commodity Credit Corporation; Farmers Home Administration.

Army Department
See also Engineers Corps.
NOTICES
Environmental statements; availability, etc.:
30711 Fort Monroe and Fort Eustis, Va.; base realignment; hearing
30711 Gallipolis Locks and Dam, Ohio River; replacement alternatives

Arts and Humanities, National Foundation
NOTICES
Meetings:
30783 Museum Advisory Panel

Center for Disease Control
NOTICES
Meetings:
30765 Disease prevention/health promotion objectives; conference

Civil Aeronautics Board
RULES
Public charters:
30680 Charter prospectuses; contents and filing requirements; GAO approval
PROPOSED RULES
30694 Cargo indirect air carriers, Foreign; liberalized regulations
NOTICES
30813 Meetings; Sunshine Act

Civil Rights Commission
NOTICES
Meetings, State advisory committees:
30709 South Carolina
30709 West Virginia

Coast Guard
PROPOSED RULES
Regattas and marine parades; safety of life:
30701 Norfolk, Va., Harborfest; correction
NOTICES
Committees; establishment, renewals, terminations, etc.:
30805 New York Harbor Vessel Traffic Service Advisory Committee

Commerce Department
See Foreign-Trade Zones Board; Industry and Trade Administration; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration.

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
30690 Tobacco; correction

Community Services Administration
RULES
31000 Summer youth recreation programs, 1979 FY

Defense Department
See Army Department; Engineers Corps; Navy Department.

Economic Regulatory Administration
NOTICES
Crude oil, domestic; allocation program; 1979; entitlement notices:
30712 March
Crude oil, imported; transfer pricing program:
30721 Representative and maximum prices; June (1975) through December (1976)
Natural gas:
30726 Distribution and emergency management; curtailment priorities; review; inquiry; extension of time

Education Office
NOTICES
Meetings:
30767 Education of Disadvantaged Children National Advisory Council

Employment and Training Administration
NOTICES
30782 Employment transfer and business competition determinations; financial assistance applications

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration.
PROPOSED RULES
Electric and hybrid vehicle program:
30982 Small business planning grants
Energy conservation program; appliances:
30978 Furnace test procedures; advance notice

Engineers Corps
PROPOSED RULES
Water resources policies and authorities:
30892 Nonstructural measures use in planning for flood damage reduction

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
30702 Maine
30702 Rhode Island
Air quality implementation plans; delayed compliance orders:
30703 Kansas
NOTICES
Air quality implementation plans; approval and promulgation:
30760 Fall River, Mass.; sewage sludge incinerator; PSD permit
30988 Improving Government regulations
Meetings:
30759 Innovative and alternative technology assessment manual
30760 Scientific Advisory Board

Farmers Home Administration
RULES
30665 Indian loans; obsolete regulations removed
30665 Loans secured by real estate on reclamation projects; CFR part removed

Federal Aviation Administration
RULES
Airworthiness directives:
30678 Pratt & Whitney
30679 Transition areas
30679 VOR Federal airways
PROPOSED RULES
30691 Control zones
30693 Jet routes and VOR Federal airways
30692 VOR Federal airways

Federal Election Commission
NOTICES
30813 Meetings; Sunshine Act

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
30683 Illinois et al.
PROPOSED RULES
Flood elevation determinations:
30699 Florida
30700 Illinois
30700 Mississippi
30701 Virginia

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act of 1978:
30681 Maximum ceiling prices; filing procedures; rehearing denied
NOTICES
Hearings, etc.:
30726 American Electric Power Service Corp.
30745 Blanchet, Victor J., Jr.
30746 Cimarron Transmission Co.
30747 Cities Service Gas Co.
30732 Columbia Gas Transmission Corp.
30748 Duncan, J. Walter, Jr., et al.
30749 El Paso Natural Gas Co. et al.
30733, 30734 Florida Gas Transmission Co. (2 documents)
30750 Inland Gas Co., Inc.
30737 Montana Department of Natural Resources and Conservation
30738 National Fuel Gas Supply Corp. et al.
30751 Northwest Alaskan Natural Gas Transportation Co.
30753 Panhandle Eastern Pipe Line Co.
30736 Smith, James F.
30753 Southern Natural Gas Co.
30744 Tennessee Gas Pipeline Co.
30744 Texas Eastern Transmission Corp.
30754 Texas Gas Transmission Corp.
30745, 30754 Transcontinental Gas Pipe Line Corp. (2 documents)
30755 Western Gas Interstate Co.
30756 Wheatland Rural Electric Association
30813 Meetings; Sunshine Act
Natural Gas Policy Act of 1978:
30731–30753 Jurisdictional agency determinations (10 documents)
30734 Preliminary Finding

Federal Highway Administration
RULES
Rights-of-way and environment:
30682 Highway traffic and construction noise abatement procedures; level prediction methods
PROPOSED RULES
Motor carrier safety regulations:
30704 Driver qualifications; minimum physical requirements; withdrawal

Federal Home Loan Bank Board
NOTICES
30816 Meetings; Sunshine Act (2 documents)

Federal Insurance Administration
See Federal Emergency Management Agency.

Federal Maritime Commission
NOTICES
30814 Meetings; Sunshine Act

Federal Mine Safety and Health Review Commission
NOTICES
30814 Meetings; Sunshine Act

Federal Reserve System
PROPOSED RULES
Electronic fund transfers (Regulation E):
30690 Access devices; unauthorized use; disclosure of consumer liability
NOTICES
Applications, etc.:
30761 Farmbanc Co.
30761 Maryland National Corp. et al.
30761 Paonia Financial Services, Inc.
30760 Pittsburgh National Corp. et al.
Federal Open Market Committee:
30761 Foreign currency operations; authorizations and directives
30815 Meetings; Sunshine Act (2 documents)

Fiscal Service
RULES
Surety companies doing business with U.S.:
30685 Annual renewal certificates of authority and reinsurance agreement forms; correction
NOTICES
Surety companies acceptable on Federal bonds:
30808 Equitable General Insurance Co.

Fish and Wildlife Service
NOTICES
30779, 30780 Endangered and threatened species permits; applications (5 documents)

Food and Drug Administration
RULES
Human drugs:
30682 Chloramphenicol; correction
NOTICES
30765 Privacy Act; systems of records

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
30709 Suffolk County, N.Y.

General Services Administration
NOTICES
30762 GSA employees; part-time employment program

Geological Survey
NOTICES
Environmental statements; availability, etc.:
30780 Coal resources development, Utah

Health, Education, and Welfare Department
See Center for Disease Control; Education Office; Food and Drug Administration; Health Resources Administration.

Health Resources Administration
NOTICES
Meetings:
30767 Advisory committees; June

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
30758 Decisions and orders

Heritage Conservation and Recreation Service
NOTICES
Historic Places National Register; additions, deletions, etc.:
30781 Arkansas et al.

Housing and Urban Development Department
See also Federal Insurance Administration.
RULES
30946 Relocation assistance and real property acquisition, uniform

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
30768 Recreational lease and conveyance; Wildhorse Reservoir and lands; Nev.
30768 Wildhorse Reservoir and lands; recreational lease and conveyance; hearings

Industry and Trade Administration
NOTICES
Meetings:
30710 Computer Systems Technical Advisory Committee

Interior Department
See Fish and Wildlife Service; Geological Survey; Heritage Conservation and Recreation Service; Indian Affairs Bureau; Land Management Bureau; National Park Service.

Internal Revenue Service
NOTICES
Authority delegations:
30808 Regional Directors of Appeals, et al.; deficiency notices
30809 Regional Directors of Appeals, et al. limitations on assesment or collection consents

Interstate Commerce Commission
RULES
Intermodal transportation:
30687 Fishyback service; Alaskan trade; substituted service
NOTICES
30812 Motor carrier, broker, water carrier, and freight forwarder applications
Motor carriers:
30810 Regular-route passenger operations; general temporary authority
Petitions filed:
30810 Bi-County Trucking, Inc.
Railroad operation, acquisition, construction, etc.:
30811 Chesapeake & Ohio Railway Co.

Labor Department
See Employment and Training Administration; Wage and Hour Division.

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
30770 Outer Continental Shelf; North Atlantic; oil and gas lease sale, hearing
Outer Continental Shelf:
30770, 30778 Oil and gas lease sales; Southern California (2 documents)
Wilderness areas; characteristics, inventories, etc.:
30768 Arizona (2 documents)
30769 Idaho
Withdrawal and reservation of lands, proposed etc.:
30769 Michigan

Legal Services Corporation
NOTICES
30815 Meetings; Sunshine Act

Management and Budget Office
NOTICES
30788 Agency forms under review

Materials Transportation Bureau
RULES
Hazardous materials:
30686 International Maritime Dangerous Goods Code (IMCO Code); incorporation by reference
NOTICES
Hazardous materials:
30805 Applications; exemptions, renewals, etc.

National Aeronautics and Space Administration
NOTICES
Meetings:
30783 Aeronautics Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
30688 Tanner crab off Alaska; early closure
NOTICES
Meetings:
30710 South Atlantic Fishery Management Council

National Park Service
NOTICES
Environmental statements; availability, etc.:
30781 Colorado and Lower Dolores Wild and Scenic Rivers Study, Colo. and Utah

National Telecommunications and Information Administration
RULES
30898 Public telecommunications facilities program

Navy Department
RULES
Procurement:
30685 Technical information for release to foreign governments, protection of proprietary rights; policies and procedures

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
30783 Piping design, deficiencies
Applications, etc.:
30786 Dairyland Power Cooperative
30787 Northeast Nuclear Energy Co. et al.
30787 Power Authority of State of New York
30786 Virginia Electric & Power Co.
Meetings:
30785, 30786 Reactor Safeguards Advisory Committee (3 documents)
30788 Three Mile Island accident, investigation; order for preservation of all records
30815 Meetings; Sunshine Act

Personnel Management Office
RULES
Excepted service:
30665 Commerce Department; correction
PROPOSED RULES
30820 Privacy Act; implementation
NOTICES
Health benefits program, Federal employees:
30789 Central Essex Health Plan; program terminated
30836 Privacy Act; systems of records

Postal Service
RULES
30686 Board of Governors bylaws; salary decisions

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
30680 Market Regulation Division, Director; action on proposed rule changes filed by self-regulatory organizations
PROPOSED RULES
30924 Self-regulatory organizations; filing of proposed rule changes, etc.
NOTICES
Hearings, etc.:
30790 American Utility Shares, Inc.
30790 AMIC Corp.
30791 Automated Medical Laboratories, Inc.
30791 Consolidated Natural Gas Co.
30792 Cosco, Inc.
30792 Del Monte Corp.
30793 Falcon Seaboard Inc.
30793 Great Southwest Corp.
30794 Green Giant Co.
30794 Jenn-Air Corp.
30795 Koppers Co., Inc.
30795 Leggett & Platt, Inc.
30803 Louisiana Power & Light Co.
30797 Mouldings, Inc.
30798 Skil Corp.
30804 Transgas Inc.
30798 Uarco Inc.
30799 Union Carbide International Capital Corp.
30800 Vance, Sanders Exchange Fund et al.
30802 Vapor Corp.
30802 Wiser Oil Co.
Self-regulatory organizations; proposed rule changes:
30791 Boston Stock Exchange, Inc., et al.
30796 Midwest Stock Exchange, Inc., (2 documents)
30797, 30804 Philadelphia Stock Exchange, Inc. (2 documents)
30799 Stock Clearing Corp. of Philadelphia

Small Business Administration
RULES
Procurement and technical assistance:
30666 Section 8(a) program; completions and terminations
30672 Small business and capital ownership development program
NOTICES
30812 Subcontracting program; socially and economically disadvantaged; eligibility interpretations; inquiry

State Department
NOTICES
Fishing permits, applications:
30943 Japan et al.

Tennessee Valley Authority
RULES
30682 Chapter redesignated

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Materials Transportation Bureau.

Treasury Department
See also Fiscal Service; Internal Revenue Service.
NOTICES
Organization and functions:
30809 Small and Disadvantaged Business Utilization Office; establishment
Notes, Treasury:
30809 T-1981 series

Wage and Hour Division
RULES
30684 Garnishment of earnings; restrictions

Water Resources Council
NOTICES
30809 Improving Government regulations

Western Area Power Administration
NOTICES
Power rate adjustments:
30759 Colorado River Storage Project

White House Conference on Library and Information Services
NOTICES
30815 Meetings; Sunshine Act

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
30709 South Carolina Advisory Committee, 6-20-79
30709 West Virginia Advisory Committee, 6-26-79

COMMERCE DEPARTMENT
Industry and Trade Administration—
30710 Hardware Subcommittee of the Computer Systems Technical Advisory Committee, 6-13-79
National Oceanic and Atmospheric Administration—
30710 South Atlantic Fishery Management Council, 6-26 through 6-28-79

ENVIRONMENTAL PROTECTION AGENCY
30759 Grants for Construction of Treatment Works, Innovative and Alternative Technology Assessment Manual; 6-25-79
30760 Science Advisory Board's Clean Air Scientific Advisory Committee (CASAC), 6-14 through 6-16-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
30765 Federal Council on the Aging, Long Term Care Committee, 6-21-79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
30783 Aeronautics Advisory Committee, NASA Advisory Council, 6-13 and 6-14-79

NUCLEAR REGULATORY COMMISSION
30785 Advisory Committee on Reactor Safeguards, Subcommittee on Operating Reactors, 6-13-79
30786 Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities, 6-13-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Health Resources Administration—
30767 National Advisory Council on Nurse Training, 6-26 through 6-28-79
Center for Disease Control—
30765 Preventing Disease/Promoting Health Objectives for the Nation, 6-13 and 6-14-79

NATIONAL ENDOWMENT FOR THE ARTS
30783 Museum Advisory Panel, 6-11 and 6-12-79

CHANGED MEETINGS

NUCLEAR REGULATORY COMMISSION
30785 Advisory Committee on Reactor Safeguards, Subcommittee on Reliability and Probabilistic Assessment, 6-2-79

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
4610 (Amended by Proc. 4663)....30663
4663....30663

5 CFR
213....30665
Proposed Rules:
293....30820
297....30820

7 CFR
1890c....30665
1890f....30665
Proposed Rules:
1464....30690

10 CFR
Proposed Rules:
430....30978
476....30982

12 CFR
Proposed Rules:
205....30690

13 CFR
124 (2 documents)....30666, 30672

14 CFR
39....30678
71 (2 documents)....30679
380....30680
Proposed Rules:
71 (3 documents)....30691–30693
75....30693
207....30694
208....30694
212....30694
215....30694
296....30694
297....30694
385....30694

15 CFR
2301....30898

17 CFR
200....30680
Proposed Rules:
240....30924
249....30924

18 CFR
154....30681
270....30681
Ch. II....30682
Ch. XIII....30682

21 CFR
455....30682

23 CFR
772....30682

24 CFR
42....30946
1914....30683
Proposed Rules:
1917 (4 documents)....30699–30701

29 CFR
870....30684

31 CFR
223....30685

32 CFR
744....30685

33 CFR
Proposed Rules:
100....30701
280....30892

39 CFR
3....30686

40 CFR
Proposed Rules:
52 (2 documents)....30702
65....30703

45 CFR
1061....31000

49 CFR
171....30686
1091....30687
Proposed Rules:
391....30704

50 CFR
671....30688

Federal Register
Vol. 44, No. 104
Tuesday, May 29, 1979

Presidential Documents

Title 3—

The President

Proclamation 4663 of May 24, 1979

Amendment of Proclamation No. 4610 Regarding the Allocation of Quotas on Certain Sugars, Sirups, and Molasses

By the President of the United States of America

A Proclamation

1. By Proclamation No. 4610 of November 30, 1978, I modified Headnote 3 of Subpart A, Part 10, Schedule 1 of the Tariff Schedule of the United States (19 U.S.C. 1202, hereinafter referred to as "TSUS"). The proclamation was designed substantially to bring the United States into conformity with certain provisions of the International Sugar Agreement, 1977, which the United States is applying provisionally, by allocating a large portion of the sugar import quota to certain named countries which at the time of the issuance of the proclamation were parties or provisional parties to the International Sugar Agreement.

2. Taking into account the factors cited in Proclamation No. 4610, and in order to enable additional countries which have become or may decide to become parties or provisional parties to the International Sugar Agreement to share currently in the import quota set aside in Proclamation No. 4610 for the parties to the International Sugar Agreement, I find it appropriate to amend that proclamation by authorizing the Secretary of State to allocate the sugar quota among supplying countries or areas to the extent necessary to conform with the provisions of the International Sugar Agreement, 1977. I find that the amendment hereinafter proclaimed is in conformity with the International Sugar Agreement, 1977, and that it gives, as provided for in Headnote 2, of Subpart A, Part 10, Schedule 1 of the TSUS, due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and statutes, including section 201 of the Trade Expansion Act of 1962, and in conformity with Headnote 2 of Subpart A, Part 10, Schedule 1 of TSUS, do hereby proclaim:

A. The first paragraph of Headnote 3 of Subpart A, Part 10, Schedule 1 of the TSUS is modified by substituting for the second sentence of that paragraph the following:

"This quantity shall be allocated among supplying countries or areas to the extent necessary to conform with the provisions of the International Sugar Agreement, 1977, by the Secretary of State or his designee, after appropriate consultations with the Secretary of Agriculture and the Special Trade Representative. The Secretary of State or his designee shall inform the Commissioner of Customs of such allocation, which shall be published in the Federal Register.

B. The provisions of this proclamation shall become effective with respect to articles entered, or withdrawn from warehouse, for consumption on the day following the publication in the **Federal Register** of the first allocation made pursuant to this proclamation, except that articles which were released under the provisions of section 448(b) of the Tariff Act of 1931 (19 U.S.C. 1448(b)) prior to such date shall not be denied entry.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of May, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

[FR Doc. 79-16839
Filed 5-25-79; 10:20 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 44, No. 104
Tuesday, May 29, 1979

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: This amendment corrects a document published on March 23, 1979, which erroneoulsy listed a Schedule A position in the Department of Interior, National Park Service.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Office of Personnel management.

Beverly M. Jones,

Issuance System Manager.

In FR document 79-8753, appearing at 44 FR 17649, March 23, 1979, 5 CFR 213.3112 (f)(3) is redesignated as 213.3112 (f)(4).

* * * * *

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

[FR Doc. 79-16568 Filed 5-25-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1890c

Loans Secured by Real Estate on Reclamation Projects; Deletion

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) deletes obsolete regulations regarding loans secured by real estate on reclamation projects. This action is taken as a result of an overall review of the Code of Federal Regulations to remove extraneous or obsolete provisions. The intended effect of this action is to simplify the CFR.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charlie Alexander, phone: 202-447-3646.

SUPPLEMENTARY INFORMATION: FmHA deletes Part 1890c of Subchapter G, Chapter XVIII, Title 7 in the Code of Federal Regulations. This regulation has been incorporated in 7 CFR Part 1943-A, Exhibit A. It was rewritten to clarify policies and procedures applicable to insure FmHA loans to homestead and desertland entrymen which are to be secured by real estate. The regulation provides information for taking real estate mortgages on entries to secure Farm Ownership, Soil and Water, and Operating loans in connection with loan making and servicing. All entrymen are expected to keep in contact with appropriate officials of the Bureau of Land Management and Bureau of Reclamation and comply to their laws and regulations relating to issuance of patents for homestead or desertland entries.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This deletion, however, is not published for proposed rulemaking since the purpose of the change is to delete obsolete regulations and therefore publication is unnecessary. This determination has been made by Mr. James E. Lee, Assistant Administrator, Farmer Programs, Farmers Home Administration.

PART 1890c [Deleted]

Therefore, Part 1890c of Chapter XVIII is hereby deleted from the Code of Federal Regulations.

A copy of the Impact Analysis is available from Mr. Joseph Linsley, Chief, Directives Management Branch, Farmers Home Administration.

(7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Dated: May 14, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-16545 Filed 5-25-79; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1890f

Loans to Indians; Deletion

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) deletes obsolete regulations regarding loans to Indians. This action is taken as a result of an overall review of the Code of Federal Regulations to remove extraneous or obsolete provisions. The intended effect of this action is to simplify the CFR.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charlie Alexander, phone: 202-447-3646.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration deletes Part 1890f of Subchapter G, Chapter XVIII, Title 7 in the Code of Federal Regulations. The provisions of this Part have been primarily incorporated into the revised and renumbered Part 1943, Subparts A, B, and C. These Subparts have incorporated the necessary provisions in their real estate security sections.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This deletion, however, is not published for proposed rulemaking since the purpose of the change is to delete obsolete regulations and therefore publication is unnecessary. This determination has been made by Mr. James E. Lee, Assistant Administrator, Farmers Programs, Farmers Home Administration. Therefore, Part 1890f of Chapter XVIII is hereby deleted from the Code of Federal Regulations as follows:

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

PART 1890f—[Deleted]

This action has not been determined significant under the USDA criteria implementing Executive Order 12044.

A copy of the Impact Analysis is available from Mr. Joseph Linsley, Chief, Directives Management Branch, Farmers Home Administration.

(7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Dated: May 14, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-16544 Filed 5-25-79; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

[Amendment 9]

The Section 8(a) Program; Completions and Terminations

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: As a result of the provisions of Pub. L. 95-507 which amend the Small business Act, SBA is clarifying the procedures by which SBA will determine 1) that a small Business concern participating in its section 8(a) program has completed its participation in the program, or 2) that the participation of a small business concern participating in its section 8(a) program should be terminated.

These regulations originally appeared at Part 101, § 101.10 et seq. of SBA's rules and regulations, and are hereby being revised and placed in § 124 to provide for easier usage and more clarity.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Office of General Counsel, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, 202-653-6797.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in section 8(a)(9) of the Small Business Act, 15 U.S.C 637(a), as amended, notice is hereby given that SBA amends Part 124 of Chapter 1 of Title 13 of the Code of Federal Regulations to include following rules.

Dated: May 24, 1979.

A. Vernon Weaver,

Administrator.

13 CFR Part 124 is amended by adding the following new sections to read as follows:

Sec.

124.10 Rules of Practice for Adjudicative Proceedings To Be Used In Effecting The Completion Or Termination Of A Section 8(a) Business Concern From Participating In The Section 8(a) Program.
124.10-1 Scope of the rules in this part.
124.10-2 Definitions.
124.10-3 Appearances.
124.10-4 Order to show cause and notice of hearing.
124.10-5 Answer.
124.10-6 Motions.
124.10-7 Amendments and supplemental proceedings.
124.10-8 Prehearing conferences.
124.10-9 Voluntary intervention.
124.10-10 Admissions as to facts and documents.
124.10-11 Evidence.
124.10-12 Presiding official.
124.10-13 Hearings; transcripts.
124.10-14 Witnesses and fees.
124.10-15 Proposed findings, conclusions, and order.
124.10-16 Interlocutory appeals.
124.10-17 Initial decision.
124.10-18 Petition for review.
124.10-19 AAMSB-COD review.
124.10-20 Decision on review.
124.10-21 Requirements as to form and filing of documents other than correspondence.
124.10-22 Time.
124.10-23 Service.
124.10-24 Ex parte communication.
124.10-25 Reopening of proceedings.

§ 124.10 Rules of practice for adjudicative proceedings to be used in effecting the completion or termination of a section 8(a) business concern from participating in the section 8(a) program.

§ 124.10-1 Scope of the rules in this part.

The rules in this part govern the procedure to be utilized in adjudicative proceedings conducted pursuant to the provisions of section 8(a)(9) of the Small Business Act, as amended (15 U.S.C. 637(a)(9)). They do not apply to adjudicative or rulemaking proceedings under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) nor do they apply to investigations conducted under the Small Business Act (15 U.S.C. 631 *et seq.*).

§ 124.10-2 Definitions.

AAMSB-COD. "AAMSB-COD" means the Associate Administrator for Minority Small Business and Capital Ownership Development of the SBA.

Act. "Act" means the Small Business Act, as amended.

Administration. "Administration" means Small Business Administration (SBA).

Administrative Law Judge. "Administrative Law Judge" (ALJ) means the official who presides over the conduct of hearings held pursuant to the rules of practice in this part.

Order to show cause. "Order to show cause" means the formal statement and notice of hearing issued by SBA under § 124.10-4 for the purpose of initiating adjudicative proceedings under these rules.

Party. "Party" refers to SBA and each respondent.

Respondent. "Respondent" means a section 8(a) business concern against which proceedings are instituted pursuant to section 8(a)(9) of the Small Business Act.

§ 124.10-3 Appearances.

(a) By non-lawyers. An individual may appear in his own behalf or may represent a sole proprietorship; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association upon a showing of adequate authorization.

(b) By lawyers. An individual, sole proprietorship, partnership, corporation, trust or association may be represented by an attorney at law who is a member in good standing of a bar of any Federal court or of the highest court of any State, Commonwealth, Territory of the United States or the District of Columbia.

(c) Restrictions as to former employees. The restrictions as set forth in § 105 of the SBA Rules and Regulations (13 CFR 105, et seq.) shall apply to former employees of SBA with respect to their appearances as attorney or agent for anyone other than the United States in any proceeding conducted under the rules of practice in this part.

(d) Notice of appearance. Any attorney desiring to appear before SBA on behalf of a respondent, shall file with SBA a written notice of such appearance, which shall contain a statement of such attorney's eligibility as provided in this section.

(e) Standards of conduct. All counsel practicing before SBA shall conform to the standards of ethical conduct required of practitioners in the courts of the United States and by the bars of which they are members.

(f) Suspension or disbarment of attorneys. (1) The ALJ shall have the authority, for good cause stated on the

record, to bar from participation in a particular proceeding any attorney who shall refuse to comply with his directions, or who shall be guilty of disorderly conduct, dilatory tactics, or contemptuous language in the course of such proceedings. Any attorney so barred shall have the right to appeal to the AAMSB–COD from such action of the ALJ and take such action as he deems warranted by the circumstances.

(2) The Administrator of the SBA for good cause shown may, in accordance with the procedures set forth in § 104 of the SBA Rules and Regulations (13 CFR 104, *et seq.*) suspend or disbar any alleged offender from practice before the Administration.

§ 124.10–4 Order to show cause and notice of hearing

(a) Commencement of proceeding. Adjudicative proceedings are commenced by the issuance of an order to show cause. A copy of the order to show cause will be served upon each respondent.

(b) Form and notice of hearing. The order to show cause shall be issued by SBA and shall contain a statement of the matters of fact and law asserted by SBA to be the grounds upon which proceedings have been instituted, and the legal authority and jurisdiction under which a hearing is to be held.

(c) Hearing date. The hearing shall be held on a date fixed by the ALJ.

(d) Motion for more definite statement. If the statement in the order to show cause as to matters of fact and law, or legal authority and jurisdiction asserted by SBA is so vague and ambiguous that a respondent cannot reasonably frame a responsive answer, a respondent may move for a more definite statement before filing an answer. Such motion shall be filed within 15 days after service of the order to show cause and shall point out the defects complained of and the details desired.

§ 124.10–5 Answer

(a) Time for filing. A respondent shall have thirty days after service of the order to show cause within which to file an answer thereto: *Provided, however,* That the filing of a motion for a more definite statement alters this period of time as follows, unless a different time is fixed by the ALJ: (1) if the motion is denied, the answer shall be filed within ten days after notice of such action; (2) if the motion is granted in whole or in part, the answer shall be filed within ten days after service of the more definite statement: *Provided further, however,* That in no event need an answer be filed in less than thirty days after service of the order to show cause.

(b) Content of answer. An answer shall conform to the following:

(1) Answer contesting allegations of order to show cause. Such answer shall contain:

(i) A concise statement of the facts constituting the ground(s) of defense;

(ii) Specific admission, denial, or explanation of each fact alleged in the order to show casue, or if the respondent is without knowledge thereof, a statement to that effect.

(2) Answer admitting allegations of order to show cause. If the respondent elects not to contest the allegations of fact set forth in the order to show cause, the answer shall consist of a statement that respondent admits all material allegations to be true. Such an answer shall constitute a waiver of hearings as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the ALJ. In such answer, the respondent may, however, reserve the right to submit proposed findings of fact, conclusions of law, and a proposed order to be issued by the ALJ, and may reserve the right to petition for review under § 124.10–18.

(c) Default. Failure of a respondent to file an answer within the time provided shall be deemed to constitute a waiver of its right to appear and to authorize the ALJ, without further notice to respondent, to find the facts to be as alleged in the order to show cause and to enter an initial decision containing such findings, appropriate conclusions and an order.

(d) Signature on answer. Every answer filed pursuant to this section shall be signed by (1) the proprietor of a sole proprietorship named as respondent, or (2) an officer of a corporate respondent, or (3) a partner of a partnership, or (4) a trustee of the trust, or (5) the attorney who represents a respondent.

§ 124.10–6 Motions

(a) Presentation and disposition. During the time a proceeding is before an ALJ, all motions, except as provided in § 124.10–12(e)(2), shall be addressed to and ruled upon the ALJ, and if in writing, shall be filed with the ALJ. All motions addressed to the SBA shall be in writing and filed with SBA.

(b) Content. All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) Replies. Within ten days after service of any written motion, or within such longer or shorter time as may be designated by the ALJ or SBA, the opposing party shall reply or be taken to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the ALJ or SBA.

(d) Motions for extensions. As a matter of discretion, the ALJ or SBA may waive the requirements of this section as to motions for extensions of time, and may rule upon such requests ex parte.

(e) Rulings on motions for dismissal. When a motion to dismiss an order to show cause or for other relief is granted with the result that the proceeding before the ALJ is terminated, the ALJ shall make and file an initial decision in accordance with the provisions of § 124.10–17. When a motion to dismiss is made at the close of the evidence offered in support of the order to show cause based upon the alleged failure to establish a *prima facie* case, the ALJ may, if he so elects, defer ruling thereon until the close of the case in order to permit the reception of evidence.

§ 124.10–7 Amendments and supplemental proceedings

(a) Amendments—(1) By leave. If and whenever determination of a controversy on the merits will be facilitated thereby, the ALJ may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings: *Provided, however,* That an application for amendment of an order to show cause may be allowed only if the amendment is reasonably within the scope of the proceeding initiated by the original order to show cause.

(2) Conformance to evidence. When issues not raised by the pleadings, but reasonably within the scope of the proceeding initiated by the original order to show cause, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings; and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(b) Supplemental pleadings. The ALJ may, upon reasonable notice and such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 124.10-8 Prehearing conferences.

(a) The ALJ upon motion of any party or upon his own motion may direct counsel for all parties to meet with him for a conference to consider:

(1) Simplification and clarification of the issues;

(2) Necessity or desirability of amendments to pleadings, subject, however, to the provisions of § 124.10-7(a)(1);

(3) Stipulations, admissions of fact and of the contents and authenticity of documents;

(4) Expedition in the presentation of evidence, including, but not limited to, restriction of the number of expert, economic or technical witnesses; and

(5) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses or furnishing for inspection or copying of nonprivileged documents, papers, books or other physical exhibits, which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of any party to the proceeding.

(b) Prehearing conferences, in the discretion of the ALJ, may be stenographically reported as provided in § 101.10-14(f), but shall not be public unless all parties so agree.

(c) The ALJ shall enter in the record an order which recites the action taken, the amendments allowed and the agreements made at the conference; and such order shall control the subsequent course of the proceeding, unless modified at the hearing to prevent manifest injustice. If counsel for any party after proper direction fails or refuses to disclose the names of witnesses or to make available for inspection or copying nonprivileged documents, papers, books or other physical exhibits, the ALJ, in his discretion, may also enter in the record an order providing, as appropriate:

(1) That the testimony of the witnesses whose names are not disclosed or the documents, papers, books or other physical exhibits which are not made available for inspection or copying in accordance with the direction shall not be introduced in evidence; or

(2) That counsel who fails or refuses to comply with the ALJ's direction in respect to any of the foregoing shall be barred from participation in the proceeding in accordance with the provisions of § 124.10-3(f)(1).

§ 124.10-9 Voluntary intervention.

(a) Any individual, partnership, unincorporated association, or corporation desiring to intervene in a proceeding conducted under these rules shall make written application in the form of a petition setting forth the basis therefor. Such application shall have attached to it a certificate showing service thereof upon each party to the proceeding in accordance with the provisions of § 124.10-23(b). A similar certificate shall be attached to the answer filed by any party showing the service of such answer upon the applicant.

(b) The ALJ may by order permit the intervention to such extent and upon such terms as may be deemed proper. The ALJ shall consider, among other matters, whether the intervention will unduly delay or prejudice the adjudication of the rights of the parties.

§ 124.10-10 Admissions as to facts and documents.

(a) At any time after an answer has been filed, any party may serve upon any other party a written request for the admission of the genuineness of any relevant documents described in the request, or the admission of the truth of any relevant matters of fact set forth in such documents. Copies of the documents shall be delivered with the request unless copies have already been furnished.

(b) Each requested admission shall be deemed made unless, within a period designated by the ALJ, not less than ten days after service thereof, or within such further time as the ALJ may allow, the party so served serves upon the party making the request either (1) a statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them, or (2) written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a copy of a request to the ALJ for a hearing on the objections at the earliest practicable time. Answers on matters to which such objections are made may be deferred until the objections are determined, but if written objections are made to only part of a request, the remainder of the request shall be answered within the period designated.

(c) Admissions obtained pursuant to this procedure may be used in evidence to the same extent and subject to the same objections as other admissions.

§ 124.10-11 Evidence

(a) Burden of proof. Counsel supporting the order to show cause shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with reference thereto.

(b) Admissibility. Relevant, material, and reliable evidence, shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable.

(c) Official notice of facts. When any decision of an ALJ or of an official of SBA rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(d) Objections. Objections to evidence shall be timely and shall briefly state the grounds relied upon. The transcript of any proceeding governed by the rules shall include argument thereon except as ordered by the ALJ. Rulings on all objections shall appear in the record.

(e) Exceptions. Formal exceptions to an adverse ruling by the ALJ are not required.

(f) Record of excluded evidence. When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to provide by the answer of the witness, or the ALJ upon request shall receive and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground. Similarly, rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

§ 124.10-12 Presiding official

(a) Who presides. All hearings in adjudicative proceedings shall be presided over by an ALJ.

(b) Powers and duties. ALJs shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive evidence;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in an adversary proceeding;

(6) To make and file initial decisions;

(7) To take or cause depositions to be taken and to determine their scope; and

(8) To take action authorized by the rules in this part or in conformance with the provisions of Chapter 5, Administrative Procedure of title 5 of the United States Code (5 U.S.C. 551–559).

(c) Substitution of ALJ. In the event of substitution of a new ALJ for the one originally designated, any motion predicated upon such substitution shall be made within five days thereafter.

(d) Interference. In the performance of their adjudicative functions, ALJs shall not be responsible to, nor subject to the supervision or direction of, any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the SBA, and all directions by SBA to ALJs concerning any adjudicative proceeding shall appear in and be made a part of the record.

(e) Disqualification of ALJ. (1) When an ALJ deems himself disqualified to preside in a particular proceeding, he shall withdraw therefrom by notice on the record and shall notify the SBA of such withdrawal.

(2) Whenever any party shall deem the ALJ for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with SBA a motion to disqualify and remove such ALJ, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of such motion shall be served by SBA on the ALJ whose removal is therein sought, who shall have ten days from such service within which to reply thereto. If the ALJ does not disqualify himself within ten days, then SBA shall promptly determine the validity of the grounds alleged, either directly or on the report of another ALJ appointed to conduct a hearing for that purpose.

§ 124.10–13 Hearings; transcripts.

(a) Public hearings. All hearings conducted pursuant to these rules shall be public unless otherwise specified in the order to show cause or ordered by the ALJ for good cause shown.

(b) Rights of parties. Every party shall have the right to due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

(c) Adverse witnesses. An adverse party, or an officer, agent, or employee thereof, and any witness who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may also be contradicted and impeached by the party calling him.

(d) Expedition. Hearings shall proceed with all reasonable expedition. Unless SBA otherwise orders upon a certificate of necessity therefor by the ALJ, all hearings will be held at one place and will continue without suspension until concluded. (This shall not bar overnight, weekend, or holiday recesses, or other brief intervals of the sort normally involved in judicial proceedings.)

(e) Notice. Not less than ten days notice of the time and place of any hearing shall be given, and in setting such hearing due regard shall be had for the public interest and the convenience and necessity of all parties, witnesses, and counsel.

(f) Transcripts. Hearings shall be stenographically reported and transcribed by the official reporter under the supervision of the ALJ, and the original transcript shall be a part of the record and the sole official transcript. Copies of transcripts shall be available to respondents and to the public from the reporter at rates established by the reporter.

(g) Corrections of the transcript. Corrections of the offical transcript may be made only when they involve errors affecting substance and then only in the manner herein provided: Corrections ordered by the ALJ or agreed to in a written stipulation signed by all counsel and approve by the ALJ shall be included in the record, and such stipulations, except to the extent they are capricious or without substance, shall be approved by the ALJ. Corrections shall not be ordered by the ALJ except upon notice and opportunity for the hearing of objections. Corrections so ordered or approved shall be incorporated in the record as an appendix and when so incorporated the ALJ shall make or cause to be made the necessary physical corrections in the official transcript so that it will incorporate the changes agreed upon or ordered. In making such physical corrections, there shall be no substitution of pages, but, to the extent practicable, such corrections shall be made by running a line through the matter to be changed, but without obliteration, and writing the matter as changed immediately above. Where the correction consists of an insertion, it shall be added, by rider or interlineation, as near as may be to the text which is intended to precede and follow it.

§ 124.10–14 Witnesses and fees.

(a) Witnesses at hearings and depositions shall be examined orally under oath. Such witnesses shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) Witness fees and mileage shall be paid by the party at whose instance witnesses appear.

§ 124.10–15 Proposed findings, conclusions, and order.

At the close of the reception of evidence in an adjudicative proceeding, or within a reasonable time thereafter fixed by the ALJ, any party may file with the ALJ for his consideration proposed findings of fact, conclusions of law, and an order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. The record shall show the ALJ's ruling on each proposed finding and conclusion except when his order disposing of the proceeding otherwise informs the parties of the action taken by him thereon.

§ 124.10–16 Interlocutory appeals.

Except as provided in § 124.10–3(f), interlocutory appeals from rulings of an ALJ may be filed only after permission is first obtained from the SBA. Any request for such permission (including supporting memoranda of fact and/or law) shall be in writing, not to exceed ten pages in length, and shall be filed within five days after notice of the ruling complained of. No such permission shall be granted by SBA unless it is found that such ruling involves substantial rights and will materially affect a final decision, and that determination of its correctness before the conclusion of the proceeding would better serve the interest of justice.

Interlocutory appeals shall be in the form of a brief, not to exceed ten pages in length, and shall be filed within five days after notice of the ruling complained of, in the case of appeals under § 124.10–3(f), or within five days after notice of permission to file, in the case of appeals under this section. Answer thereto may be filed within five days after service of the appeal brief. The appeal shall not operate to suspend the hearing unless otherwise ordered by the ALJ or SBA.

§ 124.10–17 Initial decision.

(a) When filed and when effective as agency decision. Within sixty days after completion of the reception of evidence

in any proceeding, or within such further time as the SBA may allow on the ALJ's written request, the ALJ shall file an initial decision which shall become the decision of the AAMSB–COD (i.e., the findings of fact, conclusions of law, and order contained in such initial decision shall become the final agency decision) thirty (30) days after service thereof upon each of the parties; unless (1) within fifteen (15) days after service of the initial decision a petition for review thereof shall be filed pursuant to § 124.10–18, or (2) within such thirty day period the AAMSB–COD issues an order directing the case to be placed on his docket for review. In that event, a copy of such order in addition to a copy of the initial decision shall be served on each party and each counsel or other representative who has appeared in the proceeding pursuant to § 124.10–3.

(b) Content. An initial decision shall include a statement of (1) findings and conclusions, with the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (2) an appropriate order specifying the effective date thereof. Initial decisions shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

(c) By whom made. The initial decision in an adjudicative proceeding shall be made and filed by the ALJ who presided therein, except when he shall have become unavailable to the Administration, in which event a substitute ALJ shall be designated.

(d) Reopening; termination of ALJ's jurisdiction. (1) At any time prior to the filing of his initial decision, an ALJ may reopen the proceeding for the reception of further evidence.

(2) Except for the correction of clerical errors, the jurisdiction of the ALJ is terminated upon the filing of his initial decision, unless and until the proceeding is remanded to him by the AAMSB–COD.

§ 124.10–18 Petition for review.

(a) Who may file. Any party to a proceeding may file a petition for review within the time prescribed by § 124.10–17.

(b) Content. The petition for review shall concisely and plainly state (1) the questions presented for review, (2) the facts in abbreviated form, and (3) the reasons why review by the AAMSB–COD is deemed to be in the public interest. Such petition shall not exceed fifteen pages in length.

(c) Answer. Within ten days after service upon the opposing party of a petition for review, such party may file in opposition thereto an answer not exceeding fifteen pages.

(d) Disposition. A petition for review will be granted where, on examination of the record, the petition for review, and the answer, the AAMSB–COD finds that the questions presented are substantial and that determination thereof by the AAMSB–COD is necessary or appropriate under the law to insure a just and proper disposition of the proceeding and to protect the rights of all parties. If the petition for review is denied, the initial decision of the ALJ shall thereupon become the decision of the AAMSB–COD.

§ 124.10–19 AAMSB–COD review.

(a) Within thirty days after service of the AAMSB–COD's order granting the petition for review, the petitioner may file exceptions to the initial decision and a brief in support thereof.

(b) Exceptions. Each exception (1) shall relate only to substantive or procedural matters presented on the record, limited to the questions stated in the petition for review; (2) shall identify the part of the initial decision to which objection is made; (3) shall specify the portions of the record relied upon; and (4) shall state the grounds for the exception, including the citation of authorities in support thereof. Any objection to a ruling, finding, or conclusion which is not made a part of the exceptions shall be deemed to have been waived. Any exception which fails to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration may be disregarded.

(c) Brief. The brief in support of the exceptions shall contain, in the order indicated, the following:

(1) A subject index of the matter in the brief, with page references, and a table of cases, textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case containing all that is material to the consideration of the questions presented;

(3) A specification of the assigned errors; and

(4) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the transcript and the legal or other material relied upon.

Material not included in the exceptions or brief may not be presented to the AAMSB–COD in oral argument or otherwise.

(d) Answering brief. Within thirty days after service of the brief upon the opposing party, such party may file an answering brief which shall also contain a subject index, with page references, and a table of cases, textbooks, statutes, and other material cited, with page references thereto. It shall be limited to the questions raised in the brief in support of the exceptions and shall present clearly the points of fact and law relied upon in support of the position taken on each question with specific page references to the transcript and legal or other material relied upon.

(e) Reply brief. Reply briefs, not in excess of ten pages and limited to rebuttal of matter in an answering brief, will be received if filed and served within seven days after receipt of the answering brief or the day preceding the oral argument, whichever comes first. No answer to a reply brief will be permitted.

(f) Length of briefs. No brief in excess of sixty pages, including any appendices, shall be filed without leave of the AAMSB–COD.

(g) Oral argument. The AAMSB–COD may permit oral argument in connection with agency review of any initial decision (1) upon request made by any party at the time of filing its brief and for good cause shown, or (2) on the AAMSB–COD's own motion. Oral argument before the AAMSB–COD shall be reported stenographically unless otherwise ordered by the AAMSB–COD.

§ 124.10–20 Decision on review.

(a) Upon review of an initial decision, the AAMSB–COD will consider such parts of the record as are cited or as may be necessary to resolve the issues presented; and in addition will, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had made the initial decision.

(b) In rendering his decision, the AAMSB–COD will adopt, modify, or set aside the findings, conclusions and order contained in the initial decision, and will include in the decision a statement of the reasons or basis for his action.

(c) The final decision issued by the AAMSB–COD on review of the inital decision shall be served upon each party and each counsel or other representative who has appeared in the proceeding pursuant to § 124.10–3.

§ 124.10–21 Requirements as to form and filing of documents other than correspondence.

(a) Filing. All documents filed in proceedings hereunder before the

AAMSB–COD shall be addressed to and filed with the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, Washington, D.C. 20416. All documents filed in proceedings hereunder before an ALJ shall be addressed and filed with the Office of Hearings and Appeals, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(b) Title. All documents shall clearly show the docket number and title of the proceeding.

(c) Copies. Five copies of all documents shall be filed with the exception of notices of appearances under § 124.10–3, in which case only one copy need be filed.

(d) Form. All documents and pleadings, including briefs, filed in proceedings hereunder shall be printed, typewritten or otherwise processed in permanent form and on good unglazed paper.

(e) Signature. (1) One copy of each document shall be signed by an attorney of record for the party or, in the case of respondents not represented by counsel, by an officer of respondent.

(2) Signing a document constitutes a representation by the signer that he has read it, that to the best of his knowledge, information, and belief, the statements made in it are true, and that is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the document had not been filed.

§ 124.10–22 Time.

(a) Computation. Computation of any period of time prescribed or allowed by these rules, by order of the AAMSB–COD, or an ALJ, or by any applicable statute, shall begin with the first business day following that on which the act, event or development initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the office of SBA is closed, the period shall run until the end of the next following business day. When such period of time, with the intervening Saturdays, Sundays and national holidays counted, is less than seven days, each of the Saturdays, Sundays, and such holidays shall be excluded from the computation. When such period of time, with the intervening Saturdays, Sundays, and national holidays counted, exceeds seven days, each of the Saturdays, Sundays and such holidays shall be included in the computation.

(b) Extensions. For good cause shown, the examiner may, in any proceeding before him, extend any time limit prescribed or allowed by these rules or by order of the AAMSB–COD or the ALJ.

§ 124.10–23 Service.

(a) By SBA. (1) Service of orders to show cause, orders and other processes of SBA may be effected as follows:

(i) By registered mail. A copy of the documents shall be addressed to the person, partnership, corporation or unincorporated association to be served at his or its residence or principal office or place of business, registered, and mailed; or

(ii) By delivery to any individual. A copy thereof may be delivered to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or unincorporated association to be served; or

(iii) By delivery to an address. A copy thereof may be left at the principal office or place of business of the person, partnership, corporation or unincorporation association, or it may be left at the residence of the person or of a member of the partnership or of an officer or director of the corporation or unincorporated association to be served.

(2) Documents other than orders to show cause, orders and other processes of SBA, the service of which starts the running of prescribed periods of time provided or allowed by any of the rules in this part or by any order of SBA or an ALJ for the performance of some act or the occurrence of some event or development, shall be served in the same manner as orders to show cause, orders and other processes of SBA, or by certified mail.

(3) All other documents may be similarly served, or they may be served by ordinary first-class mail.

(b) By other parties. Service of documents by parties other than SBA shall be by delivering copies thereof as follows: Upon SBA by personal delivery or delivery by first-class mail to the Office of Hearings and Appeals or the Office of AAMSB–COD as appropriate; upon any other party, by delivery to the party. If the party is an individual or partnership, delivery shall be to such individual or a member of the partnership; if a corporation or unincorporated association, to an officer or agent authorized to accept service of process therefor. Delivery to a party other than SBA means handing to the individual, partner, officer, or agent; leaving at his office with a person in charge thereof, or, if there is no one in charge or if the office is closed or if he has no office, leaving at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending by first class mail.

(c) Proof of service. (1) When service is by mail, registered or ordinary first-class, it is complete upon delivery of the document by the post office.

(2) When a party has appeared in a proceeding by a partner, officer, or attorney, service upon such partner, officer, or attorney of any document other than an order to show cause, order or other process of SBA shall be deemed service upon the party.

(3) The return post office receipt for a document registered and mailed, or the verified return or certificate by the person serving the document by personal delivery or ordinary mail, setting forth the manner of said service, shall be proof of the service of the document.

§ 124.10–24 Ex parte communication.

(a) In any proceeding conducted under these rules, no employee or agent of SBA who performs any investigative or prosecuting function in connection with the proceeding and no respondent in the proceeding, or agent, or counsel, or anyone acting on behalf of a respondent, shall communicate ex parte, directly or indirectly, with the AAMSB–COD, or the ALJ, or any employee involved in the decisional process in such proceeding, with respect to the merits of that or a factually related proceeding.

(b) In any proceeding conducted under these rules, the AAMSB–COD, ALJ or employee involved in the decisional process of such proceeding, shall not communicate ex parte, directly or indirectly, with any employee or agent of SBA who performs any investigative or prosecuting function in connection with the proceeding, or with any party respondent in the proceeding, or agent, or counsel, or anyone acting on behalf of a party respondent, with respect to the merits of that or a factually related proceeding.

(c) In any proceeding conducted under these rules, if any oral or written ex parte communication is made to or by the ALJ, or employee involved in the decisional process, in violation of paragraph (a) or (b) of this section, such ALJ or employee as the case may be, shall promptly deliver to the AAMSB–COD any such written communication or, in the case of an oral communication, a report giving the substance thereof in writing, together with a written statement of the circumstances under

which it was made. If the AAMSB–COD determines that any such communication should, in fairness, be brought to the attention of all parties to the proceeding, the relevant written material pertaining thereto shall be made a part of the record of the proceeding to which it applies and the AAMSB–COD shall send copies thereto to all parties respondent.

(d) In any case where the AAMSB–COD determines that the dictates of fairness so require, any party requesting an opportunity to do so may rebut, on the record, any facts or contentions contained in any such ex parte communication.

(e) The Administrator of the SBA may, in accordance with the procedures contained in Part 104 of this chapter, suspend or revoke the privilege of any person who makes or solicits the making of an unauthorized ex parte communication, to practice or appear before SBA.

§ 124.10–25 Reopening of proceedings.

(a) In any case where an order has been issued by SBA it may, upon notice to the parties, modify or set aside, in whole or in part, its report of findings as to the facts or order in such manner as it may deem proper at any time prior to expiration of the time allowed for filing a petition for review.

(b) In any case in which an order issued by SBA has become final, SBA may at any time after reasonable notice and opportunity for hearing as to whether changed conditions of fact or of law or the public interest so require, reopen and alter, modify or set aside, in whole or in part, its report of findings as to the facts or order therein whenever in the opinion of the AAMSB–COD such action is required by the changed conditions or by the public interest.

(c) After an order dismissing an order to show cause has been issued, SBA may, upon reasonable notice to the parties and opportunity for a hearing as to whether the proceeding should be reopened, issue an order reopening such proceeding whenever, in the opinion of the AAMSB–COD, changed conditions of fact or of law or the public interest so require.

[FR Doc. 79–16784 Filed 5–25–79; 8:45 am]
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13 CFR Part 124

[Amendment 8]

The Small Business and Capital Ownership Development Program

AGENCY: Small Business Administration.

ACTION: Final Rules.

SUMMARY: These final rules describe the type of assistance available, the requirements for obtaining assistance, and the methods of providing assistance to certain eligible small businesses under SBA's new Small Business and Capital Ownership Development Program as mandated by Pub. L. 95–507. In addition, they provide criteria for determining when the participation of a business in the program should be terminated or determined to be completed, and specify a procedure by which such a determination can be made.

DATES: Effective date: May 29, 1979. While these rules are being published in final form, and are effective upon publication, the public is welcome to comment upon them, and from time to time they will be revised as appropriate.

ADDRESS: Comments, submitted in duplicate, are to be submitted to the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street, N.W., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles Gaston, Office of Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street, N.W., Washington, DC. 20416, 202–653–6851.

SUPPLEMENTARY INFORMATION: Pub. L. 95–507 requires the revision of Part 124 of Title 13 of the Code of Federal Regulations because that Public Law substantially amends parts of the Small Business Act which Part 124 implements. As a result of Pub. L. 95–507, it is necessary to replace the following presently effective sections: 124.8, 124.8–1 and 1243.8–2. The final rules are replacements for these sections.

On January 25, 1979, SBA published for comment its proposed rules to provide for the implementation of certain provisions of Pub. L. 95–507. A public comment period of sixty days was provided. During the comment period, approximately forty comments were received by SBA from the general public, and after due consideration of such comments, certain changes have been made which it is believed will result in the better administration of the program.

Several comments were received favoring eligibility of individuals for the section 8(a) program who are not members of minority groups designated by the statute. These comments were reviewed by SBA, and as a result a change in the final regulations was made to permit individuals to establish their social disadvantage for the purposes of the section 8(a) program by demonstrating to SBA that they have individually been subjected to chronic racial or ethnic prejudice or cultural bias. They must additionally establish their economic disadvantage as provided for in the statute in order to be eligible for participation in the program.

In addition, a procedure has been provided which allows minority groups not designated in the statute as socially disadvantaged to establish the group's status as socially disadvantaged for the purposes of the section 8(a) program. This procedure will also be utilized to allow minority groups to establish their status as socially and economically disadvantaged within the meaning of section 211 of Pub. L. 95–507 for participation in the subcontracting program. For clarity this procedure will be separately announced and published simultaneously with the publication of these rules and regulations for use in group designation in the subcontracting program. When a group is designated under this procedure as socially disadvantaged for section 8(a) purposes, it shall simultaneously be determined to be socially and economically disadvantaged for the purposes of the subcontracting program provided for in section 211 of Pub. L. 95–507.

Comments were also received regarding the need for clarification of certain regulations in order to facilitate the financing of section 8(a) businesses by members of the SBIC and MESBIC industries, and by development companies. These changes were made in order to encourage and stimulate financing of section 8(a) businesses.

The section of the proposed regulations regarding the contracting process between SBA and other Federal agencies was deleted in its entirety to facilitate the orderly administration of the program.

The section of the proposed regulations regarding the surety bond waiver provisions of Pub. L. 95–507 has been deleted to allow for a comprehensive review of the administration of this provision of the Act.

It is believed that all of the above changes will result in better administration of the provisions of Pub. L. 95–507.

These final rules are designed to provide for the implementation of the Pub. L. 95–507, which amends among other provisions, sections 8(a) and 7(j) of the Small Business Act, as amended (hereinafter the "Act"). The purpose of

section 8(a) of the Act is to foster business ownership by individuals who are both socially and economically disadvantaged to promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary, and to clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials and construction work from small business concerns owned and managed by socially and economically disadvantaged individuals.

The Act sets forth a business development program whereby the Administration is authorized to provide to eligible business concerns procurement contracts, financial management and technical assistance.

The Congress has found that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential in order to attain social equality and economic parity for such persons. The Congress found further that Black Americans, Hispanic Americans, Native Americans, and other minorities have suffered the effect of discriminatory practices and other invidious circumstances over which they have no control.

The business development program of the Administration is designed to ameliorate the condition of socially and economically disadvantaged groups by providing the maximum practical opportunity for the development of businesses owned and managed by such persons. Such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, and construction work from such businesses and the provision of management and technical assistance to develop managerial self-sufficiency. The Congress intends that the primary beneficiaries of this program shall be minorities and that the authorities granted the Administration in this program will be used for appropriate business development.

The Act requires that the Administration of the section 8(a) program—the principal procurement assistance vehicle—and the section 7(j) management assistance program shall be under the direction of the Associate Administrator for Minority Small Business and Capital Ownership Development. The interface of these programs should result in the delivery to the business owned by the socially and economically disadvantaged individual an increased opportunity to produce and sell goods and services efficiently and profitably.

These regulations provide for significant changes in regard to the following areas:

(a) Program eligibility—The Act allows program participation for a "socially and economically disadvantaged small business concern." This means a small business concern which is at least 51 percent owned by one or more socially disadvantaged individuals, and whose management and daily business operations are controlled by one or more of such individuals. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and individuals who are able to demonstrate to SBA that they have been subjected to racial or ethnic prejudice or cultural bias.

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities. The Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

This represents a significant change of eligibility criteria from the standard of social or economic disadvantage heretofore utilized by the Administration.

(b) Termination—Detailed termination procedures and standards are provided which will govern the circumstances under which a business concern can be denied assistance under the program.

(c) Small Business and Capital Ownership Development Program—This section grants significant new authority for the Administration to aid section 8(a) concerns in regard to procurement, financial, management and technical assistance matters.

(d) Advance Payments and Business Development Expense—These sections set forth the criteria and standards for the award and use of advance payments and business development expense.

Dated this 24th day of May 1979.

A. Vernon Weaver,

Administrator.

13 CFR Part 124 is amended by deleting § 124.8, § 124.8-1 and § 124.8-2 and by adding the following new sections:

PART 124—PROCUREMENT AND TECHNICAL ASSISTANCE

Sec.

124.1-1 The Section 8(a) Program.
124.1-2 Advance Payments.
124.1-3 Letter of Credit.
124.1-4 Business Development Expense.
124.2-1 Development Assistance Program.
124.3-1 Small Business and Capital Ownership Development Program.

* * * * *

§ 124.1-1 The section 8(a) program.

(a) *General.* These regulations implement section 8(a) of the Small Business Act (15 U.S.C. 637(a)) which authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research and development) with other Government departments and agencies and negotiate subcontracts for the performance thereof.

(b) *Purpose.* It is the purpose of section 8(a) to:

(1) foster business ownership by individuals who are both socially and economically disadvantaged;

(2) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

(3) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(c) *Eligibility.* In order to be eligible to participate in the section 8(a) program, an individual or an applicant concern, as the case may be, must meet all of the pertinent eligibility criteria set forth hereafter in paragraphs (1) through (5) below. All determinations pursuant to paragraphs (1) through (5) below shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development (AAMSB-COD) whose decision shall be final; provided, however, that an applicant may request reconsideration of such final decision based upon information discovered subsequent to such decision or upon information which was unavailable at the time of such final decision. The granting of such reconsideration shall be within the absolute discretion of the AAMSB-COD.

(1) *Small Business Concern.* In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small

business concern as defined for purposes of Government procurement in section 121.3–8 of the SBA Rules and Regulations. The particular size standard to be applied shall be based on the principal activity of the applicant concern.

(2) *Ownership and Control.* In order to be eligible to participate in the section 8(a) program, an applicant concern must be one:

(i) Which is at least 51 percent owned by an individual or individuals who are citizens of the United States, (specifically excluding resident aliens) and who are determined to be socially and economically disadvantaged by SBA.

(A) In the case of an applicant concern which is a corporation, 51 percent of all classes of voting stock of such corporation must be owned by an individual(s) determined to be socially and economically disadvantaged.

(B) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged, and

(ii) Whose management and daily business operations are controlled by an individual(s) determined to be socially and economically disadvantaged. Such individual(s) must be engaged in the daily management and operation of the business concern.

(iii) State, local and Community Development Corporations, MESBIC's and SBIC's, profit or nonprofit, may own up to 49 percent interest or voting stock in an applicant concern. State, local and Community Development Corporations, MESBIC's and SBIC's, profit or nonprofit, may own more than 49 percent interest or voting stock in an applicant 8(a) concern pursuant to a written divestiture agreement approved by the AAMSB–COD.

The divestiture agreement shall provide that such concern will divest within a specified period of time at least 51 percent of the business interest or voting stock, as the case may be, of the section 8(a) business concern to an individual(s) who is socially and economically disadvantaged within the meaning of these regulations.

In determining the "ownership and control" of a business within the meaning of these regulations, the potential ownership interests of state, local and Community Development Corporations, SBIC's and MESBIC's such as warrants, voting trust interests and other arrangements, shall not be counted until and unless exercised by the subject entity.

(3) *Social Disadvantage.*

(i) Socially disadvantaged individuals are (A) those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identification as members of certain groups, without regard to their individual qualities; such groups including, but not limited to, Black Americans, Hispanic Americans, Native Americans, (including American Indians, Eskimos, Aleuts and Native Hawaiians) and other minorities, to be designated from time to time by SBA according to the procedures set forth at § 124.1–1(3)(iii) below; and (B) those individuals who are able to demontrate to SBA that they have individually been subjected to chronic racial or ethnic prejudice, or cultural bias.

(ii) The social disadvantage of individuals, including those within the above-named groups, shall be determined by SBA on a case-by-case basis. Membership alone in any group is not conclusive that an individual is socially disadvantaged.

(iii) *Minority Group Inclusion.* (A) *General.* Upon an adequate showing to SBA by representatives of a minority group that the group has suffered chronic racial or ethnic prejudice or cultural bias, and upon the request of the representatives of the group that SBA do so, SBA shall publish in the Federal Register a notice of its receipt of a request that it consider a minority group not specifically named in section 201 of Pub. L. 95–507 to have members which are socially disadvantaged because of their identification as members of the group for the purpose of eligibility for the section 8(a) program. The notice shall adequately identify the minority group making the request, and if a hearing is requested on the matter, the time, date and location at which such hearing is to be held. All information submitted to support a request should be addressed to the AAMSB–COD.

(B) *Standards to be applied.* In determining whether a minority group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, SBA shall determine (1) if the group has suffered the effects of discriminatory practices or similar invidious circumstances over which its members have no control, (2) if the group has generally suffered from prejudice or bias, (3) if such conditions have resulted in economic deprivation for the group of the type which Congress has found exists for the groups named in Pub. L. 95–507, and (4) if such conditions have produced impediments in the business world for members of the group over which they have no control which are not common to all small business people. If it is demonstrated to SBA by a particular group that it satisifies the above criteria, SBA will publish a notice under this regulation.

(C) *Procedure.* Once a notice is published under this regulation, SBA shall adduce further information on the record of the proceeding which tends to support or refute the group's request. Such information may be submitted by any member of the public, including Government representatives and any member of the private sector. Information may be submitted in written form, or orally at such hearings as SBA may hold on the matter.

(D) *Decision.* Once SBA has published a notice under this regulation it shall afford a reasonable comment period of not more than thirty (30) days for public comment upon a request. It shall complete the reception of comments, including the holding of hearings, within such comment period. Thereafter, SBA shall consider the comments received as expeditiously as possible, and shall render its final decision within 30 days of the close of receipt of information on the matter. Such decision shall take the form of a notice in the Federal Register, and SBA shall also inform the subject group representatives who have appeared in the proceeding of such decision in writing at the time it is made.

(4) *Economic Disadvantage.*

(i) Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.

(ii) In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration shall be given:

(A) with respect to both the disadvantaged individual and the applicant concern with which he or she is affiliated, to the following factors, including but not limited to:

(1) Personal and business assets;

(2) Personal and business net worth; and

(3) Personal and business income and profits.

(B) with respect to the applicant concern, the following factors, including but not limited to:

(1) Availability of financing;

(2) Bonding capability;

(3) Availability of outside equity capital; and

(4) Available markets.

(5) *Potential for Success.* In order to be eligible to participate in the section 8(a) program, an applicant concern must be a concern:

(i) Which with contract, financial, technical and management support will be able to successfully perform subcontracts awarded under the section 8(a) program, and with such assistance shall have reasonable prospects for success in competing in the private sector.

(ii) In addition to meeting the criteria set forth in § 124.1–1(c)(5)(1) above, the AAMSB–COD must determine that the procurement, financial, technical and management support necessary to enable the applicant concern to successfully complete the section 8(a) program shall be available to such concern from SBA or other identified and acceptable sources.

(d) *Program Completion.* (1) When a section 8(a) business concern has substantially achieved the objectives of the section 8(a) program, including but not limited to, the achievement of the goals set forth in its business plan as approved and modified, and the attainment of demonstrated ability to compete in the market place without assistance under the section 8(a) program, its participation within the program shall be determined by SBA to be completed.

(2) In determining whether a concern has substantially achieved the goals of its business plan and has attained the ability to compete in the market place without section 8(a) program assistance, the following factors, among others, shall be considered by SBA. The factors cited below shall be considered and applied by SBA with due regard to the remedial purposes of Pub. L. 95–507.

(i) Positive overall financial trends, including but not limited to:

(A) Profitability

(B) Sales, including improved ratio of non-section 8(a) sales

(C) Net worth, financial ratios, working capital, capitalization, access to credit and capital

(D) Ability to obtain bonding

(E) A positive comparison of the section 8(A) business concern's business and financial profile with profiles of non-section 8(a) small businesses in the same area or similar business category

(F) Good management capacity and capability.

(3) Upon determination by SBA that a section 8(a) business concern's participation within the section 8(a) program has been completed pursuant to paragraph 124.1–1(d)(1) above, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the SBA's Rules of Practice for Adjudicative Proceedings set forth at Part 124.10, et seq., of SBA Rules and Regulations.

(4) Subsequent to the completion of such hearing, based upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, the AAMSB–COD shall render a final decision regarding the completion of the section 8(a) business concern's participation in the program. Prior to a final decision, the subject section 8(a) business concern may have full rights of participation in the section 8(a) program.

(e) *Program Termination.* (1) Participation of a section 8(a) business concern in the section 8(a) program may be terminated by the SBA prior to the completion of the concern's business plan for good cause. Examples of good cause include, but are not limited to, the following:

(i) Failure of a section 8(a) business concern to continue to meet the standards of eligibility set forth in these regulations.

(ii) Failure of a section 8(a) business concern to maintain ownership and control by the person(s) who has (have) been determined to be socially and economically disadvantaged pursuant to these regulations.

(iii) Inadequate management performance by a section 8(a) business concern.

(iv) Repeated inadequate performance of awarded section 8(a) procurement subcontracts by a section 8(a) business concern.

(v) A section 8(a) business concern has ceased its business operations.

(vi) Failure of a section 8(a) business concern to submit an updated business plan within a reasonable time after its due date, without approval by SBA.

(vii) Withholding notice from, or failure to obtain SBA approval prior to changes in ownership and management control by a section 8(a) business concern.

(viii) Unauthorized use of business development expense funds and/or advance payment funds by a section 8(a) business concern. Violation by a section 8(a) business concern of a substantial requirement or provision of an advance payment agreement.

(ix) Violation by a section 8(a) business concern of any of SBA's Rules and Regulations.

(x) Failure of a section 8(a) business concern to comply with the reporting provisions required in an SBA approved management agreement. Compensating those providing management assistance in excess of that specified in an SBA approved management agreement. Having a management agreement, either written or oral, that has not been approved by SBA. Willful violation of any of the other requirements of a management agreement approved by SBA.

(xi) Noncompliance by a section 8(a) business concern with substantial requirements of any divestiture or management agreement as approved by SBA.

(xii) Failure or refusal by a section 8(a) business concern to provide SBA with required quarterly and annual financial statements, reports, and other requested data within a reasonable time after the close of the reporting period.

(xiii) Failure by a section 8(a) business concern to achieve goals cited in its business plan, as modified, as a result of repeated refusal to accept or utilize SBA assistance.

(xiv) Failure by a section 8(a) business concern to reasonably pursue competitive and commercial business in accordance with its business plan, or failure to otherwise make reasonable efforts to achieve competitive status.

(xv) Inability of a section 8(a) business concern to make satisfactory progress in achieving its business development objectives within a reasonable time after receiving SBA management and technical assistance, financial and technical assistance.

(xvi) Failure by a section 8(a) business concern to request and obtain prior approval from SBA before subcontracting under a section 8(a) subcontract.

(xvii) Failure by a section 8(a) business concern to disclose to SBA the extent to which nondisadvantaged persons or firms will participate in the management of the section 8(a) business concern.

(xviii) Failure by a section 8(a) business concern to disclose to SBA fees paid or to be paid, costs incurred or committed to third parties, directly or indirectly, in the process of obtaining section 8(a) contracts or subcontracts.

(xix) Willful failure by a section 8(a) business concern to comply with applicable labor standards obligations.

(xx) Knowing submission of false information to SBA on behalf of a

section 8(a) business concern by its principals, officers, agents or employees.

(xxi) Debarment by the Comptroller General, the Secretary of Labor or Director of the Office of Federal Contract Compliance of a section 8(a) business concern.

(xxii) Debarment or suspension of a section 8(a) business concern for cause by any contracting agency pursuant to FPR subpart 1–1.6 "Debarred, Suspended and Ineligible Bidders" or DAR (ASPR) section I. Part 6, "Debarment, Ineligibility and Suspension."

(xxiii) Conviction of a section 8(a) business concern or a principal of a section 8(a) business concern for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

(xxiv) Conviction of a section 8(a) business concern or a principal of a section 8(a) business concern under the Organized Crime Control Act of 1970; or conviction of such a principal of a section 8(a) business concern of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor.

(xxv) Conviction of a section 8(a) business concern or a principal of a section 8(a) business concern under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

(xxvi) Violation by a section 8(a) business concern of a section 8(a) subcontract provision against contingent fees and gratuities.

(2) Upon determination by the SBA that a section 8(a) business concern's participation in the section 8(a) program should be terminated for good cause, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the SBA's Rules of Practice for Adjudicative Proceedings set forth at Part 124.10 et seq., of the SBA Rules and Regulations.

(3) Subsequent to the completion of such hearing, upon the record established therein, and after consideration of the initial decision of the Administrative Law Judge who has conducted the hearing, the AAMSB–COD shall render a final decision regarding the termination, for good cause, of the 8(a) business concern's participation in the program.

(4) After the effective date of a program termination as provided for herein, a section 8(a) business concern is no longer eligible to receive any section 8(a) program assistance. Such concern is obligated to complete previously awarded section 8(a) contracts.

124.1–2 Advance payments.

(a) *General.* (1) Advance payments are disbursements of money made by SBA to a section 8(a) business concern prior to the completion of performance of a specific section 8(a) subcontract. Advance payments are made for the purpose of assisting the section 8(a) business concern in meeting financial requirements pertinent to the performance of the subcontract. Advance payments must be liquidated from proceeds derived from the performance of the specific section 8(a) subcontract. However, this does not preclude repayment of such advance payments from other revenues of the business, except from other advance payments and business development expenses (as defined hereinafter in these regulations). The proceeds derived from the performance of the specific section 8(a) subcontract must be deposited by the procuring agency in a special bank account established exclusively for the purpose of administering the advance payments. These proceeds will be used to liquidate the advance payments. No withdrawals of such subcontract proceeds from the special bank account may be made by the section 8(a) business concern before the full amount of the advance payments is liquidated.

(2) Advance payments shall not be made to a section 8(a) business concern in any case in which the section 8(a) business concern has assigned its rights to receive any payment under the specific section 8(a) subcontract to any person or entity, unless such assignment shall be made to SBA or to a Federal agency in regard to the receipt by the section 8(a) business concern of a progress payment for any specific section 8(a) subcontract.

(3) In no event shall the total amount of advance payments for a section 8(a) business concern exceed 90 percent of the amount of the section 8(a) subcontract to which the above payments relate. The amount of advance payments made to a section 8(a) business concern shall not exceed the amount which is to be paid to the section 8(a) concern upon completion of performance of the specific section 8(a) subcontract by the procuring agency.

(4) The SBA shall not charge interest on advance payments disbursed pursuant to these regulations.

(b) *Requirements.* (1) Advance payments may be approved for a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(i) A section 8(a) business concern does not have adequate working capital to perform a specific section 8(a) subcontract.

(ii) Either adequate and timely financing is not available on reasonable terms to provide necessary capital, or financing is available but the terms of such financing are not conducive to the effective and/or the business development purposes of the section 8(a) program.

(iii) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of advance payment funds. These records must be made available upon request for review by SBA and the General Accounting Office.

(c) *Procedure.* To be eligible to receive Advance Payments, a section 8(a) business concern must meet the conditions set forth in § 124.1–2(b) above and must comply with the following procedure.

(1) A section 8(a) business concern desiring to receive an advance payment in connection with any section 8(a) subcontract shall:

(i) Submit a written request for advance payment to the appropriate SBA Regional Director or his designee. Such request must include detailed documentation supporting the need for such funds and evidence that working capital financing cannot be found upon terms acceptable pursuant to § 124.1–2(b)(ii) above from financing institutions.

(ii) The section 8(a) business concern must select a commerical bank which is a member of the Federal Reserve System in which it must establish a special bank account for the deposit of payments paid to it by the procuring agency pursuant to the performance of the subcontract(s). This special account shall be a demand deposit account.

(A) Disbursements from the account shall require the countersignature of such SBA employee as shall be designated by the appropriate SBA Regional Director.

(B) Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(C) At the time that SBA disburses advance payment funds into the special bank account, SBA shall obtain a lien upon the special bank account, any property contracted for, and supplies, material and other property acquired with the advance payment funds.

(2) Upon a review of all the circumstances and evidence, the appropriate SBA Regional Director shall have the obligation to decide whether to approve or deny a request for advance payment. This right of approval by the Regional Director shall not be delegated to any other person or entity. The section 8(a) business concern, the bank selected pursuant to § 124.1-2(c)(ii) above, and SBA shall execute an Advance Payment Agreement which shall set forth the terms and conditions governing advance payments.

(d) *Use of Advance Payment Funds.* (1) Except for repayment to SBA in appropriate circumstances, advance payment funds may be withdrawn from the special bank account by a section 8(a) business concern exclusively for the purpose of purchasing materials and labor and paying for administrative and overhead expenses required to perform the specific section 8(a) subcontract.

(2) Under no circumstances may advance payment funds be deposited in interest-bearing accounts.

(3) Advance payment funds shall be dispersed by SBA for deposit into the special account only in such amounts necessary to pay for the immediate needs of a section 8(a) subcontract. Such disbursements shall be made as expeditiously as possible. Such immediate needs shall be documented by the small business concern and verified by SBA prior to disbursement.

(4) All payments to the section 8(a) business concern for work performed or services rendered pursuant to the subject section 8(a) subcontract shall be paid into the special bank account by the procuring agency, and shall be applied by SBA against the balance of advance payments until the total amount of advance payments made by SBA to the section 8(a) business concern is liquidated.

(e) *Cancellation.* (1) SBA may determine that advance payments should be cancelled under the following circumstances:

(i) The terms and conditions of the advance payment agreement have not been adhered to by a section 8(a) small business concern.

(ii) The section 8(a) business concern's participation in the section 8(a) program is completed or has been terminated.

(2) In the event of cancellation of advance payments to a section 8(a) business concern, all previous advance payments made to that section 8(a) business concern shall become immediately due and payable to SBA.

§ 124.1-3 Letter of credit.

(a) *General Policy.* The letter of credit method of payment will be utilized under certain circumstances to disburse advance payments to section 8(a) business concerns performing subcontracts under the section 8(a) program when SBA has made a decision approving the use of advance payments pursuant to the requirements and conditions provided for in these regulations.

(b) *Eligibility Requirements.* SBA may disburse advance payments through the letter of credit method of payment through the Federal Reserve Bank System to a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(1) SBA determines that the section 8(a) business concern may be awarded more than one section 8(a) subcontract during a period of at least one year.

(2) The aggregate amount of letter of credit advance payment funds made to one section 8(a) business concern will exceed $120,000 annually.

(3) The section 8(a) business concern has submitted a schedule of its projected monthly advance requirements for section 8(a) subcontract disbursements, SBA has reviewed it, and SBA has found it to be reasonable.

(4) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(c) *Procedures.* The procedures for the utilization of the letter of credit method of payment shall be in accord with 41 CFR 1-30.408-1.

§ 124.1-4 Business development expense.

(a) *Purpose.* Business Development Expense (BDE) funds are funds made available by SBA for the purpose of assisting a section 8(a) business concern in connection with the performance of a specific section 8(a) subcontract.

In the discretion of SBA, BDE funds may be used for the following purposes:

(1) To make up the difference between the current fair market subcontract price and the reasonable price required by the section 8(a) contractor to provide the product or service in connection with a specific section 8(a) subcontract.

(2) For the purchase of capital equipment which has been determined by SBA to be essential to the section 8(a) business concern's performance of a specific section 8(a) subcontract and for which acquisition cannot be made by other financing means without adversely affecting the concern's financial condition.

(b) BDE may be used to defray other costs of a section 8(a) business concern for the performance of a specific section 8(a) subcontract, including but not limited to:

(1) Facility and production engineering.

(2) Development, testing, and implementation of quality control procedures.

(3) Training costs to counteract low labor productivity due to the inexperience of the business concern or its labor force.

(4) Differential due to low order purchasing power and/or material usage in comparison to its competitors.

§ 124.2-1 Development assistance program.

(a) *General.* The Small Business Act, as amended by Pub. L. 95-507, authorizes the SBA to provide assistance as set forth in section 7(j) of the Act. Section 7(j) of the Small Business Act provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of the Small Business Act. The Associate Administrator for Minority Small Business and Capital Ownership Development is responsible for coordinating and formulating policies relating to the dissemination of this assistance to small business concerns eligible for assistance under sections 7(i), 7(i)(10) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1-2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated below to those individuals or concerns who meet the eligibility criteria contained in sections 7(i) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small

businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of the Small Business Act;

(iv) The establishment and strengthening of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to:

(i) Encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. SBA may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of the Small Business Act, and

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under section 124.2–1(b) above shall include, but not be limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in 13 CFR Part 121, or which are located in urban or rural areas with a high proportion of unemployed or low-income individuals, and which are owned by such unemployed or low-income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of Services.* (1) The financial assistance authorized for projects under § 124.2–1(b) above includes assistance advanced by grant, agreement, or contract.

(2) To the extent feasible, services available under § 124.2–1(b) above shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and Cooperation With Other Government Agencies.* (1) The Associate Administrator for Minority Small Business and Capital Ownership Development may utilize the resources of other agencies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(i), 7(j) and 8(a) of the Small Business Act.

(2) The Associate Administrator for Minority Small Business and Capital Ownership Development shall enter into agreements with Federal agencies and departments to further effectuate sections 7(i), 7(j) and 8(a) of the Small Business Act.

(3) The Associate Administrator for Minority Small Business and Capital Ownership Development shall encourage the placement of deposits made by the Federal Government, or by programs aided with Federal funds, in such a way as to further the purposes of sections 7(i), 7(j) and 8(a) of the Small Business Act.

§ 124.3–1 Small business and capital ownership development program.

(a) *General.* Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. The management of the Capital Ownership Development program is vested in the Associate Administrator for Minority Small Business and Capital Ownership Development who is responsible for the oversight of the program and activities set forth in this part of these regulations.

The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership Development program. This program shall:

(1) Assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objectives, and goals;

(2) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limited to (i) loan packaging, (ii) financial counseling, (iii) accounting and bookkeeping assistance, (iv) marketing assistance, and (v) management assistance;

(3) Assist small business concerns participating in the program to obtain equity and debt financing;

(4) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(5) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(6) Provide assistance necessary to help small business concerns participating in the program to procure surety bonds. Such assistance shall include, but not be limited to, (i) the preparation of surety bond application forms; (ii) special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and (iii) preparation of all forms necessary to receive a surety bond guarantee from the SBA pursuant to Title IV, part B of the Small Business Investment Act of 1958.

(Secs. 5, 8, 72 Stat. 385, 389, as amended; 15 U.S.C. 634, 637.)

[FR Doc. 79-16783 Filed 5-25-79; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

4 CFR Part 39

[Docket No. 78-EA-99; Amdt. 39-3477]

Airworthiness Directives; Pratt & Whitney of Canada, Ltd.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Pratt & Whitney Aircraft of Canada, Ltd., PT6T-3 and PT6T-6 aircraft engines. The AD would require the installation of a P3 air filter in the P3 air sense line.

DATE: May 31, 1979. Compliance is required as set forth in the AD.

ADDRESS: Pratt & Whitney Service Bulletins may be acquired from the manufacturer at Pratt & Whitney Aircraft of Canada, Ltd., P.O. Box 10, Longueuil, Quebec, Canada J4K 4X9.

FOR FURTHER INFORMATION CONTACT: J. Kiselica, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: On page 10391 of the Federal Register for February 20, 1979, the FAA proposed a rule to issue an AD applicable to Pratt & Whitney Aircraft of Canada, Ltd., PT6T-3 and PT6T-6 aircraft engines. Interested parties were given time in which to submit written data or views. No comments were received.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adopting a new airworthiness directive, as published.

EFFECTIVE DATE: This amendment is effective May 31, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89)

Issued in Jamaica, New York, on May 17, 1979.

Louis J. Cardinali,

Acting Director, Eastern Region.

Pratt & Whitney Aircraft of Canada

Applies to Pratt & Whitney Aircraft of Canada, Limited PT6T-3 power sections prior to serial number CP-PS 61324 and PT6T-6 power sections prior to serial number CP-PS 72321.

Compliance required within the next 3000 hours in service after the effective date of this AD, unless already accomplished.

To preclude automatic fuel control contamination install the air filter and associated parts in accordance with Paragraph 2, Accomplishment Instructions in Pratt & Whitney Aircraft of Canada, Ltd. Engine Service Bulletin No. 5124 thru Revision 3 or approved equivalent procedures and parts.

Equivalent procedures and parts must be approved by the Chief, Engineering and Manufacturing Branch of the Eastern Region of the Federal Aviation Administration (FAA).

[FR Doc. 79-16607 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-SO-15]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area, Fort Rucker, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will alter the Fort Rucker, Alabama, Transition Area and will lower the base of controlled airspace within a 6.5 mile radius of the Andalusia-Opp Airport from 1200 to 700 feet AGL to accommodate Instrument Flight Rule (IFR) operations. A new public use instrument approach procedure has been developed for the Andalusia-Opp Airport and the additional controlled airspace is required to protect aircraft conducting Instrument Flight Rule (IFR) operations.

EFFECTIVE DATE: August 9, 1979.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: William F. Herring, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the Federal Register on Thursday, March 15, 1979 (44 FR 15653), which proposed the alteration of the Fort Rucker, Alabama, Transition Area. The proposed rule is adjusted without change except for the correction of a typographical error in the geographical description contained in the proposed rulemaking action. No objections were received from this Notice.

Adoption of the Amendment

Accordingly, Subpart G. § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, August 9, 1979, by adding the following:

Fort Rucker, Alabama

"* * * within a 6.5 mile radius of Andalusia-Opp Airport, Andalusia, Alabama (latitude 31°18'45"N., longitude 86°23'00"W.)"

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

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on May 15, 1979.

Lonnie D. Parrish,

Acting Director, Southern Region.

[FR Doc. 79-16603 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 78-EA-104]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns the segment of V-30 between East Texas, Pa., and Solberg, N.J., to be direct rather than via the FRENS intersection which is approximately 5 miles south of the direct line. The procedural requirement for the indirect airway no longer exists. Rerouting V-30 via direct radials reduces the airway distance and fuel consumption required for its use.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On March 8, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign the segment of V-30 from East Texas to Solberg (44 FR 12689). Interested persons were invited to participate in the rulemaking proceeding by submitting written comment on the proposal to the FAA. The two comments received expressed no objection to the proposal. Section 71.123 of Part 71 was

republished in the Federal Register on January 2, 1979 (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns a segment of V-30 to go from East Texas direct to Solberg rather than via the INT of East Texas 103° and Solberg 255° radials. The alignment via an intersection south of a direct route was established for procedural separation of en route and terminal air traffic. Since that time, the procedures in this area have changed and the indirect route is no longer required.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 GMT, August 9, 1979, as follows:

Under V-30 all after "East Texas, Pa.;" is deleted and "to Solberg, N.J." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on May 21, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-16611 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 380

[Regulation SPR-158; Amendment No. 3]

Requirements Related To Filing and Contents of Charter Prospectuses; Approval by the Comptroller General

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on May 23, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: This final rule gives notice that the requirements related to the filing of charter prospectuses and the contents of charter prospectuses in Part 380 have been approved by the U.S. General Accounting Office. This approval is required by the Federal Reports Act and was transmitted to the Civil Aeronautics Board by letter dated May 1, 1979.

DATES: Effective: May 23, 1979, Adopted: May 23, 1979.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Chief, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-6044.

PART 380—PUBLIC CHARTERS

Accordingly, the Civil Aeronautics Board amends Part 380 of its Economic Regulations (14 CFR 380) by revising the note currently shown at the end of Part 380 to read:

Note.—The record-retention requirement contained in § 380.43 and the reporting requirement contained in § 380.50(c) have been approved by the U.S. General Accounting Office under Number B-180226 (R0558), and the reporting requirements contained in sections 380.25 and 380.28 have been approved by the U.S. General Accounting Office under Number B-180226 (R0630).

This amendment is issued under authority delegated from the Board to the Secretary in 14 CFR 385.24(b).

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; U.S.C. 1324.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16667 Filed 5-25-79; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-15839]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules of general organization to delegate to the Director of the Division of Market Regulation authority to extend the period for Commission action on proposed rule changes filed by self-regulatory organizations.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Susan Davis, Esq., Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 755-7610.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act") requires the Commission, within 35 days from the date of publication of notice of the filing of a proposed rule change by a self-regulatory organization,[1] either (i) to approve, by order, the proposed rule change, or (ii) to institute proceedings to determine whether the proposed rule change should be disapproved. The Commission may extend, for a period not exceeding 90 days from the date of publication of notice of the filing, the time within which to take either action if the Commission finds the extension to be appropriate and publishes its reasons for so finding.

The 35-day period often does not provide the Commission's staff with sufficient time to review and recommend appropriate action on proposed rule changes that raise substantial legal or policy issues, particularly in light of the requirements imposed by the Government in the Sunshine Act.[2] The preparation of recommendations to the Commission that it extend the time for Commission action on proposed rule changes requires staff time that could be devoted to analyzing the substantive issues of proposed rule changes. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), hereby amends § 200.30-3 (17 CFR 200.30-3) of the Commission's rules relating to general organization by adding a new paragraph (a)(31) to delegate to the Director of the Division of Market Regulation authority to grant those extensions of time.[3]

The Commission finds, in accordance with 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(d) of the Administrative Procedure Act, that the foregoing action relates solely to a rule of agency organization, procedure, or practice and does not relate to a substantive rule. Accordingly, the foregoing action becomes effective

[1] Section 19(b)(1) of the Act defines the term "proposed rule change" to mean "any proposed rule or any proposed change in, addition to, or deletion from the rules of * * * [a] self-regulatory organization."

[2] Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b).

[3] Authority to extend the period for Commission action on a proposed rule change would include authority to publish reasons for finding the extension to be appropriate.

immediately May 29, 1979. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

Part 200 of Title 17 of the Code of Federal Regulations is amended by adding paragraph (a)(31) to § 200.30-3, as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation

* * * * *

(a) * * *

(31) Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), to extend for a period not exceeding 90 days from the date of publication of notice of the filing of a proposed rule change pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), the period during which the Commission must by order approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

* * * * *

(Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2))

By the Commission.

George A. Fitzsimmons,

Secretary.

May 18, 1979.

[FR Doc. 79-16547 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270

Rate Schedules and Tariffs; Rules Generally Applicable to Regulated Sales of Natural Gas; Order on Rehearing of Order No. 23

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing.

SUMMARY: On March 13, 1979, the Federal Energy Regulatory Commission (Commission) issued Order No. 23. That order addressed the question of the contractual authority to collect a maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA), and the Commission's responsibility under that act and the Natural Gas Act (NGA) to examine questions of contractual authority. Eighteen applications for rehearing of Order No. 23 were filed.

The Commission denies these applications for rehearing and takes this opportunity to expand and further clarify its position.

EFFECTIVE DATE: May 11, 1979.

ADDRESSES: All filings should reference Docket No. RM79-22 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, (202) 275-4212.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 13, 1979, the Federal Energy Regulatory Commission (Commission) issued Order No. 23. (44 FR 16895, March 20, 1979) That order addressed the question of the contractual authority to collect a maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA), and the Commission's responsibility under that act and the Natural Gas Act (NGA) to examine questions of contractual authority. The Commission has previously responded to two requests for clarification,[1] and a motion for emergency procedural relief [2] filed herein.[3] Additionally, eighteen applications for rehearing or Order No. 23 were filed.

This Order denies these applications for rehearing.[4]

II. Discussion

Excluding questions of procedure, the petitions for rehearing raise no matters of factor or arguments of law which would cause the Commission, acting within the narrow confines of its substantive review, to change the basic findings of Order No. 23. However, although this order denies the applications for rehearing insofar as they relate to the substance of Order No. 23, the Commission takes this opportunity to expand and further clarify its position. This expression is limited to the two major concerns which appear to have caused the most confusion among the applicants for rehearing: the scope of the Commission's duty to examine contracts, and the applicable rules of law which will be applied to those contracts which the Commission does examine.

A. *Scope of the Commission duty to examine contractual authority.*—The Commission's statutory responsibility to examine contracts covering gas subject to the NGA was established by the Supreme Court.[5] The rule laid down by the Court, which has come to be known as the *"Mobile-Sierra* doctrine", has two components: (1) the NGA does not give a natural gas company the power to make a unilateral rate change filing absent contractual authority (*Mobile*); and (2) the NGA does not authorize the collection of a "just and reasonable" rate absent contractual authority (*Sierra*). Thus, the *Mobile-Sierra* doctrine plainly applies to contracts for the sale of natural gas subject to the jurisdiction of the Commission under the NGA. Just as plainly the *Mobile-Sierra* doctrine does not apply to contracts for the sale of gas not subject to the Commission's jurisdiction under the NGA.[6]

However, natural gas, which is not subject to our NGA jurisdiction, is nonetheless subject to our jurisdiction under the NGPA. And, for certain categories of "non-NGA" gas, NGPA Title I ceiling prices are based on contractual provisions.[7] For these categories of gas, the Commission is not the proper forum to adjudicate contractual disputes. Those parties who wish to resolve contractual disputes involving gas covered by sections 105 or 106(b), or gas which is otherwise not covered by the NGA, should petition the appropriate state or federal court. The Commission will limit its involvement in these matters to the statutory enforcement responsibility imposed by Title V of the NGPA.

B. *Order 23 and Contract Law.*—Several applications on rehearing, citing cases which adhere to the "plain meaning rule" of contract interpretation, contended that our *administrative* view, that "great weight must be given to the intent of the parties to the contract", is erroneous as a matter of contract law. That rule holds that, if contract language is clear and unambiguous, the contract must be interpreted by reference to the

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[1] The New York Public Service Commission, joined by Associated Gas Distributors, requested clarification.

[2] The Associated Gas Distributors filed this motion.

[3] Order Extending Time to File Protests and Clarifying Prior Order, issued April 30, 1979.

[4] The parties who filed applications for rehearing are listed in the Appendix. To the extent the applications for rehearing raise procedural issues, the Commission will consider them as if they were made in response to our Notice of Inquiry issued herein on May 2, 1979.

[5] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[6] Order No. 23, at page 14, stated: "Accordingly, the *Mobile-Sierra* doctrine requires the Commission to determine whether contractual authorization exists for the collection of the maximum lawful prices established by the Natural Gas Policy Act." That sentence should be further modified to indicate that the *Mobile-Sierra* requirement does *not* apply to gas which is no longer subject to the Commission's jurisdiction under the NGA. *See, e.g.*, section 601(a)(1)(B) of the NGPA.

[7] See sections 105 and 106(b).

contract alone, and extrinsic evidence is inadmissible.

The viability of this view has been challenged by a more modern theory which permits a contract to be interpreted by reference to evidence of the commercial context in which it was drafted.[8] The Commission adopts this mode of analysis in this instance. Accordingly, where the Commission must rule on the proper interpretation of a contract clause, references will be made not only to the "four corners" of the contract, but also to the circumstances surrounding the execution of the contract.[9]

The Commission orders: The applications for rehearing of the Commission's Order No. 23, issued March 13, 1979, are denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix

Applications for rehearing of Order No. 23 were filed by:

1. Associated Gas Distributors.
2. State of California and the Public Utilities Commission of the State of California.
3. Indicated Producers, Exxon, *et al.*
4. Gas Consumers Group.
5. Gulf Oil Corporation.
6. Congressman Andrew Maguire.
7. The People's Counsel of Maryland.
8. Memphis Light, Gas and Water Division, City of Memphis, Tennessee.
9. The State of Michigan and the Michigan Public Service Commission.
10. New England State Commissions.
11. Natural Resources Corporation.
12. The Public Service Commission of the State of New York.
13. Pacific Gas and Electric Company.
14. The South Dakota Public Utilities Commission and the Minnesota Public Service Commission.
15. Shell Oil Company.
16. Tenneco Oil Company, *et al.*
17. Terra Resources, Incorporated.
18. The Wisconsin Public Service Commission.

[FR Doc. 79-16677 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[8] *See: Whitebird* v. *Eagle-Picher Co.*, 390 F.2d 831 (10th Cir. 1969); Uniform Commercial Code, § 2-202; Restatement (Second) of Contracts, § 246 (Tent. Draft 1973).

[9] Part of the "commercial context" which the Commission will consider is the limitation imposed upon the parties by § 154.93 of the Commission's regulations. This limitation was not before the Supreme Court when it decided *Texas Gas Corp.* v. *Shell Oil Co.*, 363 U.S. 263 (1959). In *Texas Gas*, the Court found that the producer had drafted broader "most favored nation" clauses in other contracts, and that the most "reasonable explanation" for the narrower provision in the contract under dispute was an intent to distinguish between events which would or would not trigger the clause. Based on this "explanation", the Court found that the clause was not triggered. However, any contract executed on or after April 2, 1962 cannot contain an escalator clause broader than that permitted by § 154.93 of the Commission's regulations. The regulatory prohibition against broader escalator clauses may "reasonably explain" why area rate clauses were drafted as they were after April 2, 1962.

TENNESSEE VALLEY AUTHORITY

18 CFR Ch II and XIII

Redesignation of Chapter

Editorial Note.—18 CFR Chapter II—Tennessee Valley Authority (Parts 300–399) is hereby redesignated as Chapter XIII—Tennessee Valley Authority (Parts 1300–1399). This redesignation of chapter and parts is being made by the Director of the Office of the Federal Register with the concurrence of the Tennessee Valley Authority in order to conform with 1 CFR 8.2—"to assure orderly development of the Code of Federal Regulations along practical lines."

BILLING CODE 6820-27-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 455

[Docket No. 78N-0312]

Certain Other Antibiotic Drugs; Miscellaneous Amendments; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction of Final rule.

SUMMARY: In FR Doc. 79-5210 appearing at page 10377 in the issue of February 20, 1979, paragraph 16 on page 10380, which amends § 455.410 concerning chloramphenicol, is deleted because the amendment made therein inadvertently failed to reflect a previous revision of § 455.410 published in the Federal Register of January 30, 1979, on page 5881.

EFFECTIVE DATE: March 22, 1979.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

Dated: May 18, 1979.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc. 79-16560 Filed 5-25-79; 8:45 a.m.]

BILLING CODE 4110-03-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 772

Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amendment to final rule.

SUMMARY: This amendment defers the proposed implementation date for revised procedures by which FHWA will approve traffic noise level prediction methods for use on Federal-aid highway projects.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Reagan, Environmental Quality Division, Office of Environmental Policy, 202-426-4836, or Mr. Thomas P. Holian, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 772.25 of Title 23, Code of Federal Regulations, had specifically approved two prediction methods and provided for submission of other methods or variations to FHWA's headquarters office for approval prior to use. This section was amended by publication of an "Amendment to final rule" in the Federal Register on Wednesday, October 4, 1978 (43 FR 45838). That amendment revised § 772.25 to indicate that any method which is consistent with the FHWA Highway Traffic Noise Prediction Model, and which uses noise emission levels obtained from approved FHWA Procedures, was approved for use. The amendment further provided that the two approved prediction methods listed in the preamendment version of § 772.25, and all other methods approved pursuant to that section, would remain approved for use on Federal-aid projects until July 1, 1979. Any noise analysis performed after that date was to comply with the revised procedures. The present amendment would change this implementation date from July 1, 1979, to December 31, 1979.

The July 1, 1979, date was based upon the expectation that noise prediction methodologies meeting the basic requirements of § 772.25(a) would be available by that date. It was expected that Report FHWA-RD-77-108, The FHWA Highway Traffic Noise Prediction Model, and the two computer programs that implement this prediction model, would be available for general

distribution by January 1, 1979. This would have provided a minimum of 6 months as a transition period from the older obsolete prediction models to the revised methodology.

During consultation meetings with the various States concerning this new methodology many States responded to FHWA's representation that the new methodology would be available by January 1, 1979, by indicating that they would await availability of this new model in final form and adopt it for their use. However, because of printing problems and contractual difficulties associated with the computer programs, the FHWA noise prediction model will not be available in final form until July 1979.

As a result of this delay, should FHWA not amend the implementation date for use of new models under revised § 772.25, many States which relied upon FHWA's representations would be unable to comply with the revised requirements of § 772.25 on, or soon after, July 1, 1979. Therefore, the FHWA is now amending this implementation date by deferring it until December 31, 1979. This will provide the States with a period of time which is adequate for an orderly transition to the use of the new methodology.

This amendment will not result in substantial costs nor will it result in unusual impacts. Further, since the new methodology is a refinement of older available methods and reflects advancements in technology, the deferment until December 31, 1979, will not result in any significant adverse impacts upon the environment during the period of that deferment.

Accordingly, 23 CFR 772.25(d) is amended to read as follows:

§ 772.25 Traffic noise level prediction methods.

* * * * *

(d) Traffic noise prediction methods approved pursuant to prior requirements of this part (41 FR 16936, Apr. 23, 1976) remain approved until December 31, 1979. Any noise analysis performed after December 31, 1979, must comply with the requirements of paragraph (a) of this section.

Note.—The Federal Highway Administration has determined that this document does not contain a significant regulation according to the criteria established by the Department of Transportation pursuant to E.O. 12044. A regulatory evaluation is available for inspection in the public docket any may be obtained by contacting Mr. Jerry Reagan of the program office at the address specified above.

(23 U.S.C. 101(e), 109(i), 315; 49 CFR 1.48(b).)

Issued on: May 17, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FR Doc. 79-16532 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-22-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1914

[Docket No. FI-5491]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.[1]

ACTION: Final Rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

§ 1914.6 List of Eligible Communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Illinois	Pike	Valley City, village of	170559-A	May 14, 1979, emergency.	Dec. 17, 1973 and Mar 19, 1978.
Pennsylvania	Snyder	Perry, township of	422003	May 17, 1979, emergency.	Jan. 3, 1975.
Do	Mercer	Sandy Lake, township of	421874	do	Dec. 13, 1974.
Pennsylvania	Washington	Bealsville, borough of	422129-A	May 21, 1979, emergency.	Dec. 13, 1974 and July 16, 1978.
Do	Jefferson	Eldred, township of	422443	do	Jan. 17, 1975.
Do	Somerset	Milford, township of	422519	do	Jan. 3, 1975.
South Carolina	Florence	Unincorporated areas	450076	May 22, 1979	Apr 29, 1978.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Massachusetts	Worcester	Gardner, city of	250305-A	Sept. 4, 1975, emergency, Mar. 31, 1979, suspended, May 18, 1979, reinstated.	Sept. 6, 1974 and Mar. 12, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 21, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-16596 Filed 5-25-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 870]

Restriction on Garnishment

AGENCY: Wage and Hour Division, Labor.

ACTION: Final interpretative rule.

SUMMARY: The Tax Reduction and Simplification Act, which amends the Consumer Credit Protection Act, has in the case of multiple garnishments resulted in problems relating to the priorities of the garnishments. The CCPA does not define such priorities, leaving that question to other Federal and State laws. This document will assist the public in understanding the application of the CCPA to situations where various creditors are attempting to garnish a debtor's wages.

DATE: This rule shall be effective on May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Paul E. Myerson, Counsel, General Legal Services, Office of the Solicitor, Room N2464, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone No. 202–523–8244.

SUPPLEMENTARY INFORMATION: The Tax Reduction and Simplification Act of 1977 amended section 303(b) of the Consumer Credit Protection Act to restrict the amount of an individual's disposable earnings which may be garnished for the support of any person (child support and alimony). Prior to this amendment there were no Federal limitations on the amount of earnings which could be garnished for this purpose. Section 303(b) now provides that the maximum amount of an individual's disposable earnings which may be garnished for support is as follows:

(1) 50% is garnishable if the individual is supporting his spouse or a dependent child, and the garnishment for support concerns someone else (i.e. a former spouse and/or another dependent child);

(2) 60% is garnishable if the individual is not supporting any such additional person(s);

(3) these percentages are increased to 55% and 65% respectively, if the garnishment order concerns support payments more than 12 weeks in arrears.

Section 303(b) continues to provide that there are no limitations on the amount that may be garnished for debts for State or Federal taxes or for withholdings pursuant to Title XIII of the Bankruptcy Act which are, for the purposes of this law, classified as garnishments. Section 303(a) continues to provide that garnishments for all other debts (other than those for support, State or Federal taxes, and Title XIII bankruptcy) are limited to 25% of disposable earnings.

As the CCPA does not contain any provisions concerning the priority of garnishments, problems of priority have arisen when there is more than one garnishment. Such priority is a matter for determination under other Federal laws or State laws. In view of the diversity of State laws and the possibility of amendment of Federal or State laws the examples given in this section are based on stated assumptions of what the priorities are.

Where there is a garnishment for support as well as a garnishment for taxes or Title XIII bankruptcy, and if this latter type of garnishment has priority, this priority garnishment will absorb disposable earnings which otherwise would be withheld to satisfy the garnishment for support. This means that although garnishments for Federal and State taxes and Title XIII bankruptcy can be in any amount, if these garnishments have priority, then a garnishment for support can require a withholding only if these other garnishments absorb an amount less than the applicable ceiling for the support garnishment (50–65%). If that is the case, then the garnishment for support can take only the difference between the applicable ceiling and the amounts withheld pursuant to the garnishments with priority.

Where there is a garnishment for support as well as a garnishment for other debts subject to the 25% limitation in section 303(a), the priority of the garnishments is generally a matter of applicable state law. If the garnishment for support has priority and results in the withholding of 25% more of the debtor's disposable earnings, then the garnishment for the other debt takes nothing. If the garnishment for the other debt has priority, it is subject to the 25% limitation and the combined amount subject to garnishment for this debt and the support debt may not exceed the 50% to 65% maximum applicable percentage.

With the addition of § 870.11, it is necessary to amend the Title of § 870.10 to reflect its coverage of section 303(a) only.

This document was prepared under the direction and control of the Associate Solicitor for General Legal Services, Office of the Solicitor, Department of Labor.

To effectuate the above changes paragraph (a) of § 870.1 is revised, the title to § 870.10 is amended, and a new § 870.11 is added, as follows:

1. Paragraph (a) of § 870.1 is amended as follows:

§ 870.1 Purpose and scope.

(a) This part sets forth the procedures and any policies, determinations, and interpretations of general application whereby the Secretary of Labor carries out his duties under section 303 of the CCPA dealing with restrictions on garnishment of earnings, and section 305 permitting exemptions for State-regulated garnishments in certain situations. While the Secretary's duties under section 303 include insuring that certain amounts of earnings are

protected, such duties do not include establishing priorities among multiple garnishments, as such priorities are determined by other Federal statutes or by State law.

* * * * *

2. The title of § 870.10 is amended to read as follows:

§ 870.10 Maximum part of aggregate disposable earnings subject to garnishment under section 303(a).

* * * * *

3. A new § 870.11 is added which reads as follows:

§ 870.11 Exceptions to the restrictions provided by section 303(a) of the CCPA and priorities among garnishments.

(a)(1) Section 303(b) of the Consumer Credit Protection Act provides that the restrictions in section 303(a) do not apply to:

(i) Any debt due for any State or Federal tax, or

(ii) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

(2) Accordingly the Consumer Credit Protection Act does not restrict in any way the amount which may be withheld for State or Federal taxes or in Chapter XIII Bankruptcy Act proceedings.

(b)(1) Section 303(b) provides the following restrictions on the amount that may be withheld for the support of any person (e.g. alimony or child support):

"(A) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is issued), 50 per centum of such individual's disposable earnings for that week; and

"(B) Where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve week period which ends with the beginning of such workweek."

(2) Compliance with the provisions of section 303(a) and (b) may offer problems when there is more than one garnishment. In that event the priority is determined by State law or other Federal laws as the CCPA contains no provisions controlling the priorities of garnishments. However, in no event may the amount of any individual's disposable earnings which may be garnished exceed the percentages specified in section 303. To illustrate:

(i) If 45% of an individual's disposable earnings were garnished for taxes, and this garnishment has priority, the Consumer Credit Protection Act permits garnishment for the support of any person of only the difference between 45% and the applicable percentage (50 to 65%) in the above quoted section 303(b).

(ii) If 70% of an individual's disposable earnings were garnished for taxes and/or a Title XIII Bankruptcy debt, and these garnishments have priority, the Consumer Credit Protection Act does not permit garnishment either for the support of any person or for other debts.

(iii) If 25% of an individual's disposable earnings were withheld pursuant to an ordinary garnishment which is subject to the restrictions of section 303(a), and the garnishment has priority in accordance with State law, the Consumer Credit Protection Act permits the additional garnishment for the support of any person of only the difference between 25% and the applicable percentage (50–65%) in the above quoted section 303(b).

(iv) If 25% or more of an individual's disposable earnings were withheld pursuant to a garnishment for support, and the support garnishment has priority in accordance with State law, the Consumer Credit Protection Act does not permit the withholding of any additional amounts pursuant to an ordinary garnishment which is subject to the restrictions of section 303(a).

(Secs. 303, 306, 82 Stat. 163, 164; 15 U.S.C. 1673, 1676; as amended by 91 Stat. 158)

Signed at Washington, D.C., on this 22nd day of May 1979.

C. Lamar Johnson,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 79-16707 Filed 5-25-79; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Correction of Revision of Regulations Which Govern Surety Companies Doing Business With the United States

AGENCY: Bureau of Government Financial Operations, Department of the Treasury.

ACTION: Authority citation correction.

SUMMARY: This corrects an oversight by adding an authority citation to a final rule published in FR Doc. 78-24671 on September 1, 1978, at 43 FR 39088 and 39089. The final rule amended 31 CFR 223.3 and 223.11.

EFFECTIVE DATE: September 1, 1978.

FOR FURTHER INFORMATION CONTACT: Mr. John Newell, Audit Staff, Bureau of Government Financial Operations, U.S. Department of the Treasury, Washington, D.C. 20226. Telephone (202) 634-5978.

SUPPLEMENTARY INFORMATION: The authorities for 31 CFR Part 223, and for the above referenced September 1, 1978 amendments of that Part, are 80 Stat. 379; 5 U.S.C. 301 and 6 U.S.C. 8.

Dated: May 21, 1979.

D. A. Paglial,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 79-16548 Filed 5-25-79; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 744

Policies and Procedures for the Protection of Proprietary Rights in Technical Information Proposed for Release to Foreign Governments; Miscellaneous Amendments and Deletions

AGENCY: Department of the Navy, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending 32 CFR Part 744 relating to the protection of proprietary rights in connection with the exchange, for defense purposes, of technical information between the United States and foreign governments. These amendments and deletions are being made in order to remove material which unnecessarily duplicates certain provisions of 32 CFR Part 264, which Part 744 implements. Additionally, references to deleted portions of Part 744 are changed to appropriate provisions in 32 CFR Part 264. The intended effect of these amendments and deletions is to improve 32 CFR by removing duplicative material.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Lieutenant Gerald J. Kirkpatrick, JAGC, U.S. Navy, Regulations Branch Attorney (Code 133.1), Office of the Judge Advocate General, Department of the Navy, Washington, D.C. 20370, telephone number (202) 694-5267.

SUPPLEMENTARY INFORMATION: In accordance with the Presidential objective of assuring that Federal regulations are as effective, reasonable, and understandable as possible, and pursuant to a Department of Defense project to, among other things, make title 32 of the *Code of Federal Regulations* (CFR) a more useful guide for members of the public, the Department of the Navy has determined, under guidance issued by the General Counsel of the Department of Defense, that certain provisions of 32 CFR Part 744 can be deleted because they unnecessarily duplicate provisions of 32 CFR Part 264. The source documents for the deleted CFR provisions are not cancelled and thus remain in effect. The amendments and deletions have been determined to be nonsubstantive in nature. Invitation for public comment prior to adoption has been determined to be impractical, unnecessary, and contrary to the public interest, and is thus not required under the rule-making provisions in Parts 296 and 701 of 32 CFR.

§§ 744.2, 744.3, 744.4, 744.5, 744.7, and 744.8 [Deleted]

Accordingly, 32 CFR Part 744 is amended as follows:

1. Section 744.2, 744.3, 744.4, 744.5, 744.7, and 744.8 are deleted.

§ 744.6 [Amended]

2. In the seventh line of paragraph (a) of § 744.6, "§ 744.5(b)(3)" is changed to "§ 264.4(d)(3)."

3. In the fifth line of paragraph (b) of § 744.6, "§ 744.5(d)" is changed to "§ 264.4(f)."

(Sec. 301, 80 Stat. 379, secs. 5031, 6011, 70A Stat. 278, 375 as amended; 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply the Mutual Security Act of 1954 (68 Stat. 832) as amended, 22 U.S.C. 1750 et seq., and Act of Sept. 4, 1961 (Public Law 87–195, 75 Stat. 424), 22 U.S.C. 2151–2406 (2351, 2356).

4. In the eighth line of paragraph (c) of § 744.6, "§ 744.5(b)(3)" is changed to "§ 264.4(d)(3)."

Dated: May 22, 1979.

P. B. Walker,

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

[FR Doc. 79-16676 Filed 5-25-79; 8:45 am]

BILLING CODE 3810-71-M

POSTAL SERVICE

39 CFR Part 3

Bylaws—Matter Reserved for Decision by the Board

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The bylaws of the Board of Governors are revised so as to reserve for Board decision the salaries of officers of the Postal Service. The term "officers" includes Assistant Postmasters General and above, as well as a small number of ancillary positions.

This revision became necessary because the new Postal Career Executive Service is not structured on the basis of grades for senior officers and executives in the Postal Service, as is the existing compensation system. Thus, an existing bylaw reserves to Board decision compensation for officers and executives "in PES grade 34 and above". Such a bylaw had to be changed.

EFFECTIVE DATE: April 3, 1979.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

Accordingly, 39 CFR is amended as follows:

In § 3.4 revise paragraph (p) to read as follows:

§ 3.4 Matters reserved for decision by the Board.

* * * * *

(p) Compensation of officers of the Postal Service whose positions are included in Level II of the Postal Career Executive Service, including the Senior Assistant Postmasters General, Assistant Postmasters General, Regional Postmasters General, General Counsel, Chief Inspector, Controller, Treasurer, Consumer Advocate, Executive Assistant to the Postmaster General, and Judicial Officer.

(39 U.S.C. 205, 401, 1003)

Louis A. Cox,

General Counsel.

[FR Doc. 79-16581 Filed 5-25-79; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

49 CFR Part 171

[Docket No. HM-22; Amdt. No. 171-47]

Matter Incorporated by Reference

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the reference in 49 CFR 171.7 to the International Maritime Dangerous Goods Code (IMCO Code) in order to recognize Amendments 14–76 and 15–77 to the Code.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, 2100 Second Street, SW, Washington, D.C. 20590, telephone (202) 426–0656.

SUPPLEMENTARY INFORMATION: The Materials Transportation Bureau finds it necessary in the public interest to amend regulations in 49 CFR 171.7 to recognize Amendments 14–76 and 15–77 to the IMCO Code which have recently been published by the Inter-Governmental Maritime Consultative Organization (IMCO). These amendments promulgate numerous miscellaneous changes to the IMCO Code and address matters such as listing, classification, labeling, and packaging of dangerous goods. IMCO has established July 1, 1979, as the implementation date for these amendments. Since this rule does not impose additional requirements, notice and public procedure thereon are unnecessary. The primary drafter of this document is Edward A. Altemos, International Standards Coordinator, Office of Hazardous Materials Regulation.

In consideration of the foregoing, Title 49, Code of Federal Regulations, § 171.7(d)(17) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(17) "International Maritime Dangerous Goods Code," (IMCO Code), Volumes I, II, III and IV, 1977 edition, and Amendments 14-76 and 15-77 thereto.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1).

Note.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821 and DOT implementing procedures (43 FR 9583). A regulatory evaluation is available in the public docket.

Issued in Washington, D.C., on May 21, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 79-16450 Filed 5-23-79; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 325]

49 CFR Part 1091

Practices of For-Hire Motor Common Carriers of Property Participating in Alaskan Motor-Ocean-Motor (AMOM) Substituted Service; Substituted Service—Water-for-Motor Service (Fishyback Service)—Alaskan Trade

AGENCY: Interstate Commerce Commission.

ACTION: Final regulations.

SUMMARY: The ICC has modified and adopted the rules governing the participation of for-hire motor common carriers of property in substituted water-for-motor service, involving water common carriers otherwise subject to the Shipping Act of 1916, for movement between points in Alaska, on the one hand, and points in the contiguous United States, on the other. Among other changes, the water portion of the substituted service may now involve any seaport in Alaska, on the one hand, and any seaport on the West Coast of the contiguous United States, on the other. The earlier rules limited the water portion of the substituted service to Seattle and Tacoma, Washington, on the West Coast.

EFFECTIVE DATE: June 28, 1979.

FOR FURTHER INFORMATION CONTACT: Janice M. Rosenak or Harvey Gobetz, (202) 275-7693.

Copies of the Commission's decision, containing a full explanation of the action taken, entered May 17, 1979, have been served on the parties to this proceeding and may be obtained from the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. In requesting copies, reference should be made to docket Ex Parte No. 325.

SUPPLEMENTARY INFORMATION: An Administrative Law Judge in an initial decision served October 13, 1977, proposed that rules be prescribed governing substituted water-for-motor service between points in Alaska, on the one hand, and points in the contiguous United States, on the other. Those rules, although they had not been adopted by the Commission, were inadvertently published at 42 FR 53601, October 3, 1977 as Part 1091 in Title 49 of the Code of Federal Regulations.

In a decision of the entire Commission, the Commission has modified in part the initial decision of the Administrative Law Judge and has modified and adopted the rules prescribed in the initial decision. Among other changes, the water portion of the substituted service may now involve any seaport in Alaska, on the one hand, and any seaport on the West Coast of the contiguous United States, on the other. The earlier rules limited the water portion of the substituted service to Seattle and Tacoma, Washington, on the West Coast.

The modified rules are set forth below.

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

H. G. Homme, Jr.,

Secretary.

49 CFR Part 1091 is revised to read as follows:

PART 1091—PRACTICES OF FOR-HIRE MOTOR COMMON CARRIERS OF PROPERTY PARTICIPATING IN ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.

1091.1 Definition of AMOM Service.
1091.2 Motor carrier operating rights requirement for participation.
1091.3 Tariff notice for AMOM Service and shipper designation feature.
1091.4 Motor carrier tariff inclusions for AMOM Service.
1091.5 Motor carrier two-tier rate structure.

Authority: Secs. 553 and 559 of the Administrative Procedure Act (5 U.S.C.), the national transportation policy (49 U.S.C. preceding section 1) and Parts I, II, III, and IV of the Interstate Commerce Act, and particularly sections 2, 3, 15(3), 15(10), 15(12), 17(3), 204(a)(6), 206(a)(1), 208(b), 210a, 216(c), 216(d), 216(e), 217, 222, 304, 305, 307, 402, 403(a), 404, 406, and 410(a) of the Interstate Commerce Act (49 U.S.C.).

§ 1091.1 Definition of AMOM Service.

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a common carrier by water subject to the Shipping Act, 1916, as amended, (hereafter referred to as the ocean carrier) by an irregular route motor common carrier authorized to transport property in interstate or foreign commerce under authority granted by the Interstate Commerce Commission between points in Alaska, on the one hand, and any points in the contiguous United States, on the other, (hereafter referred to as the motor carrier) for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and a seaport on the West Coast of the contiguous United States, on the other.

§ 1091.2 Motor carrier operating rights requirement for participation.

All motor carriers authorized under irregular route authority to provide service between any point in Alaska, on the one hand, and any point in the contiguous United States, on the other, may tender empty or loaded equipment to and receive their previously-tendered empty or loaded equipment in AMOM Service from ocean carriers at a seaport in Alaska and a seaport on the West Coast of the contiguous United States.

§ 1091.3 Tariff notice for AMOM Service and shipper designation feature.

Motor carriers may participate in AMOM Service only if their tariff publications give notice that, in the absence of a shipper election, the shipment will be transported over the lower-cost service, whether that be AMOM Service or all-highway service, and that the shipper has the right to elect with regard to any particular shipment that a particular service be utilized.

§ 1091.4 Motor carrier tariff inclusions for AMOM Service.

Tariffs embracing AMOM Service rates or charges, including substituted service directories, if used, shall set forth the underlying operating rights (overhead) relied upon, the service covered by the published rates or charges, the points of substitution between modes of transportation, and the names of the carriers participating therein.

§ 1091.5 Motor carrier two-tier rate structure.

Motor carriers utilizing AMOM Service may publish tariffs setting forth different rates or charges for AMOM Service and for all-highway service.

[FR Doc. 79-16688 Filed 5-25-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

Tanner Crab off Alaska; Early Closure of Bering Sea District of Registration Area J (Westward) to Fishing By U.S. Vessels

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final Regulation.

SUMMARY: The Director, Alaska Region, (Regional Director), National Marine Fisheries Service (NMFS) issues a final regulation (Field Order) applicable to fishing by vessels of the United States in the Alaska Tanner crab fishery, in accordance with the fishery management plan for Tanner crab off Alaska (FMP), and the regulations implementing this FMP (50 CFR 671.27(b)) (see 43 FR 57149). This Field Order closes the Bering Sea District of Registration Area J (Westward) to fishing for *C. bairdi* Tanner crab by vessels of the United States effective beginning at 12:00 noon Alaska Standard Time (AST) on May 24, 1979 rather than on June 15, 1979 as currently provided in 50 CFR 671.26(f)(3)(iv). This closure remains in effect until January 1, 1980. Public comments are invited until July 24, 1979.

EFFECTIVE DATE: 12:00 noon, AST, May 24, 1979. Public comments are invited until July 24, 1979.

ADDRESS: Comments may be sent to: Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Telephone 907–586–7221.

FOR FURTHER INFORMATION: Contact Mr. Phillip Chitwood at the above address.

SUPPLEMENTARY INFORMATION: The FMP (see 43 FR 21170) provides for in-season adjustments to season and area openings and closures. The FMP's implementing regulations at 50 CFR Part 671 (43 FR 57149) specify in § 671.27(b) that these decisions shall be made by the Regional Director in accordance with the criteria set out in that section. On October 20, 1978, the Assistant Administrator of Fisheries, NOAA, with the approval of the Administrator, NOAA delegated to the Regional Director authority to promulgate Field Orders making in-season adjustments.

The FMP set the optimum yield (OY) for *C. bairdi* Tanner crab in the Bering Sea District equal to the acceptable biological catch (ABC) of 89 million pounds (40,370 mt.) for the current season, based on pre-season abundance estimates and historic harvest levels. It was anticipated that the OY would be reached approximately June 15, 1979. Accordingly, 50 CFR 671.26(f)(3)(iv) of the FMP's implementing regulations established a June 15, 1979 closing date for the *C. bairdi* Tanner crab fishery in the Bering Sea District of Registration Area J.

However, it has become apparent that the FMP's OY for *C. Bairdi* in the Bering Sea District is too high. The FMP was actually prepared during 1978, for implementation in 1979, which meant that the OY in the FMP was based on information collected on the fishery in 1977. The 1977 annual NMFS trawl survey was one of the factors relied upon in deriving the OY of 89 million pounds. The trawl survey completed by NMFS in 1978, after the Plan was implemented, indicated that the OY for *C. Bairdi* might actually be as low as 27–51 million pounds. While this survey alone did not justify amending the Plan to reduce the OY, recent information regarding the current fishery in that area confirms the fact that the FMP's OY is too high and that the acceptable biological yield for *C. Bairdi* in the Bering Sea District will soon be reached. This recent information is as follows:

(1) While the number of vessels engaged in this fishery in 1979 has increased significantly over 1978 (160 compared to 120 in 1978), and all areas fished in 1978, plus new areas, have been fished in 1979, catches are lower than in 1978. For example, the fleet has harvested only 1.6 million pounds from the Pribilof subdistrict, which in 1978 accounted for 13 million pounds.

(2) The weekly catch per unit of effort (CPUE) for those vessels fishing *C. bairdi* in the Bering Sea has declined dramatically during the course of the fishery. The CPUE began at 57 crabs per pot for the week ending March 25, but fell steadily to 32 for the week ending May 6. For the week ending May 13 the CPUE increased to 41 crabs per pot, however, this is attributed to only 13 vessels targeting solely on *C. bairdi*, (the remaining vessels fished both species), and not to an increase in abundance.

(3) Since April 15, landings of *C. opilio*, a less preferred species of Tanner crab, have been increasing. In fact, since May 6 *C. opilio* landings have surpassed the *C. bairdi* landings, further indicating the low abundance of *C. bairdi*.

All of these factors indicate the acceptable biological yield for *C. bairdi* in the Bering Sea District is approximately the mid-point of the harvest range calculated from the 1978 NMFS trawl survey data. On May 13th the total harvest for this season was 37.9 million pounds. It is estimated that by May 24 it will reach approximately 40 million pounds, which is within the 27–51 million pound range of the 1978 trawl survey. With advance notice of intent to close the fishery already issued by the Alaska Department of Fish and Game, May 24 is the nearest date upon which the fishery can be terminated in an orderly manner.

Finally, there is another indication that this fishery should be closed as soon as possible. Information collected from Bering Sea fishermen indicates that mating of *C. bairdi* has already commenced, which means that the crabs will soon begin molting. Significant wastage of the resource occurs due to deadloss when crabs are harvested in the soft shell condition that follows molting. Continuance of the fishery beyond approximately May 24 would likely result in a significant increase in the proportion of soft shelled crabs harvested, with the resultant wastage of crabs, some of which would otherwise be available for harvest next year.

Therefore, in order to prevent overfishing of *C. bairdi* stocks in the Bering Sea and to minimize wastage of the resource that would likely occur if the fishery continued beyond May 24, the Regional Director has determined, in accordance with 50 CFR 671.26(b), and following consultation with the Alaska Department of Fish and Game, that an emergency exists and that the Bering Sea District of Registration Area J will be closed to fishing for *C. bairdi* Tanner crab at 12:00 noon AST on May 24, 1979. The Bering Sea District fishery for *C. opilio* and hybrid Tanner crab remains open.

The Regional Director further finds that, in order to protect the resource, public comment prior to issuance of this Field Order is impracticable and contrary to the public interest. However, public comments on the necessity for, and extent of, this closure will be received by the Regional Director for a period of 60 days after the effective date of the Field Order.

(Address: Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802). During this 60-day period, the data and information from which this decision is based will be available for inspection during business hours at the NMFS, Alaska Regional Office, Federal Building, Room 453, 709 West 9th Street, Juneau, Alaska.

If comment are received during the 60-day period the Regional Director shall, if appropriate, reconsider the necessity for

the closure and, as soon as practicable after that reconsideration, publish in the Federal Register either:

(A) A notice of continued effectiveness of this closure;

(B) A notice to modify or rescind the closure.

An environmental impact statement was prepared for the FMP and is on file with the Environmental Protection Agency.

(16 USC 1801 *et seq.*)

Signed in Washington, D.C. this 23d day of May, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

PART 671—TANNER CRAB OFF ALASKA

§ 671.26 [Amended]

In accordance with 50 CFR 671.27(b), 50 CFR 671.26(f)(3)(iv) is amended by *deleting "June 15" and substituting "May 24".*

[FR Doc. 79-16666 Filed 5-25-79; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 104
Tuesday, May 29, 1979

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1464]

Tobacco Loan Program; Proposed 1979 Crop Grade Loan Rates—Flue-Cured Tobacco

Corrections

In FR Doc. 79-16178 appearing on page 29905 in the issue for Wednesday, May 23, 1979, make the following changes:

1. The word "Crop" was misspelled in the heading and appears correctly above.

2. The telephone number under **FOR FURTHER INFORMATION CONTACT** should read "447-7601".

3. In the table under § 1464.16, under the last two columns (Grade and Loan rate), insert "H6FR 133" below "H5FR 140".

4. In the first column of the table the second "B5L" and "B6L" should read "B5F" and "B6F".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment an amendment of § 205.5(c) of Regulation E (Electronic Fund Transfers) to provide that written notice of loss or theft of an access device or possible unauthorized electronic fund transfers is effective at the time the consumer mails or otherwise sends the notice to the financial institution. The regulation presently provides that written notice is effective upon receipt of the notice by the financial institution (or upon expiration of the time normally required for transmission, if earlier). The Board is publishing the amendment for comment to give interested parties an opportunity to comment on the benefits and costs associated with the proposed change. A draft economic impact analysis is incuded as item (2) of the supplementary information.

DATE: Comments must be received on or before June 25, 1979.

ADDRESS: Comments should be addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 and should refer to docket number R-224.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Lynne B. Barr, Senior Attorney, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2584).

SUPPLEMENTARY INFORMATION: (1) *Proposed Amendment.* On March 21, 1979, the Board adopted sections of Regulation E (Electronic Fund Transfers) to implement sections 909 and 911 of the EFT Act (44 FR 18468, March 28, 1979). Section 205.5 of the regulation sets limits on a consumer's liability for unauthorized transfers. Generally, the consumer's liability for such transfers is limited to $50 if the consumer notifies the financial institution within 2 business days of learning of the loss or theft of the access device, to $500 if notification occurs after 2 business days, and can be unlimited if the consumer fails to notify the institution within 60 days after transmittal of a periodic statement that reflects unauthorized transfers.

Section 205.5(c), Notice to financial institution, implements a statutory provision (section 909(a)) by stating that notice to a financial institution of loss or theft of an EFT access device or possible unauthorized transfers is considered given when the consumer takes such steps as are reasonably necessary to provide the institution with the pertinent information. The Board has provided that notice may be given by the consumer in person, by telephone or in writing. The Board, when adopting the regulation, added a sentence which provides that written notification is effective upon receipt of the notice by the financial institution, or upon expiration of the time normally required for transmission, whichever is earlier.

This "receipt rule" is similar to one in Regulation Z (12 CFR 226.13(e)) implementing identical language in the Truth in Lending Act. The Board believed that consumers will usually notify the institution in person or by telephone, rather than in writing, in order to minimize potential losses. Telephone notification is the quickest and most efficient means of telling an institution of a lost or stolen EFT card. To encourage such notification, the Board issued a model disclosure clause for financial institutions to distribute to consumers stating that telephone notification is the best way of limiting losses.

A number of comments have been received by the Board on the receipt rule. These comments point out that the liability structure of the EFT Act and Regulation E operates in a manner that may increase a consumer's liability significantly when the consumer notifies the institution in writing of the possibility of unauthorized transfers. A notice mailed by the consumer immediately upon learning of the loss or theft of the card may not be received by the financial institution within 2 business days and would subject the consumer to the $500 liability limit (instead of the $50 limit imposed if notice is received within 2 business days). This is in contrast to the operation of the rule in Truth in Lending, where a delay in receiving written notice would not increase a consumer's liability above the $50 statutory maximum.

The Board believes that interested parties should be given an opportunity to comment on the merits and costs of the proposed "mailbox rule." The Board therefore proposes to amend § 205.5(c) to provide that written notice is effective at the time the consumer deposits the notice in the mail or transmits the notice by any other usual means to the financial institution. Comment is solicited on the proposal, particularly as to the following issues:

(a) The difficulties that may be encountered by consumers and financial institutions in proving when a written notice is transmitted, particularly in light of the fact that first class mail often no longer bears dated postmarks.

(b) The effect of shifting liability to financial institutions for losses from unauthorized transfers during the transmission period of a written notice.

(c) What percentage of consumers notify institutions by mail of loss or theft of EFT cards.

(d) The amount and per cent of losses experienced by institutions during the transmission period of written notices.

The Board believes that an expedited rulemaking procedure for this proposal is necessary in order to protect the public interest, as the comments on the present regulatory provision suggest that unnecessary harm to consumers may result from imposition of the receipt rule. Accordingly, the expanded procedures set forth in the Board's policy statement of January 15, 1979, will not be followed in connection with this proceeding.

(2) *Economic Impact Analysis.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies the proposed revision of § 205.5(c), which implements, in part, section 909 of the Act.[1]

Offered for comment is the proposal that, for purposes of the liability provisions of § 205.5 of the regulation, written notice by the consumer to the financial institution shall be considered given when notice is put in the mail or otherwise transmitted. With the existing notice provisions the consumer's liability exposure would depend on the vagaries of mail or other written message delivery. At present it is uncertain when notice will be considered given and whether the delivery system will validate the consumer's actions. The proposed change would give the consumer more time in which to give notice of loss, theft or suspected unauthorized transfer before a higher liability limit is imposed according to the liability timing requirements of the Act.

The proposed change would ensure that the consumer's liability would not depend on mail delivery times, which vary by sending point, receiving point and other factors, such as time of day, week and year. The Postal Service has established a service standard which calls for overnight delivery if an item is ZIP coded and mailed first class by 5:00 p.m., if the sending and receiving points are in the same metropolitan area. It is estimated that this standard is met approximately 95 per cent of the time. A consumer meeting all of the service standard conditions cannot be certain of delivery within two days and a consumer failing to meet even one of the conditions would find delivery within two days unlikely.

Although corrective action by financial institutions would be delayed if the proposed change encouraged less prompt notification by consumers, consumers would still have an incentive to give prompt notice, by telephone if possible, because their funds are at stake. The Board, in emphasizing the desirability of telephone notification by consumers to financial intsitutions, believes that most notice delivery problems will be obviated by the likelihood that consumers will give notice promptly by telephone. The proposal may encourage financial institutions to set up or improve their systems for receiving telephone notification. The Board invites comment on these possible effects and requests information on the present and planned extent of telephone notification receiving systems. Further, how would the efficiency of the payments system and the growth of EFT be affected by a requirement that telephone notification receiving systems be maintained by financial institution? Finally, the Board solicits estimates of the additional costs financial institutions expect to incur from (a) delayed receipt of consumer notifications, (b) additional message reception activity, including toll-free telephone service and message logging procedures, and (c) promotional efforts to encourage prompt notification.

(3) Pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board proposes to amend paragraph (c) of 12 CFR 205.5 (Regulation E), by deleting the third sentence and substituting the following sentence, to read as follows:

§ 205.5 Liability of consumer for unauthorized transfers

* * * * *

(c) * * *Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual to the financial institution. * * *

* * * * *

By order of the Board of Governors, May 18, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-16665 Filed 5-25-79; 8:45 am]

BILLING CODE 6210-01-M

[1] The analysis must consider the costs and benefits of the proposed regulation to suppliers and users of EFT services, the effects of the proposed regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the proposed regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers. The analysis presented here is to read in conjunction with the economic impact analysis that accompanied the Board's Regulation E at 44 FR 18474, March 28, 1979.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 79-ASW-14]

Control Zone; Proposed Designation: Houston (David Wayne Hooks Memorial Airport), Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The nature of the action being taken is the proposed designation of a control zone at Houston, Tex. The intended effect of the proposed action is to provide controlled airspace to the surface for aircraft executing instrument approach procedures to the David Wayne Hooks Memorial Airport, Houston, Tex. The circumstance which created the need for the action is that the FAA will be commissioning a part-time Airport Traffic Control Tower (ATCT) at the David Wayne Hooks Memorial Airport in October 1979. The airport will meet the requirements for a part-time control zone by having communication available down to the runway surface and a federally certified weather observer to take hourly and special weather observations at the airport during the times the control zone is effective.

DATES: Comments must be received by June 29, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

Subpart F 71.171 (44 FR 353) of FAR Part 71 contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of the control zone at Houston, Texas, will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before July 28, 1979 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling 817-624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a control zone at Houston, Tex. The FAA believes this action will enhance IFR operations at the David Wayne Hooks Memorial Airport by providing controlled airspace for aircraft executing instrument approach procedures to the airport. Subpart F or Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 353.)

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.71 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 353) by adding the Houston, Tex., control zone as follows:

Houston (David Wayne Hooks Memorial Airport), Tex Within a 5-mile radius of the David Wayne Hooks Memorial Airport (Latitude 30°04'00" N., Longitude 95°33'35" W.).

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas, on May 15, 1979.

Henry N. Stewart,

Acting Director, Southwest Region.

[FR Doc. 79-16609 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-SW-7]

Alteration of Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign V-187E between Farmington, N. Mex., and Albuquerque, N. Mex., and establish an alternate airway (V-421W) from Farmington to Gallup, N. Mex. This action would improve air traffic control efficiency by providing laterally separated routes for aircraft operations from Farmington to Albuquerque and between Farmington and Gallup, N. Mex.

DATES: Comments must be received on or before June 28, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 79-SW-7, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before June 28, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Section 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-187E between Farmington, N. Mex., and Albuquerque, N. Mex., and to establish an alternate airway V-421W from Farmington to Gallup, N. Mex. This action would improve ATC service for the increased flow of instrument flight rule (IFR)

traffic serving the Farmington, N. Mex., Durango, Colo., area. Both the realignment of V–187E and the establishment of alternate V–421W would provide needed routes with lateral separation from V–187 and V–421 respectively.

Section 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) would be amended as follows:

Under V–187: From Albuquerque, N. Mex., via Farmington, N. Mex.; including an east alternate via INT Albuquerque 345°T (332°M) and Farmington 128°T (114°M) radials;

Under V–421: From Zuni, N. Mex., via Gallup, N. Mex.; Farmington, N. Mex.; including a west alternate via INT Gallup 008°T (354°M) and Farmington 233°T (219°M) radials.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) as follows:

Under V–187: "Farmington 138°" is deleted and "Farmington 128°" is substituted therefor.

Under V–421: "Farmington, N. Mex.;" is deleted and "Farmington, N. Mex., including a west alternate via INT Gallup 008° and Farmington 233° radials;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on March 18, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79–16610 Filed 5–25–79; 8:45 am]

BILLING CODE 4910–13–M

[14 CFR Parts 71 and 75]

[Airspace Docket No. 79–EA–12]

Proposed Alteration of Airways and Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter V–29, V–157, V–166, V–170, V–433 Airways and Jet Route J–40 as a result of the requirement to relocate the New Castle, Del., VORTAC a distance of less than 2 miles, and rename it FATIMA. This relocation is caused by the inability of FAA to renew the land lease at the present location.

DATES: Comments must be received on or before June 28, 1979.

ADDRESSES: Send comments on the proposal in triplicate to Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 79–EA–12, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N. Y. 11430.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N. Y. 11430. All communications received on or before June 28, 1979 will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) that would result in the following Airway and Jet Route segment realignments: (1) Victor Airway 29 from Kenton, Del., direct to FATIMA, Del., direct to Modena, Pa.; (2) Victor Airway 157 from Kenton direct to FATIMA, direct to Robbinsville, N.J.; (3) Victor Airway 166 from Westminster, Md., direct to FATIMA, direct to Woodstown, N.J.; (4) Victor Airway 170 from Modena direct to FATIMA, to the INT of FATIMA 222°T (232°M) and Andrews, Md., 060°T (067°M) radials, to the INT of Andrews 060°T (067°M) and Baltimore, Md., 165°T (173°M) radials; (5) Victor Airway 433 from the INT of Washington, D.C. 065°T (072°M) and FATIMA, 222°T (232°M) radials via FATIMA, direct to Yardley, Pa., including an east alternate via INT FATIMA 058°T (068°M) and Yardley 196°T (206°M) radials; (see ASD 78–EA–96) and (6) Jet Route 40 from the INT of Gordonsville, Va., 059°T (065°M) and FATIMA, Del. 222°T (232°M) radials to FATIMA. Jet Routes 6, 8 and 42 will continue above the FATIMA VORTAC without the use of a navigation aid at this location, therefore, no changes are required in their definition.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as republished (44 FR 307, 722) as follows:

Under V–29 "New Castle," is deleted and "FATIMA," is substituted therefor.

Under V–157 "New Castle," is deleted and "FATIMA," is substituted therefor.

Under V–166 "New Castle," is deleted and "FATIMA," is substituted therefor.

Under V-170 "New Castle, Del.; INT New Castle" is deleted and "FATIMA, Del.; INT FATIMA" is substituted therefor.

Under V-433 "New Castle, Del., 222° radials; New Castle;" is deleted and "FATIMA, Del., 222° radials; FATIMA;" is substituted therefor, and "INT New Castle 058°" is deleted and "FATIMA 058°" is substituted therefor.

Under Jet Route No. 40 "New Castle, Del., 222° radials; to New Castle." is deleted and "FATIMA, Del., 222° radials; to FATIMA." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; Sec. 6(c), Department of Transportation Act [49 U.S.C. 1655(c)]; and 14 CFR 11.65.)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on May 22, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-16606 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, 212, 215, 296, 297 and 385]

[EDR-378/ODR-18, Docket 35568]

Proposed Rule To Liberalize Regulation of Foreign Indirect Cargo Carriers

May 17, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes a new Part 297 which would provide a simple registration procedure in place of proceedings under section 402 of the Act to grant operating authority to foreign air freight forwarders and foreign cooperative shippers associations. This proposal is being made on the Board's initiative to carry out the intent of Congress in the Airline Deregulation Act of 1978, which gave the Board power to grant exemptions to foreign indirect air carriers, and to give foreign air freight forwarders equal competitive opportunities with U.S. air freight forwarders, which were recently deregulated. In addition, this notice proposes changes in the Economic and Organization Regulations to conform to the proposed Part 297.

DATES: Comments by: July 6, 1979 Reply comments by: July 23, 1979.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: June 6, 1979. Docket Section prepares the Service List and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 35568, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., 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, Universal Building, 1825 Connecticut Avenue, N.W, Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION, CONTACT: Joseph Di Bella, Bureau of International Aviation, Legal Division, 1825 Connecticut Avenue, NW, Washington, D.C. 20428, 202-673-5035.

SUPPLEMENTARY INFORMATION: On January 24, 1979, the Board reissued 14 CFR Part 296 to provide for liberalized regulation of indirect cargo air carriers, i.e., air freight forwarders and cooperative shippers (ER-1094, 44 FR 6634, January 31, 1979). Among other things, these new regulations include a simple registration procedure in place of the previous fitness determination; elimination of the need to file tariffs; permission to vertically integrate with direct air carriers and to horizontally integrate with other indirect cargo air carriers; removal of the statutory duty to carry; exemption from many of the antitrust review provisions of the Federal Aviation Act of 1958, as amended (Act); simplified reporting rules and airway bill formats; and elimination of public liability and cargo liability insurance requirements (except for a duty to disclose the extent of cargo liability limits, and of liability insurance coverage, if any).[1] That action was taken to promote the Congressional policy of deregulation, as expressed in Pub. L. 95-163, which allowed almost unlimited entry of direct air carriers into all-cargo service, and as an experimental program to test the ultimate deregulation of the airline industry proposed in the Airline Deregulation Act of 1978, which will end most economic regulation of passenger air transportation by 1985.

The scope of Part 296 covers both domestic and international air transportation, but does not apply to foreign indirect cargo air carriers. These carriers must obtain permits under section 402 of the Act, as do foreign direct air carriers, and in the process must meet fitness standards. Moreover, they are subject to many of the provisions of the Act to which U.S. indirect cargo air carriers are now exempted by Part 296. This dichotomy between U.S. and foreign indirect air carriers was caused by the Board's inability, prior to passage of the Airline Deregulation Act, to grant exemptions to foreign air carriers. The new Act extended the Board's exemption power to include "persons," not just "air carriers," eliminated the old criterion of "undue burden," and required exemptions simply to be "consistent with the public interest." (49 U.S.C. 1386) More importantly, Congress enacted a special subsection of the Act for exemption of foreign indirect air carriers. Section 416(b)(3) gives the Board the power to exempt foreign indirect air carriers from any provision of the Act, not just Title IV, if such relief is in the public interest. This parallels the provision for domestic indirect air carriers in § 101(3) of the Act. It is a clear indication that Congress intends that foreign indirect air carriers be accorded substantially similar treatment, particularly in the nature and degree of regulatory oversight.

The Board has tentatively decided to adopt a new Part 297 of its Economic Regulations, to govern operations by foreign air freight forwarders and foreign cooperative shippers associations. These carriers would not be required to obtain permits under section 402 of the Act if they complied with simple registration procedures. They would also be exempted from many provisions of the Act, and in general would be subject to the same amount of regulation as applies to U.S. indirect cargo carriers under Part 296, except that additional provisions would be adopted to take account of foreign policy considerations.

This action is being proposed for two reasons. First, the complicated and time-consuming procedures necessary to obtain a 402 permit are disproportionate to the type of operations conducted by indirect cargo carriers. The economic and foreign policy issues raised by applications for indirect air carrier permits are usually insignificant and non-controversial, and these applications are normally processed

[1] This rule is currently being appealed in court. Shippers National Freight Claim Counsel v. C.A.B., C.A.D.C. No. 79-1340.

through show-cause procedures without objection. The applications that raise significant issues are the exception rather than the rule, and all applications are subject to investigation only because the Board, until recently, could not grant exemptions to foreign carriers. Second, the retention of a stricter regulatory system for foreign indirect cargo carriers than for U.S. indirect cargo carriers is contrary to sound economic principles and inconsistent with the international aviation policy of the United States, which favors free and equal opportunities for competition among all carriers, regardless of nationality. Applying unnecessary procedural barriers to entry by only one class of carriers places them at a disadvantage in responding to market opportunities. Moreover, a market opportunity, by definition, represents unmet consumer demand, and not allowing foreign air freight forwarders to begin operations as quickly as possible to meet that demand means that the shipping public is underserved in the interim. Placing foreign air freight forwarders on an equal regulatory footing with domestic air freight forwarders would increase competition in cargo air transportation, contribute to the economic health of both classes of air carriers, and result in the best service to consumers.

As the purpose of the proposed rule is to create a more equal regulatory climate vis-a-vis U.S. air freight forwarders, it is patterned closely after Part 296, and is based to a large extent on the rationale in ER-1094, 44 FR 6634, January 31, 1979. The proposed rule would not apply to indirect foreign air transportation of property from points outside of the United States to points within the United States, as the Board has previously disclaimed jurisdiction over indirect cargo air transportation in that direction. E-9179, May 3, 1955; 27 C.A.B. 658 (1958). Section 297.20 would make this disclaimer explicit. As in Part 296, we would require foreign air freight forwarders to comply with a new airwaybill format. Although existing permits do not require these carriers to prepare airwaybills, the new standards are very simple, and considerations of uniformity with U.S. air freight forwarder procedures and notice to the shipping public suggest that this would be in the public interest.

Provisions similar to those in Part 296 have been included in the proposed rules for foreign freight forwarders. For example, foreign forwarders would be able to use the agents of direct carriers to transport shipments. This would assist in insuring that the most efficient and flexible means be used to offer services for the shipper. The proposal also makes clear that a foreign forwarder would be able to act as an agent of the direct carrier on a shipment tendered by the shipper, if it expressly reserved the option to do so when accepting the shipment for carriage. The foreign forwarder would further be allowed to act as the agent of the shipper, if the option to so act was reserved in the airwaybill, and acknowledged by the shipper, when accepting a shipment for carriage. By requiring the forwarder to reserve the option to act as either the agent of the direct carrier or of the shipper when accepting the shipment for carriage, the shipper would be put on notice of who has responsibility for the shipment as the principal.

One important provision in the proposal on which we would specifically like comment is that requiring notice of insurance coverage and the limits of liability. In ER-1094, we explained our reasons for not requiring either public liability or cargo liability insurance coverage for U.S. indirect cargo carriers. The proposed rule here would not require either coverage for foreign indirect cargo carriers. As for U.S. forwarders, a notice provision would be required so that shippers can make an informed decision about whether additional insurance or declaration of value is needed for a particular shipment. We have tentatively decided that foreign forwarders should not be treated differently from U.S. forwarders in this respect. It is generally more efficient for each forwarder, based on its own history of claims and the type of its operation, to determine the needed amount of insurance, if any. We are particularly interested in the comments of shippers on this issue, specifically on whether there has been any history of problems in this area.

The proposal also includes an explicit prohibition against a foreign forwarder receiving a commission from a direct carrier on outbound traffic when acting in the capacity of a forwarder. In Notice of Proposed Rulemaking PSDR-54, 44 FR 3724, January 18, 1979, the Board has proposed to allow payments by direct carriers to shippers or indirect air carriers for ready-for-carriage services. If a final rule is adopted to permit these payments, we anticipate adopting a similar provision for foreign indirect carriers.

Since the Board has relieved applicants for authority to operate as U.S. air freight forwarders from the fitness and public convenience and necessity standards of section 401, there is no provision in Part 296 for rejection of a registration application that otherwise conforms to the filing requirements. However, in the case of foreign indirect air carriers, there are additional issues that must be evaluated; namely, those of foreign policy and of ownership and control. Some foreign countries do not afford U.S. air freight forwarders free and equal competitive opportunities, and in such cases it might be in the interest of the United States to restrict or prohibit operations in the United States by foreign air freight forwarders from those countries. Also, relations between countries are subject to change, and the Board might find it necessary to rescind or modify authority that has been granted under Part 297. Further, United States policy requires that substantial ownership and effective control rest in citizens of the country that transmits the application through diplomatic channels; and an application which did not meet this standard could be subject to rejection. *See* proposed § 297.20(b).

The proposed section 297.21 would provide for four procedures which the Board could follow upon receipt of an application. First, as in Part 296, the Board could stamp the Form 297A and thereby approve the registration. Second, the Board could request additional information where necessary to resolve any foreign policy or ownership and control issues. Where the further information resolved these issues to the Board's satisfaction, the application could then be approved. We also propose to delegate authority to the Director, Bureau of International Aviation, to reject or approve an application, or to request further information. If the Board found that an application raised serious foreign policy or ownership and control issues, it could (third) issue an order conditioning a carrier's authority under this part, or (fourth) institute a proceeding under section 402 of the Act and allow the carrier to operate only under a permit issued after notice and hearing. While we do not contemplate that very many applications would be subject to special conditioning exemption orders or to 402 hearing procedures, we are inclined to reserve these options in light of the unforeseeable problems that often arise in matters affecting foreign air carriers. In section 297.24 we propose to retain the ability at any time to cancel a registration, or place conditions upon its exercise, where it is in the public interest.

Section 296.10 exempted U.S. air freight forwarders from many sections of the Act which do not apply to foreign

air carriers. We propose to exempt foreign air freight forwarders only from sections 402 (permits), 403 (tariffs) except 403(b)(2),[1] and 404(a)(2) (duty to provide reasonable rates). Although section 408(a)(4) is applicable to foreign air carriers, we do not propose to grant an exemption from that provision, since our purpose is not to allow integration between foreign air carriers and U.S. citizens engaged in the business of aeronautics. Vertical integration between U.S. air freight forwarders and U.S. direct air carriers, and horizontal integration between indirect U.S. air carriers, were specifically approved in ER–1094, and an exemption was granted from section 408 to allow such integration, subject only to any prohibitions contained in the antitrust laws. Since there is no provision in the Act preventing integration between foreign air carriers, no exemption is necessary.

However, we would point out that integration between foreign air carriers who are citizens of different countries would violate the principle that ownership and control must rest in citizens of the country of citizenship of the applicant or registrant. This is made explicit in proposed § 297.23(b).

In ER–1094, we found that U.S. air freight forwarders should be exempted from the requirement to file tariffs under section 403 of the Act, because other means could be used to meet Congressional concerns, and because tariffs would be inconsistent with the basic scheme of Pub. L. 95–163 (cargo deregulation amendments) and of the Airline Deregulation Act of 1978, to deregulate pricing and entry in cargo air transportation. An exemption would result in greater price competition and, ultimately, lower prices to shippers. The same considerations lead us to tentatively conclude that foreign air freight forwarders should not be required to file tariffs. Aside from the competitive disadvantage they would face if required to maintain a rigid advance notice system of pricing while U.S. air freight forwarders were free to undercut their prices at any time, the public is better served if all carriers have the flexibility to respond to the needs of the shippers with a greater variety of rates and services. From an economic standpoint, the nationality of a supplier of services is irrelevant to its potential as a price competitor. Thus, considerations of fairness to foreign indirect air carriers and of the potential benefits to consumers suggest that the foreign air freight forwarders should also be exempted from tariff-filing requirement.

U.S. air freight forwarders were exempted from section 404(a) of the Act, which imposes a duty to carry, [subsection [a][1]) and an obligation to observe just and reasonable rates and practices (subsection [a][2]). Only section 404(a)(2) applies to foreign air carriers, and we propose to exempt foreign air freight forwarders from this section for the reasons set forth in ER–1094. Since the Board's policy is to deregulate the field of indirect cargo air transportation and permit prices to be set by market forces, it would be inconsistent to administratively enforce observance of "just and reasonable rates and practices." Moreover, continuation of this statutory prescription could result in court suits seeking its enforcement, with rates then being set by judicial decisions. In that regard, judicial prescription of rates to be charged only by foreign air freight forwarders would produce anomalous economic results, so there does not appear to be any reason why the exemption from section 404(a)(2) should not be extended to these carriers.

Proposed registration Form 297A, which is patterned after Form 296B, provides for disclosure of the names and citizenship of all persons owning or holding beneficial ownership of 10 percent or more of an applicant. This should provide enough information for our initial determination of ownership and control. As to subsequent transfers of stock ownership, as well as acquisitions by other air carriers or foreign air carriers, we do not propose to require prenotification. We would, however, require an amended registration within 30 days after a change in ownership reaches 10 percent or more of the beneficial or voting interest since the previous filing. Without this requirement, determination of ownership and control could easily be circumvented by an initial "flag-of-convenience" filing. We note that, where such changes did occur, and ownership and control issues were raised, the Board would have the option under section 297.24 to restrict or cancel a registration on its own initiative or upon the application of any interested person.

Foreign citizens that currently hold foreign air freight forwarder permits would have 120 days to file for registration under this part. At the end of the 120-day period, all outstanding permits for indirect foreign air carriers of property would be terminated. § 297.25.

We propose to adopt three additional provisions patterned after permit conditions that are contained in many existing foreign air freight forwarder permits. First, proposed section 297.30 would require a foreign indirect air carrier to identify its nationality in any advertisements, tickets, stationery, or other public documents. This would give shippers notice that they were dealing with a foreign entity, which might be relevant to their evaluation of the carrier's services or financial accountability. For example, a foreign air freight forwarder cannot provide domestic forwarding services. In this regard, section 297.22 would require that each applicant, in accepting an approved registration, waive any defense it might possess of sovereign immunity from suit in any action in a U.S. court arising out of operations under this part. Form 297A would also require that an applicant provide the name and address of a designated agent for service of process, to insure its accountability under U.S. law.

We propose to amend Part 215 (names of air carriers and foreign air carriers) to provide that name changes would be accommodated by resubmitting Form 297A. Part 215 is designed to avoid the use of the same or similar names by different air carriers. In place of the formalized Part 215 procedure, the Board would review each resubmitted registration form for any possibility of public confusion with other names already being used. The Director, Bureau of International Aviation, would use delegated authority to deal with any name conflicts.

Conforming amendments would also be made to Parts 207, 208, 212, and 296.

We emphasize that the foregoing are our tentative conclusions only, and we solicit the views of all the interested persons to assist us in determining whether to adopt the proposed rules set forth in this notice.

Proposed Rules

We propose to amend 14 CFR Parts 207, 208, 212, 215, 296, and 385, and adopt a new Part 297, as follows:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

Paragraph (b)(3) of § 207.11 would be revised to read:

[1] Foreign air freight forwarders received an interim exemption from section 403 of the Act in Order 79–3–51, dated March 8, 1979, to avoid any competitive disadvantage vis-a-vis U.S. air freight forwarders pending completion of this rulemaking. As in Order 79–3–51, we would not exempt foreign air freight forwarders from section 403(b)(2), which prohibits rebates from direct air carriers, for the reasons specified in ER–1094.

§ 207.11 Charter flight limitations.

Charter flights (trips) in air transportation shall be limited to the following:

* * * * *

(b) * * *

(3) By an air freight forwarder or cooperative shippers association registered under Part 296 of this subchapter; with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder or a foreign cooperative shippers association registered under Part 297 of this subchapter or holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act; or, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder or foreign cooperative shippers association.

* * * * *

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Paragraph (b)(3) of § 208.6 would be revised to read:

§ 208.6 Charter flight limitations.

Charter flights in air transportation shall be limited to the following:

* * * * *

(b) * * *

(3) By an air freight forwarder or cooperative shippers association registered under Part 296 of this subchapter; with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder or a foreign cooperative shippers association registered under Part 297 of this subchapter or holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act; or, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder or foreign cooperative shippers association.

* * * * *

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Paragraph (a)(3) of § 212.8 would be revised to read:

§ 212.8 Charter flight limitations.

Charter flights (trips) shall be limited to

* * * * *

(a) * * *

(3) By an air freight forwarder or cooperative shippers association registered under Part 296 of this subchapter; with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder or a foreign cooperative shippers association registered under Part 297 of this subchapter or holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act; or, with respect to flights to the United States in foreign air transportation, by a foreign air freight forwarder or foreign cooperative shippers association.

* * * * *

PART 215—NAMES OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Section 215.1 would be revised to read:

§ 215.1 Applicability.

This part applies to all direct air carriers and foreign direct air carriers, except air taxi operators.

PART 296—AIR FREIGHT FORWARDERS AND COOPERATIVE SHIPPERS ASSOCIATIONS

Paragraph (a) of section 296.40 would be revised to read:

§ 296.40 Financial and operating report.

(a) Each air freight forwarder and cooperative shippers association shall file with the Board a Financial and Operating Report (CAB Form 296R) (obtainable from Publications Services Section, CAB, Washington, D.C. 20428) on or before February 15 of each year, addressed to Reports Control, Data Systems Management Division, Office of the Comptroller.

* * * * *

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

A new paragraph (u) would be added to § 385.26 to read:

§ 385.26 Delegation to the Director, Bureau of International Aviation.

The Board delegates to the Director, Bureau of International Aviation, authority to:

* * * * *

(u)(1) Approve or disapprove applications for registration filed under Part 297 of this chapter (Economic Regulations), or require that a registrant under Part 297 submit additional information.

(2) Cancel the registration of any foreign air freight forwarder or a foreign cooperative shippers association that files a written notice with the Board indicating the discontinuance of common carrier activities.

(3) Grant or deny requests by foreign air freight forwarders or foreign cooperative shippers associations for permission to deviate from the documentation requirements of § 297.32 of this chapter (Economic Regulations). Such requests will be granted upon a showing that the record retention system of the forwarder permits ready access to information otherwise required on a manifest; that the name of the peson determining rates and charges, together with the commodity rate applied, appears on the airwaybill; that the forwarder will provide copies of airwaybills to the consignor or consignee when either so requests; and that the recordkeeping operations of the forwarder otherwise comport with the policy set forth in Order E–19074 of December 7, 1962.

PART 297—FOREIGN AIR FREIGHT FORWARDERS AND FOREIGN COOPERATIVE SHIPPERS ASSOCIATION

A new Part 297 would be added to read:

Subpart A—General

Sec.

297.1 Purpose.
297.2 Applicability.
297.3 Definitions.
297.4 Joint loading.
297.5 Foreign air fright forwarder as agent.
297.6 Foreign cooperative shippers association as agent of shippers.

Subpart B—Exemption for Foreign Indirect Air Transportation of Property

297.10 Exemption from the Act.
297.11 Disclaimer of jurisdiction.

Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

297.20 Filing for registration.
297.21 Procedure on receipt of registration form.
297.22 Waiver of sovereign immunity.
297.23 Notification to the Board of change in operations.
297.24 Cancelation or conditioning of registration.
297.25 Termination of operating authority.

Subpart D—General Rules for Foreign Indirect Air Carriers

297.30 Foreign identification.
297.31 Public disclosure of cargo liability insurance.
297.32 Preparation of airwaybills and manifests.
297.33 Prohibition against receipt of commissions.

Subpart E—Reporting Requirements

297.40 Financial and operating report.

Subpart F—Violations

297.50 Enforcement.

Authority: (Sec. 204, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, as amended by 92 Stat. 1731, 1732; 49 U.S.C. 1324, 1386).

Subpart A—General

§ 297.1 Purpose.

This part establishes registration procedures and operating rules for foreign air carriers that engage indirectly in air transportation of property from points within the United States to points outside of the United States. It also exempts these carriers from certain provisions of the Act, and establishes simplified reports for them.

§ 297.2 Applicability.

This part applies to foreign air transportation of property by foreign indirect air carriers outbound from the United States. It also applies to applications for registration as a foreign indirect air carrier of property.

§ 297.3 Definitions.

For purposes of this part:

(a) "Foreign air freight forwarder" means a foreign indirect air carrier that is responsible for the transportation of property from the point of receipt to point of destination, and utilize for the whole or any part of such transportation the services of a direct air carrier or its agent, of another foreign air freight forwarder, or of an air freight forwarder registered under Part 296.

(b) "Foreign cooperative shippers association" means a bona fide association of shippers operating as a foreign indirect air carrier on a nonprofit basis that undertakes to ship property by air for the account of such association or its members, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, of a foreign air freight forwarder, or of an air freight forwarder registered under Part 296.

(c) "Direct air carrier" means an air carrier or foreign air carrier directly engaged in the operation of aircraft under a certificate, regulation, order, or permit issued by the Board.

(d) "Foreign indirect air carrier" means any person, not a citizen of the United States, who undertakes indirectly to engage in foreign air transportation of property.

§ 297.4 Joint loading.

Nothing in this part shall preclude joint loading, meaning the pooling of shipments and their delivery to a direct air carrier for transportation as one shipment, under an agreement between two or more indirect air carriers or foreign indirect air carriers.

§ 297.5 Foreign air freight forwarder as agent.

A foreign air freight forwarder may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A foreign air freight forwarder shall not act as the agent of any direct air carrier with respect to shipments accepted for forwarding.

§ 297.6 Foreign cooperative shippers association as agent of shippers.

A foreign cooperative shippers association may act as agent of a shipper, if it expressly reserves the option to do so when the shipment is accepted.

Subpart B—Exemption for Foreign Indirect Air Transportation of Property

§ 297.10 Exemption from the Act.

Foreign indirect air carriers are exempted from the following sections or subsections of the Act:

(a) Section 402 (Permits);

(b) Section 403 (Tariffs), except section 403(b)(2); and

(c) Section 404(a)(2) (Carrier's Duty to establish just and reasonable rates, etc.)

§ 297.11 Disclaimer of Jurisdiction.

The Board declines to exercise its jurisdiction over foreign indirect air carriers of property with respect to shipments that originate in a foreign country. The Board reserves the right to exercise its jurisdiction over any foreign indirect air carrier of property at any time it finds that such action is in the public interest.

Subpart C—Registration for Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

§ 297.20 Filing for registration.

(a) Not later than 60 days before the start of operations as a foreign indirect air carrier, every foreign air freight forwarder and foreign cooperative shippers association shall register with the Board, unless upon a showing of good cause, the Director, Bureau of International Aviation, allows registration at a later time.

(b) Registration shall consist of filing with the Board's Bureau of International Aviation, Regulatory Affairs Division, two copies of completed Form 297A (obtainable from the Civil Aeronautics Board, Publications Service Division, Washington, D.C. 20428) by the government of the applicant's country of citizenship, through diplomatic channels, and shall be deemed to have been filed on the date that they are actually received by the Board. Substantial ownership and effective control of an applicant must reside in citizens of the country that forwards the registration application.

§ 297.21 Procedure on receipt of registration form.

After review of a registration form filed under § 297.20, the Board will take one or more of the following actions:

(a) Indicate by stamp on CAB Form 297A the effective date of registration, and return to the carrier the duplicate copy of Form 297A as evidence of registration with the Board under this part;

(b) Reject an application for registration for failure to comply with this part;

(c) Request additional information from the registrant;

(d) Issue an order subjecting a carrier's exercise of registration under this part to such terms, conditions, or limitations as may be required by the public interest;

(e) Institute a proceeding under section 402 of the Act.

§ 297.22 Waiver of sovereign immunity.

By accepting an approved registration form under this part, a carrier waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the carrier in any court or other tribunal in the United States based upon any claim arising out of operations by the carrier under this part.

§ 297.23 Notification to the Board of change in operations.

(a) Not later than 30 days before any change in its name or address, or any temporary or permanent cessation of operations, each foreign indirect air carrier shall notify the Board's Bureau of International Aviation, Regulatory Affairs Division, of the change by re-submitting CAB Form 297A.

(b) Not later than 30 days after a change in ownership reaches 10 percent or more of the beneficial or voting interest of the registrant, it shall notify the Board's Bureau of International Aviation, Regulatory Affairs Division, of the change by resubmitting CAB Form 297A. Acquisition of ownership interest in a registrant by persons who are not citizens of the country of citizenship of the registrant may invalidate the registration.

§ 297.24 Cancelation or conditioning of registration.

The registration of a foreign indirect air carrier may be canceled or subjected to additional terms, conditions, or limitations if:

(a) It files with the Board a written notice that it is discontinuing foreign indirect air carrier activities;

(b) It fails to perform air transportation services as authorized;

(c) It fails to file the reports required by this part; or

(d) A substantial ownership interest is acquired by persons who are not citizens of the country of citizenship of the registrant;

(e) The Board finds that it is in the public interest to do so.

§ 297.25 Termination of operating authority.

The operating authority held by any foreign indirect air carrier under a permit issued by the Board prior to the effective date of this part shall terminate as of 120 days from adoption of this part, unless within 60 days the President has indicated his disapproval under section 801(a) of the Federal Aviation Act of 1958, as amended.

Subpart D—General Rules for Foreign Indirect Air Carriers

§ 297.30 Foreign identification.

In all advertisements, tickets, stationery, or other public documents, a foreign indirect air carrier shall display words indicating its nationality at least as prominently as any legal name, trademark, or trade name.

§ 297.31 Public disclosure of cargo liability insurance.

Every foreign air freight forwarder shall give notice in writing to the shipper, when any shipment is accepted, of the limits of its cargo liability insurance, or of the absence of such insurance, and the limits of its liability, if any. The notice shall be included clearly and conspicuously on all of its rate sheets and airwaybills, and on any other documentation that is given to a shipper at the time of acceptance of the shipment.

§ 297.32 Preparation of airwaybills and manifests.

(a) Each registered foreign indirect air carrier shall prepare an accurate airwaybill describing completely all services rendered to or on behalf of the shipper, including the conditions under which the contract will be completed, in its capacity as a foreign indirect air carrier. A copy of the airwaybill shall be given to the consignor and to the consignee.

(b) Each registered foreign indirect air carrier shall prepare an accurate manifest showing every individual shipment included in each shipment consigned for transportation to a direct air carrier.

(c) A waiver of paragraph (a) of this section may be granted by the Board upon a written application by the foreign indirect air carrier not less than 30 days before the shipment to which it relates is transported, if the waiver is in the public interest, and is warranted by special or unusual circumstances.

§ 297.33 Prohibition against receipt of commissions.

No foreign air freight forwarder, acting in that capacity, shall accept directly or indirectly any payment of a commission on traffic tendered to a direct carrier or its agent.

Subpart E—Reporting Requirements

§ 297.40 Financial and operating report.

(a) Each foreign indirect air carrier shall file with the Board a Financial and Operating Report (CAB Form 297R) on or before February 15 of each year, addressed to Reports Control, Data Systems Management Division, Office of Comptroller.

(b) Blank copies of CAB Form 297R will be supplied annually by the Civil Aeronautics Board.

(c) In the spaces provided, each foreign indirect air carrier shall report the gross air freight forwarding revenues, gross air freight forwarding expenses, net income (loss) from forwarding operations and the number of shipments and number of tons of air freight received from customers as an indirect carrier. Foreign cooperative shippers associations need not report revenue or expense data.

Subpart F—Violations

§ 297.50 Enforcement.

In case of any violation of any of the provisions of the Act, or this part, or any other rule, regulation or order issued under the Act, the violator may be subject to a proceeding under sections 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel to compliance; or to civil penalties under the provisions of section 901(a) of the Act; or in the case of a willful violation, to criminal penalties under the provisions of section 902(a) of the Act; or other lawful sanctions including cancellation of registration.

(Sec. 204, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, as amended by 92 Stat. 1731, 1732; 49 U.S.C. 1324, 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-16418 Filed 5-25-79; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI-5487]

Proposed Flood Elevation Determinations for the City of Naples, Collier County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Naples, Collier County, Florida

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 735 Eighth Street South, Naples, Florida. Send comments to: Mr. George Patterson, City Manager, City of Naples, City Hall, 735 Eighth Street South, Naples, Florida 33940.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

notice of the proposed determinations of base (100-year) flood elevations for the City of Naples, Florida, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, National geodetic vertical datum
Gulf of Mexico	Neopolitan Way (entire street).	12
	Crayton Road between Harbour Drive and Mooring Line Drive.	12
	Coral Drive (entire street)	11
	Admirality parade East (entire street).	11
	16th Avenue South between 4th Street and 8th Street.	10
	8th Street between 12th Avenue South and 8th Avenue South.	9

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: May 17, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-16592 Filed 5-25-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. 5488]

Proposed Base Flood Elevation for the Village of Franklin Park, Cook County, Ill., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevation described below.

This proposed base flood elevation is the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevation are available for review at 9545 Belmont Avenue, Franklin Park, Illinois. Send comments to: Mr. Jack B. Williams, President, Village of Franklin Park, 9545 Belmont Avenue, Franklin Park, Illinois 60131.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, 451 Seventh Street, SW., Room 5270, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevation for the Village of Franklin Park, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

Zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevation will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base flood elevation is:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Silver Creek	440 feet downstream of Manheim Road.	640

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: May 17, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-16593 Filed 5-25-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5489]

Proposed Flood Elevation Determinations for the Town of Tunica, Tunica County, Miss. Under the National Flood Insurance program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Tunica, Tunica County, Mississippi.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall,

Tunica, Mississippi. Send comments to: Mayor Ellis E. Koonce, Town Hall, Box 395, Tunica, Mississippi 38676.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Tunica, Tunica County, Mississippi, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stream 1	Third South Street West (extended).	190

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: May 17, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

FR Doc. 79-16594 Filed 5-25-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. 5490]

Proposed Base Flood Elevations for the Town of Brookneal, Campbell County, Virginia, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations described below. These proposed base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Municipal Building, Brookneal, Virginia. Send comments to: Mr. V. J. Lusardi, Mayor, Municipal Building, Brookneal, Virginia 24528.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 425–8872, 451 Seventh Street, SW., Room 5270, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations for the Town of Brookneal, Virginia, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

Zone designations and base (100-year) flood elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base flood elevations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Roanoke River	1.66 miles upstream of State Highway 40.	333
Roanoke River	0.44 miles downstream of State Highway 40.	333
Falling River	0.65 miles upstream of State Highway 40.	334
Falling River	1.47 miles upstream of State Highway 40.	403
Falling River	0.36 miles downstream of State Highway 40.	331

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: May 17, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-16593 Filed 5-25-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 100]

[CGD 5-79-03R]

Establishment of Special Local Regulations for the City of Norfolk, Va., Harborfest Regatta

Correction

In FR Doc. 79–15439, appearing at page 28830 in the issue of Thursday, May 17, 1979, the fourth line of paragraph (a) under "SUPPLEMENTARY INFORMATION" should be replaced with the following:

"36°50'54"N. and 36°50'19"N. and a line drawn across the eastern branch of the Elizabeth River at a longitude of 76°17'19"W."

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ERL 1236-6]

Availability of Implementation Plan Revision for State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt.

SUMMARY: This notice is to announce the receipt of a State Implementation Plan (SIP) revision for Maine which is now available for public review and comment.

Under the requirements of Part D of the Clean Air Act, EPA received on May 1, 1979 a revision to the State of Maine SIP for certain areas designated as not attaining the National Ambient Air Quality Standards (NAAQS) for specific air pollutants. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution and to demonstrate that these measures will provide for attainment of the primary NAAQS as expeditiously as practicable, but no later then December 31, 1982 (in certain instances December 31, 1987). A notice of Proposed Rulemaking describing the revision and EPA's intended approval or disapproval action will be published in the Federal Register at a later date.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses: Environmental Protection Agency, Region I, Air Branch, Room 1903, J. F. K. Federal Building, Boston, Massachusetts 02203; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460; and Maine Department of Environmental Protection, Bureau of Air Quality Control, State House, Augusta, Maine 04330.

WRITTEN COMMENTS SHOULD BE SENT TO: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203, Telephone: 617/223-5609.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. The non-attainment areas in Maine are:

Maine	TSP		CO	O_x	SO_x
	Primary	Secondary			
AQCR 107				X	
Augusta		X			
Rockland and Thomaston		X			
Lewiston and Auburn		X			
AQCR 109				X	
Bangor and Brewer	X				
Baileyville		X			
Bangor Area			X		
Lewiston Area			X		
Millinocket					X
AQCR 110				X	

Part D of the Clean Air act required each state to revise its SIP to meet specific requirements in the non-attainment areas. These SIP revisions were due on January 1, 1979 and must demonstrate attainment of the NAAQS, as expeditiously as practicable, but no later then December 31, 1982, or in limited instances for carbon monoxide and oxidants, no later than December 31, 1987. An 18-month extension may be granted for plans to demonstrate attainment of secondary standards for total suspended particulates.

On May 1, 1979 EPA received the revised SIP for Maine and is currently reviewing the revision. The revision addresses control strategies for SO_2; attainment plans for TSP including redesignation of certain areas; transportation planning for control of CO; control of Volatile Organic Compound (VOC) emissions; procedures for Prevention of Significant Deterioration of air quality (PSD) and new source review in non-attainment areas; and procedures to augment public participation in the regulatory process.

At the completion of this review, a notice will be published in the Federal Register proposing approval or disapproval of the revision.

All interested persons are advised that the proposed revision is available for review at the locations listed, and are invited to comment on its approvability. A file of documents explaining EPA's criteria for approval is also available at EPA offices. The proposed notice referred to above will announce the last day for public comment. This public comment period will end not less than 60 days from this date and not less than 30 days from the published date of EPA's proposal for approval or disapproval.

Dated: May 17, 1979.

Rebecca W. Hanmer,

Acting Regional Administrator, Region I.

[FR Doc. 79-16879 Filed 5-25-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 52]

[FRL 1236-4]

Receipt of Implementation Plan Revision for the State of Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice is to announce the receipt of a State Implementation Plan (SIP) revision for Rhode Island which is available for public review and comment.

Under the requirements of Part D of the Clean Air Act, the State of Rhode Island submitted to EPA on May 14, 1979 a revision to its SIP for certain areas designated as not attaining the National Ambient Air Quality Standards (NAAQS) for specific air pollutants. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution and to demonstrate that these measures will provide for attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982 (in certain instances December 31, 1987). A Notice of Proposed Rulemaking describing the revision and EPA's intended approval or disapproval action will be published in the Federal Register, at a later date.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses: Environmental Protection Agency, Region I, Air Branch,

Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460; and the Rhode Island Department of Environmental Management, Division of Air Resources, Cannon Building, 75 Davis Street, Providence, Rhode Island 02908.

WRITTEN COMMENTS SHOULD BE SENT TO: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusettts 02203.

FOR FURTHER INFORMATION CONTACT: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, JFK Federal Building, Room 1903, Boston, Massachusetts 02203, Telephone: 617/223-5609.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, EPA designated areas in each State as non-attainment with respect to the criteria air pollutant. The non-attainment areas in Rhode Island are:

Rhode Island	TSP	CO	O_x
Providence	X	X	
Rhode Island Portion of AQCR 120			X

Part D of the Clean Air Act requires each state to revise its SIP to meet specific requirements in the non-attainment areas. These SIP revisions were due to January 1, 1979 and must demonstrate attainment of the NAAQS, as expenditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and oxidants, no later than December 31, 1987. An 18-month extension may be granted for plans to demonstrate attainment of secondary standards for total suspended particulates.

On May 14, 1979 EPA received the revised SIP for Rhode Island, and is currently reviewing the revision. The revision addresses redesignation of Providence to unclassfied for Total Suspended Particulates (TSP), and strategies for attainment of Carbon Monoxide (CO) NAAQS. At the competion of this review, a notice will be published in the Federal Register proposing approval or disapproval of the revision.

All interested persons are advised that the proposed revision is available for review at the locations listed, and are invited to comment on its approvability. A file of documents explaining EPA's criteria for approval is also available at EPA offices. The proposed notice referred to above will announce the last day of public comment. This public comment period will end not less than 60 days from this date and not less than 30 days from the published date of EPA's proposal for approval or disapproval.

Dated: May 17, 1979.

Rebecca W. Hanmer,

Acting Regional Administrator, Region I.

[FR Doc. 79-16681 Filed 5-25-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[Docket No. VII-79-DCO-3, FRL 1217-8]

Notice of Proposed Approval of an Administrative Order Issued by Kansas Department of Health and Environment to Kansas City Power and Light Co., LaCygne, Kans.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administative order issued by the Kansas Department of Health and Environment to Kansas City Power and Light Company (KCPL). The order requires the company to bring air emissions from its dry ash collection top hatch and baghouse filters on Unit No. 2 in LaCygne, Kansas into compliance with certain regulations contained in the federally-approved Kansas State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provision of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before June 28, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106. The State order, supporting material, 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: Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kansas City, Missouri 64106, telephone 816/374-2576.

SUPPLEMENTARY INFORMATION: KCPL operates an electric power generating plant at LaCygne, Kansas. The order under consideration addresses emissions from the dry ash collection top hatch and baghouse filters on Unit No. 2 at the facility, which are subject to Kansas Air Pollution Emission Control Regulation 28-19-50B, Opacity Requirements. The regulation limits the emissions of particulates, and is part of the federally approved Kansas State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979 through modifying the ash handling system and baghouse controls.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal 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 provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Kansas SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the order in 40 CFR Part 65.

Authority: 42 U.S.C. 7413, 7601.

Dated: April 11, 1979.

David R. Alexander,

Acting Regional Administrator, Region VII.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.211 to reflect approval of the following Order:

2. The text of the order reads as follows:

Notice of Revised Order

State of Kansas, Department of Health and Environment

December 18, 1978.

Kansas City Power and Light Company, Its Successors or Assigns, *Post Office Box 211, LaCygne, Kansas 66040.*

Certified Mail Number: 870604.

Attention: Mr. Charles Ryan, Plant Superintendent.

Gentlemen: On September 22, 1978 your firm was issued Violation Notice and Corrective Order Number 78–33 for violation of Kansas Air Pollution Emission Control Regulation 28–19–50B. Opacity Requirements. This observed violation was due to excessive emissions from the dry ash collection top hatch and baghouse filters on Unit Number 2.

The requirements of the order were that the emissions from the dry ash collection top hatch and baghouse filters were to be brought into compliance with the provisions of Regulation 28–19–50B by December 1, 1978 or submit to the Department by not later than December 1, 1978 and approvable time schedule within which the emissions would be brought into compliance with the Regulation or cease operation.

On December 4, 1978 your firm submitted to the Department an approvable schedule for bringing the subject source of excessive emissions into compliance with Regulation 28–19–50B. Your firm is hereby notified that the corrective order contained in the third paragraph of the September 22, 1978 notification is being revised as follows:

"In accordance with the provisions of K.S.A. 65–3011(a), you are hereby notified of this violation. You are ordered to bring the emissions from the dry ash collection top hatch and baghouse filters into compliance with the provisions of Regulation 28–19–50B by July 1, 1979 according to the following schedule:

(1) On-site construction or installation of emission control equipment or process change to be initiated by April 2, 1979.

(2) On-site construction or installation of emission control equipment or process change to be completed by June 1, 1979.

(3) Final compliance with Kansas Air Pollution Emission Control Regulations by July 1, 1979.

Until final compliance, as specified, is achieved you are also ordered to comply with the following interim requirements.

(1) You are required to notify the Department of the status of each increment of compliance within five (5) days after the specified date of completion.

(3) During the term of the order there are no practical methods of emission control which can be initiated.

As provided for in K.S.A. 65–3011, you are advised of the right to request a hearing concerning this order. Any such request for a hearing must be submitted to the Department, in writing, within fifteen (15) days of receipt of this order.

Failure to comply with the requirements of this order will constitute a violation of the order and require that the matter be referred to the State Attorney General's Office for enforcement proceedings under the provisions of K.S.A. 65–3018.

You are also further advised that, at this time, the Federal Clean Air Act as amended, now provides that operators of source which are not brought into compliance with provisions of the State's regulations by July 1, 1979 will be subject to federally imposed non-compliance penalties, under the provisions of Section 120 of the Act, in addition to any other enforcement actions.

Any questions pertaining to these matters should be referred to Raymond Buergin, Chief, Air Engineering and Enforcement Section, Bureau of Air Quality and Occupational Health, Topeka, Kansas, telephone number (913) 862–9360.

Sincerely,

Melville W. Gray,

Director of Environment.

[FR Doc. 79–16503 Filed 5–25–79; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[49 CFR Part 391]

[BMCS Docket No. MC–72; Notice No. 79–4]

Medical Qualification of Drivers; Withdrawal of Proposed Rulemaking

AGENCY: Federal Highway Rulemaking, DOT.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: The purpose of this action is to withdraw the Proposed Rulemaking, Docket MC–72, 41 FR 17569–17571, issued on April 27, 1976. Docket MC–72 was issued to solicit comments and information on a proposed rule to change the minimum cardiovascular requirements under the Federal Motor Carrier Safety Regulations. It has been determined that the original proposal to adopt a modified version of the Functional Classification System of the New York Heart Association (Sixth and Seventh Editions) is not acceptable as a minimum medical standard for drivers operating in interstate or foreign commerce and fails to improve the present rule.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, 202–426–9767; Mr. Gerald Tierney, Office of the Chief Counsel, 202–426–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. EST., Monday through Friday.

SUPPLEMENTARY INFORMATION: The present regulations prescribing certain minimum medical requirements were established in 1971. Specifically, § 391.41(b)(4) of the Federal Motor Carrier Safety Regulations (FMCSR) states that a person is medically qualified to drive a motor vehicle provided no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (difficult or painful breathing), collapse or congestive cardiac failure exists.

After encountering some early difficulties in applying the subjective standards of the present regulations, a new rule was proposed. The proposal, adopting a modified version of the Functional Classification System (FCS) of the New York Heart Association (NYHA), was intended to:

(1) Improve cardiac evaluation by establishing an evaluation framework (Functional Classes I, II, III, IV) more objective and common to medical professionals;

(2) Develop a medical standard and evaluation system more readily understandable to lay individuals making driver qualification determinations; and finally,

(3) Reduce the difficulty of interpreting the present rule with respect to cardiac evaluation and qualification determinations required of examining medical physicans in certifying drivers under the FMCSR.

Major Comments of the Records

The 71 respondents who commented on Docket MC–72 may be grouped into 4 general categories;

(1) Individual medical professionals (46 percent)

(2) Representatives of motor carriers (32 percent)

(3) Representatives of medical and nonmedical organizations (18 percent), and

(4) Interested parties of the general public (4 percent).

Individual Medical Professionals

Of the total 71 respondents, 32 or approximately (46 percent, were individual medical professionals. Of these 32 respondents, 23 supported the

proposed rule with some modifications, and 9 disagreed.

PRO. Generally favorable comments of individual medical professionals, paraphrased for brevity, follow:

(1) A great deal of considerate thought has been placed in the proposal. The proposal should, however, be amended with modifications including required treadmill or equivalent cardiac testing.

(2) The respondent agrees with the concept that Functional Class I individuals should be allowed to drive, but should be restricted from transporting passengers or hazardous materials.

(3) The new evaluation system introduces a more classified approach for evaluating the status of drivers with cardiovascular disease and is acceptable on an individual basis.

(4) The proposed rule is clearly a step in the right direction, but the rule does not recognize the diversity of the different types of heart disease and the importance of identifying them in the regulation.

(5) The new guidelines are imperfect but represent an improvement, giving the physician some ability to individualize recommendations based on the driver's condition. The proposal will allow both the assurance of reasonable safety and void arbitrary denial based on a given cardiac diagnosis.

CON. Unfavorable comments of individual medical professionals, paraphrased for brevity, follow:

(1) Experience in the area of cardiovascular evaluations has demonstrated that generalization, for the most part, should be avoided and the final determinations regarding medical fitness must be looked at individually. Unfortunately, predetermined certification by functional classes is a generalization. Even conditions that may be included in Class I may lead to sudden and unpredictable incapacitation.

(2) The FCS of the NYHA is largely dependent upon "reported symptoms" and while this works quite well in the practice of medicine, experience in regulatory medicine has shown that the medical history, as provided by the driver, is frequently poor or inaccurate. To reach a determination that is not arbitrary and to provide enforcement standards that are neither too relaxed nor too strict, more objective information is usually required.

(3) The proposal modifying the FCS is not supportable because the severity of symptomatology is not nearly as useful an indicator of severity of disease and of prognosis for ischemic heart disease as it is for other less common diseases. Some persons in whom disease cannot be recognized have sufficient coronary disease to constitute 25 percent of those who become sudden cardiac death victims. The severity of the residual myocardial impairment following a myocardial infarction and the extent of generalized arteriosclerosis are better indicators of prognosis.

(4) The definition of "ordinary physical activity" and "undue fatigue" is unclear and should be expressed in terms of the duties of a commercial motor vehicle operator. A physician's viewpoint toward these terms may be very different from the viewpoint of lay individuals.

(5) The proposal fails to remove the subjective determination which is primarily based on a cardiovascular disease with symptoms or the likelihood of symptoms. Once it becomes known and clearly established that those individuals who are in Class I can resume their occupations, these drivers will be able to subjectively respond to appropriate questions by denying any significant cardiac symptoms. Existing technology is available to establish objective evaluation criteria without removing the final determination from the physician and criteria should be mandated as part of the proposal.

Comments. Other general comments from medical professionals follow:

(1) Six months is too short a time to permit interstate driving.

(2) The annual physical examination for a period of 3 years following a cardiovascular occurrence is good, but should also include mandatory stress testing.

(3) It is well known that current examination methods, such as EKG and clinical examination, are totally insufficient to demonstrate the presence or absence of cardiac disease, thus, drivers who have undergone coronary artery bypass surgery must be individually evaluated after 3 months including stress testing and perhaps a restudy of their grafts periodically by cardiac catherization.

(4) If a driver requires a pacemaker, the underlying disease is probably serious enough to preclude driving a commercial vehicle.

(5) There should be a restriction on those Class I individuals who require continued drug therapy e.g. digitalis, diuretics, inderal, etc.).

Representatives of Motor Carriers

Of the total 71 respondents, 23 or approximately 32 percent were representatives of motor carriers. Of these 23 respondents, 10 agreed with the proposal, and 13 disagreed. Once again, proponents favoring the proposal, in part, recommended major modificiations. Several motor carrier representatives submitted comments from medical professionals (e.g., company physicians, medical specialists, etc.).

PRO. Favorable comments of representatives of motor carriers, paraphrased for brevity, follow:

(1) The proposed rule would make qualifying of drivers with cardiovascular problems more uniform and clear.

(2) The proposal appears to be good but many doctors will refuse to use the NYHA's FCS because the FCS is not widely known or accepted.

(3) The proposal appears to be generally adequate but pathological changes are such that the possibility of sudden disability could occur even though the driver is in Class I.

(4) The proposal that drivers in Class I should be allowed to operate a commercial vehicle in interstate commerce is commendable; however, individuals taking anticoagulants should not be allowed to drive.

(5) The proposal has great merit and the classification system evaulating the status of drivers with cardiovascular disease will provide definite parameters for judging medical qualifications.

(6) The proposal should be implemented, but with the following modifications: Any driver who has had definitive evidence of myocardial infarction or who has required cardiac surgery of any nature such as bypass surgery or pacemaker insertion should never by reclassified in Class I.

CON. Unfavorable comments of representatives of motor carriers follow:

(1) There may be a progression from Class I to a Class II, Class III, or Class IV without advance warning.

(2) There is no "easy job" in the trucking industry. Drivers who have suffered from a myocardial infarction should not be allowed to drive.

(3) Drivers having evidence of a myocardial infarction should never be reclassified into Class I, and allowed to resume driving (medical comment).

(4) The current rule should remain as written. Innocent bystanders should be a prime concern in determining whether individuals with cardiovascular problems should be allowed to drive in interstate commerce.

(5) The use of the NYHA's FCS is improper because it is a "physical activity" classification. The danger of heart disease in drivers and sudden incapacitation are not covered.

(6) The biggest problem with the proposal is that most doctors will be

lenient during the evaluation process and not refuse a person the right to work even when they are cognizant of Federal regulations.

(7) The term "physical activity" is not defined with respect to the tasks of a commercial motor vehicle operator.

(8) It is commendable to return certain disqualified drivers to work after a cardiovascular incident, but, the overriding factors of highway safety must be paramount. Thus, the proposal, lacking in more objective standards, is viewed as a relaxation of the present rule and cannot be supported.

(9) There is no such thing as "low risk" after a cardiac occurrence and individuals who have suffered a heart attack should be barred from driving.

(10) After reading the information in the proposal it appears that drivers who have suffered a cardiac occurrence have an increased chance of a second attack and should not continue to drive commercial vehicles.

(11) Drivers with cardiovascular disease, even under adequate treatment, should not be qualified because of the unpredictability of progressive arteriosclerotic disease which may lead to sudden death.

(12) The proposal is opposed on medical grounds. The FCS may measure the probability of sudden incapacitation, but the examining physician will tend to lean toward a Class I classification rather than Class II for marginal individuals. It is theoretically possible to have a Functional Class I patient (without limitations of ordinary physical activity) in whom none of the listed symptoms may be present, but who may, nevertheless, have electrocardiographic evidence of severe conductive defects. In short the system based on functional classification is not sensitive enough to pick out all the individuals in a high risk category.

Representatives of Medical and Nonmedical Organizations

Of the total 71 respondents, 13 or approximately 18 percent of the respondents were representatives of medical and nonmedical organizations. Of these 13 respondents, 8 agreed with the proposal, and 5 disagreed. Individuals representing the Amalgamated Council of Greyhound Divisions (ACGD), American College of Cardiology (ACC), American Petroleum Institute (API), American Trucking Associations, Inc. (ATA), Hazardous Substance Transportation Board of Pennsylvania (State DOT), International Brotherhood of Teamsters (IBT), National Association of Motor Bus Owners (presently American Bus Association (ABA)), Naval Medical Department (NMD), New York Heart Association (NYHA), Private Truck Council of America (PTCA), New York Department of Health (NYDH), National Heart and Lung Institute (NHLI), and Southwest Research Institute (SRI) submitted comments. Those organizations submitting opinions of medical specialists are noted.

PRO. Favorable comments of organizational representatives follow:

(1) Representatives of ABA believed the proposal, with some modification, will furnish realistic criteria for the motor carrier and examining physician in making driver qualification decisions. The physician, in the past, has not been required to evaluate practical risk factors which are important to motor carriers of passengers. The proposed change combines both the symptoms and the risk factors into a guideline generally accepted by the medical profession and should significantly reduce the number of conflicting medical cases that currently are going to arbitration thereby reducing the total cost.

(2) The NYDH agrees with the thrust of the proposal, but believes the definition of "ordinary physical activity" should be identified in the context of truck driver tasks.

(3) The PTCA supports the establishing of various classifications of cardiovascular disease in an attempt to provide more objective evaluation either as to the severity of or to the degree of recovery from heart disease.

(4) The IBT enthusiastically endorses the concept of evaluating a driver's capability and physical qualification on an individual basis, and Class I drivers are fully capable of performing on par with other drivers. This opinion was supported by comments of professionals.

(5) The ACGD supports the proposal. The new proposal appears to substitute, to the extent possible, an objective standard for the subjective element of the present rule. The medical opinion accompanying the counsel's opinion supports Class I drivers returning to driving provided they are free of angina pectoris, symptoms of heart failure, and serious arrhythmias.

(6) The Pennsylvania Hazardous Substances Transportation Board agrees with the proposal, but believes drivers in Class I should not be allowed to transport passengers or hazardous materials. Class I drivers are still statistically more liable to have a complication of coronary atherosclerosis than an individual without previous cardiac occurrences.

CON. Unfavorable comments of representatives of medical and nonmedical organizations, paraphrased for brevity, follow:

(1) The ACC reviewed the comments of the National Heart, Lung and Blood Institute and supports its views and suggests the proposal be modified in accordance with these comments.

(2) Members of the Medicine and Biological Science Department of the API have reservations concerning use of the NYHA's FCS. It is agreed that drivers with cardiovascular disease in Functional Class I should be allowed to return to driving, but not be able to transport passengers or hazardous materials. While the FCS of the NYHA is a valuable device in relating the physical capacities of workers there are limitations of methodology that must be recognized. The first is that the examination process may be performed by either a specialist or a general practitioner. The classification of a driver is highly dependent upon the patient relating symptomatic information. This information may be biased depending on whether or not the driver wishes to continue to drive. The second is that the FCS, as modified, may be overly simplistic and inadequate as a framework for providing an objective cardiac evaluation. Third, the FCS does not relate medical fitness to the realities of the work place. There are problems in defining the terms "ordinary physical activity" and "undue fatigue." Driving a private vehicle on an open highway may be nonstressful and ordinary physical activity; but, driving a tractor trailer on mountain roads, or in congested traffic, or performing tasks involving loading and unloading may be very stressful. These activities, while ordinary tasks in the day-to-day operations of a truck driver, would not be "ordinary physical activity" as used in the NYHA criteria.

(3) ATA is strongly opposed to the proposal, arguing that the evidence presented in the preamble does not support the proposal or fully quantify the degree of risk involved, but only assumes that the risk is acceptable with the given safeguards. ATA contends, for the fair treatment of individuals suffering from mild heart disease, the public is asked to overlook the dangers that these individuals present when allowed to drive commercial vehicles. Also, ATA directed comments to those individuals who are able to function in a "nearly normal manner" only because they are on medication or utilizing heart assist devices. It is believed such individuals will be wrongly listed in Class I, which is described as "uncompromised." The fact remains,

concludes ATA, that the health of these individuals is very much compromised by their reliance on drugs or pacemakers. ATA recommends that studies be undertaken to determine the effects and recurrence rates of cardiac occurrences among persons engaged in strenous occupations. In addition, such studies should be accompanied by an assessment of the economic and social costs (benefits) that would result from any change in the current regulations.

(4) Comments of the National Heart and Lung Institute follow:

(a) Although a history of recognized coronary heart disease clearly enhances the likelihood of recurrent heart disease, including sudden cardiac death, only half of "sudden cardiac death" victims are those who have known heart disease. The survivors of heart attacks, or those who manifest symptoms of coronary or ischemic heart disease, cannot be lumped into a single group with a single prognosis. Once ischemic heart disease is recognized, a prognosis based on the results of careful physical examination, laboratory studies, X-rays, and potentially, coronary angiography is more accurate, than a prognosis based on symptomatology alone.

(b) Persons with recognized cardiac disease who are Functional Class I, and who do not have evidence of substantial cardiac impairment by physical examination, cardiomegaly, and substantial ventricular irritability, should definitely be allowed to drive commercial vehicles.

(c) The Department of Transportation is to be commended for recognizing that the diagnosis of heart disease is not and should not carry an automatic stigma of high risk. The proposed rules are clearly a step in the right direction. The comments are offered to emphasize the importance of recognizing the diversity of different types of heart disease and the importance of identifying this in the regulations. Not only are the proposed rules a step in the right direction, but the only question is whether they are a large enough step.

(5) The comments of the president of the NYHA follow:

(a) The proposed rule is based on a mixture of the old editions of the NYHA's FCS and differs radically and fundamentally from that of the present criteria (Seventh Edition).

(b) Recent advances in the field of cardiology have indicated that serious cardiac problems (anatomic and physiologic) can be present without the patient being aware of the abnormalities. Accordingly, it was decided that a driver's "Cardiac Status" (classification of the Seventh Edition) must be determined by a consideration of the cause of the heart disease, the structural abnormalities, and the functional disabilities whether recognized by the driver or not. For example, a driver with moderate obstruction to blood flow at the aortic valve may well be asymptomatic during usual activities and categorized in Class I. However, a sudden increase in heart rate might well precipitate an abrupt fall in blood flow causing syncope. The proposed rule would place this patient in Class I using criteria of the old Sixth Edition prior to the time that the patient becomes symptomatic. The classification of the individual using the Seventh and currently preferred edition of the NYHA would be Class III or IV which would be disqualifying under the proposed classification.

(c) Cardiac status represents a total assessment of the etiologic, anatomic, and physiologic diagnoses. The Seventh Edition classification should be used only.

(6) Representatives of SRI suggested the entire circulatory disease(s) complex be considered at the time of medical examination. The evaluation criteria should be predicated largely upon:

(a) Manifestations of cardiac insufficiency, reflecting severity of the underlying ischemic or other heart disease.

(b) Attitude of the applicant toward the condition and maintenance medicine.

(c) Presence or absence of significant associated conditions and adverse drug effects. SRI submitted a detailed index of overall unfitness based on this criteria to replace the NYHA's FCS.

Interested Parties of the General Public

Of the total 71 respondents, 3 or approximately 4 percent of the respondents were interested parties of the general public. All of the respondents agreed with the proposal. Two respondents were spouses of truck drivers, and they believed their spouses should be allowed to return to driving a commercial vehicle after open heart surgery. The remaining respondent believes the new proposal would "clear the air" of regulatory ambiguities and individualize the evaluation process.

Analysis. The NYHA believes the proposal represents a misconception of the criteria for classification of the Seventh Edition of the *Nomenclature and Criteria for Diagnosis of Disease of the Heart and Great Vessels.* The Seventh Edition specifically indicated that symptoms alone (the patient's awareness of malfunction and the basis of the classification in the old Sixth Edition) are not adequate in determining cardiac status. Evaluation under the Sixth and Seventh requires that all diagnoses (etiologic, anatomic, and physiologic) be considered and not the physiologic or symptomatic alone. Using the proposed rule which combines the Sixth and Seventh Edition it would be possible to place in Class I of the old Sixth Edition the asymptomatic patient with heart block even though the physician knew that the underlying lesion could possibly progress to complete atrioventricular block with resulting complications (dizziness, syncope, death). Use of the criteria of the Seventh Edition alone would require the patient to be classified as severely compromised (Cardiac Status—4), also, the majority of the respondents favoring the proposal did not support the proposal in its suggested form. Instead, they recommended numerous modifications, many of which would have thwarted the use of the FCS as a minimum medical standard.

Another objective of the proposal, the establishing of an evaluation system and cardiac standard more common to medical professionals appears to have failed. The NYHA's FCS has not been as widely accepted as first believed (not adopted by the American Medical Association in total), and several respondents were adamant in the concern that a minimum standard was being based on a system which disagreed with their individual medical philosophies.

While it is recognized that it is difficult to write a regulation on a complex medical subject that is both understandable to medical specialists and nonmedical individuals, it was believed that the proposal would provide transportation management an objective framework (functional classes) which could be easily understood. A driver not in Class I could not be returned to work. It appears that the FCS is more readily understandable to lay individuals, but as the members of the Medicine and Biological Science Department of the American Petroleum Institute indicate, the NYHA's FCS as modified, may be too simplistic and is inadequate as a framework for providing an objective cardiac evaluation and minimum medical standard.

Finally, it was the intent of the original proposal to reduce chances of a misinterpretation of the present rule, and the applicability of the rule to qualification determinations. It appears that the terms used in the NHYA's FCS (e.g., "ordinary physical activity" and "undue fatigue") are not uniformly

understood by examining physicians. Many comments reflected opinions that these terms in the new proposal would have to be identified in terms of the tasks of truck drivers. Adoption of the proposed terms would create additional interpretation problems. With respect to qualification determination decisions the FCS is inadequate. It allows medically impaired, unsafe drivers to be qualified under the FMCSR (Class I). This point is further illustrated by the NYHA and others in their comments. A driver with severe, persistent, cardiac disease (e.g., sinus bradycardia, often the sign of a failing sino-atrial node), who is as yet asymptomatic, would be categorized in Class I until the disease progressed sufficiently to produce symptoms. A search for the origin of the driver's condition (using modern techniques) might reveal that a serious underlying cardiac dysfunction and danger of sudden incapacitation exists. This driver has an increased potential for accident involvement, and yet would be categorized in Class I.

Salient Alternatives. While the proposal should not be adopted as a final rule it appears that there are several salient alternatives:

(1) Modify the proposed rule on the basis of the respondent's comments;

(2) Develop a new cardiovascular regulation not using the FCS, and based on more objective criteria; or

(3) retain the present rule as written and clarify its intent.

Discussion of Alternatives

Modify the Proposed Rule. It has been decided that it would not be in the best interest of highway safety to modify the original proposed rule by continuing to use the Functional Classification System established by the New York Heart Association Committee as a basis for a general rule for reasons previously discussed.

Develop New Regulations. In an effort to be responsive to the comments of Docket MC-72 for more objective evaluation criteria several alternative rules are being considered, but finalization is pending further investigation of the merits of each proposal.

Retain Present Rule. This alternative is warranted at this time. Several administrative hearings have recently been held with respect to settling cardiovascular conflicts of evaluation under § 391.41(b)(4) of the FMCSR. These formal decisions emanating out of the administrative hearings have clarified the intent of the present rule removing existing ambiguities. For example, the terms "current clinical diagnosis" and "known to be accompanied by" in § 391.41(b)(4) have been defined. Also, criteria for evaluation have been established with respect to the subjective determination: Whether the nature and severity of an individual's condition is likely to result in the symptoms stated in the rule.

Final Determinations. The following determinations have been made:

(1) To withdraw the Notice of Proposed Rulemaking, Docket MC-72;

(2) To retain 391.41(b)(4) as written;

(3) To publish official interpretations in the Federal Register to clarify the present rule;

(4) To continue looking at alternative proposals; and finally

(5) To consider medical research in this specific area.

Since the present action is to withdraw a previously proposed rulemaking, implementing no change in current regulatory requirements and is neither costly nor controversial, a full regulatory evaluation is unwarranted. Thus, no separate evaluation is being placed in the public docket.

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 pursuant to Executive Order 12044. (49 U.S.C. 304, 1655(e), 49 CFR 1.48, 301.60)

Issued on: May 16, 1979.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 79-16587 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 44, No. 104
Tuesday, May 29, 1979

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.

CIVIL RIGHTS COMMISSION

South Carolina Advisory Committee; Agenda and 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 South Carolina Advisory Committee (SCAC) of the Commission will convene at 2:00 pm and will end at 5:00 pm, on June 20, 1979, Carolina Town House, 1615 Gervais Street, Gervais Room, Columbia, South Carolina 29202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303.

The purpose of this meeting is to orientate new members, plan for Regional Workshop on Municipal Services, followup in Mullins.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 23, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-16684 Filed 5-25-79; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and 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 factfinding meeting of the West Virginia Advisory Committee (SAC) of the Commission will convene at 7:00 pm and will end at 10:00 pm on June 26, 1979, at Raleigh County Court House, Criminal Court Room, 215 Main Street; Beckley, West Virginia 25801; also will convene at 8:15 am and end 10:00 am, with a talk show (WWNR) from 10:00 am to 11:00 am, on June 27, 1979, at the Ramada Inn, 1940 Harper Road, Beckley, West Virginia 25801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is a discussion on various local civil rights issues in Beckley and Raleigh County; discussion of followup to 5/3 Wheeling SAC Forum and ongoing SAC monitoring project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 23, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-16685 Filed 5-25-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 5-79]

Foreign-Trade Zone—County of Suffolk, N.Y.; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Suffolk, New York, requesting authority to establish a general-purpose foreign-trade zone within the County at the Long Island MacArthur Airport in the Township of Islip, adjacent to the New York City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 21, 1979. The County is authorized to make this proposal under Chapter 584 of the New York Laws of 1975.

The proposal calls for the establishment of a 52.6-acre foreign-trade zone on land owned by the Township of Islip on the south boundary of the Long Island MacArthur Airport. Operation of the zone will be assigned to the township's Department of Aviation and Transportation. As part of a proposed air cargo industrial center, the zone is to be located within the Islip industrial area, across Veterans Memorial Highway from the Airport International Plaza industrial park. Two 50,000 square foot multi-user warehouse structures will be the zone's first facilities.

The application contains economic data and information concerning the need for providing zone services for firms in the Suffolk County area. Several firms have indicated their intention to use the zone for warehousing, assembly, inspection and distribution activities on various products including electronic components, hardware items, and electronic safety devices.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The Committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, 14th and E Streets, N.W., Washington, D.C. 20230; Irwin Gold, Asst. Chief, Inspection Branch, New York Seaport, U.S. Customs Service, 6 World Trade Center, Room 213, New York, N.Y. 10048; and Colonel Clark H. Benn, District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, N.Y. 10007.

As part of its investigation of the proposal, the Examiners Committee will hold a public hearing on June 27, 1979, beginning at 9:00 a.m., at the Long Island MacArthur Airport Terminal Building (Meeting Room, 2nd Floor), Veterans Memorial Highway, Ronkonkoma, New York. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of view, and to obtain information useful to the examiners.

Interested persons or their representatives are invited to present their views at the hearing. Such persons should, by June 20, 1979, notify the Board's Executive Secretary of their desire to be heard either in writing at the address below or by phone, 202/377–2862. In lieu of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the data of this notice through July 27, 1979. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is

new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Department of Economic Development, County of Suffolk, Hauppauge County Center, Veterans Memorial Highway, Hauppauge, N.Y. 11787.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886-B, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 21, 1979.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 79-16551 Filed 5-25-79; 8:45 am]

BILLING CODE 3510-25-M

Industry and Trade Administration

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10[a][2] of the Federal Advisory Committee Act, 5 U.S.C. App. [1976), notice is hereby given that a meeting of the Hardware Subcommittee of Computer Systems Technical Advisory Committee will be held on Wednesday, June 13, 1979, at 9:00 a.m. in Room 3708, 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. Sec.2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, 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 Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee meeting agenda has four parts:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. General discussion of user microprogramability.

Executive Session

4. Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public; 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.

With respect to agenda item (4), 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, Pub. 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 national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any Subcommittees thereof, was published in the Federal Register on September 14, 1978 (43 FR 41073).

Copies of the minutes of the General Session can be obtained by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202-377-2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: May 24, 1979.

Lawrence J. Brady,

Acting Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79-16718 Filed 5-25-79; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council, Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) status of various fishery management plans (FMP's); (2) review foreign fishing permit applications, if any; and (3) other management business.

DATES: The meeting will convene on Tuesday, June 26, 1979, at 1:30 p.m. and will adjourn on Thursday, June 28, 1979, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at East Carolina University, Greenville, North Carolina, in the Willis Building.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, Telephone: (803) 571-4366.

Dated: May 23, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-16674 Filed 5-25-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Base Realignment of Fort Monroe and Fort Eustis, Va.; Public Hearing on Environmental Impact Statement

A Public Hearing will be held on 6 June 1979 on the Draft Environmental Impact Statement (DEIS) concerning the proposed closure of Fort Monroe, Virginia and the proposed relocation of Headquarters, US Army Training and Doctrine Command from Fort Monroe to Fort Eustis, Virginia. The DEIS examines the physical, biological, and socio-economic impacts on Fort Monroe, Fort Eustis and neighboring communities associated with the proposed realignment. Comments made at the public hearing or submitted in writing will be considered in preparing the Final Environmental Impact Statement.

The public hearing on the DEIS and the environmental and socio-economic impacts of the proposed realignment will be held at the Hampton Coliseum, Hampton, Virginia on 6 June 1979 at 7:30 p.m.

Copies of the DEIS are available for inspection at the Public Affairs Office of Fort Monroe between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Copies are also available for inspection at Hampton city libraries. Interested organizations or individuals may obtain copies of the DEIS for the cost of reproducing those copies ($2.62 per copy—checks should be made payable to "Treasurer of the United States") from the Commander, US Army Training and Doctrine Command, ATTN: ATAG-FOIA, Fort Monroe, Virginia 23651.

In the Washington area, inspection copies may be reviewed during normal duty hours in the Environmental Office, Office of the Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: (202) 694-3434.

Daniel R. Voss,

Acting Deputy for Environment, Safety and Occupational Health OASA(IL&FM).

[FR Doc. 79-16613 Filed 5-25-79; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Replacement Alternatives for the Gallipolis Locks and Dam, Ohio River

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

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The actions to be proposed in a report (Phase I General Design Memorandum) are means to increase the capability to process traffic through a modification of the existing Gallipolis Locks and Dam at Ohio River mile 279.2.

2. Replacement sites upstream and downstream of the existing Locks and Dam have been considered. These alternatives are to be referenced and discussed in the DEIS:

a. No action—continue to operate and maintain the existing facility;

b. Rehabilitate the existing dam and construct a 1200-foot lock chamber located in a canal on the West Virginia bank. Rehabilitate the existing 600-foot lock and use it as an auxiliary chamber;

c. Rehabilitate the existing dam, close the existing locks and construct a single 1200-foot lock in a canal on the West Virginia bank;

d. Rehabilitate the existing dam, close the existing locks and construct twin 1200-foot locks located in a canal on the West Virginia bank;

e. Rehabilitate the existing dam, close the existing locks, construct a 600-foot lock and a 1200-foot lock, both located in a canal on the West Virginia bank.

3. Even though the scoping process is not required in accordance with paragraph 1506.8 b(1) of 43 FR 55978-56007, November 29, 1978, a significant effort has been conducted to determine significant issues related to the proposed actions. Public meetings, workshops, widely distributed public announcements, consulting conferences, and close cooperation with State and Federal agencies were and will continue to be significant to the scoping process. Recommendations were considered and utilized from such sources as the Federal Fish and Wildlife Service, Waterways Experiment Station, Council on Environmental Quality, and Soil Conservation Service, the States of West Virginia and Ohio, and the general public. Workshops were held with the local landowners, soil conservation, environmental interests, and transportation interest.

The study and scoping effort included:

9 July 62—Office of Chief of Engineers authorization for replacement studies.
2 Oct 67—Public Notice of District Public Meeting (New locks and dam three miles downstream from existing structure.)
2 Nov 67—Public Meeting.
12 Sep 69—Ohio River Division Public Notice.
28 Dec 73—Huntington District Notice of Public Meeting on two 1200-foot locks in canal at existing dam.
4 Jan 74—Draft EIS available to Public.
22 Jan 74—Draft EIS submitted to Council on Environmental Quality.
23 Jan 74—Public Meeting in Huntington, West Virginia.
13 Dec 74—FEIS changed to RDEIS and copies furnished to Ohio River Division and Office of the Chief of Engineers.
16 Jan 75—RDEIS sent from OCE to Council on Environmental Quality and to Governors and Department Heads. OCE requested comments of other agencies.
8 Apr 75—District submitted addendum—Water Resources Council Procedures for Principles and Standards.
14 Jul 75—Office of the Chief of Engineers recommended two 1200-foot locks in a canal with rehabilitation of existing dam to Secretary of the Army.
9 Dec 75—Secretary of the Army returned the Gallipolis Report for reanalysis, without forwarding the report to Congress.
Oct 76—Congress authorized Phase I AE&D Studies.
1977-1978—Waterways Experiment Station (WES) conducted hydraulic model studies for alternatives.
Aug 77—Published and distributed Phase I Plan of Study. Made available to public.
30 Sep 77—Scoping conference with WES to develop parameters for field testing and system impact studies.
17 Nov 77—Towing industry officials and towboat captains visited WES to see hydraulic models of alternative replacement plans.
28 Jan 78—Scope of Work Conference conducted at Huntington to develop details for Study of Towboat Effects. Consultants efforts were further defined.
9 Feb 78—Coordination meeting to further define scope of field studies. Contributions by consultants and WES were analyzed.
21 Mar 78—Towing Industry Advisory Council Meeting held at Huntington. The Gallipolis Study and Waterways Industry opinions were discussed.
Apr 78—Published Cultural Resources Reconnaissance and distributed copies to other agencies.
28 Apr 78—Contract awarded for environmental baseline literature search. The contractor made extensive investigation of publications, professional journals, theses, texts, libraries, utility and corporation records, Environmental Protection Agency records, United States Geological Survey records, ORSANCO records, and information from Federal, State, and local governments, agencies, commissions, and colleges and universities within the area.
18 Jul 78—Workshop for transportation interests. Participants included representatives of Ohio Department of Transportation, Federal Railroad Administration, Office of the Chief of Engineers, Office of the Assistant Secretary for Policy and International Affairs, U.S. Coast Guard, St. Lawrence Seaway Development Corporation, West Virginia Department of Highways and the Chessie System.
27 Jul 78—Workshop for environmental interests attended by representatives of the Ohio Department of Natural Resources,

West Virginia Department of Natural Resources, and U.S. Fish and Wildlife Service.

30 Sep 78—Public Meeting held at Gallipolis Locks and Dam attended by 83 individuals including local landowners, representatives of the towing industry and waterways association, a city official, an area planning agency, representatives of local industry, power companies, and State and Federal officials. Officials represented West Virginia Department of Natural Resources, Ohio Department of Transportation, Kentucky Department of Transportation, West Virginia Governor's Office of Economic and Community Development and the West Virginia Legislative Service. The U.S. Coast Guard was the only Federal agency represented other than the Corps of Engineers.

7 Nov 78—Progress conference on Literature Search and findings.

10 Jan 79—Copies of the 30 September 1978 Public Meeting Transcript were mailed to the meeting attendees, with press releases announcing availability of transcript.

5–7 Mar 79—Study conference at WES (Vicksburg, MS) to view hydraulic models and discuss details of WES contributions to the study.

29 Mar 79—Board of Consultants meeting concerning site impacts, attended by consultants and representatives of West Virginia Department of Natural Resources, Ohio Department of Natural Resources, and U.S. Fish and Wildlife Service.

3 May 79—Board of Consultants meeting concerning system impacts attended by consultants and representatives of West Virginia Department of Natural Resources, Ohio Department of Natural Resources, and the U.S. Fish and Wildlife Service.

Jun 80—Scheduled publication of DEIS for Phase I AE&D Studies.

Jul 80—Scheduled late stage Public Meeting.

Significant issues to be discussed in the DEIS will include: a) navigation impacts on the Ohio River environment; b) extensive literature search and field measurements to establish these baseline conditions; c) site specific impacts of navigation; d) site specific impacts anticipated from project construction; and e) systems impacts resulting from projected navigation traffic.

Potential effects of increased navigation as regards water quality, benthos, waves and turbulence generation, and terrestrial vegetation and wildlife impacts will be evaluated. Literature search, field measurements and river reconnaissance were conducted to establish baseline conditions. Rierbank conditions were noted, referenced and posted to maps and navigation charts with more than 26,000 referenced photographs included. Results of comprehensive field studies to determine magnitude, duration, frequency, and effects of waves generated by commercial and pleasure craft will be included.

In addition to information obtained from other agencies, the U.S. Fish and Wildlife Service is preparing a Planning Aid Report which will provide evaluations and recommendations to preserve, mitigate, compensate or enhance natural resources. The Federal Fish and Wildlife Service has conducted field studies to determine "critical" areas in the Greenup and Gallipolis navigation pools, and evaluations of islands, shorelines, wetlands, and high quality terrestrial areas.

4. No additional scoping meetings are scheduled; however, additional workshops will be conducted if significant findings indicate a need during the period prior to public circulation of the DEIS.

5. The DEIS should be available to the public in June 1980.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Allan Elberfeld, Chief, Navigation/ Economics Branch, Huntington Engineer District, Huntington, West Virginia 25721.

Dated: May 21, 1979.

James H. Higman,

Colonel, Corps of Engineers,

District Engineer.

[FR Doc. 79-16614 Filed 5-25-79; 8:45 am]

BILLING CODE 3710-GM-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration Domestic Crude Oil Allocation Program; Entitlement Notice for March 1979

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: March 1979 Entitlement Notice.

SUMMARY: Under the Department of Energy's (DOE) domestic crude oil allocation (entitlements) program, this is the monthly entitlement notice which sets forth the entitlement purchase or sale requirements of domestic refiners for March 1979.

DATES: Payments for entitlements required to be purchased under this notice must be made by May 31, 1979. The monthly transaction report specified in § 211.66(i) shall be filed with the DOE by June 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Douglas McIver (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street NW., Room 6128I Washington, D.C. 20461, (202) 254–8660.

Fred Wolgel (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room 6A–127, Washington, D.C. 20585, (202) 252–6754.

SUPPLEMENTAL INFORMATION: In accordance with the provisions of 10 CFR 211.67 relating to the domestic crude oil allocation program of the Department of Energy (DOE), administered by the Economic Regulatory Administration (ERA), the monthly notice specified in § 211.67(i) is hereby published.

Based on reports for March 1979 submitted to the DOE by refiners and other firms as to crude oil receipts, crude oil runs to stills, eligible product imports and imported naphtha utilized as a petrochemical feedstock in Puerto Rico; application of the entitlement adjustment for residual fuel oil production shipped in foreign flag tankers for sale in the East Coast market provided in § 211.67(d)(4); application of the entitlement adjustments for California lower tier and upper tier crude oil provided in § 211.67(a)(4); April 1979 deliveries of crude oil for storage in the Strategic Petroleum Reserve; and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for March 1979 is calculated to be .188702.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of March 1979, each barrel of old oil is equal to one barrel of deemed old oil and each barrel of upper tier crude oil is equal to .256550 of a barrel of deemed old oil.

The issuance of entitlements for the month March 1979 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR 211.67(i)(4), the price at which entitlements shall be sold and purchased for the month of March 1979 is hereby fixed at $9.50, which is the exact differential as reported for the month of March between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil, less the sum of 21 cents.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of March 1979 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of March 1979 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of March 1979 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for that month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements. In addition, certain refiners are required to purchase or sell entitlements to effect corrections for reporting errors for the months September 1975 through February 1979 pursuant to 10 CFR 211.67(j)(1).

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by ERA pursuant to § 211.67(h).

The listing contained in the Appendix identifies in a separate column labeled "Exceptions and Appeals" additional entitlements issued to refiners pursuant to relief granted by the Office of Hearings and Appeals (prior to March 30, 1978, the Office of Administrative Review of the Economic Regulatory Administration). Also set forth in this column are adjustments for relief granted by the Office of Hearings and Appeals for 1975 and 1976, which adjustments are reflected in monthly installments. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, *see Beacon Oil Company, et al,* 4 FEA par. 87,024 (November 5, 1976).

The listing contained in the Appendix continues the "Consolidated Sales" entry initiated in the October 1977 entitlement notice. The "Consolidated Sales" entry is equal to the March 1979 entitlement purchase requirement of Arizona Fuels. The purpose of providing for the "Consolidated Sales" entry is to ensure that Arizona Fuels is not relieved of its March 1979 entitlement purchase requirement and that no one firm will be unable to sell its entitlements by reason of a default by Arizona Fuels. For a full discussion of the issues involved, *see Entitlement Notice for October 1977* (42 FR 64401, December 23, 1977).

For purposes of § 211.67(d)(6) and (7), which provide for entitlement issuances to refiners or other firms for sales of imported crude oil to the United States Government for storage in the Strategic Petroleum Reserve, the number of barrels sold to the Government totaled 1,978,816 barrels.

For the month of March 1979, imports of residual fuel oil eligible for entitlements issuances totaled 40,679,230 barrels.

In accordance with § 211.67(a)(4), the number of barrels of California lower tier and upper tier crude oil as reported by refiners to the DOE, and the weighted average gravity thereof are as follows:

	Volumes	Weighted average gravity
California Lower Tier Crude Oil	9,712,065	19°
California Upper Tier Crude Oil	9,578,378	20°

The total number of entitlements required to be purchased and sold under this notice is 19,581,298.

Based on reports submitted to the DOE by refiners as to their adjusted crude oil receipts for March 1979, the pricing composition and weighted average costs thereof are as follows:

	Volumes	Weighted average cost	Percent of total volumes*
Lower Tier	83,998,856	$6.26	18.1
Upper Tier	91,688,149	13.32	19.7
Exempt Domestic:			
Alaskan	33,406,682	14.10	7.2
Stripper	41,922,726	15.47	9.0
Naval Petroleum Reserve	3,056,019	14.06	.7
Total Domestic	254,072,432	11.45	54.6
Total Imported	211,271,948	16.39	45.4
Total Reported Crude Oil Receipts	465,344,280	13.70	100.0
Total Uncontrolled (Exempt Domestic and Imported)	289,657,375	15.97	62.2
Total Reported Crude Oil Runs to Stills	468,135,005		

*Numbers may not add due to rounding.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for March 1979 must be made by May 31, 1979.

On or prior to June 10, 1979, each firm which is required to purchase or sell entitlements for the month of March 1979 shall file with the DOE the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of March. The monthly transaction report forms for the month of March have been mailed to reporting firms. Firms that have been unable to locate other firms for required entitlement transactions by May 31, 1979 are requested to contact the ERA at (202) 254-3336 to expedite consummation of these transactions. For firms that have failed to consummate require entitlement transactions on or prior to May 31, 1979, the ERA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with the Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before June 28, 1979.

Issued in Washington, D.C., on May 21, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

BILLING CODE: 6450-01-M

APPENDIX

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL

March 1979

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	E N T I T L E M E N T P O S I T I O N EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
-CONSOL'D-SALES	-54,207	0	0	0	0	0	54,207*
A-JOHNSON	0	199,371	0	19,462	0	0	199,371
ALLIED	109,549	88,585	0	0	0	20,964	0
AMER-PETROFINA	756,140	535,247	0	0	0	220,893	0
AMERADA-HESS	2,632,527	3,326,683	0	235,461	0	0	694,156
AMOCO	9,119,829	6,410,638	0	-3,067	0	2,709,191	0
ANCHOR	46,562	162,708	0	0	38,018	0	116,146
APEX	0	22,524	0	22,524	0	0	22,524
ARCO	3,924,878	4,060,066	0	0	21,776	0	135,188
ARIZONA	90,750	36,543	0	0	-1,902	54,207	0
ASAMERA	98,348	162,649	0	0	0	0	64,301
ASHLAND	1,144,168	2,107,859	0	66,126	0	0	963,691
ASIATIC	0	354,037	0	354,037	0	0	354,037
BASIN	117,737	191,626	0	0	34,690	0	73,889
BAYOU	104	58,000	0	0	0	0	57,896
BEACON	199,836	150,787	-17,932	0	27,044	49,049	0
BELCHER	0	277,624	0	277,624	0	0	277,624
BI-PETRO	32,748	41,741	0	0	0	0	8,993
BRUIN	44,884	94,508	0	0	0	0	49,624
CALCASIEU	12,408	77,639	0	0	0	0	65,231
CALUMET	21,480	28,515	0	0	0	0	7,035
CANAL	70,721	71,526	0	0	0	0	805
CARBONIT	43,779	61,910	0	0	0	0	18,131
CARIBOU	83,050	81,513	0	0	12,907	1,537	0
CASTLE	0	64,439	0	64,439	0	0	64,439
CENTRAL	0	36,561	0	36,561	0	0	36,561
CHAMPLIN	1,399,560	1,462,624	0	0	203,985	0	63,064
CHARTER	442,368	549,462	78,318	0	0	0	107,094
CHEVRON	5,560,027	7,003,771	0	32,167	538,267	0	1,443,744
CIBRO	0	257,741	0	77,047	0	0	257,741
CITGO	2,345,107	1,547,054	0	0	0	798,053	0
CLAIBORNE	62,625	48,860	0	0	0	13,765	0
CLARK	195,382	708,529	0	0	0	0	513,147
COASTAL	122,920	1,202,814	0	55,497	0	0	1,079,894

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
COLONIAL	0	90,635	0	90,635	0	0	90,635
CONOCO	2,324,964	2,014,536	0	16,956	100,716	310,428	0
CONSUMERS-POWER	0	76,542	0	76,542	0	0	76,542
CORAL	-31,036	201,706	0	0	0	0	232,742
CORCO	102,061	865,389	334,472***	37,365	34,979	0	763,328
CRA-FARMLAND	303,473	317,150	0	0	0	0	13,677
CROSS	44,510	103,045	0	0	0	0	58,535
CROWN	312,493	615,114	0	0	0	0	302,621
CRYSTAL-OIL	97,787	141,413	0	0	0	0	43,626
CRYSTAL-REF	0	33,048	0	0	0	0	33,048
DELTA	221,367	290,996	0	0	0	0	69,629
DEMENNO	25,738	123,417	0	0	17,946	0	97,679
DETROIT-ED	0	39,565	0	39,565	0	0	39,565
DIAMOND	420,427	367,861	0	0	0	52,566	0
DORCHESTER	5,166	216,645	0	0	0	0	211,479
DOW	73,347	113,560	0	0	0	0	40,213
E-SEABOARD	0	114,993	0	114,993	0	0	114,993
ECO	60,209	85,229	0	0	16,628	0	25,020
EDDY	39,062	44,242	0	0	0	0	5,180
ELM	0	5,072	0	5,072	0	0	5,072
ENERGY-COOP	2,221	695,403	51,921	0	0	0	693,182
ERGON	86,082	85,775	0	0	0	307	0
ERICKSON	17,598	131,298	0	0	0	0	113,700
EVANGELINE	42,450	39,349	0	0	0	3,101	0
EXXON	8,144,890	7,263,341**	0	587,270	0	881,549	0
EZ-SERVE	30,024	47,186	0	0	-101	0	17,162
FARMERS-UN	161,033	303,477	0	0	0	0	142,444
FLETCHER	21,426	251,643	0	0	2,573	0	230,217
FLINT	6,496	11,839	0	0	0	0	5,343
FRIENDSWOOD	21,244	85,651	0	0	0	0	64,407
FUNDING	74,229	67,655	0	0	0	6,574	0
GARY	166,964	123,358	0	0	0	43,604	0
GETTY	1,105,053	1,219,399	0	0	0	0	114,346
GIANT	40,369	66,968	0	0	3,100	0	26,599

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	E N T I T L E M E N T P O S I T I O N EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL	
GLACIER-PARK	96,274	50,637	0	0	0	45,637	0	
GLADIEUX	103,268	112,432	0	0	0	0	9,164	
GOLDEN-EAGLE	0	157,466	0	0	0	0	157,466	
GOLDKING	95,935	131,620	0	0	0	0	35,685	
GOOD-HOPE	66,129	269,984	0	0	0	0	203,855	
GUAM	0	309,402	0	0	0	0	309,402	
GULF	7,593,424	5,433,323	0	57,560	56,568	2,160,101	0	
GULF-STS	62,970	128,869	0	0	0	0	65,899	
HIRI	0	413,031	0	0	0	0	413,031	
HOWELL	59,006	255,637	0	0	0	0	196,631	
HUDSON-OIL	24,567	177,650	0	0	0	0	153,083	
HUNT	204,233	235,405	0	0	0	0	31,172	
HUSKY	695,967	695,967	379,882	0	0	0	0	****
INCONTRADE	0	13,500	0	13,500	0	0	13,500	
INDEPENDENT-REF	83,203	130,620	0	0	0	0	47,417	
INDIANA-FARM	32,155	187,354	0	0	0	0	155,199	
INDUST-FUEL	0	54,384	0	0	0	0	54,384	
INTER-PETRO	0	13,486	0	13,486	0	0	13,486	
IRVING	0	19,277	0	19,277	0	0	19,277	
KENCO	32,032	53,473	0	0	0	0	21,441	
KENTUCKY	16,248	13,606	0	0	0	2,642	0	
KERN	537,725	108,542	0	0	9,729	429,183	0	
KERR-MCGEE	1,048,051	780,614	0	0	0	267,437	0	
KOCH	294,253	802,318	0	41,532	0	0	508,065	
LAGLORIA	432,500	251,140	0	0	0	181,360	0	
LAKESIDE	70,868	46,113	0	0	0	24,755	0	
LAKETON	145,558	106,895	21,219	0	0	38,663	0	
LITTLE-AMER	1,296,109	570,266	93,788	0	0	725,843	0	
LOUISIANA-LAND	278,942	295,282	0	0	0	0	16,340	
MACMILLAN	70,736	165,748	0	0	12,966	0	95,012	
MARATHON	3,297,806	2,361,255	0	0	0	936,551	0	
MARION	20,330	145,367	0	0	0	0	125,037	
METROPOLITAN	0	191,012	0	191,012	0	0	191,012	
MID-AMER	1,405	28,168	0	0	0	0	26,763	

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
MOBIL	6,233,096	4,740,438	0	0	394,373	1,492,658	0
MOBILE-BAY	0	154,490	0	0	0	0	154,490
MOHAWK	397,065	282,327	0	0	52,328	114,738	0
MONOCO	0	20,721	0	20,721	0	0	20,721
MONSANTO	442,994	289,164	0	0	0	153,830	0
MORRISON	14,595	13,128	0	0	0	1,467	0
MOUNTAINEER	7,828	6,768	0	0	0	1,060	0
MT-AIRY	76,195	129,571	0	0	0	0	53,376
MURPHY	811,326	690,705	0	0	0	120,621	0
N-AMER-PETRO	8,334	165,582	0	0	0	0	157,248
NATL-COOP	248,665	329,074	0	0	0	0	80,409
NAVAJO	288,974	335,226	70,669	0	0	0	46,252
NEVADA	23,503	36,401	0	0	160	0	12,898
NEW-BELCHER	0	88,108	0	88,108	0	0	88,108
NEW-EDGINGTON	596,982	538,729	133,889	0	173,603	58,253	0
NEW-ENGL-PETRO	0	92,020	0	92,020	0	0	92,020
NEW-ENGL-POWER	0	55,938	0	55,938	0	0	55,938
NEWHALL	226,468	231,592	0	0	58,650	0	5,124
NORTHEAST-PETRO	0	52,724	0	52,724	0	0	52,724
NORTHLAND	39,008	39,008	18,047	0	0	0	0
NORTHVILLE	0	69,414	0	69,414	0	0	69,414
OKC	126,019	179,156	0	0	0	0	53,137
OKLA-REF	66,775	147,419	0	0	0	0	80,644
OXNARD	24,006	51,620	0	0	16,058	0	27,614
PEERLESS	0	39,081	0	0	0	0	39,081
PEMEX	0	252,262**	0	0	0	0	252,262
PENNZOIL	611,792	323,463	0	0	0	288,329	0
PESTER	90,360	190,856	0	0	0	0	100,496
PHILLIPS	2,430,290	1,834,006	0	0	10,557	596,284	0
PHILLIPS-PR	0	198,863	0	198,863	0	0	198,863
PIONEER	56,655	68,844	0	0	0	0	12,189
PLACID	232,475	218,667	0	0	0	13,808	0
PLATEAU	162,593	181,016	0	0	0	0	18,423
PORT	16,416	12,973	4,964	0	0	3,443	0

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	E N T I T L E M E N T P O S I T I O N EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
POWERINE	188,642	270,164	0	0	48,645	0	81,522
PRIDE	148,503	251,589	0	0	0	0	103,086
QUAD	-33,298	77,520	0	0	18,541	0	110,818
QUAKER-ST	44,053	198,431	0	0	0	0	154,378
QUITMAN	17,475	82,683	0	0	0	0	65,208
RANCHO-REF	7,404	14,928	0	0	0	0	7,524
RAYMAL	7,044	24,269	0	0	0	0	17,225
RICHARDS	180	75	0	0	0	105	0
RICO	0	20,488	0	20,488	0	0	20,488
ROAD-OIL	0	4,904	0	0	0	0	4,904
ROCK-ISLAND	115,018	309,731	0	0	0	0	194,713
SABER-TEX	5,973	186,006	0	0	0	0	180,033
SABRE-CAL	17,417	93,021	0	0	3,659	0	75,604
SAGE-CREEK	2,749	3,269	0	0	0	0	520
SAN-JOAQUIN	454,019	352,612	20,375	0	154,005	101,407	0
SCANOIL	0	46,934	0	46,934	0	0	46,934
SCHULZE	5,257	9,086	0	0	0	0	3,829
SECTOR	48,608	36,321	0	0	0	12,287	0
SEMINOLE	11,046	98,118	0	0	0	0	87,072
SENTRY	23,167	317,865	168,368	0	5,716	0	294,698
SHELL	9,138,746	5,852,275	0	0	428,831	3,286,471	0
SHEPHERD	25,793	90,160	0	0	0	0	64,367
SIGMOR	20,096	159,851	0	0	0	0	139,755
SILVER-EAGLE	432	793	0	0	0	0	361
SLAPCO	41,842	59,397	0	0	0	0	17,555
SO-HAMPTON	33,567	140,099	0	0	0	0	106,532
SOHIO	1,340,026	1,934,668	0	0	0	0	594,642
SOMERSET	15,913	41,268	0	0	0	0	25,355
SOUND	38,709	98,716	0	0	17,051	0	60,007
SOUTHERN-UNION	202,465	240,503	0	0	0	0	38,038
SOUTHLAND	302,347	291,728	117,906	0	0	10,619	0
SOUTHWESTERN	5,129	6,334	0	0	0	0	1,205
SPRAGUE	0	122,716	0	122,716	0	0	122,716
STEUART	0	72,001	0	72,001	0	0	72,001

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	E N T I T L E M E N T P O S I T I O N EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
SUNLAND	-135	130,943	0	0	-88	0	131,078
SUNOCO	3,712,424	3,043,914	1,694	80,411	0	668,510	0
SWANN	0	47,570	0	47,570	0	0	47,570
T&S	5,000	3,764	0	0	0	1,236	0
TARRICONE	0	55,367	0	55,367	0	0	55,367
TENNECO	825,505	598,532	0	0	5,104	226,973	0
TESORO	145,250	391,899	0	0	0	0	246,649
TEXACO	7,987,465	6,621,502	0	431,168	314,306	1,365,963	0
TEXAS-AMERICAN	95,134	87,096	0	0	0	8,038	0
TEXAS-ASPH	27,470	23,539	0	0	0	3,931*****	0
TEXAS-CITY	786,081	695,916	0	0	0	90,165	0
THAGARD	187,516	200,814	14,549	0	54,159	0	13,298
THRIFTWAY	45,530	57,358	0	0	0	0	11,828
THUNDERBIRD	69,963	113,718	0	0	0	0	47,755
TIPPERARY	22,131	48,473	0	0	0	0	26,342
TONKAWA	47,358	80,612	0	0	0	0	33,254
TOSCO	1,833,461	1,465,568	0	0	367,787	367,893	0
TOTAL-PETROLEUM	277,194	448,791	0	0	0	0	171,597
TRAMMO	0	25,102	0	25,102	0	0	25,102
UCC-CARIBE	0	106,564	0	106,564	0	0	106,564
UNI-REF	35,178	140,599	0	0	0	0	105,421
UNION-OIL	3,365,862	2,872,915	0	0	236,738	492,947	0
UNION-PETRO	0	-82,381	-82,381	0	0	82,381	0
UNTD-REF	103,525	282,953	0	0	0	0	179,428
US-OIL	22,394	169,271	0	0	5,117	0	146,877
USA-PETROCHEM	60,790	101,583	0	0	13,837	0	40,793
VAL-VERDE	302	2,065	0	0	0	0	1,763
VICKERS	180,191	431,159	0	0	0	0	250,968
VICKSBURG	83	46,113	0	0	0	0	46,030
WALLEP	0	14,624	0	14,624	0	0	14,624
WARRIOR	67,306	38,344	7,013	0	0	28,962	0
WEST-COAST	69,187	121,422	0	0	26,484	0	52,235
WESTERN	94,084	133,288	0	0	0	0	39,204
WINSTON	111,310	169,608	0	0	0	0	58,298

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	E N T I T L E M E N T P O S I T I O N EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
WIREBACK	0	775	0	0	0	0	775
WITCO	94,078	149,202	0	0	21,148	0	55,124
WYATT	0	37,550	0	37,550	0	0	37,550
WYOMING	61,209	112,115	0	0	0	0	50,906
YETTER	0	539	0	0	0	0	539
YOUNG	69,470	58,513	18,963	0	0	10,957	0
TOTAL	105,061,673	105,061,673	1,435,724	4,180,926	3,556,658	19,581,298	19,581,298

* See discussion in Notice.

** Includes entitlements issued for sales of imported crude oil to the United States Government for storage in the Strategic Petroleum Reserve.

*** Authorization to sell these entitlements is subject to conditions set forth in a DOE Decision and Order issued to Commonwealth Oil and Refining Company on March 20, 1978.

**** This is consistent with the court's order prohibiting any further entitlement purchase requirements by this firm pursuant to the terms of the court's Judgment in Husky Oil Co. v. DOE, et al., Civ. Action No. C77-190-B (D.Wyo., filed March 14, 1978), remanded ___F.2d ____ (No. 10-18 TECA, August 10, 1978).

***** This does not include the purchase obligation stayed by court order in Texas Asphalt & Refinery Co. v. FEA Civ. Action No. 4-75-268 (N.D. Tex., filed October 31, 1975).

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BILLING CODE: 6450-01-C

Imported Crude Oil Transfer Pricing Program; Publication of Representative and Maximum Prices for the Period June 1975 through December 1976

AGENCY: Department of Energy (DOE), Economic Regulatory Administration.

ACTION: Notice of the publication of representative and maximum prices for inter-affiliate transfers of imported crude oil during the period June 1975 through December 1976.

SUMMARY: Notice is hereby given of representative and maximum prices as determined by DOE for certain crude oils when imported pursuant to a transaction between affiliated entities for the months of June 1975 through December 1976.

DATES: May 29, 1979.

FOR FURTHER INFORMATION CONTACT:
Andrew Drance (Transfer Pricing Program Office), Economic Regulatory Administration, 2000 M Street NW., Room 6128, Washington, D.C. 20461, (202) 254–8464.
William H. Harrison (Office of Special Counsel), or Leslie Wm. Adams, Esq, Department of Energy, 12th & Pennsylvania Avenue NW., Room 3108, Washington, D.C. 20461, (202) 633–9161 or 633–8288.

SUPPLEMENTAL INFORMATION: 10 CFR 212.84(d) provides that whenever the cost for crude oil imported from an affiliated entity exceeds the maximum allowable price, the amount in excess of the representative prive shall be disallowed. The maximum and representative prices for the period June 1975 through December 1976 are hereby published in Appendix A to this Notice. Representative and maximum prices listed in Appendix A were determined pursuant to data submitted by the refiners in FEA Form F701–M–O and calculated according to § 212.84(e) as modified (with respect to the use of the clean product premium) by the Notice and Order on the Determination of Representative and Maximum Prices for January 1975, dated June 20, 1975 (40 FR 27058, June 26, 1975). Prices for crude oils not listed in Appendix A remain subject to disallowance of costs, and the companies will be notified of such actions.

In accordance with § 212.84(f) and pursuant to the information made available to DOE in FEA Form F701–M–O, no designation of a reference crude oil has been made whenever (i) the total volume is less than 600,000 barrels, (ii) the number of arms-length transactions of at least 100,000 barrels is less than four, or (iii) more than 35 percent of the transactions by volume are pursuant to a single contract.

Pursuant to § 212.84(e)(6), for a crude oil from a country in which no reference crude oil is available in a given month, a "parity" pricing calculation is made by adjusting a reference crude oil most nearly similar in quality in the same geographical region as that crude oil. The procedures that have been used to make these "parity" pricing calculations are unchanged from the Notice dated June 20, 1975 (40 FR 27058, June 26, 1975).

In Saudi Arabia, where there is more than one reference crude oil, DOE has sufficient data to calculate arms-length prices for each month for SA–180. In the case of SA–181, in the month of January 1976 when the volume of transactions was insufficient to calculate an arms-length price, DOE has derived the reference crude oil price for SA–181 by using the posted price differential between it and SA–180, and subtracting that amount from the valid arms-length price for SA–180. A similar calculation was made in the case of SA–182 for several months, as noted in Appendix A.

We are publishing for the first time a reference crude for Sharjah, a member of the United Arab Emirates, identified as TC–016 (Mubarek). This was done because of independent actions taken by the several emirates beginning in November 1974 with respect to the royalty and tax rate structure applicable to their production.

Issued in Washington, D.C. on May 22, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

BILLING CODE 6450-01-M

APPENDIX A

REPRESENTATIVE PRICES

Reference Crude	JUN. 1975	JUL. 1975	AUG. 1975	SEPT. 1975	OCT. 1975	NOV. 1975	DEC. 1975	JAN. 1976	FEB. 1976	MAR. 1976	APR. 1976	MAY 1976	JUN. 1976	JUL. 1976	AUG. 1976	SEPT. 1976	OCT. 1976	NOV. 1976	DEC. 1976
ALGERIA (AG-020)	11.75	11.75	11.55	11.65	12.60	12.66	12.73	12.78	12.77	12.82	12.92	12.93	12.98	13.03	13.04	13.05	13.04	13.06	13.00
ANGOLA (AO-030)*						12.94**	12.94**	13.09**	13.09**	13.13**	13.17**	13.13**			13.34**			13.58**	
ECUADOR (EC-050)*		11.13**			12.15**			12.02**						12.20**					
EGYPT (EG-056)**	10.44	10.42	10.42	10.40	11.27	11.33	11.30	11.25	11.25	11.25	11.26	11.28	11.27	11.24	11.26	11.25	11.26	11.29	11.28
GABON (GB-060)*	11.58**	11.45**	11.45**	11.55**	12.77**	12.83**	12.83**		12.99**	13.04**	13.08**	13.04**	13.11**					13.49**	
INDONESIA (ID-070*** & ID-072)	12.60	12.60	12.60	12.60	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80
IRAN (IR-080)	10.64	10.62	10.63	10.61	11.53	11.59	11.56	11.56	11.56	11.56	11.57	11.59	11.58	11.55	11.56	11.56	11.57	11.62	11.59
IRAN (IR-082)	10.45	10.42	10.42	10.42	11.41	11.45	11.45	11.41	11.36	11.36	11.35	11.34	11.30	11.28	11.25	11.30	11.30	11.30	11.32
LIBYA (LY-120)	11.07	11.05	11.20	11.20	12.32	12.26	12.27	12.28	12.28	12.38	12.30	12.30	12.44	12.66	12.62	12.68	12.68	12.69	12.67
MALAYSIA (MY-270)*	11.01**	10.98**	10.94**	10.96**	11.94**	12.03**	12.02**	12.04**	12.05**	12.04**	12.04**	12.04**	12.04**	12.04**	12.10**	12.07**	12.04**	12.08**	
NEUTRAL ZONE* (IY-138)	10.18**	10.17**	10.18**	10.14**	11.06**	11.04**	11.03**	11.22**	11.04**	11.01**	11.04**	11.01**	10.94**	10.91**	10.91**	10.94**			10.92**
NIGERIA (NI-140)	11.36	11.23	11.23	11.33	12.55	12.61	12.61	12.76	12.78	12.82	12.86	12.82	12.89	13.07	13.03	13.05	13.25	13.27	13.42
NORWAY (NO-158)*	11.13**	11.11**	11.27**	11.27**															
QATAR (QA-170)*	11.07**					12.10**					12.11**								
SAUDI ARABIA (SA-180)	10.46	10.44	10.44	10.46	11.48	11.48	11.49	11.51	11.51	11.49	11.49	11.50	11.49	11.49	11.50	11.49	11.51	11.51	11.51

*Less than three sellers. Data treated as proprietary.
**Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
***Price set by regulation at official selling price.

REPRESENTATIVE PRICES

APPENDIX A

Reference Crude	JUN. 1975	JUL. 1975	AUG. 1975	SEPT. 1975	OCT. 1975	NOV. 1975	DEC. 1975	JAN. 1976	FEB. 1976	MAR. 1976	APR. 1976	MAY 1976	JUN. 1976	JUL. 1976	AUG. 1976	SEPT. 1976	OCT. 1976	NOV. 1976	DEC. 1976
SAUDI ARABIA (SA-181)	10.27	10.26	10.27	10.23	11.15	11.13	11.12	11.32**	11.14	11.11	11.14	11.11	11.04	11.01	11.01	11.04	11.04	11.01	11.02
(SA-182)	10.38	10.35**	10.35**	10.36	11.29**	11.29**	11.30**	11.33	11.33	11.30**	11.33	11.31**	11.28	11.28	11.25**	11.24**	11.29	11.28	11.28
TRINIDAD(TD-190)*	12.43**	12.36**	12.14**	12.37**	13.42**	13.06**	13.16**	13.37**	13.45**			13.47**		13.37**	13.36**	13.36**	13.55**	13.50**	
UNITED ARAB EMIRATES (TC-010)	10.87	10.84	10.80	10.82	11.80	11.89	11.88	11.89	11.90	11.89	11.89	11.89	11.89	11.89	11.95	11.92	11.89	11.93	12.00
(TC-015)*		10.65**	10.66**	10.64**					11.60**	11.60**		11.63**					11.61**		
(TC-016)*	10.90**	10.87**	10.83**		11.83**	11.92**		11.92**	11.93**	11.92**	11.92**							11.96**	
VENEZUELA (VE-234)	11.17	11.10	10.88	11.11	12.18	11.82	11.92	12.13	12.21	12.11	12.11	12.23	12.17	12.13	12.12	12.12	12.31	12.26	12.31
(VE-235)	10.68	10.48	10.48	10.52	11.17	11.25	11.25	11.09	11.12	11.08	11.18	11.19	11.17	11.27	11.22	11.25	11.46	11.49	11.46
(VE-236)	10.23	10.09	10.19	10.08	10.47	10.45	10.79	10.54	10.54	10.54	10.54	10.54	10.58	10.64	10.64	10.64	10.89	10.89	10.89

*Less than three sellers. Data treated as proprietary.
**Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
***Price set by regulation at official selling price.

MAXIMUM PRICES

APPENDIX A

Reference Crude	JUN. 1975	JUL. 1975	AUG. 1975	SEPT. 1975	OCT. 1975	NOV. 1975	DEC. 1975	JAN. 1976	FEB. 1976	MAR. 1976	APR. 1976	MAY 1976	JUN. 1976	JUL. 1976	AUG. 1976	SEPT. 1976	OCT. 1976	NOV. 1976	DEC. 1976
ALGERIA (AG-020)	11.85	11.85	11.75	11.78	12.79	12.76	12.83	12.88	12.87	12.92	13.02	13.03	13.12	13.13	13.14	13.15	13.14	13.16	13.10
ANGOLA (AO-030)*						13.04**	13.04**	13.19**	13.19**	13.23**	13.27**	13.23**			13.44**			13.72**	
ECUADOR (EC-050)*		11.23**			12.25**			12.12**						12.30**					
EGYPT (EG-056)**	10.54	10.52	10.52	10.50	11.37	11.43	11.40	11.35	11.35	11.35	11.36	11.38	11.37	11.34	11.36	11.35	11.36	11.39	11.38
GABON (GB-060)*	11.72**	11.57**	11.57**	11.65**	12.87**	12.93**	12.93**		13.09**	13.14**	13.18**	13.14**	13.21**					13.63**	
INDONESIA (ID-070)*** & (ID-072)	12.60	12.60	12.60	12.60	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80	12.80
IRAN (IR-080)	10.74	10.72	10.73	10.71	11.63	11.69	11.66	11.66	11.66	11.66	11.67	11.69	11.68	11.65	11.66	11.66	11.67	11.72	11.69
IRAN (IR-082)	10.55	10.52	10.52	10.52	11.51	11.55	11.55	11.51	11.46	11.46	11.45	11.44	11.40	11.38	11.35	11.40	11.40	11.40	11.42
LIBYA (LY-120)	11.21	11.15	11.30	11.30	12.42	12.36	12.37	12.38	12.40	12.52	12.40	12.52	12.54	12.76	12.72	12.78	12.85	12.84	12.87
MALAYSIA (MY-270)*	11.13**	11.08**	11.04**	11.06**	12.04**	12.13**	12.12**	12.14**	12.15**	12.14**	12.14**	12.14**	12.14**	12.14**	12.20**	12.17**	12.14**	12.18**	
NEUTRAL ZONE* (IY-138)	10.28**	10.27**	10.28**	10.24**	11.16**	11.14**	11.13**	11.32**	11.14**	11.11**	11.14**	11.11**	11.04**	11.01**	11.01**	11.04**			11.02**
NIGERIA (NI-140)	11.50	11.35	11.35	11.43	12.65	12.71	12.71	12.86	12.88	12.92	12.96	12.92	12.99	13.17	13.13	13.15	13.45	13.41	13.53
NORWAY (NO-158)*	11.27**	11.21**	11.37**	11.37**															
QATAR (QA-170)*	11.19**					12.20**					12.21**								
SAUDIA ARABIA (SA-180)	10.56	10.54	10.54	10.56	11.58	11.58	11.59	11.61	11.61	11.59	11.59	11.60	11.59	11.59	11.60	11.59	11.61	11.61	11.61
(SA-181)	10.37	10.36	10.37	10.33	11.25	11.23	11.22	11.42**	11.24	11.21	11.24	11.21	11.14	11.11	11.11	11.14	11.14	11.11	11.12
(SA-182)	10.48	10.45**	10.45**	10.46	11.39**	11.39**	11.40**	11.43	11.43	11.40**	11.43	11.41**	11.38	11.38	11.35**	11.34**	11.48	11.38	11.38
TRINIDAD (TD-190)*	12.53**	12.46**	12.42**	12.47**	13.52**	13.16**	13.26**	13.47**	13.55**			13.57**		13.47**	13.46**	13.46**	13.65**	13.60**	

*Less than three sellers. Data treated as proprietary.
**Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
***Prices set by regulation at official selling price.

MAXIMUM PRICES

APPENDIX A

Reference Crude	JUN. 1975	JUL. 1975	AUG. 1975	SEPT. 1975	OCT. 1975	NOV. 1975	DEC. 1975	JAN. 1976	FEB. 1976	MAR. 1976	APR. 1976	MAY 1976	JUN. 1976	JUL. 1976	AUG. 1976	SEPT. 1976	OCT. 1976	NOV. 1976	DEC. 1976
UNITED ARAB EMIRATES																			
(TC-010)	10.99	10.94	10.90	10.92	11.90	11.99	11.98	11.99	12.00	11.99	11.99	11.99	11.99	11.99	12.05	12.02	11.99	12.03	12.10
(TC-015)*		10.75**	10.76**	10.74**					11.70**	11.70**		11.73**					11.71**		
(TC-016)*	11.02**	10.97**	10.93**		11.93**	12.02**		12.02**	12.03**	12.02**	12.02**							12.06**	
VENEZUELA																			
(VE-234)	11.27	11.20	11.16	11.21	12.28	11.92	12.02	12.23	12.31	12.23	12.21	12.33	12.27	12.23	12.22	12.28	12.41	12.36	12.43
(VE-235)	10.78	10.58	10.63	10.67	11.27	11.35	11.35	11.19	11.22	11.18	11.28	11.29	11.27	11.37	11.32	11.37	11.59	11.59	11.58
(VE-236)	10.33	10.21	10.19	10.18	10.57	10.81	10.92	10.64	10.64	10.64	10.64	10.64	10.68	10.74	10.87	10.74	10.99	10.99	11.09

*Less than three sellers. Data treated as proprietary.
**Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
***Prices set by regulation at official selling price.

[FR Doc. 79-16597 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-C

[Docket No. ERA-R-79-10]

Review of Natural Gas Curtailment Priorities and Certain Other Related Gas Issues Under the Natural Gas Act and the Natural Gas Policy Act; Order Granting Requests for Extension of Time for Comments

Requests for extensions of time to respond to the Economic Regulatory Administration's Notice of Inquiry (44 FR 16954, March 20, 1979) concerning its review of natural gas curtailment priorities have been received from Consolidated Edison Company of New York, Process Gas Consumers Group (PGC), Interstate Natural Gas Association of America (INGAA), State of Louisiana and the American Textile Manufacturers Institute, Inc.

The major points raised in support of the requests for extension of time are that the Notice of Inquiry requests the parties to address 22 complex issues and the effective time for preparing meaningful comments has been somewhat truncated by the recent issuance of final rules by the Federal Energy Regulatory Commission and Department of Agriculture which are related to curtailment priority issues.

We recognized the number and complexity of the issues by initially providing nearly two and one-half months for comments. A 15-day extension of time will be granted to all parties. The time for filing comments in this matter will be extended from May 31, 1979, to June 15, 1979, by 4:30 p.m.

Dated: May 23, 1979.

Douglas G. Robinson,

Acting Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 79-16722 Filed 5-24-79; 12:48 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. E-9408]

American Electric Power Service Corp.; Scheduling Oral Argument Before the Commission

Issued May 21, 1979.

Notice is hereby given that an oral argument will be held before the Commission in the captioned proceeding commencing at 2:00 p.m. on Wednesday, June 20, 1979, in Hearing Room A of the Commission's offices, 825 North Capitol Street, N.E., Washington, D.C. The argument has been scheduled by the Commission on its own motion to assist the Commission in its resolution of the issues involved.

Attached to this notice is a copy of a draft opinion which has been recommended by the Office of Opinions and Review for adoption as the Commission's decision in this proceeding. The parties to the proceeding are requested to address their remarks in particular to the issues discussed in this proposed opinion and to provide a reasoned explanation as to why the suggested resolution is or is not consistent with the public interest.

Questions have been raised regarding (1) the use of the sum of the member's noncoincident maximum demands in calculating the member load ratio (section 5.6), as opposed to coincident demands, and (2) the justification for removing the 25% limit above the out-of-pocket costs of a supplying member in calculating the economy energy charge (section 6.6). Participants at the oral argument are further requested to address these matters specifically.

Any party to the proceeding desiring to participate in the oral argument shall so notify the Secretary of the Commission not later than May 31, 1979, including a statement of the time deemed necessary for that party's presentation. The total time of the oral argument will be approximately three hours.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

Before Commissioners: American Electric Power Service Corp. Docket No. E-9408 Draft Opinion; Opinion and Order Approving Amendment of Interconnection Agreement with Modifications.

This proceeding involves a proposal by the American Electric Power Service Corporation (AEP), filed April 29, 1975 to amend an Interconnection Agreement dated July 6, 1951,[1] executed by the principal operating subsidiaries of the AEP system establishing the charges for sales of power and energy among the interconnected companies. The proposed amendment, which is referred to as Modification No. 3 (Mod. 3), was suspended for one day and then was permitted to go into effect subject to refund pending a determination of its lawfulness under Sections 205 and 206 of the Federal Power Act.[2]

The four principal operating companies of the AEP System and their electric service areas are (a) Appalachian Power (Appalachian), serving in western Virginia and in the southern part of West Virginia, (b) Indiana & Michigan Electric (I&M), serving in the northern and east central parts of Indiana and the southwestern corner of Michigan, (c) Kentucky Power (KPC), serving in eastern Kentucky, and (d) Ohio Power (OPC) serving an extensive area in Ohio. The AEP System also includes three generating companies, each organized as a wholly-owned subsidiary of one of the principal operating companies, which own and operate generating facilities. The generating subsidaries sell at wholesale and deliver all of the power and energy they produce to their respective parent companies, pursuant to contracts filed with the Commission as rate schedules. The generating companies are (1) Ohio Electric Company (Ohio Electric), a wholly-owned subsidiary of OPC, which owns and operates the Gavin Plant, located in southern Ohio, consisting of two 1,300,000 kW coal-fired generating units which were placed in service in 1974 and 1975; (2) Indiana & Michigan Power Company (Indiana & Michigan Power), a wholly-owned subsidiary of I&M, which owns and operates the Cook Plant, located on Lake Michigan near Bridgman, Michigan, consisting of two 1,100,000 kW nuclear generating units, the first of which was placed in service in 1975, and the second of which was placed in service in the summer of 1978; and (3) Kanawha Valley Power Company, a wholly-owned subsidiary of Appalachian, which since the 1930's has owned and operated under license two hydroelectric generating facilities, located on the Kanawha River in West Virginia, having a capability of 51,000 kW.

An initial decision was issued in this proceeding on February 23, 1978, by Presiding Administrative Law Judge McGowan. That decision contains a review of the procedural history of the case, the provisions of both the 1951 Agreement and the changes occasioned by Mod. 3, and the positions of the parties.

Despite our desire to avoid repetition of material already set out in the initial decision, some brief description of Mod. 3 and of staff's proposed alternative is useful as an aid in comprehending the various issues in disputes. The principal effect of Mod. 3 is to increase the primary capacity equalization charge used in determining the amount of compensation for primary capacity surpluses and deficits among the parties

[1] Filed as Ohio Power Company's FERC Rate Schedule No. 23.

[2] This proceeding was commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was 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.

to the Agreement. The previously used charge consisted of a uniform capacity rate of $1.00 per kilowatt per month and an annual fixed charge rate of 12% plus a weighted average fixed operating cost. Mod. 3 provides for the retention of the previously used weighted average fixed operating cost but would replace the $1.00 per kW per month capacity rate with a rate based on the more recent embedded capacity costs of the individual system members.[3] It also includes a fixed monthly carrying charge factor of 1.46%, equivalent on an annual basis to a rate of 17.5%.

Another major change involves the elimination of a ceiling imposed on economy energy charges, whereby such charges were limited to not more that 125% of the out-of-pocket costs incurred by the member supplying such energy. This change maintains the basic formula set out of the 1951 Agreement, which is essentially a sharing between buyer and seller of the savings resulting from the transaction.

Three minor changes to the 1951 agreement also are embodied in Mod. 3. These changes involved the elimination of all "secondary energy" and "secondary capacity" classifications, the elimination of a lag in the recovery of costs, and a change in the definition of "member primary capacity" to permit a member, with the concurrence of the other members, to purchase capacity from a "foreign" (*i.e.* any nonaffiliated) company and to include such capacity as primary capacity of the member.

The Commission staff presented testimony urging that the primary capacity equalization charge contained in Mod. 3 was too low. It recommended that the charge be based upon the costs of the most recent generating units installed by surplus members, rather than on the average or embedded costs of generating capacity of surplus members as provided in Mod. 3. Staff also opposed the "split-savings" method of pricing economy energy charges contained both in the 1951 Agreement and in Mod. 3. Finally, staff presented testimony opposing the return component of the proposed 17.5% annual carrying charge rate reflected in Mod. 3 and recommended the use of the actual embedded capital costs of each surplus member in calculating the capacity equalization charges.

In light of the detailed description contained in the February 1978 decision, we shall forego a further recounting of these elements except as necessary to support the findings and conclusions developed herein. The administrative law judge determined that the changed which would be made by Mod. 3 in the primary capacity equalization charge and in the economy energy charge had not been proven to be just and reasonable. He likewise found that the even more substantial change (in terms of monetary effect) to the primary capacity equalization charge proposed by two parties, Ormet Corporation and Kaiser Aluminum and Chemical Corporation,[4] and the staff were unsupported by the record and also should be rejected. The law judge recommended adoption of the subsidiary changes proposed in Mod. 3 involving elimination of the "secondary energy" and "secondary capacity" classifications and of a lag in the recovery of costs. In all other respects he found that the rates and charges embodied in the 1951 Agreement as it existed prior to Mod. 3 were reasonable and recommended the refund of all amounts collected in excess of those levels. The decision makes clear that in reaching his conclusion. The law judge was influenced by his determination that the changes proposed to the Interconnection Agreement were deficient in failing to accord adequate recognition to the investment in capacity made by each of the AEP operating subsidiaries.

The exceptions by the parties to the initial decision continue to reflect, in general, the positions previously taken by them in the proceeding. Thus, AEP persists in seeking approval of its proposed Mod. 3 without change; the Indiana and Michigan Municipal Distributors Association, the Michigan Public Service Commission, the Indiana Public Service Commission and the West Virginia Public Service Commission support the law judges' decision (except that the Indiana Commission objects to the refund remedy); the Public Service Commission of Kentucky objects to the law judge's recommendation that the Interconnection Agreement be recast to recognize each company's investment in generating capacity; and the Public Utilities Commission of Ohio and the staff believe that Mod. 3, while moving in the proper direction, does not go far enough and affirm their support of the further changes recommended by staff. The Ohio Commission has indicated that the charter established by Mod. 3 "insufficient though it may be, is the very least acceptable alternative." Staff, which had advocated the charging of its recommend higher rate as of the effective date of Mod. 3 filing and that AEP "be required to submit a refund plan to provide for flowing though amounts ordered to be paid above the pool charges current [currently in effect] in the form of credits to the total costs of service of retail and wholesale customers who ultimately paid excessive amounts because of the unreasonable low pool rate," [5] appears to have moderated its position on the matter of refunds. In its final filing staff raises the possibility of making the higher pool charges which would result from its recommendations effective only prospectively from the date of the Commission' decision, without disturbing the charges paid and receiving by the respective AEP companies under Mod. 3 during the period of the prefund obligation.[6]

Discussion

Witnesses were presented by AEP to support its claim that changed conditions required modification of the 1951 Agreement. The testimony indicated that the capacity equalization charge incorporated in the original Agreement was predicated on a cost of approximately $100 per kW of installed generating capacity and that this amount continued reasonably to reflect the average cost of installed capacity of the various member companies until approximately 1970. Beginning at about that time, AEP claims, two circumstances combined to warrant a change in the charges for capacity between deficit and surplus members. First, the cost of capacity additions installed by the AEP companies in the 1970's increased to levels substantially in excess of that reflected in the 1951 rate and, second, a number of generating additions planned by several of the AEP companies were cancelled or deferred for various reasons, including financing limitations, increasing constraints on the availability of sites for large generating facilities, the necessity for compliance with environmental control regulations and delays in obtaining requisite federal and state regulatory authorizations to construct new generating facilities. Because of the cancellations and deferrals of major generating capacity additions, AEP's witness explained, largely for reasons not wholly within the system's control, it became apparent

[3] AEP's witness McNulty testified that the embedded capacity cost calculated for each member would be updated each year based on data available as of the end of the next preceding year (Tr. p. 148).

[4] Though active throughout the hearings, both Ormet and Kaiser apparently have discontinued their representation efforts and did not file exceptions to the initial decision.

[5] Brief on Exceptions, p. 37.

[6] On February 21, 1979, the Virginia State Corporation Commission filed a request for late intervention in order to participate in the remaining stages of this proceeding. The request for limited intervention is granted.

that the desired rotation of surplus generating capacity among the different companies would not occur and the OPC, which had added a large amount of capacity at the Gavin Plant of Ohio Electric, its subsidiary, would remain a surplus company for a considerable period of time. Conversely, I&M would remain deficit in capacity until well into the 1980's despite the very substantial investment in new capacity represented by the Cook Plant.

The evidence confirms each of these assertions by AEP. The record shows that the average system cost of capacity increased markedly in the 1970's with the addition of the 2600 mW coal-fired Gavin Plant at a cost of $588 million and the 2200 mW nuclear fueled Cook Plant costing $990 million. Plans for the construction of a new coal-fired plant and a pumped storage hydroelectric plant by Appalachian were abandoned, as was the addition of two 1,300 mW coal-fired units scheduled for installation by I&M. In short, the evidence establishes the validity of AEP's claim that a change became necessary in the rates and charges levied under the Interconnection Agreement in that the then existing charges did not continue to reflect adequately a proper sharing of the benefits and burdens of the generating capacity available on the AEP system.

As indicated earlier, staff and the Ohio Commission do not agree with the proposition inherent in Mod. 3 which bases the capacity equalization charge on the average investment cost of the surplus members' generating units other than hydro. Although both acknowledged that Mod. 3 would help to overcome the inadequacy of the capacity rate included in the 1951 Agreement, they assert that the new charge is insufficient in that it fails to compensate those pool members with surplus capacity for the actual costs of building such capacity. Staff contends that the equalization charge should be based on the investment cost of the generating units actually used to supply the deficient capacity—which it interprets as "usually a member's latest units"—rather than on the average investment cost of all units of the surplus companies. Staff also argued that the associated fixed charges should be calculated on the costs of the units supplying the deficiencies. The Ohio Commission, which has as its main concern in this proceeding the revenues received by OPC as a surplus member of the system, supports staff's claim that the charge should be based on the surplus member's latest unit (or units) of capacity, and not on a system average or embedded cost.

Prior to our determination of this fundamental issue in dispute, it is necessary to address another matter raised in the initial decision and the subject of some exceptions, namely the status under the Agreement of the Gavin and Cook Plants. The law judge concluded that the capacity represented by these plants was not includable as primary capacity of OPC and I&M, respectively, but instead should be treated as capacity made available by transactions with "foreign companies" under Article 7 of the Interconnection Agreement. While the question whether capacity owned by an *affiliate* of a member company comes within the Agreement's definition of "member primary capacity"[7] is not entirely clear, we believe the weight of the evidence supports AEP's and the West Virginia Commission's claim that capacity available to members from generating subsidiaries is properly classified as primary capacity of such members.

None of the parties to the proceeding challenged such inclusion by AEP nor was any question raised to suggest that a redefinition of member primary capacity was necessary to include specifically the capacity of wholly-owned subsidiaries. The practice of the AEP companies is consistent with this conclusion as can be seen from the fact that Appalachian has had available all of the 51,000 kW of hydroelectric generating capacity owned by its wholly-owned subsidiary, Kanawaha Valley Power Comapny, and this capacity has been included as primary capacity of Appalachian from the inception of the Agreement in 1951. We are also influenced by the express definition of foreign company in the 1951 Agreement (Section 0.4) as encompassing "non-affiliated electric utility companies . . ." (including the Tennessee Valley Authority, which interconnects with Appalachian) in establishing the mode of treatment to be accorded the costs and benefits flowing from transactions with such companies. On the other hand, it does appear that where the framers of the original Agreement distinguished between "member primary capacity" and "member secondary capacity" (Sections 5.9 and 5.10), they were careful in the latter category to include not only the relatively less efficient capacity installed at generating stations of a particular member, but also such capacity at ". . . generating stations not owned by said Member but where the operation and production costs thereof are the responsibility of said Member." Thus, it appears that adequate specificity was included where the need was foreseen.

We perceive no statutory or other public interest consideration which mandates the use of criteria based on legal title or direct ownership of generating capacity (as opposed to ownership through the mechanism of wholly owned subsidiaries) where the reasons for the existing mode of ownership are known (at least for the Gavin and Cook Plants) and where the operation and sales are fully consistent with the purposes intended to be served by the Interconnection Agreement. The treatment of the Kanawaha capacity as primary capacity over a course of more than twenty years without challenge upholds AEP's contention that Section 5.7 prescribes substantive, operating critera for eligibility as primary capacity, irrespective of whether the capacity is available to a member directly through ownership or indirectly through a wholly-owned subsidiary supplying all of its capacity or energy to its parent by contract.

We note that Mod. 3 would amend the definition of "member primary capacity" to make clear its inclusion of both (a) capacity installed at generating stations owned by the member and (b) capacity available to the member through interconnection arrangements with affiliated companies or foreign companies. We believe this modification is beneficial in eliminating the uncertainty inherent in the original definition. Insofar as foreign company purchases are concerned, this represents an improvement over the original treatment provided in Article 7. In addition to providing more clarity, the redefinition of member primary capacity set out in Mod. 3 would allow a deficit member to purchase capacity from a non-affilitated company and thereby decrease or eliminate its capacity deficit for pool purposes. To the extent that such purchases may aid in minimizing the long-term deficit capacity status of I&M and Appalachian, and foster enhanced competition, increased reliability and regional coordination, we believe the amendment serves a salutary purpose.

Section 5.7 of Mod. 3 vests the Operating Committee with the responsibility of determining whether additional capacity made available to a member as a result of an interconnection arrangement should be treated under Section 5.7(ii) [capacity

[7] Section 5.7 defines "member primary capacity" as "The more efficient steam and hydro capacity *installed at the generating stations of the members* normally expected to operate and carry load." (emphasis added)

calculations.[18] Consequently, we will use the 7.9% preferred stock rate as the latest record evidence available along with our derived 7.75% cost of debt.

The testimony of the parties on the appropriate allowance for equity capital is of limited usefulness. AEP's defense of its request for a 15% return on common equity is exceedingly general and, consequently, not very persuasive, while staff's recommendation was based on separated rates of return for the four Member Companies, whereas we have opted for a single rate of return in this case. Nevertheless, based on statistical data presented in staff's Exhibits S–5 and S–6 and AEP exhibit P–14, and in consideration of equity returns recently allowed by this Commission, we find that a return on common equity of 12.75% is just and reasonable. The application of these cost rates to the above mentioned capital structure results in an overall rate of return of 9.42%. The inclusion of this cost of capital component, together with a adjusted component for Federal income taxes, results in annual and monthly carrying charge factors of 16.49% and 1.37%, respectively.

The Commission further finds

(1) Ohio Power Company, Indiana & Michigan Electric Company, Appalachian Power Company and Kentucy Power Company are each a public utility as defined in the Federal Power Act and the sales by them of electric energy pursuant to the Interconnection Agreement dated July 6, 1951, are sales of electric energy at wholesale in interstate commerce subject to the jurisdiction of the Commission.

(2) The amendment to the Interconnection Agreement proposed by Modification No. 3 to increase the primary capacity equalization charge is just and reasonable under the existing circumstances and should be approved, except that the monthly carrying charge factor should not exceed 1.37%

(3) The changes in the Interconnection Agreement proposed by Modification No. 3 for the purpose of eliminating the system secondary capacity and secondary energy classifications, and for the elimination of lag in the recovery of costs, are just and reasonable and should be approved.

(4) Ohio Power Company, through its agent, American Electric Power Service Company, should be require to file appropriate guidelines applicable to the exercise by the Operating Committee of its discretion in determining when a purchase by a member of capacity from a non-affilated company shall be included as "member primary capacity" under Section 5.7(ii) of the Interconnection Agreement.

(5) Section 5.7 of the Interconnection Agreement should be amended to exclude sales of capacity from member primary capacity.

The Commission orders

(A) Modification No. 3 to the Interconnection Agreement dated July 6, 1951, filed as Ohio Power Company's F.E.R.C. Rate Schedule No. 23, is approved subject to the following conditions:

(1) Section 6.212 of the Agreement shall be changed to reflect a monthly carrying charge factor of 0.0137.

(2) Section 5.7 of the Agreement shall be amended to exclude sales of capacity from the calculation of member primary capacity.

(3) Guidelines shall be submitted for the Commission's approval applicable to the Operating Committee's exercise of its discretion in determining when a purchase by a member of capacity from a non-affiliated company will be included as member primary capacity under Section 5.7(ii) of the Agreement.

(B) The filings required by Ordering Paragraph (A) shall be submitted within 30 days of the date of issuance of this Opinion.

(C) Ohio Power Company shall file an annual statement of the member weighted average investment cost as provided in Section 6.211 of the Agreement, including the basis for the amounts shown therein.

(D) Within 60 days from the date of issuance of this Opinion, Ohio Power Company shall provide a statement reflecting appropriate credits for all sales of energy under Modification No. 3 due to the required modification in the monthly carrying charge factor.

(E) Exceptions not granted are denied.

(F) The initial Decision is affirmed to the extent consistent with this Opinion and Order.

[FR Doc. 79–16639 Filed 5–25–79; 8:45 am]
BILLING CODE 6450–01–M

[18] Exh. P–12.

Colorado; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 18, 1979.

On May 4, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Colorado Oil and Gas Conservation Commission, Department of Natural Resources

FERC Control Number: JD79–4396
API Well Number: 05–103–7961
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T22–11
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79–4397
API Well Number: 05–103–8181
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T73–11G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79–4398
API Well Number: 05–103–7957
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T66–18G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79–4399
API Well Number: 49–103–20820
Section of NGPA: 102
Operator: Lomax Exploration Company
Well Name: Hardwick Tribal No. 1–9
Field: Boysen
County: Fremont
Purchaser: Montana Dakota Utilities Company
Volume: 164 MMcf.

FERC Control Number: JD79–4400
API Well Number: 49–035–20380
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tip Top Unit F31–17G
Field: Tip Top Unit
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: 190 MMcf.

FERC Control Number: JD79–4401
API Well Number: 49–035–20410
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tip Top Unit No. F22–22G
Field: Tip Top Unit
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: 190 MMcf.

FERC Control Number: JD79–4402
API Well Number: 49–035–20378
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tip Top Unit No. F12–33G
Field: Tip Top Unit
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: 190 MMcf.

FERC Control Number: JD79–4403
API Well Number: 49–035–20472
Section of NGPA: 103
Operator: Mobil Oil Corporation

Well Name: Tip Top Unit No. F44-7G
Field: Tip Top
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: 190 MMcf.

FERC Control Number: JD79-4404
API Well Number: 05-103-8182
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T18-13G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79-4405
API Well Number: 49-009-21251
Section of NGPA: 103
Operator: Inexco Oil Company
Well Name: Federal Joyce 1-19
Field: Don Draw Teapot
County: Converse
Purchaser: Inexo Gasoline Plant
Volume: 18.0 MMcf.

FERC Control Number: JD79-4406
API Well Number: 49-009-2; 358
Section of NGPA: 103
Operator: Inexo Oil Company
Well Name: Steinle Ranch 1-29
Field: Steinle Ranch Muddy
County: Converse
Purchaser: Inexco Gasoline Plant
Volume: 20 MMcf.

FERC Control Number: JD79-4407
API Well Number: 05-103-8176
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T73-30G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79-4408
API Well Number: 49-037-20948
Section of NGPA: -07
Operator: Texaco Inc.
Well Name: Table Rock Unit Well No. 23
Field: Table Rock
County: Sweetwater
Purchaser: Colorado Interstate Gas Company
Volume: 2,900 MMcf.

FERC Control Number: JD79-4409
API Well Number: 49-007-20377
Section of NGPA: 103
Operator: CIG Exploration, Inc.
Well Name: Federal No. 11
Field: Blue Gap
County: Carbon
Purchaser: Colorado Interstate Gas
Volume: 150 MMcf.

FERC Control Number: JD79-4410
API Well Number: 49-009-20977
Section of NGPA: 103
Operator: Inexco Oil Company
Well Name: Fed. Diane 2-5
Field: Well Draw
County: Converse
Purchaser: Inexco Gasoline Plant
Volume: 4 MMcf.

FERC Control Number: JD79-4411
API Well Number: 05-103-7995
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T73-1G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79-4412
API Well Number: 05103-7452
Section of NGPA: 103
Operator: Burr and Cooley Oil Company
Well Name: Federal No. 1
Field: Undesignated Dakota
County: Rio Blanco
Purchaser: Mountain Fuel Resources, Inc.
Volume: 150 MMcf.

FERC Control Number: JD79-4413
API Well Number: 05-103-7760
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T27-4G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79-4414
API Well Number: 49-009-21330
Section of NGPA: 103
Operator: Inexco Oil Company
Well Name: Federal Lebar 1-25
Field: Mikes Draw Teapot
County: Converse
Purchaser: Inexco Gasoline Plant
Volume: 5 MMcf.

FERC Control Number: JD79-4415
API Well Number: 4902320207
Section of NGPA: 103
Operator: Marathon Oil Company
Well Name: Wilson Ranch Unit No. 5
Field: Wilson Ranch Unit
County: Lincoln
Purchaser: Mountain Fuel Supply Company
Volume: 1606 MMcf.

FERC Control Number: JD79-4416
API Well Number: 49-009-21329
Section of NGPA: 103
Operator: Inexco Oil company
Well Name: Federal Regan 1-20
Field: Don Draw Teapot
County: Converse
Purchaser: Inexco Gasoline Plant
Volume: 8 MMcf.

FERC Control Number: JD79-4417
API Well Number: 05-103-7759
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Piceance Creek Unit No. T36-30G
Field: Piceance Creek
County: Rio Blanco
Purchaser: Northwest Pipeline Corporation
Volume: 335 MMcf.

FERC Control Number: JD79-4418
API Well Number: 49-007-20314
Section of NGPA: 103
Operator: CIG Exploration, Inc.
Well Name: Federal 10
Field: Blue Gap
County: Carbon
Purchaser: Colorado Interstate Gas Company
Volume: 122 MMcf.

FERC Control Number: JD79-4419
API Well Number: 49-035-20471
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Tip Top Unit No. T75-32G
Field: Tip Top Unit
County: Sublette
Purchaser: Northwest Pipeline Corporation
Volume: 190 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16653 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP78-305]

Columbia Gas Transmission Corp.; Petition To Amend

May 18, 1979.

On May 9, 1979, Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP78-305 a petition to amend the order of July 18, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Orange and Rockland Utilities, Inc. (O&R) for an extended one-year period, all as more fully set forth in the petition to amend.

It is indicated that pursuant to the order of July 18, 1978, Petitioner was authorized, *inter alia,* to transport natural gas for O&R for a period ending March 31, 1979, which gas Petitioner received at existing points of receipt from Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and redelivered to O&R at existing points of delivery in eastern New York. The authorized transportation was for volumes up to 1,000,000 Mcf annually withdrawn from National Fuel Gas Supply Corporation's (National Supply) storage, it is stated.

The petition states that National Supply has filed for authorization in Docket No. CP79-211 to render underground storage service for O&R,

available through interconnection with affiliated or foreign companies] or Article 7 [transactions with foreign companies]. The law judge found that this redefinition would provide the operating Committee with "unwarranted discretion." Considering all of the changes to the existing Agreement which are to be affected by Mod. 3, it is our conclusion at this time that legitimate reasons may well exist for lodging such discretion in the Operating Committee. However, to assure that the authority is exercised consistent with purposes intended, AEP is directed to file appropriate guidelines for including such purchases as primary capacity of the member instead of as foreign purchases under the Agreement. The law judge's determination on these matters is reversed.

Staff questioned the fact that while capacity *purchases* from foreign companies are to be included in member primary capacity, capacity *sales* are not excluded. AEP's response related only to inter-member transactions and is not relevant to sales made to foreign companies. We agree that any such sales of firm capacity should be deducted from the aggregate capacity of the particular member in calculating that member's primary capacity. AEP shall submit a revision to Section 5.7 to reflect this modification.

A question was raised in the initial decision regarding the status under the Agreement of the Cook Nuclear Generating Plant as part of I&M's primary capacity. Observing that the definition limits primary capacity to " steam generating plants and hydro," the law judge seemingly held that a revision of the definition would be a prerequisite to the inclusion of Cook capacity. Again, in dealing with production expenses, he concluded that the costs of nuclear generation would be excluded by the original Agreement.

We do not accept the law judge's interpretation that the Cook Nuclear Plant is not a "steam generating plant." The Cook units are pressured water reactor systems which utilize superheated water to produce steam which turns turbine-generators. While the source of the heat used to produce the steam differs from that in the more common fossil-fueled generating plant, we find no basis for distinction within the definition contained in the Interconnection Agreement to support a conclusion that the Cook Plant is not comprehended within the generic category of steam generating stations.

On other major change, beside that involving the capacity equalization charge, would be occasioned by Mod. 3.[8] Under Section 6.6 of the 1951 Agreement, economy energy was priced on the "split-savings" method, *i.e.*, the out-of-pocket incremental cost of the supplying member plus one-half of the difference between the supplier's incremental cost and the out-of-pocket decremental cost of the receiving member. However, the 1951 Agreement contained a limitation that the supplier could not receive more than 125% of his out-of-pocket costs. Mod. 3 would eliminate the ceiling so that economy energy would be priced wholly on a split-savings basis.

Staff opposed the basic split-savings method for the pricing of economy energy. Staff argued that the economy energy rate should be set at the supplier's cost, determined after the transactions have taken place, and should be based prospectively on the costs of the units used in supplying the economy energy. Staff's witness testified that the filed economy energy charge is unreasonable in that (1) it may have a greater tendency than the superceded charge to prolong unit outages and may influence decisions to retire less efficient generating units, and (2) it is based on "simplified cost computation methods not commonly used by centrally dispatched power pools." [9]

Elimination of the 125% ceiling has the effect of permitting an equal sharing of the cost savings from an economy energy transaction between the supplier and the recipient. Conversely, the operation of the ceiling in the 1951 Agreement could have the effect, depending on the particular circumstances, of allocating a disproportionate share of realized cost savings to the recipient of economy energy.

Staff's witness did not defend the ceiling, nor did he support its deletion. Rather, he recommended an economy energy rate based solely on the supplier's cost. Although we appreciate the concerns promoting staff's recommendation, there is no evidence in the record that any such inappropriate actions or imprudence occurred during the 25 years of operation under the 1951 Agreement. Moreover, we have continued to monitor the operations under Mod. 3 since it was placed in effect provisionally in 1975 and find no basis for concern in the areas raised by staff. In sum, we find that the split-savings provision in Mod. 3 is one of a variety of reasonable methods for allocating the savings derived from economy energy transactions and has been accepted in prior commission decision.[10] The amendment to the prior provision to eliminate the 125% ceiling is accepted and the provision in Mod. 3 is approved.

We return now to the basic issue in this proceeding, that of the method to be used in calculating the primary capacity equalization charge. We have referred earlier to the differences between staff's proposed charging method and that contained in Mod. 3. Full details are provided in the initial decision. It is our conclusion, after study of the record and consideration of the arguments presented by the parties, that the charges levied under the 1951 Agreement do not reflect the increased costs of recent capacity additions and are therefore outdated, unfair and unreasonable, and that a change is required to reflect the present day benefits and burdens relating to the generating capacity installed by the AEP member companies. It is our further conclusion that staff's proposal of basing the charge on the investment cost of the units supplying the needed capacity to the deficit members is the superior methods *in theory* in that it would assure that the member with surplus capacity was more completely compensated for the actual ownership costs incurred in making surplus capacity available to capacity deficient members. Moreover, the economic decisions of the various member companies related to power sources (new capacity additions, purchasing from pool members and purchases from foreign companies) would be more soundly based and the design of the rates charged by the companies, retail as well as wholesale, would be based on realistic costs—as would the economic decisions of the companies' retail customers relating to their energy supplies. We also are aware of other desirable (although less certain) advantages of staff's proposal, including, the timely installation of new generating units, the encouragement of competition among pool members and neighboring utilities, the promotion of regional coordination and, since the charges would be based on marginal cost pricing principles, the fostering of energy conservation at the retail level.

[8] We have referred earlier to the elimination of the "secondary energy" and "secondary capacity" classifications, and of a lag in the recovery of costs. These changes were approved in the initial decision and no exceptions were filed on these issues. These changes are confirmed.

[9] Tr. p. 314.

[10] *E.g., Gainesville Utilities Dept. v. Florida Power Corp.*, 40 FPC 1227, 1235, 1245 (1968); *Public Service Company of Indiana, et al.*, 47 FPC 1396, 1405, 1410 (1972). See 1970 National Power Survey, Part I, pages I-1/-8 and 9.

Nevertheless, despite our acknowledgement that staff's capacity equalization method has advantages over AEP's Mod. 3 proposal, it is our determination that its recommendation should not be adopted in this case. Instead, the Mod. 3 method for calculating the primary capacity equalization charge will be approved. However, as discussed hereafter, we do not accept the justification provided for the Monthly Carrying Charge Factor and therefore amend the factor provided in Mod. 3.

Our decision to allow the capacity equalization charge based on the average investment costs of the surplus members rests entirely on the circumstances present in this case, namely (1) the relative distribution of capacity surplus and deficiencies among the AED member companies; (2) the fact that the existing status has remained constant since 1968 and is expected to persist well into the 1980's; (3) recognition of the disproportionate investment in capacity made by I&M *vis-a-vis* the other members and the heavy burden of that investment on I&M's ratepayers—a burden which would be increased under staff's proposal—and (4) the fact that, in the final analysis, the issue involves a matter of degree since even staff and the Ohio Commission admit that the Mod. 3 charge is an improvement over that contained in the original Agreement.

We accept for present purposes AEP's assertion that the systems of the four member companies participating in the Interconnection Agreement are planned and operated as a single, integrated utility system with the result that new generating and bulk transmission facilities are planned on an overall AEP system basis with due consideration to the requirements of the individual members. We likewise are aware, as pointed out earlier, that a number of planned additions of new generating capacity have been cancelled or deferred. These additions would have eliminated, or at least significantly improved, the deficit capacity status of I&M and Appalachian and, we believe, would have provided for a more reasonable rotation of excess capacity among the member companies than exists at this time. While AEP is endeavoring to construct new capacity to meet its anticipated loads in the various service territories, it is obvious that no major change in the existing pattern of supply will occur for a number of years.

Although I&M made a heavy investment in its Cook Nuclear Plant—$990 million by the time of the second unit's activation in 1978—it realized only 2200 mW of capacity, or an investment cost of $450 per kW. Construction on the Gavin fossil fired plant, on the other hand, resulted in the addition of 2600 mW of capacity at a total cost of $588 million, or only $226 per kW. While hindsight may indicate that I&M would have been better served *from a capacity cost standpoint* by the construction of a non-nuclear generating plant, there is no suggestion that the decision to undertake this plant was in any way imprudent. We note also that for 1976 and 1977 the overall cost per kWh of the energy produced by the Cook Plant was relatively low. Although I&M, as a deficit member, does not receive payments for capacity under the Agreement, it and its customers have the direct benefits associated with the low fuel costs of the Cook Plant energy. It must also be recognized that the Cook Plant is situated on Lake Michigan at the northwestern point of the entire AEP companies' service area, near I&M's principal load centers and removed from access to the coal reserves and coal transportation facilities along the Ohio River. In essence, we find no reason to conclude, under these circumstances, that the primary capacity equalization charge is defective in failing to reflect the investment in capacity made by the deficient members.

While affirming the use of average embedded costs in this case, we emphasize that our determination is predicated on the make-up of the AEP system as it now exists. The decision on this issue should not be considered as precedential in any future consideration by the Commission of this Agreement or of other interconnection arrangements.

In addition to basing the capacity equalization charge on the average installed cost per kW of the surplus member, Mod. 3 specifies a "Monthly Carrying Charge Factor", used in calculating the payments for capacity, of 0.0146, or 17.5% on an annual basis. Capital costs are the largest single component of the carrying charge and have been included on the basis of an overall cost of money (rate of return) of 11.50%.[11] Staff's witness testified that if the investment portion of the equalization charge is based on the costs of the latest units, the appropriate capital costs should be then associated with the latest units. Staff's cost of capital evidence, however, was entirely on an embedded cost basis. While it made no attempt to calculate a rate of return on the capital cost of the latest units, it recommended that AEP be ordered to develop such a rate of return for each member.

We have decided, in our prior discussion, not to adopt staff's recommended "newest unit" theory for determining the capacity equalization charge. This being so, there is no merit to the suggestion for basing the rate of return on the associated capital costs of the lastest units.

In the event the Commission decided against the use of the costs of capital associated with latest units, staff proposed separate rates of return for the four member companies based in their embedded costs and respective capitalization as of December 31, 1974.[12] The overall returns ranged from 8.71% for Appalachian (12.75% on equity) to 9.47% for I&M (13.00% on equity).[13] AEP recommended the use of a single, system-wide capital structure and an overall return of 11.18% to 11.51%. The company requested a rate of 9.0% to 9.5% on debt, 11.0% to 11.5% on preferred stock, and 15% on equity.

Without unnecessarily prolonging this discusion, and considering the purposes served by the Carrying Charge Factor, we accept as reasonable the unified capital structure recommended by AEP in the calculation of the return allowance, *i.e.* 57% long-term debt, 10% preferred stock, and 33% common equity.[14] However, we will not accept AIP's incremental cost rates for debt and preferred stock. In line with the embedded cost approach being followed in this case, we believe that the costs of senior capital should also be reflected on an embedded cost basis and should additionally take into account the consolidated operations of the four Member Companies. The testimony of AEP witness Barber states that the weighted embedded costs of long-term debt and preferred stock issued by the four Member Companies were approximately 7.0% and 7.9%, respectively, at June 30, 1975.[15] It is evident, however, that the 7.0% cost of debt does not reflect the debt of the generating subsidiaries as we believe it should.[16]

On the other hand, staff's Exhibit S-5 does present the capital structures and cost rates of the four Member Companies on a consolidated basis as of December 31, 1974.[17] Employing the data in this exhibit, we can derive an embedded cost of debt of 7.75% and embedded cost of preferred stock of 7.41%. The preferred stock rate, however, does not include a 14% preferred stock issue in 1975 that is taken into account in AEP's

[11] Exh. P-8

[12] Exh. S-5, p.1.

[13] Staff recommended 9.29% overall for OPC (13% on equity) and 8.78% for KPC (11.5% on equity).

[14] Tr., p. 299.

[15] Tr., p. 270.

[16] Exh. P-11, p. 2 of 2.

[17] Tr., p. 439.

inter alios, for the extended period April 1, 1979, through March 31, 1980, which service National Supply has provided to O&R since the storage year 1975–76. Continuation of this service is requested since the long-term storage service for which authorization was sought in Docket No. CP76–492 has not received final Commission authorization, it is stated. Consequently, Petitioner requests authorization to transport gas for O&R for the extended one-year period.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16640 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

Florida; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 21, 1979.

On May 8, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Florida, Department of Natural Resources

FERC Control Number: JD79–4609
API Well Number: 0911320171
Section: 107
Operator: Exxon Corporation
Well Name: St. Regis Paper Co. No. 43–1
Field: Jay/Lec
County: Santa Rosa
Purchaser: Florida Gas Transmission Co.
Volume: 3200 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16654 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP 79-298]

Florida Gas Transmission Co., Application

May 21, 1979.

Take notice that on May 7, 1979, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP79–298 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation services it renders for Florida Power Corporation (FPC) and Florida Power & Light Company (FP&L) under FGT's T–1 (FPC) and T–2 (FP&L) rate schedules, and certain limited facilities related thereto, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that FPC purchased natural gas from Sun Oil Company (Sun) and The Pure Oil Company under a direct sales agreement and that FP&L purchased natural gas from Sun under a similar agreement. FGT further states that it transports said gas for FPC and FP&L under its Rate Schedules T–1 and T–2 and that both the gas purchase contracts and transportation agreements expire twenty years from the date of first delivery. It is stated that the transportation services for FPC and FP&L will terminate on June 1, 1979, and June 11, 1979, respectively. FGT indicates that abandonment authorization is required since the arrangements embodied in the T–1 and T–2 transportation agreements would expire by their own terms on June 1, and June 11, 1979, respectively, and that there have been no additional long term gas supplies committed under the respective gas purchase contracts with FPC and FP&L to warrant continuation of the transportation services.

Additionally, states FGT, it will be necessary to abandon a lateral that has been utilized to deliver natural gas to FPC's Inglis electric generating plant. It is stated that the facilities to be abandoned are 29.2 miles of 8-inch pipeline, a measuring station and miscellaneous facilities appurtenant thereto.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16641 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP 79-302]

Florida Gas Transmission Co.; Application

May 18, 1979.

Take notice that on May 8, 1979, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP79-302 an application pursuant to Section 7 of the Natural Gas Act and Sections 157.7(b), 157.7(c), 157.7(e) and 157.7(g) of the Regulations thereunder (18 CFR 157.7(b), 157.7(c), 157.7(e), and 157.7(g)) for a certificate of public convenience and necessity authorizing the construction during the twelve-month period commencing July 1, 1979, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof; authorizing the construction, for the same time period, and operation of facilities to make miscellaneous rearrangements on its system; for permission and approval to abandon during the same time period, direct sale service and facilities no longer required for deliveries of natural gas to Applicant's customers; and for a certificate authorizing the construction and for permission for and approval of the abandonment, during the same time period, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction of gas-purchase facilities to enable Applicant to connect its system with the facilities of an independent producer or other similar sellers, authorized to make a sale of gas to Applicant for resale in interstate commerce, or the system of another natural gas company authorized to transport gas for the account of, or for the exchange of gas with Applicant; to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant; to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sale measuring, regulating, and related facilities; [1] and to augment Applicant's ability to act with reasonable dispatch in the construction, relocation, and operation and abandonment of facilities which will not result in changing Applicant's system saleable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that it has experienced increased construction costs due to increases in material and labor costs and inflation. Consequently, Applicant requests that the Commission waive the monetary limitation prescribed under Sections 157.7(b) and 157.7(g) of the Regulations in order to permit Applicant to increase its budget limitations as follows:

(a) the total cost of the proposed gas-purchase facilities would not exceed $11,700,000, with no single offshore project to exceed $3,500,000; [2]

(b) the total cost of its proposed construction, relocation, removal or abandonment of field compression facilities would not exceed $4,000,000, with no single project to exceed $1,000,000.[3]

Applicant states that it would finance these costs with internally generated funds.

The application states that Applicant would not abandon any direct service unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has no further need for service would be filed with the Commission, it is said.

Any person desiring to be heard or to make any protest with reference to said application whould on or before June 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the natural Gas Act (17 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonments are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16642 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[1] Applicant states that it would abandon service and facilities only when deliveries to any one direct sale customer would not exceed 100,000 Mcf of natural gas during the last year of service.

[2] Applicant's presently authorized limitation for construction of gas-purchase facilities is $7,500,000, with no single onshore project to exceed $1,500,000 and no single offshore project to exceed $2,500,000.

[3] Applicant's presently authorized limitation for construction and removal or various compression and metering facilities is $3,000,000, with no single project to exceed $500,000.

[Docket No. GP79-18]

Guernsey Petroleum Corp.; Preliminary Finding

Issued May 18, 1979.

State of Ohio; § 103 NGPA Determination, Guernsey Petroleum Corp., Hardy No. 1-MD Well, API Well NO. 3411922880**14; Notice of Preliminary Finding.

On April 3, 1979, the Division of Oil and Gas of the Ohio Department of Natural Resources submitted to the Commission a notice of determination which states that the Guernsey Petroleum Corporation Hardy No. 1-MD well meets all the requirements of a new, offshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621. The Commission published the notice of the determination in the Federal Register on April 12, 1979.

A well qualifies as a new, onshore production well under section 103 only if, among other things, the surface drilling for the well began on or after February 19, 1977.

The well completion record accompanying the determination

indicates that surface drilling of the well commenced prior to September 24, 1972, but that the well was abandoned after this initial drilling. The record also show that on October 13, 1977, the well was reopened. This indicates that the surface drilling for this well was not begun on or after February 19, 1977.

Accordingly, the Commission hereby makes a preliminary finding (pursuant to 18 CFR 275.202(a)(c)) that the determination submitted by the Division of Oil and Gas of the Ohio Department of Natural Resources, that the Guernsey Petroleum Corporation Hardy No. 1–MD well qualifies as a new, onshore production well under section 103 of the NGPA, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–16648 Filed 5–25–79; 8:45 am]

BILLING CODE 6450–01–M

Louisiana; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 21, 1979.

On May 9, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana, Department of Natural Resources, Office of Conservation

FERC Control Number: JD79–4590
API Well Number: 17–705–20094
Section of NGPA: 102
Operator: Amoco Production Company
Well Name: Vermilion 14 S/L 862 Well No. 11–D
Field: Vermilion 14 State Lease 862
County: Vermilion
Purchaser: Trunkline Gas Company
Volume: 1200 MMcf.

FERC Control Number: JD79–4591
API Well Number: 1770840265
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: K7 D2 (K7 Sand Reservoir D2)
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–4592
API Well Number: 177190100401
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: J4 R D (J4 Sand Reservoir D)
Field: NA
County: NA
Purchaser: Southern Natural Gas Company
Volume: 66 MMcf.

FERC Control Number: JD79–4593
API Well Number: 427114028100S1
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: CS–6 Fault Block "B"
Field:
County:
Purchaser: Texas Gas Transmission Corp.
Volume: 5,900 MMcf.

FERC Control Number: JD79–4594
API Well Number: 1770840243
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: L2 RA (L2 Sand Reservoir A)
Field: NA
County: NA
Purchaser: Natural Gas Pipeline Company of America
Volume: .35 MMcf.

FERC Control Number: JD79–4595
API Well Number: 1770840202
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: H2 R D (H2 Sand Reservoir D)
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: .36 MMcf.

FERC Control Number: JD79–4596
API Well Number: 1770840268–01
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A–14
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 1977 MMcf.

FERC Control Number: JD79–4597
API Well Number: 427114024000S1
Section of NGPA: 102
Operator: Union Oil Company of California
Well Name: A–4
Field:
County:
Purchaser: Texas Gas Transmission Corp.
Volume: 3,400 MMcf.

FERC Control Number: JD79–4598
API Well Number: 1770840167
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: B–4
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 15 MMcf.

FERC Control Number: JD79–4599
API Well Number: 1770840270
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A–17
Field: NA
County: NA
Purchaser: Natural Gas Pipeline Co. of America
Volume: 35 MMcf.

FERC Control Number: JD79–4600
API Well Number: 1770840250
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A–9
Field: NA
County: NA
Purchaser: Natural Gas Pipeline Co. of America
Volume: 1100 MMcf.

FERC Control Number: JD79–4601
API Well Number: 1770840215
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: B–14
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 47 MMcf.

FERC Control Number: JD79–4602
API Well Number: 1770840182
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: B–2
Field: NA
County: NA
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 36 MMcf.

FERC Control Number: JD79–4603.
API Well Number: 1770840240.
Section of NGPA: 102.
Operator: Shell Oil Company.
Well Name: A–5.
Field: NA.
County: NA.
Purchaser: Natural Gas Pipeline Co. of America.
Volume: 550 MMcf.

FERC Control Number: JD79–4604.
API Well Number: 1770840234.
Section of NGPA: 102.
Operator: Shell Oil Company.
Well Name: A–3.
Field: NA.
County: NA.
Purchaser: Natural Gas Pipeline Co. of America.
Volume: 45 MMcf.

FERC Control Number: JD79–4605.
API Well Number: 1770840257.
Section of NGPA: 102.
Operator: Shell Oil Company.
Well Name: A–11.
Field: NA.
County: NA.
Purchaser: Natural Gas Pipeline Co. of America.
Volume: 55 MMcf.

FERC Control Number: JD79–4606.
API Well Number: 1770840232.
Section of NGPA: 102.
Operator: Shell Oil Company.
Well Name: A–11.
Field: NA.
County: NA.
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 3066 MMcf.

FERC Control Number: JD79–4607.
API Well Number: 770840264.
Section of NGPA: 102.
Operator: Shell Oil Company.
Well Name: I2 R D (I2 Sand Reservoir D).
Field: NA.
County: NA.
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 17 MMcf.

FERC Control Number: JD79-4608.
API Well Number: 177064024702.
Section of NGPA: 102.
Operator: Shell Oil Company.
Well Name: A-16
Field: NA.
County: NA.
Purchaser: Natural Gas Pipeline Co. of America.
Volume: 35 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16655 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ID-1599]

James F. Smith; Application

May 21, 1979.

Take notice that on May 11, 1979, James F. Smith, (Applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board of Directors and Chief Executive Officer, Orange and Rockland Utilities, Inc., Public Utility.
Chairman of the Board of Directors and Chief Executive Officer, Rockland Electric Company, Public Utility.
Chairman of the Board of Directors and Chief Executive Officer, Pike County Light & Power Company, Public Utility.

Any person desiring the be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commisssion and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16643 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

Louisiana, Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 18, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

State of Louisiana Department of Natural Resources Office of Conservation

FERC Control Number: JD79-4829
API Well Number: 171-132-0770
Section: 107
Operator: Phillips Petroleum Company
Well Name: CAM 1 RB SUA; Herbert B #1
Field: North Parcperdue
County: Vermillion
Purchaser: Dow Chemical Co.
Volume: 3,000 Mcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E. Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16656 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

Montana; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 21, 1979.

On May 4, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Montana Department of Natural Resources and Conservation Board of Oil and Gas Conservation

FERC Control Number: JD79-4385
API Well Number: 25-083-21201
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: Moore 23-24
Field: Mon Dak West
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 60.0 MMcf.

FERC Control Number: JD79-4386
API Well Number: 25-083-21164
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: BN 22-17
Field: Mon Dak West
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 16.0 MMcf.

FERC Control Number: JD79-4387
API Well Number: 25-083-21119
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: BN 21X-25
Field: Mon Dak West
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 110.0 MMcf.

FERC Control Number: JD79-4388
API Well Number: 25-083-21151
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: Swigart 24X-8
Field: Mon Dak West
County: Rickland
Purchaser: Montana Dakota Utilities
Volume: 234.0 MMcf.

FERC Control Number: JD-794389
API Well Number: 24-025-21128
Section of NGPA: 103
Operator: Shell Oil Company
Well Name: South Pine 34-30E
Field: Pine
County: Fallon
Purchaser: Montana Dakota Utilities Co.
Volume: 11.0 MMcf.

FERC Control Number: JD-79-4390
API Well Number: 25-083-212235
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: Sheetz 21X-29
Field: Mon Dak West
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 55.0 MMcf.

FERC Control Number: JD79-4391
API Well Number: 25-083-21174
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: BN 33X-35
Field: Mon Dak West
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 5.5 MMcf.

FERC Control Number: JD79-4392
API Well Number: 25-083-21175
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: Carleton 13X-5
Field: Mon Dak West
County: Rickland
Purchaser: Montana Dakota Utilities Company
Volume: 60.5 MMcf.
FERC Control Number: JD79-4393
API Well Number: 25-009-21056
Section of NGPA: 108
Operator: Trigg Drilling Company, Inc.
Well Name: State No. 1-16
Field: N. W. Clark's Fork
County: Carbon
Purchaser: Montana Power Company
Volume: 4.8 MMcf.
FERC Control Number: JD79-4394
API Well Number: 25-083-21151
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: Swigart 24X-8
Field: Mon Dak West
County: Richland
Purchaser: Montana Dakota Utilities Company
Volume: 48.0 MMcf.
FERC Control Number: JD79-4395
API Well Number: 25-025-21130
Section of NGPA: 103
Operator: Shell Oil Company
Well Name: Cabin Creek 24X-17
Field: Cabin Creek
County: Fallon
Purchaser: Montana Dakota Utilities Company
Volume: 46.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.W., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16652 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

[Project No. 2853]

State of Montana, Department of Natural Resources and Conservation; Application for Preliminary Permit

May 18, 1979.

Take notice that on June 13, 1978, the State of Montana, Department of Natural Resources and Conservation filed an application for preliminary permit [Pursuant to the Federal Power Act, 16 U.S.C. § 791(a)-825(r)] for a proposed hydroelectric project, to be known as the Broadwater Project, FERC No. 2853, located on the Missouri River in Broadwater County, Montana. The proposed project would be located on a navigable waterway of the United States and occupy in whole, or in part, lands of the United States. Correspondence with the Applicant should be directed to: Mr. Orrin A. Ferris, Administrator, Water Resources Division, Montana Department of Natural Resources and Conservation, Capitol Station, Helena, Montana 59601 and Mr. Richard L. Bondy, P.E., Chief, Engineering Bureau, Water Resources Division, Montana Department of Natural Resources and Conservation, Capitol Station, Helena, Montana 59601.

Purpose of Project—Project energy would be sold to electric cooperatives, or private power companies, or private industrial users, or an agency of the Federal Government.

Proposed Scope and Cost of Studies Under Permit—Applicant proposed to develop preliminary designs, conduct geologic explorations, collect environmental data, and prepare an application for FERC license, including an environmental report, final geologic exploration, field surveys, and final design. Applicant requests a permit for a 3-year period. Applicant estimates the costs of studies under the permit will be $150,000.

Project Description—The Applicant's proposed Broadwater Project would include six tube turbine-generator units with a total installed capacity of 14,400 kilowatts. The power plant would be located on the Missouri River at the downstream toe of the northern end of the existing Broadwater Dam and utilize the existing irrigation canal intake structure, with modifications for the passage of water. The average power head would be 28 feet.

The powerplant is estimated to be capable of producing 90 million kWh per year. Applicant proposes to install radial lift gates to replace the flashboards now in place. Each radial gate would be 24 feet wide and 12 feet high. The existing irrigation canal intake structure at the northern end of the dam would be replaced by the intake structure to the forebay for the powerplant. New radial gates would be installed at the upstream end of the forebay. The intake to the main canal would be relocated to the downstream (eastern) end of the forebay to provide regulation for irrigation water releases.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the permittee during the term of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other necessary information for inclusion in an application for a license. In this instance, Applicant seeks a 36-month permit.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If any agency does not file comments within the time set below, it will be presumed to have no comments.

Protests, Petitions To Intervene, and Agency Comments—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protests, petition to intervene, or agency comments must be filed on or before July 23, 1979. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16645 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP 76-492 et al.]

National Fuel Gas Supply Corp. et al.; Motion of Acceptance

May 18, 1979.

National Fuel Gas Supply Corporation and National Gas Storage Corporation, Docket No. CP76-492; National Fuel Gas Supply Corporation, Docket No. CP77-644; Transcontinental Gas Pipe Line Corporation, Docket No. CP77-472; Columbia Gas Transmission Corporation, Docket Nos. CP77-518 and CP77-519; Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Docket Nos. CP77-569, CP77-570, CP77-571; Notice of motion for acceptance of proposed stipulation and agreement.

Take notice that on May 15, 1979, National Fuel Gas Supply Corporation (Supply Corporation) and National Gas Storage Corporation (Storage Corporation), 308 Seneca Street, Oil City, Pennsylvania 16301, (the Companies) and the Commission Staff filed in Docket No. CP76-492, *et al.*, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure (18 CFR 1.18), a proposed stipulation and agreement, dated May 15, 1979, for the Commission's approval in these proceedings, all as more fully set forth in said stipulation and agreement which is on file with the Commission and open to public inspection.

The Companies and Staff urge the Commission to approve the proposed stipulation and agreement as a resolution of the issues remanded by the Commission's order of April 20, 1979, in these proceedings and to accept the motion for acceptance and the proposed stipulation and agreement for filing in lieu of briefs contemplated by the order of April 20, 1979. It is stated that the Companies and Staff have been authorized to state that The Public Service Commission of the State of New York supports the subject motion.

The Companies state that the requested authorization in Docket No. CP76-492, together with the related consolidated applications, would allow development of depleted production gas fields and a related abandonment necessary for rendering underground gas storage service to non-affiliated utility customers. An initial decision approving the project was issued May 30, 1978, it is indicated. By order issued April 20, 1979, the proceeding was reopened and the Commission ordered expedited evidentiary proceedings to consider possible difficulties in confining the storage gas at two pool boundary locations, it is said. Hearings were held and concluded. The proposed stipulation and agreement resulted from several conferences among the parties.

The proposed stipulation and agreement provides the following:

Article I

The undersigned parties to these consolidated proceedings stipulate and agree that the certificates of public convenience and necessity and authorization for abandonment requested by applicants in these consolidated proceedings should issue forthwith as approved and adopted by the May 30, 1978 Initial Decision by Presiding Administrative Law Judge William Jensen except as provided for herein and as the Commission may decide with respect to the exceptions filed by the parties in this proceeding. The undersigned also agree that the provisions agreed to herein are solely for the purpose of resolving the issues remanded by the Commission in its April 20, 1979 order and shall not be cited in any other proceeding as an admission of fact or as precedent.

Article II

Construction, acquisition, operation, service and abandonment (collectively "development") of the underground gas storage pools and appurtenant facilities proposed in Docket CP76-492, as amended and supplemented, should proceed in more than one phase. Issuance of a certificate for Phase I only would be appropriate at this time. Phase I would be characterized by the facilities and service enumerated below. Storage Corporation will apply in this docket for further authorization to develop and to render service up to the design top gas capacity of the project, 23.5 Bcf, unless gas containment or other engineering problems prohibit such development.

A. Phase I shall commence with issuance of a certificate of public convenience and necessity as contemplated herein and shall expire March 31, 1982.

B. Service to be rendered from the West Independence and Beech Hill facilities during Phase I shall be limited to the twelve month period commencing April 1, 1981 and shall not exceed 7.1 Bcf of top gas capacity for that period.

C. At East Independence construction of new facilities shall be limited during Phase I to one (1) injection/withdrawal well with appurtenant gathering line and one (1) observation well. There will be no increase in the certificated capacity of East Independence during Phase I.

D. Development of West Independence during Phase I will be accomplished in two distinct periods of time, referred to as "First Year" and "Second Year".

1. The First Year shall commence upon issuance of a certificate and shall end March 31, 1981. During the First Year, construction of new facilities shall be limited to the following:

i. three (3) injection/withdrawal wells in the eastern portion of the field as defined on the attached Schedule A, page 1, which is incorporated herein by reference;

ii. four (4) injection/withdrawal wells in the western portion of the field as defined on Schedule A, page 1, hereto, which wells only shall be used as observation wells during the First Year;

iii. one (1) observation well to be located near the pool boundary or in the adjacent portion of the buffer zone (which extends 3,000 feet beyond the pool boundary and is hereinafter referred to as the "buffer zone") in the area lying generally to the north of Well No. 451 (the location of Well No. 451 is identified on Schedule A, page 1, hereto);

iv. trunkline facilities proposed in the Application, as amended, in this docket;

v. gathering line facilities necessary to connect the trunkline to new and reworked injection/withdrawal wells (which shall not include those four (4) wells identified in item ii. above); and

vi. injection of base gas not to exceed 3.6 Bcf.

2. During the period within Phase I beginning April 1, 1981 and ending March 31, 1982 (Second Year) the four (4) injection/withdrawal wells identified in item ii. above may be connected by gathering lines to the trunkline system; provided, however, that no physical activity (except surveying) at the site of such gathering lines shall be commenced until the report to the Commission for the period ending March 31, 1981 described below in paragraph I has been filed with the Commission. All First Year construction of new facilities, including injection of base gas, at West Independence not completed during the First Year may be continued during the Second Year, except that the observation well identified at item iii. above must be completed in the First Year. During the Second Year 1.4 Bcf of base gas (the remaining base gas

proposed for West Independence) and up to 4.1 Bcf of top gas may be injected.

E. Development of Beech Hill during Phase I will be accomplished in the same two year periods defined by paragraph "D" above, as "First Year" and "Second Year".

1. During the First Year, construction of new facilities shall be limited to the following:

i. three (3) injection/withdrawal wells;

ii. one (1) observation well;

iii. trunkline facilities proposed in the Application, as amended, in this docket;

iv. gathering facilities necessary to connect the truckline to new and reworked injection/withdrawal wells;

v. compressor station facilities proposed in the Application, as amended, in this docket; and

vi. injection of base gas not to exceed 2.4 Bcf.

2. During the Second Year 3.4 Bcf of base gas (the remaining base gas proposed for Beech Hill) and up to 3 Bcf of top gas may be injected. All First Year construction of new facilities, including injection of base gas, at Beech Hill not completed during the First Year may be continued during the Second Year.

F. Existing Wells No. 541 and No. 488 in the Beech Hill area as shown on Schedule A, page 2, shall be utilized as observation wells.

G. No injection/withdrawal wells shall be located outside the respective pool boundaries proposed in the Application, as amended, in this docket without further authorization from the Commission. Observation/saltwater disposal wells may be located within the pool boundaries or their respective buffer zones.

H. The three storage pools of the project, East Independence, West Independence and Beech Hill, shall be operated in as close to equilibrium pressure as is operationally possible.

I. The reports required by the Condition of Grant No. 26 appearing on page 99 of the May 30, 1978 Initial Decision shall be filed on an individual pool basis within 30 days following each October 31 and March 31 during Phase I and shall contain data current through such respective dates. The first report shall be within 30 days following October 31, 1979. Each such report, in addition to the requirements of the May 30, 1978 Initial Decision, shall include a detailed accounting for and description of facilities constructed within the proposed project area covered under Section 2.55 of the Commission's Rules of Practice and Procedure.

J. This Proposed Stipulation and Agreement shall not affect the Companies' burden of proof in any proceeding to determine rates for the proposed storage service, and the Companies' burden of proof in such proceeding shall be the same as though the proposed development were certificated without the existence of this Proposed Stipulation and Agreement.

K. Staff has testified in this proceeding (Tr. 1710–1711) that the environmental impact of the entire project proposed in the consolidated dockets in this proceeding does not require an environmental impact statement. The environmental impacts of activity which would be authorized under Phase I are less than those considered by Staff in that assessment and, therefore, such assessment applies to Phase I. Nothing in this Proposed Stipulation and Agreement is intended to be in derogation of the findings made in the May 30, 1978 Initial Decision that an environmental impact statement is unnecessary (Initial Decision, page 74).

L. This Proposed Stipulation and Agreement shall not affect the provision contained in Condition of Grant No. 2 at page 96 of the May 30, 1978 Initial Decision respecting exclusion from the rate base of Supply Corporation of the attributable values of properties transferred by it to Storage Corporation.

M. The signatory parties agree that the modifications contained in this Proposed Stipulation and Agreement are designed to accomodate the problems of a technical nature raised by Staff as indicated above. Nothing in this Proposed Stipulation and Agreement is intended to be in derogation of the findings made in the May 30, 1978 Initial Decision with respect to the existence of a market for the storage service proposed. Given the modifications contained in this Proposed Stipulation and Agreement, the Companies shall file within 90 days of certification for Commission approval a schedule setting forth the service to be rendered to each of the proposed customers, together with supporting documentation. Within this same 90 day period, Supply Corporation shall apply for authorization to provide top gas storage service for these customers to the extent such service is not available during Phase I from the proposed project in this proceeding and to the extent Supply Corporation's available top gas capacity permits."

Any person desiring to be heard or to make any protest with reference to said motion and proposed stipulation and agreement should on or before May 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16644 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 21, 1979.

On May 9, 1979, the Federal Energy Regulatory Commission received notices from the jurisdiction agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD–4610.
API Well Number: 30–045–22419.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Riddle E 1–A.
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 159 MMcf.

FERC Control Number: JD–4611.
API Well Number: 30–045–22369.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Turner 1–A.
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 270 MMcf.

FERC Control Number: JD–4612.
API Well Number: 30–045–22753.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: San Juan 10–A.
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 361 MMcf.

FERC Control Number: JD–4613.
API Well Number: 30–045–22502.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Lucerne A 3A.
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 395 MMcf.

FERC Control Number: JD–4614.
API Well Number: 30–045–22502.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Lucerne A 3A (Mesaverde).
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 310 MMcf.

FERC Control Number: JD–4615.
API Well Number: 30–045–22732.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Atlantic C No. 1A.
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 290 MMcf.

FERC Control Number: JD–4616.
API Well Number: 30–045–22732.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Atlantic C No. 1A (Mesaverde).
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 350 MMcf.

FERC Control Number: JD–4617.
API Well Number: 30–045–22417.
Section of NGPA: 103.
Operator: El Paso Natural Gas Company.
Well Name: Gartner 3–A.
Field: Blanco.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 58 MMcf.

FERC Control Number: JD–4618.
API Well Number: 30039079010000.
Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: SJ 30–4 Unit No. 22.
Field: Blanco.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 4.0 MMcf.

FERC Control Number: JD–4619.
API Well Number: 30045100550000.
Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: Heaton 3.
Field: Blanco Mesaverde Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 11.0 MMcf.

FERC Control Number: JD–4620.
API Well Number: 30045093880000.
Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: Kessler 1.
Field: Aztec.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 16.8 MMcf.

FERC Control Number: JD–4621.
API Well Number: 30039068180000.
Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: Harrington No. 4R.
Field: Blanco.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 15.0 MMcf.

FERC Control Number: JD–4662.
API Well Number: 30045085950000.
Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: Lackey C 1.
Field: Blanco Mesaverde Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 1.0 MMcf.

FERC Control Number: JD79–4623
API Well Number: 30045071990000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Omler 6
Field: Fulcher Kutz
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 17.5 MMcf.

FERC Control Number: JD79–4624
API Well Number: 30039077810000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 30–4 Unit No. 20
Field: Blanco
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

FERC Control Number: JD79–4625
API Well Number: 30039072620000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28–6 Unit No. 33
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.6 MMcf.

FERC Control Number: JD79–4626
API Well Number: 30–039–21376
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit 290
Field: Ballard
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 51 MMcf.

FERC Control Number: JD79–4627
API Well Number: 30–045–22368
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Gartner 5–A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 298 MMcf.

FERC Control Number: JD79–4628
API Well Number: 30–039–21393
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: San Juan 28–5 Unit No. 97
Field: Basin
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 111 MMcf.

FERC Control Number: JD79–4629
API Well Number: 30–045–22511
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Mudge 2A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 37 MMcf.

FERC Control Number: JD79–4630
API Well Number: 30–045–22733
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Mudge 10–A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 244 MMcf.

FERC Control Number: JD79–4631
API Well Number: 30–045–22816
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Neil 8A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 337 MMcf.

FERC Control Number: JD79–4632
API Well Number: 30–045–22800
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Atlantic C 3A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 373 MMcf.

FERC Control Number: JD79–4633
API Well Number: 30–045–22390
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Atlantic C 4–A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 351 MMcf.

FERC Control Number: JD79–4634
API Well Number: 30–045–22426
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Schwerdtferger 1A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 265 MMcf.

FERC Control Number: JD79–4635
API Well Number: 30–045–22716
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Hughes 2–A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 244 MMcf.

FERC Control Number: JD79–4636
API Well Number: 30–045–22504
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Lucerne A 2A Mesaverde
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 386 MMcf.

FERC Control Number: JD79–4637
API Well Number: 30–045–22504
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Lucerne A 2A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 174 MMcf.

FERC Control Number: JD79–4638
API Well Number: 30–045–22423
Section of NGPA: 103
Operator: El Paso Natural Gas Company

Well Name: Kernaghan 1A
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 313 MMcf.

FERC Control Number: JD79-4639
API Well Number: 30-045-20594
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Huerfano Unit No. 14R
Field: Kutz
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-4640
API Well Number: 30039600580000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27-5 Unit No. 12
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 16.0 MMcf.

FERC Control Number: JD79-4641
API Well Number: 30039078740000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 30-6 Unit 40X
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 16.1 MMcf.

FERC Control Number: JD79-4642
API Well Number: 30045072570000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Russell A 1
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79-4643
API Well Number: 30045210230000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Mudge 40 P.C.
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 18.0 MMcf.

FERC Control Number: JD79-4644
API Well Number: 30039067870000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27-4 Unit No. 11
Field: Tapacito
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

FERC Control Number: JD79-4645
API Well Number: 30039072180000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-4 Unit No. 8
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79-4646
API Well Number: 30039077930000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 30-6 Unit No. 11
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD79-4647
API Well Number: 30045093570000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Sunray D 2
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 17.0 MMcf.

FERC Control Number: JD79-4648
API Well Number: 30039069640000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27-5 Unit No. 16
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79-4649
API Well Number: 30045210940000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Gelbke 1
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 13.5 MMcf.

FERC Control Number: JD79-4650
API Well Number: 30039070380000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 27-5 Unit No. 3
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 1.0 MMcf.

FERC Control Number: JD79-4651
API Well Number: 30039072710000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-6 Unit No. 32
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79-4652
API Well Number: 30-045-22735
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Neil 2A Mesaverde
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 286 MMcf.

FERC Control Number: JD79-4653
API Well Number: 30039067790000
Section of NGPA: 108
Operator: EL PASO NATURAL GAS COMPANY
Well Name: SJ 27-4 UNIT NO. 9
Field: TAPACITO
County: RIO ARRIBA
Purchaser: EL PASO NATURAL GAS COMPANY
Volume: 5.5 MMcf.

FERC Control Number: JD79-4654
API Well Number: 30-045-22735
Section of NGPA: 103
Operator: EL PASO NATURAL GAS COMPANY
Well Name: NEIL 2A
Field: BLANCO
County: SAN JUAN
Purchaser: EL PASO NATURAL GAS COMPANY
Volume: 67 MMcf.

FERC Control Number: JD79-4655
API Well Number: 30-045-22395
Section of NGPA: 103
Operator: EL PASO NATURAL GAS COMPANY
Well Name: BARNES 2A MESAVERDE
Field: BLANCO
County: SAN JUAN
Purchaser: EL PASO NATURAL GAS COMPANY
Volume: 148 MMcf.

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Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 13, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16631 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

New Mexico; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 18, 1979.

On May 8, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of New Mexico, Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79-4444
API Well Number: 30039-20580
Section of NGPA: 108
Operator: Chace Oil Company, Inc.
Well Name: Jicarilla 70-3
Field: Ballard P. C. and Gallup Dakota Lindrith South
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume:

FERC Control Number: JD79-4445
API Well Number: 30039-20528

Section of NGPA: 108
Operator: Chace Oil Company, Inc.
Well Name: Jicarilla 71-5
Field: Ballard P. C.
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-4446
API Well Number: 30-039-21230
Section of NGPA: 108
Operator: Chace Oil Company, Inc.
Well Name: Jicarilla 70-4
Field: Ballard P. C.
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.4 MMcf.

FERC Control Number: JD79-4447
API Well Number: 30039063070000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Klein 1
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 2.6 MMcf.

FERC Control Number: JD79-4448
API Well Number: 30045090290000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Ludwick 5
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.

FERC Control Number: JD79-4449
API Well Number: 30039072630000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit 11
Field: Blanco, Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 17.5 MMcf.

FERC Control Number: JD79-4450
API Well Number: 30039061640000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit 49
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 9.9 MMcf.

FERC Control Number: JD79-4451
API Well Number: 30039209450000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 273
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 20.0 MMcf.

FERC Control Number: JD79-4452
API Well Number: 30039206090000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 29-7 Unit 104
Field: Blanco Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79-4453
API Well Number: 30039071680000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit 3
Field: Blanco South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79-4454
API Well Number: 30039070140000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit NP 43
Field: Blanco South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 5.0 MMcf.

FERC Control Number: JD79-4455
API Well Number: 30045063340000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Cleveland No. 2
Field: Fulcher Kutz Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.4 MMcf.

FERC Control Number: JD79-4456
API Well Number: 30045066750000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Dryden 4
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 10.0 MMcf.

FERC Control Number: JD79-4457
API Well Number: 30039074070000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit NP 12
Field: Blanco Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

FERC Control Number: JD79-4458
API Well Number: 30039070740000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-7 Unit NP 40
Field: Blanco South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 3.0 MMcf.

FERC Control Number: JD79-4459
API Well Number: 30045068570000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Blanco 13
Field: Blanco South Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-4460
API Well Number: 3003906010000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Hall 6
Field: Tapacito Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 2.0 MMcf.

FERC Control Number: JD79-4461
API Well Number: 30045093290000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Ludwick 6
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 17.2 MMcf.

FERC Control Number: JD79-4462
API Well Number: 30045090610000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Ludwick 4
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 6.6 MMcf.

FERC Control Number: JD79-4463
API Well Number: 30045068560000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Blanco 14
Field: Blanco Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-4464
API Well Number: 30045211700000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Hughes a 9
Field: Blanco Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.4 MMcf.

FERC Control Number: JD79-4465
API Well Number: 30045054690000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Quitzau
Field: Ballard Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-4466
API Well Number: 30045055320000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Quitzau 4
Field: Ballard Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79-4467
API Well Number: 30039054030000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Hill 6
Field: Blanco South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 1.0 MMcf.

FERC Control Number: JD79-4468
API Well Number: 30039207250000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 200
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-4469
API Well Number: 30039211740000
Section of NGPA: 108
Operator: El Paso Natural Gas Company

Well Name: Canyon Largo Unit No. 289 PC
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 16.4 MMcf.

FERC Control Number: JD79-4470
API Well Number: 30045602080000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Sellers
Field: Aztec Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-4471
API Well Number: 30039059410000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Hill 7
Field: Tapacito Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79-4472
API Well Number: 30039600480000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit NP 78
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 9.9 MMcf.

FERC Control Number: JD79-4473
API Well Number: 30039207610000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 194
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.7 MMcf.

FERC Control Number: JD79-4474
API Well Number: 30039207040000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 197
Field: Ballard Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 9.0 MMcf.

FERC Control Number: JD79-4475
API Well Number: 30039207610000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 211
Field: Ballard
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7.0 MMcf.

FERC Control Number: JD79-4476
API Well Number: 30039205420000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 179
Field: Ballard
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 0.0 MMcf.

FERC Control Number: JD79-4477
API Well Number: 30039207410000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 205
Field: Blanco
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD79-4478
API Well Number: 30039209320000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 261
Field: Ballard
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-4479
API Well Number: 30039054140000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit No. 106
Field: Ballard
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 5.8 MMcf.

FERC Control Number: JD79-4480
API Well Number: 30-045-06884
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P.C. No. 63
Field: W. Kutz P.C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 5 MMcf.

FERC Control Number: JD79-4481
API Well Number: 30-045-07074
Section of NGPA: 108
Operator: Energy Reserves Group, Inc.
Well Name: Gallegos Canyon Unit P.C. No. 41
Field: W. Kutz P.C.
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8 MMcf.

FERC Control Number: JD79-4482
API Well Number: 30-015-22049
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Williamson BC No. 4
Field: Burton Flat Atoka, North
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 13.160 MMcf.

FERC Control Number: JD79-4483
API Well Number: 30-015-22120
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Federal HQ No. 1
Field: Wildcat Canyon
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 2.270 MMcf.

FERC Control Number: JD79-4484
API Well Number: 30-015-22247
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Lechuquilla Canyon Unit No. 6
Field: Crooked Creek Morrow
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 977.520 MMcf.

FERC Control Number: JD79-4485
API Well Number: 30-015-22202
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Huber IA Federal No. 2
Field: Huber IA Federal No. 2
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 32.780 MMcf.

FERC Control Number: JD79-4486
API Well Number: 30-015-22377
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Yates 6 Federal No. 2
Field: Eagle Creek Atoka Morrow, east
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 308.710 MMcf.

FERC Control Number: JD79-4487
API Well Number: 30-015-22351
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Lechuquilla Canyon Unit No. 7
Field: Crooked Creek Morrow
County: Eddy
Purchaser: El Paso Natural Gas Company
Volume: 768.200 MMcf.

FERC Control Number: JD79-4488
API Well Number: 30-045-22948
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Suter 2A MV
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 132 MMcf.

FERC Control Number: JD79-4489
API Well Number: 30-045-22956
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Johns Federal 2A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 202 MMcf.

FERC Control Number: JD79-4490
API Well Number: 30-045-22590
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Suter 1A MV
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 185 MMcf.

FERC Control Number: JD79-4491
API Well Number: 30-045-22591
Section of NGPA: 103
Operator: Mesa Petroleum Company
Well Name: Johns Federal 1A
Field: Blanco Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 212 MMcf.

FERC Control Number: JD79-4492
API Well Number: 30-045-21869
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Charles No. 1
Field: Kutz Fruitland
County: San Juan
Purchaser: Southern Union Gathering Company
Volume: 12 MMcf.

FERC Control Number: JD79-4493
API Well Number: 30-045-21470
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Canyon No. 14
Field: Basin Dakota

County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 3 MMcf.

FERC Control Number: JD79-4494
API Well Number: 30-045-07823
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Callow No. 3
Field: Jutzpictured Cliffs West
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4 MMcf.

FERC Control Number: JD79-4495
API Well Number: 30-045-07884
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Callow No. 5
Field: Kutz Pictured Cliffs West
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 7 MMcf.

FERC Control Number: JD79-4496
API Well Number: 30-045-22634
Section of NGPA: 103
Operator: W. M. Gallaway
Well Name: Delo No. 12
Field: Bisti Gallup
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 140 MMcf.

FERC Control Number: JD79-4497
API Well Number: 30-045-07796
Section of NGPA: 108
Operator: W. M. Gallaway
Well Name: Callow No. 4
Field: Kutz Pictured Cliffs West
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4 MMcf.

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Kenneth F. Plumb,
Secretary.

[FR Doc. 79-16657 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-304]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

May 18, 1979.

Take notice that on May 10, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-304 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas during the period ending October 31, 1979, for Public Service Electric and Gas Company (Public Service), an existing customer of Tennessee, for the purpose of supplanting, during the proposed transportation period, middle distillates and/or residual fuel oil presently used by Public Service in the generation of electric energy at existing generating stations which have been exempted from the provisions of the Powerplant and Industrial Fuel Use Act of 1978, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that the gas would be made available to Tennessee by Equitable Gas Company (Equitable), the seller of the gas to Public Service, at Tennessee's existing Pittsburgh terminal sales meter station, Allegheny County, Pennsylvania. Tennessee proposes to deliver equivalent volumes, less transportation fuel and use volumes, to Public Service at the Ramsey sales meter station in Bergen County, New Jersey, and/or to Transcontinental Gas Pipe Line Corporation (Transco), for Public Service's account, at the Rivervale sales meter station also in Bergen County.

Tennessee contemplates transporting up to a total of 4,000,000 Mcf during the proposed term, with 35,000 Mcf, less transportation fuel and use volumes, being transported on a peak day and approximately 25,000 Mcf transported on an average day. Tennessee states that the gas would be transported only to the extent its operating conditions and available capacity permit.

Applicant proposes to charge Public Service 16.82 cents per Mcf for gas delivered to Transco, for Public Service's account, at Rivervale and 16.47 cents per Mcf for gas delivered to Public Service at Ramsey.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

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

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-16647 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-296]

Texas Eastern Transmission Corp., Application

May 18, 1979.

Take notice that on May 4, 1979, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP79-296 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 8,000 dekatherms equivalent of natural gas per day, on an interruptible basis, for Public Service Electric and Gas Company (Public Service),[1] all as more

[1] Pursuant to the gas transportation agreement dated April 26, 1979.

fully set forth in the application which is on file with the Commission and open for public inspection.

Texas Eastern states that Public Service has arranged to purchase natural gas from National Gas and Oil Corporation (National) for electric generation to displace oil. Texas Eastern further states that it would receive from National 8,000 dekatherms of natural gas per day at an existing point of interconnection between Texas Eastern and National located in Perry County, Ohio, or at other mutually agreeable points of receipt in Texas Eastern's Zone C, and would transport and redeliver equal quantities, less quantities for fuel and shrinkage, to Public Service at the existing point of interconnection with Texas Eastern located in Union County, New Jersey or at other mutually agreeable points, for a term ending October 31, 1979.

Texas Eastern asserts that it would charge Public Service a rate of 16.08 cents per dekatherm delivered by Texas Eastern to or for the account of Public Service; provided, however, for quantities delivered by Texas Eastern which, when added to quantities delivered by Texas Eastern to Public Service under Texas Eastern's Rate Schedules TS-1 and ISS and other transportation agreements, exceed the combined total curtailment of gas sales to Public Service under all of Texas Eastern's firm sales rate schedules, the rate would be 18.80 cents.[2] Texas Eastern would retain for fuel use and shrinkage an amount of gas equal to 3 percent of the quantities transported, it is said.

The application indicates that Texas Eastern's customers would not be adversely affected by the proposed transportation service. The said gas transportation agreement provides that this proposed service is subject to interruption and is conditioned upon the availability of sufficient capacity for Texas Eastern to provide services under its firm sales schedules and under its Rate Schedules TS, TS-1, TS-2, and ISS, it is further said.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16648 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[2] Subject to the outcome of proceedings at Docket No. RP78-87.

[Docket No. CP78-324]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

May 18, 1979.

Take notice that on May 7, 1979, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP78-324 a petition to amend the order of August 2, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), so as to authorize the transportation of natural gas for an extended 1-year period for Lithium Corporation of America (Lithium), an existing industrial customer of Public Service Company of North Carolina (PSCNC), one of Petitioner's existing customers served under Rate Schedule CD-2, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of August 2, 1978, Petitioner was authorized to transport on an interruptible basis up to 1,500 Mcf of natural gas per day for Lithium. It is stated that the underlying gas purchase contract between Lithium and First Energy Corporation (Energy) was for a primary term of one year from the date of initial delivery with initial delivery being August 18, 1978. However, it is said, by letter agreement dated March 22, 1979, Lithium and Energy have agreed to extend the term of the gas purchase contract for an additional one-year term and have renegotiated the price of the gas, establishing it as the maximum lawful price applicable under the Natural Gas Policy Act of 1978.

Consequently, Lithium has requested that Petitioner provide the transportation service for an additional one-year period. Petitioner states that the extended service proposed herein would assist Lithium in meeting its critical gas supply requirements.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16649 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ID-1863]

Victor J. Blanchet, Jr.; Application

May 21, 1979.

Take notice that on May 7, 1979, Victor J. Blanchet, Jr. (Applicant) filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Orange and Rockland Utilities, Inc., Public Utility.

Vice President, Rockland Electric Company, Public Utility.

Vice President, Pike County Light & Power Company, Public Utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16650 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

West Virginia; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 21, 1979.

On May 14, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

West Virginia Department of Mines, Oil and Gas Division

FERC Control Number: JD79-4787
API Well Number: 47-087-2-0915-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: I. Morris Perot No. 2
Field: Clover Rush Run
County: Roane
Purchaser: H. C. Boggs Gas Company
Volume: 5.553 MMcf.

FERC Control Number: JD79-4788
API Well Number: 47-013-0-1697-0000
Section of NGPA: 108
Operator: W. L. Heeter
Well Name: John W. Robinson No. 1
Field: Sycamore Millstone
County: Calhoun
Purchaser: Consolidated Gas Supply Company
Volume: 3.677 MMcf.

FERC Control Number: JD79-4789
API Well Number: 47-013-0-1780-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: John W. Robinson No. 2
Field: Sycamore Millstone
County: Calhoun
Purchaser: Consolidated Gas Supply Company
Volume: 3.679 MMcf.

FERC Control Number: JD79-4790
API Well Number: 47-087-2-0151-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: E. C. Arnott No. 1
Field: Spencer
County: Roane
Purchaser: H. C. Boggs Gas Company
Volume: 3.5 MMcf.

FERC Control Number: JD79-4791
API Well Number: 47-021-2979
Section of NGPA: 108
Operator: Braxton Oil and Gas Corporation
Well Name: Stout No. 1
Field: Sand Fork
County: Gilmer
Purchaser: Consolidated Gas Supply Corp.
Volume: 30 MMcf.

FERC Control Number: JD79-4792
API Well Number: 47-007-1013
Section of NGPA: 108
Operator: Braxton Oil and Gas Corporation
Well Name: Braxton No. 1
Field: Heaters
County: Braxton
Purchaser: Equitable Gas Company
Volume: MMcf.

FERC Control Number: JD79-4793
API Well Number: 47-007-1200
Section of NGPA: 103
Operator: Braxton Oil and Gas Corporation
Well Name: Hunter No. 1
Field: Chapel German
County: Braxton
Purchaser: Consolidated Gas Supply Corp.
Volume: 12 MMcf.

FERC Control Number: JD79-4794
API Well Number: 47-013-2-1337-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: D. O. Chenoweth No. 1
Field: Orma
County: Calhoun
Purchaser: Consolidated Gas Supply Corp.
Volume: 6.926 MMcf.

FERC Control Number: JD79-4795
API Well Number: 47-087-2-1255-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: James A. Gandee No. 1
Field: Walton
County: Roane
Purchaser: Pennzoil Company
Volume: .452 MMcf.

FERC Control Number: JD79-4796
API Well Number: 47-087-2-1439-0000
Section of NGPA: 108
Operator: William L. Heeter
Well Name: James A. Gandee No. 2
Field: Walton
County: Raone
Purchaser: Pennzoil Company
Volume: .450 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations, may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 13, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16658 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-292]

Cimarron Transmission Co.; Application

May 17, 1979.

Take notice that on May 2, 1979, Cimarron Transmission Company (Cimarron), 58 Broadlawn Village, Ardmore, Oklahoma 73401, filed in Docket No. CP79-292 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing June 1, 1979, and operation of facilities to enable it to take into its certificated main pipeline system natural gas which would be purchased or received from producers or other similar sellers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Cimarron's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Cimarron.

Cimarron states that the total cost of the proposed facilities would not exceed $100,000 and that no single project would exceed $25,000. Cimarron proposes to finance the costs of the proposed facilities from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16225 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. RP72-142, RP76-135, RP78-76 (PGA79-2 and AP79-2)]

Cities Service Gas Co.; Order Accepting, Subject to Condition, and Suspending Rate Increase, Granting Waiver, and Establishing Hearing Procedures

May 18, 1979.

On March 22, 1979, Cities Service Gas Company (Cities Service) filed Second Revised Third Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1, in which it proposed to increase its rates charged through its purchased gas adjustment clause by 34.8 million dollars. The proposed rate increase would, if approved, result in a unit increase of 11.11 cents per Mcf above current levels.[1] In particular, the proposed increased rates reflect—

(1) An increase of 9.73 cents per Mcf in current purchased gas costs, including certain costs attributable to the Natural Gas Policy Act of 1978 (NGPA);

(2) An increase of 1.19 cents per Mcf in the PGA surcharge adjustment, intended to recoup 15.6 million dollars in unrecovered purchase costs; and

(3) An increase of .19 cents per Mcf in the advance payment adjustment, due to the elimination of a negative adjustment of .29 cents per Mcf, and a reduction of .10 cents per Mcf to reflect a reduction in the advance payment balance.

Cities Service proposes that its increased rates be made effective on April 23, 1979.

Notice of Cities Service's PGA filing was issued on April 4, 1979, and comments were required to be filed on or before April 17, 1979.

The Commission notes that Cities Service's proposed increase in purchased gas costs includes increases in costs of gas supplied by producers as well as pipeline-suppliers, and is in part attributable to increases occasioned by the implementation of the NGPA. Accordingly, we will require Cities Service to submit substantiation for that portion of the increase attributable to the NGPA. The data which Cities Service shall file is listed in Appendix A of this order. Moreover, we will require Cities to file revised tariff sheets within thirty days of the issuance of this order eliminating purchase costs which Cities Service's suppliers were not authorized to charge and collect on April 23, 1979, pursuant to the Natural Gas Act, the NGPA, or the regulations of this Commission.

Cities Service's PGA filing reflects, among other things, repricing of gas received by Cities Service from 2 producer-affiliates, Cities Service Oil Company and CSG Exploration Company from area or national rates to a basis equal to that which would be received by independent producers for similar vintages under the NGPA. While section 270.203 of the Interim Regulations under the NGPA provides that in the circumstances presented here the sale by a pipeline (Cities Service) is not a "first sale" as defined by Section 2(21) of the NGPA, the Commission has not yet determined the appropriate treatment of the gas cost component of Cities Service's rates that is attributable to the pipeline's affiliate production. Accordingly, Cities Service's filings are accepted and suspended subject to the condition that the costs related to the pipeline affiliate purchases shall be collected subject to refund and subject to the final outcome of the pipeline affiliate production pricing issue in the Commission's final NGPA Regulation (on rehearing) governing this issue.

This filing reflects Section 104 NGPA prices under area rate clauses in the applicable contracts between the respective producers and Cities Service. The Commission's acceptance of this PGA filing shall not constitute a final determination that any or all of the area rate clauses permit NGPA prices. That determination shall be made in accordance with the procedures prescribed in Order No. 23, issued March 13, 1979, as amended by order issued April 30, 1979 in Docket No. RM79-22. Should the Commission ultimately determine that a producer was not entitled to an NGPA price under the area rate clause, the refunds which would be made by the producer to Cities Service would be flowed through to Cities Service's customers in accordance with the procedures prescribed in Cities' Service's PGA clause.

We will also suspend the advance payment adjustment proposed by Cities Service. Based upon a review of Cities Service's filing, we are not satisfied that all subject agreements contain repayment provisions which are consistent with the Commission's policies. The Commission requires that recovery of advances must commence within five years from the date they are first included in rate base and that such recovery must be completed within five years after it has commenced. We will set the matter of Cities Service's advance payments adjustment for hearing.

Based upon a review of Cities Service's filing, we find that the proposed rate increase has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we will accept for filing the instant tariff sheet, grant waiver of the 30 day notice requirements, and suspend its operation such that it shall be permitted to take effect on the date proposed by Cities Service, April 23, 1979, after which time it will be subject to refund as hereinafter ordered and conditioned.

The Commission orders

(A) Subject to the conditions of Ordering Paragraphs (B) and (C) below, Cities Service's proposed Second Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1, is accepted for filing, suspended, and waiver of notice requirements is granted such that the filing shall become effective April 23, 1979, subject to refund.

[1] Cities Service completed its filing on April 20, 1979.

(B) Cities Service shall file within 15 days of issuance of this order revised tariff sheets to become effective subject to refund on April 23, 1979, reflecting elimination of costs from producer and pipeline suppliers which those suppliers are not authorized to charge Cities Service as of April 23, 1979 pursuant to applicable Commission orders, the Natural Gas Act and the Regulations thereunder, and the Natural Gas Policy Act and the Regulations thereunder. This filing shall be accompanied by the data prescribed in Appendix A to this order.

(C) Cities Service shall file its case-in-chief justifying its proposed advance payment adjustment on or before June 18, 1979.

(D) Staff shall serve its statement of position, on or before August 20, 1979.

(E) A Presiding Administrative Law Judge to be designated by the Chief Adminstrative Law Judge for that purpose (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's statement of position in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate, or dismiss) as provided for in the rules of practice and procedure.

(F) The costs associated with purchases from pipeline affiliates shall be collected subject to refund and subject to the final outcome of the pipeline affiliate production pricing issue in the Commission's final NGPA Regulations (on rehearing) governing this issue.

By the Commission.

Kenneth F. Plumb,

Secretary.

Appendix A

The revised filing should clearly indicate the adjustments to the original submittal and for those sources of supply covered by maximum lawful prices prescribed under Sections 102, 103, 107 and 108 of NGPA and included in the revised rates, the following information should be provided for both the current adjustment and for amounts to be recouped through the surcharge:

(1) identification of each source of supply, including the well identification number or other information sufficient to identify the well and the contract date or rate schedule number where the gas was committed or dedicated to interstate commerce on November 8, 1978;

(2) where multiple wells are metered through a common delivery point or where production from multiple wells is sold under single contract, identify each well where the gas is priced as new natural gas and certain OCS natural gas, natural gas from onshore production wells, high-cost natural gas or stripper well natural gas;

(3) identify each source of supply being priced under the Commission's transitional rule and include statement, under oath, that to the best of pipeline purchaser's knowledge the filing requirements for collection of the price have been met;

(4) identify each source of supply where a maximum lawful price is being paid pending determination of eligibility by the jurisdictional agency and provide date of receipt of producer filing under the interim collection procedure;

(5) identify each source of supply where a jurisdictional agency determination has been made and provide date of receipt of notice from producer of election to collect the applicable price;

(6) describe basis for payment of the above prices and show for each source of supply whether payment is in response to area rate clause, clause related to Congressional action, contract amendment or other (explain).

For those prices escalated under Sections 104 and 106(a) of NGPA and included in the revised rates, the pipeline should provide explanation for the payment of these escalated prices. Where payment is in response to area rate clauses, clauses related to Congressional action, contract amendments or other agreements the explanation should so indicate.

[FR Doc. 79-16626 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CS78-509]

J. Walter Duncan, Jr. et al.: Order Granting Petition for Declaratory Order and Dismissing Motion for Expedited Proceeding

May 17, 1979.

On June 14, 1978, J. Walter Duncan, Jr., *et al.*[1] (Duncan) filed a petition for a declaratory order in Docket No. CS78-509 pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure. Duncan, a small producer,[2] requests a determination that certain sales of natural gas attributable to its interest in the Coltharp No. 1 Well, Wheeler County, Texas, qualify as small producer sales within the meaning of Section 157.40(a)(5) of the Commission's Regulations. The gas is sold to Mississippi River Transmission Corporation (MRT).

The petition was noticed August 14, 1978 (43 Fed. Reg. 37213). No protests or petitions to intervene have been received. On August 9, 1978, Duncan filed a Motion for Expedited Proceeding and the filing of briefs in Docket No. CS78-509.[3]

Background

In 1972 Duncan agreed to assign undivided interests in two oil and gas leases to Freeport Oil Company (Freeport). Freeport's rights under the agreement were contingent upon drilling a well on the lease lands. Duncan reserved an overriding royalty interest in gas production. The agreement also contained an option to convert the royalty interest into a working interest at payout.[4]

Freeport, a small producer, subsequently assigned a portion (approximately 72.66%) of its rights under the agreement with Duncan to the following persons: Chevron Oil Company (Chevron), Fluor Corporation/Fluor Oil and Gas Corporation, Laclede Gas Company, MRT (later transferred to MRT Exploration Company (MRTX)), Four M/Pico, and A. O. Wellman (Chevron Group). Chevron and MRTX are large producers. The remaining four persons and Freeport were issued small producer certificates by the Commission.[5] The rights retained by Freeport and acquired by the Chevron Group were subject to Duncan's overriding royalty interest.

The Chevron Group and Freeport entered into an operating agreement on March 31, 1973 with Pennzoil Company. Gas was successfully produced in commercial quantities and sold in interstate commerce to MRT. On

[1] The other petitioners are Walter Duncan, Walter Duncan III, Vincent J. Duncan, and Raymond T. Duncan.

[2] The individual petitioners were issued small producer certificates as follows:

Petitioner:	*Docket No.*
J. Walter Duncan, Jr	CS68-12
Walter Duncan	CS68-15
Walter Duncan, III	CS77-701
Vincent J. Duncan	CS68-14
Raymond T. Duncan	CS68-13

[3] There is no need for the submission of briefs to resolve this controversy between Duncan and MRT.

[4] The working interest is equal to 50% of the lease interests which Duncan assigned to Freeport.

[5]

Producer:	*Docket No.*
Freeport	CS69-6
Fluor Corp./Fluor Oil and Gas Corp.	CS66-128/CS73-568
Laclede Gas Co	CS76-332
A. O. Wellman	CS69-46
Four M/Pico	CS71-635/CS76-265

October 29, 1975, payout occurred. Duncan converted its overriding royalty interest into a working interest effective October 30, 1975. Approximately 43.35929% of Duncan's working interest was attributable to the two large producers in the Chevron Group. MRT executed a contract with Duncan July 14, 1977 for the sale of its working interest gas. In August 1977, MRT informed Duncan that, due to Commission Order No. 568, it would not be permitted to pay and Duncan would not be permitted to collect the small producer rate on the gas volumes attributable to the large producers. Duncan subsequently filed the petition for declaratory order under consideration here.

Discussion

MRT contends that the small producer regulations issued July 14, 1977 in Order No. 568 [6] govern the sale of Duncan's working interest gas and disqualify the 43.35929% acquired through large producers from small producer treatment. The regulations permit a small producer rate to be collected on sales of natural gas from small producer reserves. Section 157.40[a][4], which defines small producer reserves, specifies that reserves attributable to royalty and overriding royalty interests shall have the same classifications as the working interests to which they relate. Order No. 568 further states that where an overriding royalty interest is converted into a working interest and the prior working interest owner is a large producer, the new working interest owner is also limited to the large producer rate, regardless of whether the new owner is a large or small producer.[7] Under these regulations, it is clear that Duncan would not be entitled to the small producer rate on the 43.35929% of working interest gas previously owned by the large producers.

Section 157.40[a][4] of the regulations, as set out in Order No. 568, however, applies only to future conversions. Since the effective date of Duncan's conversion of its overriding royalty interest to a working interest is October 30, 1975, Duncan's sales must be viewed in the light of the regulations in effect prior to Order No. 568. Section 157.40[c] of those regulations prohibited a small producer from receiving the small producer rate on sales of reserves acquired by the "purchase of developed reserves in place from a large producer." "Purchase" would not encompass a conversion from royalty to working interest, following the reasoning set forth in *Jicarilla Apache Tribe* v. *Federal Energy Regulatory Commission* (an election to take royalty payments in kind rather than in cash was not equivalent to a purchase).[8] Under this interpretation, Duncan has not purchased any developed reserves in place from large producers. Therefore, all its working interest gas, including the 43.35929% attributable to Chevron and MRTX, is eligible, if contractually authorized, for the small producer rate.

We will grant Duncan's petition for declaratory order inasmuch as sales of its working interest gas qualify as small producer sales. Given this disposition, the Motion for Expedited Proceeding and filing of briefs is moot, and will be dismissed.

The Commission orders

(A) The petition for declaratory order of J. Walter Duncan, Jr., *et al.* is granted.

(B) Duncan's Motion for Expedited Proceeding and the filing of briefs is dismissed.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16629 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[6] The order is currently on rehearing before the Commission, but the section relevant to this proceeding is not under review.

[7] Order No. 568, page 10 at footnote 6 (mimeo).

[8] 578 F.2d 289 (10th Cir., 1978).

El Paso Natural Gas Co. and Jerome P. McHugh; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 18, 1979.

On May 3, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD79-4737
API Well Number: 30-045-22360
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: Roelofs A No. 3-A (Mesaverde)
Field: Blanco
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 263 MMcf.

FERC Control Number: JD79-4738
API Well Number: 30-039-21400
Section of NGPA: 103
Operator: Jerome P. McHugh
Well Name: Burke No. 2
Field: Choza Mesa Pictured Cliffs
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 3 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 13, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary

[FR Doc. 79-16637 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-548]

El Paso Natural Gas Co. and Northern Natural Gas Co.; Joint Petition To Amend

May 17, 1979.

Take notice that on April 25, 1979, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978 and Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102 filed in Docket No. CP78-548 a joint petition to amend the order of February 21, 1979, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to extend the authorized limited-term delivery of natural gas, on an exchange basis, through April 30, 1980, and to vacate in part said order, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that El Paso and Northern, jointly received authorization, in Docket No. CP78-548, for the utilization of certain existing facilities, the construction and operation of certain new facilities and the limited-term delievery and exchange of up to 30 billion Btu equivalent of natural gas per day on a firm and best efforts basis through April 30, 1979, at points of interconnection between El Paso's and Northern's facilities located in Eddy County, New Mexico and Hemphill County, Texas.

The limited-term delivery and exchange of up to 30 billion Btu's of natural gas per day between El Paso and Northern is presently accomplished pursuant to the terms and provisions of

a limited-term exchange agreement dated August 29, 1978, between the parties, it is stated.

Northern states it has advised El Paso that Northern continues to have available to it, needed quantities of gas from sources of supply in the Little Box Canyon and Cass Ranch areas in Eddy County, New Mexico, which Northern is unable to have transported to its interstate pipeline system. It is asserted that El Paso has advised Northern that it anticipates that in the near future it would have quantities of natural gas in the Anadarko Basin area which may temporarily exceed El Paso's available system capacity in Hemphill County, Texas. Accordingly, state the Applicants, they desire to extend the authorized arrangements in order to receive such quantities of natural gas for their respective interstate system customers. Applicants have entered into an amendment to their agreement, dated March 12, 1979, which provides for the extension of the limited-term delivery and exchange through April 30, 1980, of up to 25 billion Btu's of natural gas per day, on a best efforts basis, at existing points of interconnection of El Paso's and Northern's facilities located in Eddy County, New Mexico and Hemphill County, Texas, it is stated.

Applicants indicate that the amendment differs from the current agreement with respect to (1) the exchange of natural gas between the parties on only a best efforts basis; (2) the exchange and delivery of an aggregate quantity of natural gas not to exceed 25 billion Btu's per day; (3) the extension of the term of the exchange agreement through April 30, 1980; and (4) the deletion of one of the authorized Hemphill County delivery points.

El Paso and Northern have constructed and placed into operation one of the two authorized delivery points in Hemphill County, Texas, it is stated. Applicants indicate that sufficient quantities of natural gas can be exchanged between the parties at such delivery point and the existing Eddy County delivery points to satisfy their respective exchange and delivery requirements under the amend exchange agreement and that the remaining authorized delivery point is not needed. Accordingly, state Applicants, they make this joint petition in order to vacate that portion of the Commission's order granting authorization to construct and operate the remaining Hemphill County delivery point.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a porceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16627 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-283]

The Inland Gas Co., Inc.; Application

May 17, 1979.

Take notice that on April 23, 1979, The Inland Gas Company, Inc. (Inland), 340—17th Street, Ashland, Kentucky 41101, filed in Docket No. CP79-283 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new point of delivery, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inland proposes to construct and operate an interconnecting measuring facility to provide a new point of delivery to Ashland Oil, Inc. (Ashland) located on Barbecue Branch of Catletts Creek in Boyd County, Kentucky, at the intersection of Inland's existing 10-inch gas transmission pipeline and Ashland's existing 6-inch pipeline.

It is stated that Allied Chemical Corporation (Allied) has a sales agreement with Inland which provides for the delivery of up to 15,300 Mcf per day of natural gas at Allied's South Point, Ohio facility. It is further stated that Ashland is in the process of negotiating for the purchase of Allied's South Point, Ohio facility. Inland indicates that the sale between Ashland and Allied has not been finalized and that the date of implementation of the agreement has been extended from April 1, 1979, to such time as negotiations are completed. Inland states that upon completion of such sale, Ashland would become the successor by assignment of the sales agreement between Allied and Inland. Inland states that Ashland does not plan to operate the South Point facility at full capacity and therefore would not be able to utilize its full entitlement of natural gas from Inland at that point of delivery, but that Ashland could utilize such volumes at its refinery located in Catlettsburg, Kentucky, to replace oil now being consumed at that refinery. In order to make such deliveries, Ashland and Inland have agreed to the new point of delivery proposed herein, it is asserted.

Inland states that the cost of the proposed facilities would be $25,500, which would be financed from internally generated funds. Inland also states that authorization to operate the new interconnecting measuring facility and point of delivery is requested on the date the sale from Allied to Ashland becomes final.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16628 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-123, et al.]

Northwest Alaskan Natural Gas Transportation Co.; Order Proposing Terms and Conditions

May 17, 1979.

The Commission is considering the adoption of certain conditions to be appended to the conditional certificates of public convenience and necessity issued by the Commission on December 16, 1977, in Docket No. CP78-123, *et al.* which conditionally authorized construction of the Alaskan Natural Gas Transportation System (ANGTS). In light of the limited number, nature, and scope of the proposed conditions, as well as the statutory mandate of section 9 of the Alaska Natural Gas Transportation Act, 15 USC § 719g, that certification of the ANGTS be expedited, the Commission has decided to use notice and comment procedures to consider these conditions. In addition to other applicable law, this order is issued pursuant to section 7(e) of the Natural Gas Act, 15 U.S.C. § 717f(e), section 9 of the Alaskan Natural Gas Transportation Act, 15 U.S.C. § 717g, and § 402(a) of the Department of Energy Organization Act, 42 U.S.A. § 7172(a).

A. Background

To coordinate federal involvement with the Alaskan Natural Gas Transportation System, and to expedite pipeline construction, the Congress authorized the President to appoint a Federal Inspector "to monitor actions taken to assure timely completion of construction schedules and the achievement of quality of construction." [1] The President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (Decision) provided that the heads of the major Federal agencies involved in the project were to provide policy guidance to the Federal Inspector through an "Executive Policy Board" to be established by executive order.[2] As of the date of this Notice, the Executive Policy Board has not been formally constituted nor has a Federal Inspector been appointed. However, the involved Federal agencies have established informal working groups to address and resolve various problems.[3]

The President in his *Decision* stated that,

> A set of stipulations containing the general standards of environmental and construction performance, and the procedures for the submission and approval of construction plans and environmental safeguards will be developed by the concerned government agencies * * *. (*Decision* at 33-34).

The task of one such working group was to develop a uniform set of environmental and technical terms and conditions for the various Federal agencies with responsibilities concerning the ANGTS, and thereby to avoid construction delays and cost increases resulting from uncoordinated government action. This working group has met since the summer of 1978 and occasionally has invited informal participation by representatives of the sponsoring companies and other interested persons. In addition to meetings held in Washington, D.C., meetings were arranged in government field offices located in the geographical areas of the three pipeline segments which will be built in the United States.[4] As a result of these meetings, a large number of conditions have been prepared to govern construction and operation of the ANGTS. The majority of these conditions, once finalized, would be attached to the Department of Interior's grant of right-of-way required for the ANGTS to cross federal lands. The Department of Interior plans to publish, contemporaneously with this Order, a notice in the Federal Register of the availability for public review and comment of that Department's proposed conditions. The Commission is considering in this rulemaking proceeding the adoption of a limited number of related conditions to be attached to the conditional certificates of public convenience and necessity issued in Docket Nos. CP78-123, *et al.*

B. The Proposed Conditions

In recent months it has become apparent that there is a need for reliable information to be disseminated to the public concerning the construction schedule, construction practices, and government monitoring and enforcement functions associated with the construction of the ANGTS. To provide this information, the Commission proposes that the project sponsors prepare an informational "handbook" to be approved by the Federal inspector and distributed to all private landowners along the proposed pipeline right-of-way. The handbook would contain construction schedule information, an explanation of environmental and safety practices to be employed by the pipeline company, a description of Federal and state permit monitoring and enforcement functions, and basic information on right-of-way settlement procedures.

The distribution of the handbook would be, in many instances, one of the first direct communications between the pipeline companies and the affected landowners. There will undoubtedly be questions raised by the handbook and there will be a need for an avenue of follow-up communication. To meet this need the Commission proposes that toll-free telephone lines to the pipeline companies be installed. Records of incoming calls would be maintained by the project sponsors and sent periodically to the office of the Federal Inspector to ensure adequate responsiveness to callers' inquiries.

It should be emphasized that the informational handbook and telephone lines would not be intended to supplant the role of the courts in resolving questions of eminent domain and related disputes arising from right-of-way settlement contracts. The "handbook" would furnish landowners with background information on the pipeline construction and operation activities and, in combination with the telephone lines, would provide landowners with an avenue of communication for making their questions and concerns known to company and government officials. The telephone lines would seek to ensure that additional information is available, rumors are dispelled, and government and company officials remain responsive to the questions and needs of the public. The handbook would itself not be intended to create legal rights or obligations, and would instruct landowners seeking binding contractual-type commitments to seek legal assistance.

Section 2.69 of the Commission's Statements of General Policy and Interpretations, 18 C.F.R. § 2.69 (1978) sets forth guidelines to be followed by natural gas pipelines in the planning, locating, clearing, and maintenance of rights-of-way and the construction of above-ground facilities. The

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[1] Section 7(a)(5) of the Alaskan Natural Gas Transportation Act, 15 USC § 719e(a)(5).

[2] *Decision* at 203. Under section 201 of Reorganization Plan No. 1 of 1979 (currently pending before Congress), the function of the Executive Policy Board would be limited to providing advice to the Federal Inspector.

[3] The agencies included in the working groups are the Departments of Interior, Energy, and Transportation, the Environmental Protection Agency, and the U.S. Army Corps of Engineers.

[4] The ANGTS will consist of three segments in the United States: the Alaska segment, the "Western Leg" from Idaho to California, and the "Northern Border" pipeline from Montana to Illinois. *See Decision* at 6-7, 10-12.

Commission proposes that a condition be attached to the conditional certificates stating that the pipeline company shall comply with § 2.69. The guidelines set forth in § 2.69 would be viewed by the Commission as enforceable "standards of environmental and construction performance" as specified in the President's Decision (*Decision* at 33–36).

Finally, the Commission proposes a condition to the certificates relating to stop-work orders. Delays caused by government field officials who issue stop-work orders without adequate justification can and should be avoided. Delays result in additional costs. To minimize such delays and additional costs during the construction of the ANGTS, the Commission proposes to adopt conditions containing the following provisions:

1. Only those field officials who are specifically designated in writing by the Federal Inspector as having the proper authority may issue stop-work orders.

2. To minimize disruptions due to incorrect interpretations of regulations or other requirements, all stop-work orders shall expire 24 hours after the issuance of the order unless extended by written order of the Federal Inspector.

3. All stop-work orders shall be documented. To this end, the Federal Inspector shall maintain a written record of all stop work-orders, identifying the circumstances involved and the name(s) of the ordering official(s) and explicitly and narrowly defining the activities affected by the order.

4. Stop-work orders shall be issued only when necessary to prevent problems of a serious and immediate nature, and when, after consultation with the responsible field personnel of the company, mitigating or corrective measures cannot be identified or agreed on and implemented.

C. Written Comment Procedures

The Commission invites the parties of record in Docket Nos. CP78–123, *et al.* to submit written data, views, comments and other information concerning the matters set forth in this order. An original and 14 conformed copies should be filed by June 20, 1979, with service of copies on all parties. Parties of record may also file reply comments, pursuant to the same procedure, by July 6, 1979. Comments and reply comments should be submitted to the Federal Energy Regulatory Commission, Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket Nos. CP78–123, *et al.* All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, 825 North Capitol Street, NE., Washington, D.C. during regular business hours.

The Commission orders:

(1) Parties of record in Docket Nos. CP78–123, *et al.* may submit comments and reply comments on the conditions that the Commission proposes to append to the conditional certificates of public convenience and necessity issued by the Commission on December 16, 1977, in that docket. The proposed conditions are set forth in the attachment to this order. Comments may be filed on or before June 20, 1979, and reply comments may be filed on or before July 6, 1979. Copies of all comments and reply comments should be served on all parties of record in Docket Nos. CP78–123, *et al.*

(2) Copies of this order shall be served on all parties in Docket Nos. CP78–123, *et al.*

By the Commission.

Kenneth F. Plumb,

Secretary.

Conditions

1. Prior to construction, according to a schedule to be established by the Federal Inspector, the pipeline company shall prepare and submit for the approval of the Federal Inspector an informational handbook for distribution to private landowners in or along pipeline right-of-way. The purpose of the handbook shall be to provide landowners with basic information on the proposed construction schedules, environmental protection and safety practices, Federal and state agency monitoring and enforcement functions, and basic legal information applicable to rights-of-way settlements on private lands, including the provisions of section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h). Among the various subjects to be discussed by the pipeline company in the handbook are all statutory requirements imposed by the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§1251 *et seq.*, and similar national legislative mandates, right-of-way restoration, revegetation, refertilization and aesthetic protection practices and guidelines, noise abatement standards, line demarcation practices, restrictions on incompatible land use on the pipeline right-of-way, and property and crop protection measures or compensation policies. The handbook shall also contain the following statement which shall appear in conspicuous writing: "This handbook does not create legal rights or obligations. Right-of-way agreements, court orders in condemnation proceedings, and applicable regulations and statutes, as well as other legal instruments, will govern such legal rights or obligations. A landowner with questions concerning his legal rights or obligations should seek the advice of a licensed attorney at law." Upon approval by the Federal Inspector, the handbook shall be distributed by the company to all private landowners across whose property the pipeline passes.

2. Immediately following the distribution of the landowners' handbook, the pipeline company shall establish and operate a toll-free informational telephone number for use by landowners seeking additional information on the activities to be performed on their lands. The telephone line shall be manned by a company representative during normal business hours for a period of time to be established by the Federal Inspector. The number(s) of the telephone line shall be included in the landowner's handbook.

3. The pipeline company shall maintain records of all calls received on the informational telephone line described above, including 1) the name of the caller, 2) the location of the land area involved, as necessary, 3) the reason for the call, and 4) the action taken as a result of the call. The record of calls received shall be furnished, on a weekly basis or more often if necessary, to the Federal Inspector for review.

4. The pipeline company shall comply with § 2.69 of the Commission's Statements of General Policy and Interpretations (18 C.F.R. § 2.69).

5. Only field representatives who are expressly designated in writing by the Federal Inspector may issue a stop-order requiring an immediate cessation of one or more specified activities at any construction site or other area. Except in emergencies all stop-orders shall be in writing and, unless extended in writing by the Federal Inspector, shall expire automatically after 24 hours have elapsed from the time of issuance. The Federal Inspector shall maintain a record of all stop-orders including information as to who issued the order, the reason for the issuance, the precise scope of the activity or activities affected, and all other pertinent information. Orders shall be issued only after consultation with designated field personnel of the pipeline company and only when alternative measures cannot

be identified or agreed to. Stop-orders shall not be imposed except when necessitated by a problem of a serious and immediate nature.

[FR Doc. 79-16630 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-303]

Panhandle Eastern Pipe Line Co.; Application

May 17, 1979.

Take notice that on May 9, 1979, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1348, Kansas City, Missouri 64141, filed in Docket No. CP79-303 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon by sale to the Gas Service Company (Gas Service) certain pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to abandon by sale to Gas Service a portion of Applicant's Greeley, Kansas, lateral pipeline system consisting of approximately 3,691 feet of 4-inch pipeline, 350 feet of 4½-inch pipeline and 334 feet of 3¼-inch pipeline, together with all appurtenant facilities, easement, permits and property rights effecting these facilities. Applicant proposes to sell these facilities to Gas Service at a price of $1,554.

Applicant states that the facilities that it proposes to abandon by sale to Gas Service are all located downstream of the point of measurement of deliveries to Gas Service; therefore, this pipeline segment is carrying gas that has been measured and is owned by Gas Service. The abandonment by sale would relieve Applicant from the obligation of operating and maintaining these old pipeline facilities and would enable Gas Service to achieve integration, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-16631 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

Pennzoil Co.; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

May 18, 1979.

On May 2, 1979, the Federal Energy Regulatory Commission received notice of a determination pursuant to 18 CFR 274.104 of the Natural Gas Policy Act of 1978 applicable to:

Railroad Commission of Texas Oil and Gas Division

FERC Control Number: JD79-4739
API Well Number: 42-483-30106
Section: 102
Operator: Pennzoil Company
Well Name: Pennzoil Austin No. 1
Field: Mills Ranch
County: Wheeler
Purchaser: Natural Gas Pipeline Co. of America
Volume: 75 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before June 13, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-16636 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-300]

Southern Natural Gas Co.; Application

May 17, 1979.

Take notice that on May 8, 1979, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP79-300 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 200 horsepower of compression facilities and related and appurtenant equipment, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it purchases gas from Phillips Petroleum Company (Phillips) from the Bastian Bay Field Area, Plaquemines Parish, Louisiana (Bastian Bay Field), which field is an old field where deliverability has declined over the years, and that it has been notified by the operator of the field, Tenneco Oil Company (Tenneco), that in order to increase the field's deliverability and also to enhance the ultimate recovery of reserves from the field, the gathering pressure in the field would be lowered this summer. Once this occurs it would be necessary to compress the gas purchased from Phillips in order to effect delivery into Applicant's pipeline system.

Applicant indicates that in order to maintain its purchases of gas from Phillips in this field, it has elected to provide the necessary facilities to compress this gas. Consequently, Applicant proposes to construct and operate the 200 horsepower compression and related and appurtenant equipment. Pursuant to the requested authorization, Applicant proposes to install a 211 horsepower Ajax compressor presently on its gathering system in the Gwinville Field, Jefferson Davis and Simpson Counties, Mississippi. This unit is no longer needed in the Gwinville Field because the wells which it is connected are now shut-in, it is stated. It is stated that such compressor is a nonjurisdictional gathering facility and

that no authorization is needed to remove and relocate it.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties ot the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16632 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-125]

Texas Gas Transmission Corp.; Petition To Amend

May 17, 1979.

Take notice that on May 8, 1979, Texas Gas Transmission Corporation (Petitioner), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP77-125 a petition to amend the order of March 1, 1977,[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of up to 3,750 Mcf of natural gas per day for General Electric Company (GE) for an extended two-year period, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of March 1, 1977, Petitioner was authorized to transport, on an interruptible basis, up to 3,750 Mcf of natural gas for GE for a two-year period commencing November 1, 1977, from a point of receipt at Erath, Vermilion Parish, Louisiana, from Natural Gas Pipeline Company of America through existing facilities at the tailgate of Texaco's Henry Plant to points of delivery to Louisville Gas and Electric Company, Indiana Gas Company, Inc., and Columbia Gulf Transmission Company for the account of GE.

By this petition to amend, Petitioner requests authorization to transport the gas for GE for the extended 2-year period.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 8, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16633 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-228]

Transcontinental Gas Pipe Line Corp.; Order Establishing Procedures, Granting Petitions To Intervene and Initiating Expedited Hearing

May 18, 1979.

On March 19, 1979, Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. CP79-228 filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 100,000 dekatherms (dt) per day equivalent of natural gas to be purchased by Consolidated Edison Company of New York, Inc. (Con Ed) from Consolidated Gas Supply Corporation (Con Gas), for a two year term, all as more fully set forth in the application.

The subject gas is to be used to displace imported fuel oil for direct electric or steam generation by Con Ed in accordance with the Secretary of Energy's request that certain natural gas be used temporarily to reduce oil imports. The estimated purchases annually are approximately 36,500,000 dt. In the instant application Transco seeks authorization to transport on behalf of Con Ed, on an interruptible basis, for a term of two years up to 100,000 dt per day from certain of 16 Louisiana delivery points and up to the dekatherm equivalent of 71,548 Mcf per day from a delivery point in Clinton County, Pennsylvania. Said gas will be sold by Con Gas to Con Ed on a best efforts basis at an initial rate of $1.89 per dt. Con Ed states that it will displace 16,700 barrels per day and 6 million barrels per year of distillate and imported fuel oil. The application states that Con Gas will sell the volumes on an interruptible basis after it meets the market requirements of its present customers, including storage requirements, but before meeting any subsequent interruptible power generation or surplus gas sales contracts. Con Gas indicates that the source of the gas to be sold is a portion of the volumes which Con Gas purchases from its affiliate, CNG Producing Company (CNG) and from other independent producers in the South Louisiana area. Transco requests a temporary certificate, as has Con Ed by telegram dated May 7, 1979.[1]

After due notice by publication in the Federal Register on April 6, 1979 (44 FR 20763), the following timely petitions to intervene were received: Con Ed, Public Service Electric and Gas Company, Consolidated Gas Supply Corporation, Philadelphia Gas Works, New Jersey Natural Gas Company, General Motors Corporation, South Jersey Gas Company, Bay State Gas Company, *et al.*, Brooklyn Union Gas Company and Philadelphia Electric Company. The United States Department of Energy and the Public Service Commission of the State of New York filed timely notices of intervention. Untimely petitions to intervene were submitted by Columbia

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[1] Temporary certificates limited to a term of 60 days were issued to Transco and Con Gas on May 16, 1979.

Gas Transmission Corporation (Columbia) and Long Island Lighting Company (Lilco). South Jersey Gas Company subsequently filed a notice of withdrawal of its petition to intervene. Philadelphis Gas Works, Brooklyn Union Gas Company, and Philadelphia Electric Company filed a petition for expedited hearing, and Con Ed filed a request for a temporary certificate, convening of a prehearing conference, and an early hearing date. General Motors Corporation, Algonquin Gas Transmission Company and the New England Gas Distributors (*nee* Bay State Gas Company, et al.) filed answers in opposition to the request for a temporary certificate.

It is the Commission's view that the subject application raises a number of issues and that a formal hearing in this matter should be held to determine whether the granting of the application would be in the public interest.[2] It appears that the subject application raises the following issues and questions with respect to the proposed arrangements:

1. What is the origin of the gas to be sold by Con Gas to Con Ed and whether the natural gas being sold for boiler fuel use is actually surplus gas in light of the fact that Con Gas' interstate suppliers are curtailing or contemplate curtailment. Further, what would be the disposition of the subject gas if the sale by Con Gas to Con Ed were not made? What has been the disposition, if any, of this source of excess gas in the past?

2. If the subject arrangement were not authorized, would Con Gas have excess supplies and therefore be required to back-off takes from its interstate suppliers thus providing additional gas to the interstate market; or, posed in another way, what is the "actual impact" of the subject arrangement upon the curtailment levels of the interstate suppliers of Con Gas and Con Ed?

3. Whether the proposed arrangement will achieve the stated objective of reducing oil consumption and conserving fuel oil:

(a) What restrictions, if any, are placed upon the fuel oil to be displaced by the gas to be sold by Con Gas?

(b) Would reduced curtailment on the systems of Con Gas's interstate suppliers conserve as much fuel oil as that to be displaced by the proposed arrangement?

4. What will be the impact, if any, of the proposed arrangement on Con Gas's other customers and its interstate suppliers and their customers?

5. Is the price to be charged by Con Gas to Con Ed reasonable.

Accordingly, the application in the subject docket shall be set for expedited formal hearing on the issues and questions set forth above. Upon the conclusion of the hearing so ordered, the Administrative Law Judge's intermediate decision shall be omitted and the record in the proceedings shall be certified directly to the Commission for decision.

Although Columbia and Lilco filed petitions to intervene out of time, good cause exists to permit their intervention because of the short time frame in which the several parties were required to respond to the notice issued in this docket.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the application in this docket be set for expedited formal hearing in accordance with the procedures herein set forth.

(2) Participation by the petitioners to intervene may be in the public interest.

(3) Good cause exists to permit the late interventions by Columbia and Lilco.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 7 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act, a public hearing shall be held on the subject application, in the manner provided for in the instant order.

(B) A Presiding Administrative Law Judge designated by the Chief Administrative Law Judge shall preside over the hearing provided for in this order and shall consistent therewith assure its timely commencement in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further rules and any other procedural dates as provided for in this order and in the Commission's Rules of Practice and Procedure.

(C) The Administrative Law Judge's intermediate decision in these proceedings is omitted and upon the conclusion of the hearing ordered, the record in these consolidated proceedings shall be certified directly to the Commission for decision.

(D) Petitioners to intervene are permitted to intervene in these proceedings subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and, *Provided, further,* that the admission of said interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceedings.

By the Commission. Commissioner Smith voted present.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16634 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP76-516]

Western Gas Interstate Co.; Petition To Amend

May 18, 1979.

Take notice that on May 3, 1979, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP76-516 a petition to amend the order of November 3, 1978, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the revision of facilities in lieu of those previously authorized by the aforementioned order, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.[1]

Applicant states the Commission granted Applicant authorization in Docket No. CP76-516 to transport and sell up to 8,000 Mcf of natural gas per day to Gas Company of New Mexico (GCNM), and to construct and operate approximately 3.8 miles of 6-inch pipeline and appurtenant facilities necessary to transport gas from the Antelope Ridge Plant of Shell Oil Company (Shell) in Lea County, New Mexico to the Bell Lake Plant of Transwestern Pipeline Company (Transwestern) in Lea County, New Mexico. It is stated that the Commission also authorized Applicant to deliver the gas so transported to Transwestern for further transportation and redelivery to Applicant near the town of Portales, Curry County, New Mexico and to acquire and operate existing gas receipt, measuring and delivery facilities at the point of redelivery. Applicant indicates these facilities have not been constructed to date.

Applicant seeks authorization to revise the required facilities by

[2] As a general matter, the Commission will consider the proposed transaction in light of Order No. 30, issued May 17, 1979, in Docket No. RM79-34.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

relocating the proposed point of delivery of gas to Transwestern at a point in Section 5, Township 24 South, Range 34 East, Lea County, New Mexico. It is stated that as a result of such relocation and the depletion of reserves since the time of the filing of the original application, Applicant requests authorization to acquire, construct and operate the following facilities:

Approximately 2.1 miles of 4-inch pipeline, with appurtenances, commencing at the Shell Plant in Section 34, Township 23 South, Range 34 East, Lea County, New Mexico, and terminating at Transwestern's system at a point in Section 5, Township 24 South, Range 34 East, Lea County, New Mexico.

Applicant states the purchase price of the facilities would be reduced to $9,285.65 since this price represents the net book value of the facilities at the time of sale. The total estimated cost of all facilities is $307,082 which is less than that authorized by the Commission in Docket No. CP76-516, it is asserted.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-16635 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2864]

Wheatland Rural Electric Association; Application for Preliminary Permit

May 18, 1979.

Take notice that on August 3, 1978, the Wheatland Rural Electric Association filed an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. § 791(a)-825(r)) for a proposed water power project to be known as the Tunnel Creek Project, FERC No. 2864, located on Tunnel Creek, a tributary to the Laramie River in Albany and Platte Counties, Wyoming. The proposed project would affect lands of the United States.

Correspondence with the Applicant should be directed to: General Manager, Wheatland Rural Electric Association, P.O. Box 120, Wheatland, Wyoming 82201, or President; Board of Directors, Wheatland Rural Electric Association, P.O. Box 120, Wheatland, Wyoming 82201.

Purpose of Project.—The Wheatland Rural Electric Association would distribute the power generated at the project to its local customers through its distribution facilities.

Proposed Scope and Cost of Studies Under Permit.—The Applicant seeks issuance of a preliminary permit for a period of 3 years, during which time it would prepare a definitive project report, including preliminary designs, conduct geological explorations, and collect environmental data. The cost of these activities, together with the preparation of an environmental impact report, obtaining agreements with various Federal, State, and local agencies, preparing a FERC license application, and making final geologic explorations, field surveys, and design of facilities, is estimated by the Applicant to be about $500,000.

Project Description.—The Tunnel Creek Project would utilize water from existing irrigation reservoirs through an existing diversion tunnel to the proposed project works consisting of: (1) a one-half mile long penstock; (2) a powerhouse with an estimated installed capacity of 3,900 kW and (3) a 10 acre-foot afterbay and dam.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the permittee, during the term of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other necessary information for inclusion in an application for license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests and Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

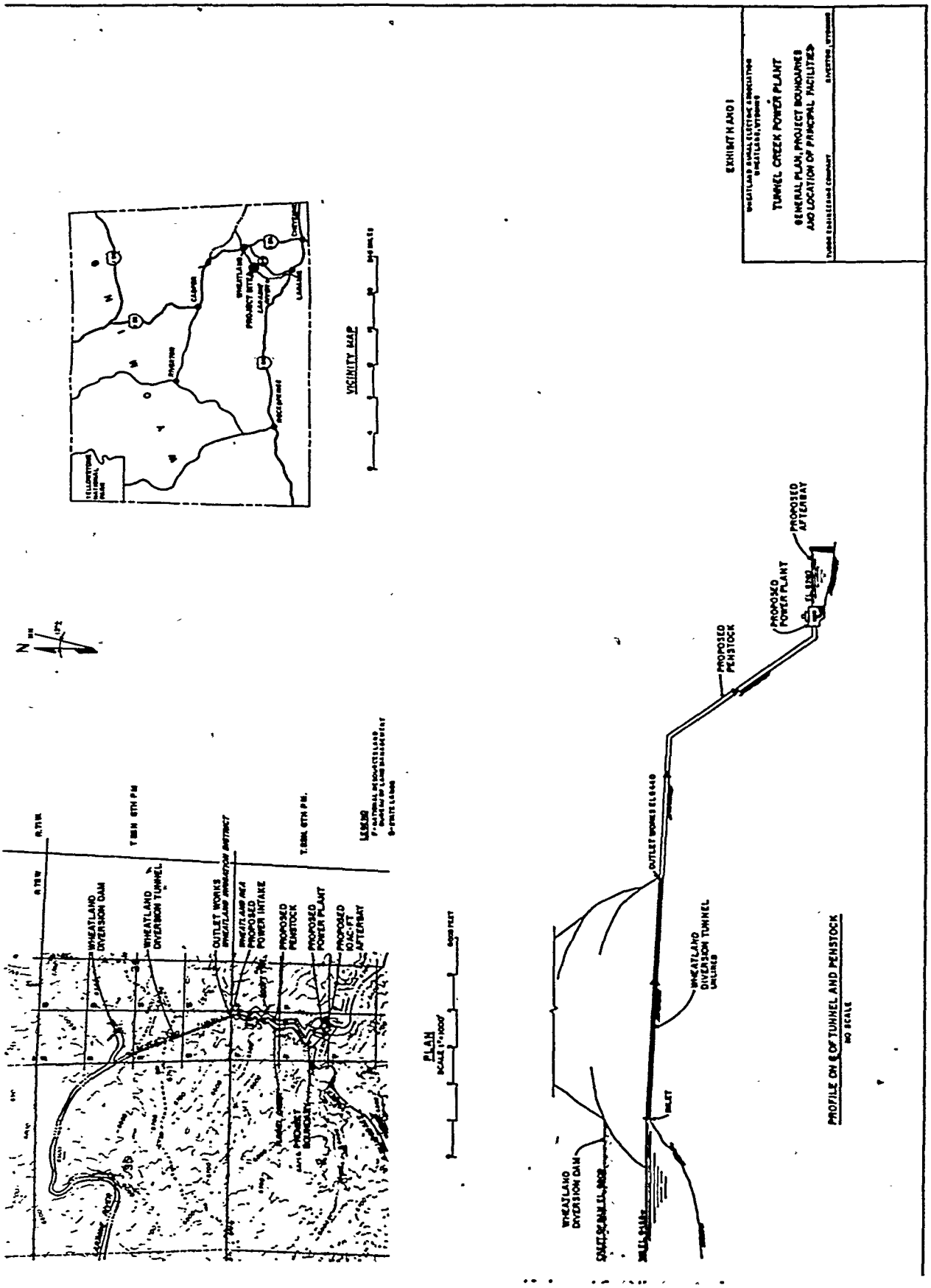
Any protest, petition to intervene, or agency comments must be filed on or before July 23, 1979. The Commission's address is: 825 North Capitol Street, N. E., Washington, D. C. 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-01-M



[FR Doc. 79-16030 Filed 5-25-79; 8:45 am]
BILLING CODE 6450-01-C

Office of Hearings and Appeals

Notice of Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; April 9 through April 13, 1979

Notice is hereby given that during the period April 9 through April 13, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Under the procedures which govern the filing and consideration of exception applications (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The applicable procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m. e.d.t., except federal holidays.

May 22, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

Arizona Fuels Corp., Washington, D.C., DEX-0056, crude oil

In accordance with Decisions and Orders issued to the Arizona Fuels Corporation which granted the firm exception relief from the provisions of 10 CFR 211.67 (the Entitlements Program), the firm submitted actual financial data for its 1976 and 1977 fiscal years. On April 11, 1979, after reviewing the level of exception relief granted to Arizona Fuels in light of the firm's actual financial results, the DOE issued a Proposed Decision and Order which determined that the firm should purchase entitlements equal in value to $611,222 to offset the excessive benefits it had received.

C. F. Lawrence & Assoc., Inc., Midland, Tex., DXE-2190, crude oil

C. F. Lawrence & Assoc., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell 67.93 percent of the crude oil which it produces from the Childress M.I. Masterson Lease at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's Childress M.I. Masterson Lease.

City of Long Beach, Calif., Long Beach, Calif., DXE-2807, crude oil

The City of Long Beach, California filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief and would permit the City of Long Beach to sell the crude oil produced for the benefit of the working interest owners at the Fault Block III Unit at upper tier ceiling prices. On April 13, 1979 the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Getty Oil Co., Los Angeles, Calif., DXE-2197, DXE-2198, DXE-2199, DXE-2200, crude oil

Getty Oil Company filed five Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception requests, if granted, would result in the extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Carranza, Davis, Luton and Quati Leases at upper tier ceiling prices and 100 percent of the crude oil which it produces from the Chamberline Lease at market price levels. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Getty's Carranza, Davis, Luton, Quati and Chamberline Leases.

P & M Management, Denver, Colo., DXE-2184, crude oil

P & M Management filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief previously granted and would permit the firm to sell 100 percent of the crude oil which it produces from the Track #1 Well at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed determined that an extension of exception relief should be granted with respect to P & M Management's Track #1 Well.

Petroleum, Inc., Wichita, Kans., DXE-2131, crude oil.

Petroleum, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief previously granted and would permit the firm to sell 100 percent of the crude oil which it produces from the Crowder Lease at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to Petroleum, Inc.'s Crowder Lease.

R. H. Engelke, San Antonio, Tex., DXE-2178, crude oil.

R. H. Engelke filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief previously granted and would permit the firm to sell 56.53 percent of the crude oil which is produces from the Bertha Copsey Lease at upper tier ceiling prices. On April 12, 1979, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to R. H. Engelke's Bertha Copsey Lease.

Southland Royalty Co., Fort Worth, Tex., DXE-2213, crude oil.

The Southland Royalty Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief and would permit the firm to sell the crude oil produced for the benefit of the working interest owners from the Aztec Totah Unit at upper tier ceiling prices. On April 13, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Southland Royalty Co., Fort Worth, Tex., DXE-2274, DXE-2275, crude oil.

The Southland Royalty Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in the extension of exception relief and would permit the firm to sell the crude oil produced for the benefit of the working interest owners from the Joss and House Creek Leases at upper tier ceiling prices. On April 13, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of April 9 through April 13, 1979

The following firms filed Applications for Exception from the provisions of Standby Regulation Activation Order No. 1. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline for the months of March, April and May 1979. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name	Case No.	Location
Edward H. Wolfe & Sons	DEE-2913	Slinger, Wisconsin.
McMahon Oil Co	DEE-2346	Newton, Texas.
Harold's Exxon	DEE-2384	Raleigh, North Carolina.
Industrial Petroleum Supply of Evansville, Inc	DEE-2404	Evansville, Indiana.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

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Company Name	Case No.	Location
C. J. Enterprises	DEE-2729	Amherst, Massachusetts.
E. Lee Young d.b.a. Big Quickstop	DEE-3390	Ruston, Louisiana.
Emerald Hills Citgo	DEE-2940	Hollywood, Florida.
Gonzales Truck Stop	DEE-3002	Prairieville, Louisiana.
Harry's 66	DEE-2989	Fort Myers, Florida.
Hassan & Hassan	DEE-2583	North Miami Beach, Florida.
Luvern L. Maricle	DEE-2689	W. Concord, Minnesota.
Walkey's Exxon	DEE-3256	Nashua, New Hampshire.
Browning's Exxon	DEE-3126	Hazelwood, North Carolina.
Clary's Auto Service	DEE-2481	Vidor, Texas.
Dundalk Exxon	DEE-3026	Baltimore, Maryland.
Red Clay Creek Exxon	DEE-2720	Wilmington, Delaware.
Sissie Car Wash	DEE-3135	Phoenix, Arizona.
Weekly's Exxon Service Center	DEE-3036	Montclair, California.
Shoal's Creek Chevron	DEE-2476	Florence, Alabama.
Sumter Oil & Gas Co., Inc	DEE-2725	Sumter, South Carolina.
Brook Plaza Exxon Service Center	DEE-2938	Brooksville, Florida.
Charles and 20th Exxon	DEE-3346	Baltimore, Maryland.
P&W Oil Co., Inc	DEE-2890	Athens, Alabama.
Bob's Vintage Texaco	DEE-2772	Napa, California.
A. A. Grocery No. 2	DEE-3113	Delvalle, Texas.
Boulder Valley Oil Co	DEE-2495	Lafayette, Colorado.
Big John's Exxon	DEE-3183	Jacksonville, Florida.
Edwards Auto Service	DEE-2994	Richmond, Virginia.
Hannah's Service Station	DEE-3428	Florence, Alabama.
Kenny's Food Markets	DEE-2832	Richfield, Minnesota.
Brockbridge Exxon	DEE-3048	Laurel, Maryland.
Burnsville Corp	DEE-2775	Burnsville, Minnesota.

[FR Doc. 79-16454 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Colorado River Storage Project (CRSP); Amendment to the Notice of Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration (WAPA), Department of Energy.

ACTION: Notice of an Amendment to the Notice of Proposed Power Rate Adjustment for CRSP.

SUMMARY: The Notice of Proposed Power Rate Adjustment for CRSP, which was published at 44 FR 19533 (April 3, 1979), is hereby amended for the purpose of including the following:

ADDRESSES: Interested persons wishing to submit written comments pertaining to the proposed rate adjustment on CRSP shall mail three (3) copies of such comments to each of the following:

Mr. A. M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administrtion, Department of Energy, 175 North 2400 West, Salt lake City, UT 84116.

Mr. Robert L. McPhail, Administrator, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401.

Mr. George S. McIsaac, Assistant Secretary for resource applications, Office of Resource Application, Department of Energy, 12th and Pennsylvania Avenue NW., Washington, DC 20461.

DATE: Written comments concerning the proposed rate adjustment on CRSP, submitted on or before July 11, 1979, will be considered.

SUPPLEMENTARY INFORMATION: The amendment to the Federal Register Notice published at 44 FR 19533 (April 3, 1979), as set forth above, shall also apply to the Federal Register Notice published at 44 FR 24154 (April 24, 1979), entitled, "Notice of An Amendment to the Notice of Proposed Power Rate Adjustment for CRSP."

Issued in Golden, Colorado, May 16, 1979.

Robert L. McPhail,

Administrator.

[FR Doc. 79-16581 Filed 5-25-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Grants for Construction of Treatment Works Innovative and Alternative Technology Assessment Manual; Public Meeting

A public meeting will be held on Monday, June 25, 1979, in Room No. 3906, Waterside Mall, 401 M Street, SW., Washington, D.C. beginning at 9:30 a.m. to discuss comments on the draft "Innovative and Alternative Technology Assessment Manual". The meeting will also provide an opportunity to clarify questions and major issues raised during the public comment period in regard to the draft Manual.

The comment period for the subject manual has been extended to June 20, 1979. All comments should be address to the Director, Municipal Construction Division (WH-547), Environmental Protection Agency, Washington, D.C. 20460. Comments received, including those during the meeting, will be reviewed and considered in finalizing the Manual. Upon completion, the Manual will be used by the State Agencies and the Environmental Protection Agency Regional Offices as a supplemental to the existing regulations and guidelines for evaluating projects proposing innovative and alternative technology. The Manual will also be

used by the municipalities and consulting engineers as a guide for preparing facilities plans using innovative and alternative technology.

The public is encourage to participate in the meeting. For further information regarding the meeting, please contact Lam K. Lim, Municipal Construction Division (WH-547), Environmental Protection Agency, Washington, D.C. 20460; telephone 202/426-8976.

Dated: May 22, 1979.

Thomas C. Jorling,

Assistant Administrator for Water and Waste Management.

[FR Doc. 79-16683 Filed 5-25-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1236-5]

Region I; Permit to Fall River, Mass.

Notice is hereby given that on May 7, 1979 the Environmental Protection Agency issued a prevention of Significant Deterioration (PSD) permit to the City of Fall River to construct a sewage sludge incinerator in Fall River, Massachusetts. This permit has been issued under EPA's Prevention of Significant Deterioration of Air Quality regulations (40 CFR Part 52.21) subject to certain conditions, including:

1. The maximum design capacity shall not exceed 3000 lb/hr. of dry sludge and scum grease input.

2. Manufacturer's design specifications for the sewage sludge incinerator and high energy venturi scrubber shall be submitted to EPA.

The PSD permit approval is reviewable under section 307(b)(1) of the Clean Air Act only in the First Circuit Court of Appeals. A petition for review must be filed on or before July 30, 1979.

Copies of the PSD permit are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203.

Department of Environmental Quality Engineering, Air and Hazardous Materials Division, 600 Washington Street, Boston, Massachusetts 02111.

Dated: May 17, 1979.

Rebecca W. Hammer,

Acting Regional Administrator, Region I.

[FR Doc. 79-16680 Filed 5-25-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1236-3]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

As required by Pub. L. 92-463 notice is hereby given that a meeting of the Science Advisory Board's Clean Air Scientific Advisory Committee (CASAC) will be held beginning at 9 a.m. June 14-16, at the Hospitality House Motor Inn, 2000 Jefferson Davis Highway, Arlington, Virginia.

The agenda includes a review by the Subcommittee on Carbon Monoxide on June 14 of the revised criteria document and evaluation of critical health studies for carbon monoxide; on June 15-16, the Committee-of-the-whole will address the reviews of the Subcommittee on Carbon Monoxide, receive a briefing on the status of risk assessment as conducted by the Office of Air Quality Planning and Standards, be briefed on regulatory analyses conducted by the Agency, receive an update on the oxides of nitrogen criteria document, and discuss procedures for involving CASAC in the process for developing ambient Air Quality Standards.

Copies of the revised criteria document and critical health studies for carbon monoxide will be mailed to those individuals or groups that had submitted comments to the Agency during the formal public comment period. Copies can also be obtained at the CASAC meeting or by contracting the Environment Criteria and Assessment Office, Research Triangle Park, North Carolina at 919-629-2266.

Any member of the public wishing to attend, participate, or obtain information should contact Mr. Terry F. Yosie at 202-406-2317, or Ms. Shirley Smith at 202-755-0263, by close of business June 7, 1979.

Dated: May 23, 1979.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 79-16682 Filed 5-25-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies, Federal Bank of Cleveland, et al.; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have 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)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, 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 gains 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 comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 14, 1979.

A. *Federal Reserve Bank of Cleveland,* 1455 East Sixth Street, Cleveland, Ohio 44101:

Pittsburgh National Corporation, Pittsburgh, Pennsylvania (mortgage banking; West Virgina): to engage, through its subsidiary, The Kissell Company, in mortgage banking activities, including the making or acquiring and servicing, for its own account or the account of others, loans and other extensions of credit. These activities would be conducted from an office in Beckley, West Virginia, serving Raleigh, Fayette, Greenbriar, Summers, Wyoming, Monroe, Mercer, and McDowell Counties, West Virginia.

B. *Federal Reserve Bank of St. Louis,* 411 Locust Street, St. Louis, Missouri 63166:

First Union Bancorporation, St. Louis, Missouri (insurance activities; Missouri): to engage, through its subsidiary, Union Finance Company, in the sale, as agent, of (1) any insurance for a banking

subsidiary of First Union Bancorporation, and (2) credit life, accident, and health insurance and physical damage and fire insurance directly related to an extension of credit or the provision of other financial services by Union Finance Company or a banking subsidiary of First Union Bancorporation. These activities would be conducted from the offices of Union Finance Company and the offices of the banking subsidiaries of First Union Bancorporation, and the area to be served is the State of Missouri.

C. *Federal Reserve Bank of Kansas City*, 925 Grand Avenue, Kansas City, Missouri 64198:

Midland Capital Co., Oklahoma City, Oklahoma (mortgage banking; Texas): to engage, through its subsidiary, Midland Mortgage Co., in the origination and servicing of residential and commercial mortgage loans. These activities would be conducted from an office in Laredo, Texas, serving Laredo and Webb, Zapata and Jim Hoggs Counties, Texas.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 16, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16576 Filed 5-25-79; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies, Federal Bank of Richmond, et al.; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have 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)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, 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 gains 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 comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 15, 1979.

A. *Federal Reserve Bank of Richmond*, 701 East Byrd Street, Richmond, Virginia 23261:

Maryland National Corporation, Baltimore, Maryland (leasing activities; national): to engage, through its subsidiary, Maryland National Leasing Services Corporation, in leasing personal property in transactions complying with the Board's Regulation Y, acting as agent or adviser with regard to such leases, and acting as agent for the sale of credit life, accident and health insurance directly related to such leases. These activities will be conducted from an office in Towson, Maryland, and the area to be served is national.

B. *Federal Reserve Bank of Kansas City*, 925 Grand Avenue, Kansas City, Missouri 64198:

Jefferson Bankshares of Colorado, Inc., Lakewood, Colorado (mortgage banking; western United States): to engage, through its subsidiary, Jefferson Mortgage Company, in the origination, purchase and sale, for its own account, or the account of others, extensions of credit secured or otherwise related to real estate. These activities will be conducted from an office in Lakewood, Colorado serving the western United States.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 17, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16577 Filed 5-25-79; 8:45 am]

BILLING CODE 6210-01-M

Farmbanc Co.; Formation of Bank Holding Company

Farmbanc Company, Nashville, Tennessee, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers Bank & Trust, Winchester, Tennessee. The factors that are considered in acting on the application are set forth in 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 18, 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, May 17, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16578 Filed 5-25-79; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorization for Foreign Currency Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on May 9, 1979, paragraph 5 of the Committee's authorization for foreign currency operations was amended to read as follows:

5. Foreign currency holdings shall be invested insofar as practicable, considering needs for minimum working balances. When appropriate in connection with arrangements to provide investment facilities for foreign currency holdings, U.S. Government securities may be purchased from foreign central banks under agreements for repurchase of such securities within 30 calendar days.

Note.—For paragraph 5 of the Authorization see 32 FR 9583.

By order of the Federal Open Market Committee, May 14, 1979.

Murray Altmann,

Secretary.

[FR Doc. 79-16575 Filed 5-25-79; 8:45 am]

BILLING CODE 6210-01-M

Paonia Financial Services, Inc.; Formation of Bank Holding Company

Paonia Financial Services, Inc., Paonia, Colorado, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C.

1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Paonia State Bank, Paonia, Colorado. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 12, 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, May 17, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-16579 Filed 5-25-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of Controller—Administration

[GSA Order OAD P 3610]

GSA Part-Time Employment Program; Proposed GSA Order

Pursuant to the provisions of the Federal Employees Part-Time Employment Act of 1978 (Pub. L. 95-437), notice is hereby given that the General Services Administration, Office of Controller-Administration, has developed internal procedures for permanent part-time employment. The proposed directive includes program objectives, program goals, management officials' and supervisors' responsibilities, definitions, implementing procedures, and reporting, review, and analysis guidelines.

Written comments, suggestions, or objections may be submitted to the Office of Personnel (Mailing Address: General Services Administration (BPE), Washington, DC 20405) by July 30, 1979. All written comments will be available in Room 6234, GS Building, 18th and F Streets, N.W., Washington, DC 20405, for public inspection. The final document will be available at 18th and F Streets, NW., Washington, D.C. 20405, Room 6236 or telephone (202) 566-1335.

Dated: May 17, 1979.

Janice K. Mendenhall,

Controller-Director of Administration.

GSA Order

Subject: GSA Part-time Employment Program (PEP).

1. *Purpose:* This order issues and transmits the GSA Part-time Employment Program (PEP).

2. *Applicability:* This program applies to all positions in GSA except those designated as temporary or intermittent.

3. *Program objective:* The Part-time Employment Program (PEP) provides new career opportunities to current and prospective GSA employees who are unable to be full-time employees but who are able to accept employment from 16 to 32 hours in a work-week. The program is one of the President's major employment initiatives. It is the GSA implementation of the Federal Part-time Employment Act of 1978 (Pub. L. 95-437).

4. *Program summary:* PEP is a component of the GSA Manpower Management Program (OAD P 3610.12). The attachment describes the objectives of the program, explains the source of program goals, the responsibilities of management officials, provides definitions, explains program implementation, and provides for reporting and review and analysis.

5. *Labor Management Relations Responsibilities:* Consultation has been conducted with labor organizations holding national consultation rights. Management shall notify labor organizations accorded exclusive recognition of these changes, and upon timely request, shall discuss or meet anc confer to the extent consistent with applicable laws, regulations, and negotiated agreements.

6. *Reports:* Reporting requirements are based on the requirement to complete a semi-annual report of activities (Interagency Report 0177-CSC-OT) and for periodic internal status reviews, both of which will vary in format.

7. *Forms:* No new forms are prescribed for this program.

Part-Time Employment Program (PEP)

1. *Introduction.* The Part-Time Employment Program (PEP) in the General Services Administration (GSA) is a method to bring part-time permanent employees into the work-force. Properly used, part-time employees increase productivity, have a lower absenteeism rate, and provide additional motivation and incentives for quality within the workforce. They are an additional resource in the management arsenal of effective personnel management practices.

2. *Background.* The concept of part-time employment is not new. In the private sector of the economy, many corporations, large and small have relied on the additional employees who are available on a part-time basis, especially during periods of fluctuating workloads. In addition, employees have been allowed to shift from a full-time to a part-time basis, to go to school to raise a growing family, to continue to provide useful service on a reduced time basis in the later years of an employee's work life, and for a host of other very good reasons. In other instances, positions were initially set-up as part time because of special requirements. For example, a small engineering consulting firm might have a work load for a draftsman for 16 to 24 hours a week. Rather than hire a full time draftsman, or use an engineer already on board at a lower work level, management might hire the draftsman on a part-time basis. The result is cost effective, and does not lead to the morale difficulties inherent if an employee is working below his (or her) capability. The concept has been rather heavily used in both the private sector and by non-profit organizations. In the public sector use has been rather sporatic, and limited to a few Agencies with special (and often cyclical) needs. Recently, more Agencies have been adding part-time employees as permanent members of their work-force.

In a memorandum dated September 16, 1978, the President asked that special emphasis be placed on the development and implementation of an expanded Federal Part-Time Employment Program. As a result of that memorandum the Office of Management and Budget (OMB) developed a new ceiling control concept called Full Time Equivalency (FTE). GSA was one of five Agencies designated to test the feasibility of the program. The test year was designated as September 24, 1978 through September 22, 1979.

The Federal Employee's Part-Time Employment Act (Pub. L. 95-437) was signed on October 10, 1978. Part-time employment programs are now required by all agencies.

3. *Purposes.* The purposes for the GSA PEP program are:

a. To break down artificial barriers that may inhibit the employment of part-time permanent employees,

b. To provide part-time employment opportunities to potential GSA employees at all grade levels and occupations; professional and administrative, technical, clerical, crafts, trades, and custodial,

c. To improve personnel management and overcome some of the criticisms

directed at the end-of-year ceiling control system,

d. To provide a vehicle for adjusting deficiencies in the number of minorities and women in the GSA work-force,

e. To serve as a working model for other Agencies demonstrating the practicality of the concept of part-time employment,

f. To provide additional motivation and incentives for quality, and

g. To allow for experimentation with less used work-force management techniques including; "job-sharing", "job pairing", and "job restructuring."

4. *Definitions.* a. *Full-time employee.* An employee who works a regularly scheduled number of hours and days, required by the administrative work-week for his (or her) employment group or class. Most full time employees have an administrative work-week of 5 days of 8 hours each.

b. *Part-time employee.* An employee who works a regularily scheduled tour of duty of from 16 to 32 hours in a work-week.

c. *Intermittent employee.* An employee who works on an occasional or irregular basis without a prearranged schedule and with compensation only for the time actually employed or for services actually rendered.

d. *Permanent appointment.* An appointment to serve in either the competitive or the excepted service. The appointment may be career, career-conditional, excepted, excepted-conditional, or in an obligated position. The employee may or may not be serving under probation.

e. *Temporary appointment.* An appointment to serve in a temporary, indefinite, TAPER, status quo, or other nonstatus position.

f. *Work-year.* The amount of time worked by a full-time employee. It is normally equivalent to 2,080 hours in a given year, or 40 hours in a given week. It does not include overtime.

g. *Full-time equivalent (FTE).* The equivalent of one work-year or 2,080 hours of work performed by a full-time employee.

h. *Total employment.* All employees except those in disavantaged youth programs or participating in the developmental component of the Worker-Trainee Opportunity Program (WTOP).

i. *Full-time permanent (FTP).* Employees working in a full-time position in a permanent appointment.

j. *Job-sharing.* A method of filling a set of duties is which 2 persons split one full-time set of duties, with each taking the responsibility for and being evaluated on producing a part of the total work. Commonly each will work 20 hours, although each person can work anywhere between 16 and 32 hours. The split is arrange by the supervisor between the 2 persons to insure coverage of all duties.

k. *Job-pairing.* A method of filling a set of duties in which 2 persons share one full-time set of duties, with each working only part-time, but both taking equal responsibility for performing part of the work. Commonly each will work 20 hours during the week, although each person can work anywhere between 16 and 32 hours.

l. *Job restructuring.* A method of filling a set of duties in which 2 persons split one full-time set of duties with each working a module of the work-time, but at a different skill and pay level to perform what had previously been a single job. (Examples: An archives technician and an archivist, each working 20 hours during a week, or a buildings management specialist and a program assistant, each working 32 hours. In the latter example, the total hours worked is 64 hours. This would occur when there was too much work for one full-time employee, but not enough for two employees).

5. *Coverage.* a. All occupations and grade levels through GS–15 are included in this program.

b. All persons newly employed by GSA as part-time permanent employees after April 7, 1979 come under the provisions of this order.

c. Part-time permanent employees employed prior to April 7, 1979 are excluded, unless there is a break in their part-time employment.

6. *Ceiling.* No ceiling relief is provided by this program.

7. *Size of the program.* a. The Administrator shall annually determine the FTP work-years to be filled through the employment of part-time employees.

b. The number of part-time employees needed to meet this requirement will be determined using the estimate that a part-time employee will commonly work half the tour of a full-time employee or 20 hours a week.

i. If less than 20 hours on the average is worked, more part-time employees will be needed to reach the Agency goal.

ii. If more than 20 hours on the average is worked, fewer part-time employees are needed.

c. Determination of the average number of hours worked is provided for in paragraph 13 below.

8. *Program responsibilities.* a. Heads of services and staff offices are responsible for working with the appropriate Central Office personnel division branches in the development and implementation of their particular part-time program. They can not change the percentage goal set by the Administrator. Their responsibility is to:

(1) To determine which positions will be used for part-time employment;

(2) To establish the methods to reach the potential candidates and the time frame to be used;

(3) To provide the necessary resources to reach their goals, and including recruitment team members when appropriate;

(4) To provide information to the personnel officials preparing the Office of Personnel Management semi-annual reports, GSA internal status reports, and research data to determine the effectiveness of the program;

(5) To conduct active communications programs to keep all employees aware of the purpose and scope of the part-time program; and

(6) To insure that part-time employees are utilized for the purposes set forth in paragraph 3, above.

b. Regional administrators are responsible for working with their personnel divisions in the development and implementation of their part-time program. They can not change the percentage goal set by the Administrator. Their responsibility is:

(1) To determine which positions will be used for part-time employment:

(2) To establish the methods to reach the potential candidates and the time frame to be used;

(3) To provide the necessary resources to reach their goals including recruiting team members when appropriate;

(4) To provide information to the personnel officials for preparing the Office of Personnel Management semi-annual report, GSA internal status reports, and research data to determine the effectiveness of the program;

(5) To conduct active communications programs to keep all employees aware of the purpose and scope of the part-time program; and

(6) To insure that part-time employees are utilized for the purposes set forth in paragraph 3, above.

c. The Director of Personnel is responsible for the overall coordination and administration of the GSA part-time employment program.

d. The GSA Part-Time Employment Program Manager is designated by the Director of Personnel and has responsibility for:

(1) Developing fiscal year implementing instructions as needed;

(2) Reviewing internal status reports to determine program effectiveness and to recommend to the Director of Personnel such measures as are

necessary for the Administrator's goals to be reached;

(3) Advising and assisting operating personnel officials in the development and execution of their program;

(4) Informing the Employee and Labor Relations Division, Office of Personnel, of any program changes which might require consulting and/or conferring with labor organizations;

(5) Maintaining contact with OPM and other agency personnel and with non-Government personnel and facilities necessary for the accomplishment of PEP objectives;

(6) Developing necessary reporting formats on a periodic basis;

(7) Reviewing reports received from service, staff office and regional program managers that:

(a) Identify target positions for use in PEP;

(b) Indicate positions which have been filled to date;

(c) Indicate the number of hours worked under PEP for the reporting period;

(d) Provide information on successes and both real and potential shortfalls in PEP;

(e) Assess program costs in terms of manpower and money;

(e) Evaluate program effectiveness at service, staff office, regional and GSA-wide levels; and

(8) Consulting and coordinating with the Affirmative Action Staff, Office of Personnel, on program matters as they relate to the GSA EEO program.

e. The Director, Affirmative Action Staff, Office of Personnel, is responsible for:

(1) Assisting the GSA Part-time Program Manager in developing implementing instructions for each yearly program to insure that PEP supports the GSA EEO Affirmative Action plan commitment;

(2) Reviewing semi-annual and other reports to determine conformity with EEO objectives;

(3) Providing information to the GSA PEP Manager for use in evaluating the PEP;

(4) Alerting the GSA PEP Manager to real or potential deficiencies in the program in meeting the goals in the AAP; and

(5) Assisting the GSA PEP Manager in correcting PEP deficiencies impacting on the EEO program.

f. The Director, Program Management Staff, Office of Personnel, has the responsiblity to provide an internal review of the PEP during any scheduled or special reviews.

g. A part-time employment program coordinator will be designated in the Central Office Personnel Division and in each Regional personnel division responsible for:

(1) Acting as a single source of contact for the GSA PEP Manager;

(2) Developing implementing instructions necessary for more efficient program operations;

(3) Reviewing the status of the PEP at any given point of time and make such recommendations to the Head of Service or Staff Office or Regional Administrator as will increase the effectiveness of the program;

(4) Keeping appropriate labor relations offices advised of any program changes which require consulting and/or conferring with labor organizations;

(5) Maintaining contact with appropriate OPM, other agency, and non-governmental personnel and facilities as necessary for accomplishment of program objectives;

(6) Implementing the reporting system referred to in d(7) above; and

(7) Consulting and coordinating with appropriate EEO Officers regarding PEP matters as they relate to the EEO program.

h. Training officers perform a vital role in the development and implementation of the GSA part-time employment program by:

(1) Assisting in determining the need for in-house and external training for part-time employees;

(2) Acting as a main resource for development of sources of training;

(3) Providing administration of the day-to-day operations of training programs;

(4) Assisting in the development of training modules for in-house use; and

(5) Coordinating the annual training needs analysis with the combined call as it relates to part-time employment.

i. The supervisor, who has the best knowledge within GSA of his own workload requirements, is responsible for:

(1) Determining which positions can be filled on a part-time basis;

(2) Insuring that part-time employees are provided with the basic information required to accomplish their job;

(3) Providing training, as necessary, to increase the effectiveness of the part-time employee; and

(4) Advising on changes that need to be made to the PEP for better efficiency.

j. Interested employees, who desire to shift from full-time to part-time employment are responsible for:

(1) Keeping their supervisor advised of their interest; and

(2) Applying for positions which interest them as the positions are announced.

9. *Position Classification.* Part-time positions are classified following the same procedures as full-time employees.

10. *Hours of employment.* A part-time employee is allowed to work from 16 to 32 hours in a given work week. Within that guideline, the supervisor and the employee together set the hours to be worked. A part-time employee is not to be hired merely as a feeder into a full-time position.

11. *Benefits.* a. Annual leave is earned based on the category of leave which the employee is in and pro-rated as to hours worked as follows:

Years of service and annual leave earned

Less than 3—1 hour for each 20 hours of work.
3 to 14—1 hour for each 13 hours of work.
15 or more—1 hour for each 10 hours of work.

The employee is allowed to carry over 240 hours of annual leave the same as a full-time employee.

c. Leave-without-pay (LWOP) is credited in the same way as for full-time employees.

d. Court leave is credited in the same way as for full-time employees.

e. A part-time employee employed after the signing of the Part-time Career Employment Act of 1978 is eligible for life insurance and for health insurance benefits. The method for prorating of health insurance benefits will be provided by OPM.

f. A part-time employee is not eligible for military leave.

g. Holidays are included for part-time employees if they are regularly scheduled as work days.

12. *Program operation.* a. Supervisors and management officials have complete flexibity regarding the specific methods used to operate their internal part-time program. They may simply hire part-time employees or they may use job-pairing, job-sharing, or job restructuring, or use any combination of these methods.

b. Within the above guidelines, the supervisor or management official is responsible for reaching the annual goal set by the Administrator.

13. *Reporting requirements.* a. The format for the semi-annual report of part-time activities is provided in a periodic OPM bulletin. Specific information on required report content will be provided to appropriate personnel officials by the GSA Part-time Employment Program Manager in advance of the reporting date.

b. The format for the periodic internal review will be developed by the GSA Part-time Employment Program Manager and provided to appropriate operating personnel officials.

c. For consistency throughout the program, it is estimated that each part-time employee will work approximately 20 hours in any work week. Assuming that the GSA goal for part-time employment is set at 5 percent of full-time employment in permanent positions (FTP) equivalency, and GSA is allowed 35,000 work-years, the number of hours worked by part-time employees should equal 5 percent of the total hours for FTP (or 1,750 staff-years). Since each part-time employee is considered to be working on the average, half of a work-year (or 20 hours a week), then GSA would need to employ 3,500 part-time employees to reach its goal. It is recognized that this 20 hour a week figure will fluctuate with time, location, and ceiling allotment.

d. The use of the following sample calculations (for a "region" of 2,000 employees) provides a simple method for all components of GSA to be evaluated on an equal basis.

(1) $2{,}000 \text{ work-years} \times \frac{2080 \text{ hours}}{1 \text{ work-year}} = 4{,}160{,}000 \text{ FTP Equivalency}$

(2) $5 \text{ percent goal} = \frac{4{,}160{,}000 \text{ FTP}}{5} = 208{,}000 \text{ FTP hours}$

(3) $\frac{208{,}000 \text{ FTP hours}}{2{,}080 \text{ hours/work year}} = 100 \text{ work-years set aside for PEP}$

(4) Assuming each part-time employee worked only one-half work-year or 20 hours each week:

$100 \text{ PEP work-years} \times \frac{2 \text{ part-time employees}}{1 \text{ work-year}} = 200 \text{ part-time employees to reach goal.}$

e. If it is determined that part-time employees are working more or less than an average of 20 hours a week, an adjustment is required to the reporting figures.

(1) If the average is above 20 hours, less part-time employees will be needed to reach the 5 percent goal. For example, if a region was alloted 2,000 work-years, based on a part-time employee working 20 hours a week, it would need 200 part-time employees to reach its part-time goal of 100 work-years (or 5 percent). However, if the part-time employees were averaging 32 hours of work a week, then only $^{2}\%_{32}$ (or $\frac{5}{8}$) of the number of part-time employees would be needed to reach the regional goal (i.e., 125).

(2) Conversely, if a region with an allotment of 2,000 work-years found that its part-time employees were working on the average only 16 hours in a week, it would need more part-time employees to reach it goal. In this case it would need $^{2}\%_{16}$ (or $\frac{3}{4}$) of the 200 employees or 250.

[FR Doc. 79-16689 Filed 5-25-79; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

Health Resources Administration

Preventing Disease/Promoting Health Objectives for the Nation; Open Meeting

The following conference will be convened as a joint effort of the Center for Disease Control and the Health Resources Administration, in coordination with the Office of Disease Prevention and Health Promotion of the Office of the Assistant Secretary for Health. The conference will be open to the public, limited only by the space available:

Date: June 13-14, 1979.
Time & Place:

June 13—8:00 a.m., White Hall, Emory University, 1380 S. Oxford Road, N.E., Atlanta, Georgia 30322.

June 14—8:30 a.m., Auditorium B, Center for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Purpose: To discuss a series of specific disease prevention and health promotion objectives to be achieved by 1990.

Additional information may be obtained from: Mr. Billy G. Griggs, Deputy Director, Bureau of Health Education, Center for Disease Control, Atlanta, Georgia 30333; Telephones: FTS: 236-3111, Commercial: 404/329-3111.

Dated May 21, 1979.

William H. Foege, M.D.,
Director, Center for Disease Control.

[FR Doc. 79-16615 Filed 5-25-79; 8:45 am]
BILLING CODE 4110-86-M

Federal Council on the Aging

Long-Term Care Committee Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 92-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress, on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Committee will hold a meeting on Thursday, June 21, 1979 from 9:30 a.m. to 4:30 p.m. in Room 507-503A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

The agenda will consist of a discussion with Federal officials on the issues and problems in long-term care.

Further information on the Council may be obtained from the FCA, Secretariat, Federal Council on the Aging, Washington, D.C. 20201, telephone (202) 245-0441. FCA meetings are open for public observation.

Dated: May 17, 1979.

Nelson H. Cruikshank,
Chairman, Federal Council on the Aging.

[FR Doc. 79-16588 Filed 5-25-79; 8:45 am]
BILLING CODE 4110-92-M

Food and Drug Administration

Privacy Act; New System of Records

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of new system of records, Epidemiological Research Studies of the Bureau of Radiological Health, HEW/FDA/BRH.

SUMMARY: The Department is publishing notice of a new system of records in the

Food and Drug Administration in accordance with the Privacy Act. The Department invites interested persons to submit comments on the proposed routine uses of records in the system.

DATES: HEW will adopt the routine uses of the system of records without further notice unless HEW receives comments which would result in a contrary determination within the 30 day comment period. A new system report was filed for this system with the Director, Office of Management and Budget, the Speaker of the House of Representatives, and the President of the Senate on May 22, 1979. HEW has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. If this waiver is granted, notice of this system, except for the routine use provisions, will be effective on the date of the waiver. The routine use provision will be effective on the date of the waiver or 30 days after the date of publication, whichever is later.

ADDRESS: Comments should be addressed to Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue S.W., Washington, D.C. 20201. Comments received will be available for inspection in Room 526–F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald H. Deighton, FDA Privacy Act Coordinator, Room 12A–16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or call 301–443–1813.

SUPPLEMENTAL INFORMATION: The Bureau of Radiological Health (BRH), Food and Drug Administration, proposes to establish routine uses for a system of records that will provide a data base for use in performing analyses to determine and evaluate the possible harmful effects of exposure to radiation.

To carry out the appropriate analyses, FDA will collect data from a number of different sources over a long period of time and will need to collect data from individual respondents at several different times. In order to accomplish the recontacts, FDA will employ a unique identifier that assures absolute matching of data among the various sources and from one data collection period to another.

As explained under "Purpose of the System" in the notice of the establishment of the new system, records making up the system were collected, analyzed and reported on prior to 1970. Either because these records were inactive or due to administrative oversight, no Privacy Act notice was previously published by FDA for these records.

The system will include new records from current and future studies as well as the old records discussed above. FDA will update and reanalyze the old records in light of the recognition that the latency periods before biological effects of radiation become apparent may be longer than once was thought.

FDA will maintain the records in this system in a secure manner compatible with their content and use. Access will be given only to Department employees whose official duties require access for verification, coding, and statistical manipulation and evaluation purposes and to those persons identified in the "routine uses" portion of the notice. FDA will keep records in locked file cabinets or rooms under the direct control of the studies' principal investigators.

Dated: May 22, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

09–10–0017

SYSTEM NAME:

Epidemiological Research Studies of the Bureau of Radiological Health. HEW/FDA/BRH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Epidemiologic Studies Branch, Division of Biological Effects, Bureau of Radiological Health, Food and Drug Administration, Room 38, Twinbrook Research Laboratory, 12709 Twinbrook Parkway, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been exposed to radiation (ionizing, nonionizing, sonic) from either medical, occupational or environmental sources; patients with cancer, birth defects, or other diseases or conditions resulting from radiation exposure; unexposed persons (e.g., family members) for the purpose of making comparisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

ID number, Social Security number which is supplied on a voluntary basis, name, demographic characteristics, radiation exposure, occupational and personal health histories, medical data and information on or from death certificates, if deceased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 310, 354, 356 and 357, 42 U.S.C. 241, 242A, 263b, 263c and 263d. Federal Food, Drug and Cosmetic Act, Section 702(a), 21 U.S.C. 372(a). Reorganization Plan No. 3 of 1970, Section 2.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records in the system may be made available to individuals and organizations deemed qualified by the Department to carry out epidemiological research solely for the purpose of carrying out such research (Item 101, Appendix B of the Department Regulations (45 CFR 5b)).

2. Records in the system may be made available to Federal, State, and local agencies having an interest in protecting the public from the effects of radiation.

3. Records in the system may be made available to agencies or other persons who may be able to help locate individuals who may have been exposed to radiation.

4. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office, at the request of that individual.

5. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity, (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components, or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on punch cards and magnetic tape and discs, computer printouts and on microfilm.

RETRIEVABILITY:

Records are retrieved by name and ID number. They are used in HEW by epidemiologists, statisticians and

authorized staff for epidemiological research and analyses on the effects of radiation exposure.

SAFEGUARDS:

Name listings and log books containing information to permit the identification of an individual and microfilmed records are kept in locked files with access limited to authorized personnel.

Data collection instruments (questionnaires, report forms) are stored either in file cabinets after all identifiers are removed or in locked file cabinets or a locked room. All computer files and printed listings are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standard 41 and 31, and the HEW ADP Systems Manual Part 6, "ADP Systems Security." For example, a password is required to access these files.

RETENTION AND DISPOSAL:

One year to permanently, depending on the length of patient follow-up required to complete all phases of the study. The records will be destroyed by shredding, burning, or other appropriate means so as to render them illegible. Computer tapes and discs will be erased.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Epidemiologic Studies Branch (HFX-130), Division of Biological Effects, Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. In the event the file contains medical or medically related information, the requestor shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These procedures are in accordance with Department Regulations (45 CFR 5b(6)).

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified under "Notification Procedure" above and reasonably identify the record and specify the information to be contested. (These procedures are in accordance with FDA Regulations (21 CFR 21.50).)

RECORD SOURCE CATEGORIES:

Individuals in the system of records, employers, health care providers and facilities, administrative and vital statistics agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-16720 Filed 5-25-79; 8:45 am]
BILLING CODE 4110-03-M

Health Resources Administration

Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1979:

Name: National Advisory Council on Nurse Training, Date and Time: June 26-28, 1979, 10:30 a.m., Place: Conference Room 7-32, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782. Open June 26, 1979, 10:30 a.m.-12:00 noon, closed remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources Administration, concerning general regulations and policy matters arising in the administration of the Nurse Training Act of 1975. The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRA.

Agenda: Agenda items for the open portion of the meeting include announcements; consideration of minutes of previous meeting; discussion of future meeting dates; and administrative and staff reports. The remainder of the meeting will be devoted to the review of grant applications for Federal assistance, and will therefore be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources Administration, pursuant to Public Law 92-463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Dr. Mary S. Hill, Bureau of Health Manpower, Room 3-50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6681.

Agenda items are subject to change as priorities dictate.

Dated: May 22, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79-16552 Filed 5-25-79; 8:45 am]
BILLING CODE 4110-83

HEALTH, EDUCATION, AND WELFARE

Office of Education

National Advisory Council on the Education of Disadvantaged Children; Site Visits

Notice is hereby given, pursuant to Pub. L. 92-463, that the National Advisory Council on the Education of Disadvantaged Children will conduct site visits simultaneously in Salem, Oregon; Olympia, Washington; and Sacramento, California. On June 28, 1978 from 9:00 a.m. to 12:30 p.m., visits will be made at:

1. Oregon State Department of Education, 942 Lancaster Drive NE., Salem, Oregon 97310.
2. Washington Department of Education, Old Capitol Building, Olympia, Washington 98504.
3. California State Department of Education, 721 Capitol Mall, Sacramento, California 95814.

On June 29, 1979, from 9:00 a.m. to 2:30 p.m., the entire group will visit the Technical Assistance Center at:

Northwest Regional Educational Laboratory, 710 SW. Second Avenue, Portland, Oregon 97204.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2411) to advise the President and the Congress on the effectivenss of compensatory education to improve the educational attainment of disadvantaged children.

The purpose of these activities is to discuss the progress and implementation of the USOE developed Title I Evaluation and Reporting System and the Regional Technical Assistance Center mechanism for assisting states with implemention of the system.

The Council's activities will be open to the public. Because of limited space, all persons wishing to attend should contact the Council office by June 18, 1979, area code 202/724-0114 and speak with Mrs. Lisa Haywood.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children located at 425 Thirteenth Street, N.W., Suite 1012, Washington, D.C. 20004.

Signed at Washington, D.C. on May 23, 1979.

Gloria B. Strickland,

Acting Executive Director.

[FR Doc. 79-16664 Filed 5-25-79; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[INT DES 79-26]

Proposed Recreational Lease and Conveyance of Wildhorse Reservoir and Lands to the Shoshone-Paiute Indian Tribes of Duck Valley, Elko County, Nev.; Availability of Draft Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Indian Affairs, Department of the Interior has prepared a draft environmental statement for the proposed lease and conveyance of Wildhorse Reservoir and lands to the Shoshone-Paiute Indian Tribes of Duck Valley, Nevada.

The environmental statement considers the effects of a two-phased proposal for the lease of the Wildhorse Reservoir and adjacent BIA-administered lands to the Duck Valley Indians, and the concurrent development of legislation whereby the leased property would be conveyed to the tribes as trust lands for their beneficial use.

Copies of the statement are available for review at the following locations:

Bureau of Indian Affairs, Environmental Quality Services, Room 4554, Department of Interior, Washington, D.C., Telephone 202-343-8248

Bureau of Indian Affairs, Eastern Nevada Agency Office, 1555 Ruby View Drive, Elko, Nevada 89801, Telephone 702-738-5165

Bureau of Indian Affairs, Eastern Nevada Sub-agency, Owyhee, Nevada 89832, Telephone 702-757-3066

Bureau of Indian Affairs, Phoenix Area Office, Room 502, 3030 North Central Avenue, Phoenix, Arizona 85012, Telephone 602-261-4195

Single copies of the statement can be made available upon request to the Phoenix Area Office at the above address.

The Department of the Interior invites written comments on the draft statement to be submitted by *July 30, 1979* to the Area Director, Phoenix Area Office, P.O. Box 7007, Phoenix, Arizona 85011.

Dated: May 22, 1979.

larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-16599 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-02

Proposed Recreational Lease and Conveyance of Wildhorse Reservoir and Lands to the Shoshone-Paiute Indian Tribes of Duck Valley, Elko County, Nev.; Public Hearings

Public hearings on the proposed Wildhorse Reservoir lease and conveyance will be held at the following times and locations:

June 26, 1979, 10:00 a.m., Regency Whitman Room, Owyhee Plaza Hotel, 1109 Main Street, Bosie, Idaho.

June 27, 1979, 10:00 a.m., Old Gymnasium, Owyhee, Nevada.

June 28, 1979, 9:00 a.m., Elko Civic Auditorium and Convention Center, 700 Festival Way, Elko, Nevada.

June 29, 1979, 10:00 a.m. Room 4002, Federal Building, 300 Rooth Street, Reno, Nevada.

The hearings are being held to enable interested individuals, representatives of organizations, and public officials to present comments concerning the Department of Interior's Draft Environmental Impact Statement identified above. The statement considers the effects of a two-phased proposal for the lease of the Wildhorse Reservoir and adjacent BIA-administered lands to the Duck Valley Indians, and the concurrent development of legislation whereby the leased property would be conveyed to the tribes as trust lands for their beneficial use.

Oral and written comments are invited. The number of persons desiring to present oral statements may make it necessary to limit the time allowed for any single statement. Written comments supplementary to, or in lieu of, oral statements will be accepted at the hearings. Copies of the Draft Environmental Statement may be obtained from the Phoenix Area Office, Bureau of Indian Affairs, 3030 North Central Avenue, Suite 502, Phoenix, Arizona 85012, telephone 602-261-4195.

Those desiring to make an oral presentation at the hearings should make that fact known by advising the Phoenix Area Office in advance of the hearing or by registering on the date and at the place of hearing prior to the scheduled hour.

Dated: May 22, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-16600 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-02

Bureau of Land Management

Arizona; Accelerated Intensive Inventory for the Hualapai-Aquarius Planning Area, Phoenix District

Notice is hereby given that pursuant to the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579) and the Bureau of Land Management's *Wilderness Inventory Handbook*, that the Intensive Inventory for the Hualapai-Aquarius Planning Area has been started and will be accomplished by August 1, 1979, after which a public comment period will be announced.

The wilderness review process has been accelerated in order to comply with a court-ordered land-use planning and environmental statement schedule.

Maps and other information about the wilderness review procedure can be obtained from the Bureau of Land Management, Phoenix District Office, 2929 West Clarendon, Phoenix, Arizona 85017, 602-261-4231.

Dated: May 17, 1979.

Robert O. Buffington,

State Director.

[FR Doc. 79-16554 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Wilderness Study of Paria Canyon, Paiute, and Vermillion Cliffs Instant Study Areas; Public Comment

Notice is hereby given that pursuant to the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579) that a 45-day public comment period will begin May 25, 1979 on the planning recommendations as to the suitability of the Paria Canyon, Paiute, and Vermillion Cliffs Instant Study Areas for designation as wilderness. Recommendations, developed with public comments, will be the basis for final recommendations to be submitted, along with an environmental statement, to Congress on whether the Instant Study Areas should be designated as wilderness.

All three areas are located in the Arizona Strip vicinity. Paria Canyon lies in both Arizona and Utah, Paiute and Vermillion Cliffs are in Arizona.

A previous Federal Register Notice, submitted May 10, (published May 17, 1979; 44 FR 28885) announced the purpose, time, and location of public meetings to be held in conjunction with this comment period. Comments will be accepted through July 9, 1979. Information can be obtained from Bureau of Land Management District Offices: 196 East Tabernacle, P.O. Box 250, St. George, Utah 84770, (801) 673-3545, and 1579 North Main, P.O. Box 729,

Cedar City, Utah 84720, (801) 586-2401, after May 25, 1979.

Dated: May 17, 1979.

Robert O. Buffington,

State Director.

[FR Doc. 79-16553 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-84-M

Idaho; Wilderness Inventory; Decision

Notice is hereby given that the Bureau of Land Management has completed wilderness inventory on certain public lands in Idaho. The inventory, following guidelines established by the Bureau, was conducted in advance of the statewide inventory in order to meet time commitments previously established for a BLM-State of Idaho land exchange in the Donkey Hills area, Salmon District.

The proposed decision on this inventory was announced in the January 11, 1979, Federal Register (44 FR 2433). A 90-day comment period was conducted including public meetings in Salmon and Challis, Idaho. After analysis of public comments and the District Manager's recommendation, the State Director's final decision is as follows:

Unit 45-1 Goldburg.
11,640—total acres.
8,350—acres lacking characteristics.
3,290—acres with characteristics.

A portion of Unit 45-1 contains the wilderness characteristics of naturalness and solitude-recreation, however, for size is dependent upon the contiguous RARE II area 4-503 remaining a further study or wilderness proposal at the BLM-Forest Service contiguous border.

Unit 45-2 Summit Creek.
4,408—total acres.
4,408—acres lacking characteristics.

Unit 45-2 lacks outstanding opportunity for solitude and primitive and unconfined types of recreation.

Unit 45-3 Donkey Hills.
46,408—total acres.
46,408—acres lacking characteristics.

Unit 45-3 meets the size criteria, and portions of the unit also meet the naturalness criteria. The unit lacks outstanding opportunities for solitude and primitive and unconfined types of recreation due to the ability to see surrounding roads and traffic from most of the unit, and the gentle topography and numerous substantial ways penetrating the interior of the unit which seriously affect solitude-recreation.

Unit 45-1 Goldburg (3,290 acres) is therefore identified as a Wilderness Study Area (contingent on the adjacent RARE II lands). All other BLM land included within this inventory is dropped from the inventory process, with management limitations imposed by Section 603 of the Federal Land Policy and Management Act of 1976 no longer applying.

This decision becomes final 30 days following publication in the Federal Register unless formally and publically amended and published by the State Director, based on new information received as a result of final publication.

For further information contact: William L. Mathews, State Director, Idaho State Office—BLM, 550 W. Fort Street, Federal Building, Box 042, Boise, ID 83724.

Dated: May 17, 1979.

William L. Mathews,

Idaho State Director, Bureau of Land Management.

[FR Doc. 79-16555 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-84

[ES 8517]

Michigan: Proposed Withdrawal and Reservation of Lands

The U.S. Forest Service, Department of Agriculture, filed application ES 8517 on December 14, 1970, for the withdrawal and reservation for Forest Service purposes of the following described lands, subject to valid existing rights:

Michigan Meridian
T. 44 N., R. 31 W.,
Sec. 23, Lots 8 and 11,
containing 112.00 acres aggregate.
T. 47 N., R. 13 W.,
Sec. 18, Lot 1,
containing 35.74 acres.

The lands in T. 44 N., R. 31 W., lie within the State Forests of Michigan and within the National Forest Purchase Unit established to facilitate a land exchange program between the State and Ottawa National Forest under the General Exchange Authority of March 20, 1922. The land in T. 47 N., R. 13 W., also lies within the State Forest lands and a National Forest Purchase Unit for Hiawatha National Forest. The purpose of the withdrawals will be to permit exchange of these lands for State lands within the boundaries of the respective National Forests, thereby helping to consolidate the land managed by the two National Forests as well as that managed by the State. Until June 28, 1979, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the Director, Eastern States, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, on or before June 28, 1979. Notice of the public hearing will be published in the Federal Register giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual, Sec. 2351.16 B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of assuring that the area sought is the minimum essential to meet the applicant's needs, providing for the maximum concurrent utilization of the lands for purposes other than the applicant's and reaching agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on the application will be published in the Federal Register. The Secretary's determination shall, in a proper case, be subject to the provisions of section 204(c) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2752. The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over segregated lands will not be affected by the temporary segregation. The segregative effect of this proposed withdrawal shall terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with this proposed withdrawal should be addressed to the Director, Eastern States, Bureau of Land Management,

Department of the Interior, 7981 Eastern Avenue, Silver Spring, Maryland 20910.

Lane J. Bouman,

Acting Director, Eastern States.

[FR Doc. 79-16558 Filed 5-25-79; 8:45 am]

BILLING CODE: 4310-84-M

DEPARTMENT OF THE INTERIOR

North Atlantic OCS Oil and Gas—Intent To Hold Public Hearing Concerning Draft Supplement to Final Environmental Statement for OCS Sale No. 42

In accordance with section 102 (2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft supplement to the final environmental statement (FES) for Outer Continental Shelf (OCS) lease Sale No. 42. This statement, released on May 22, 1979, assesses the possible effects of leasing 128 tracts (294,912 hectares) for oil and gas development on Georges Bank.

Single copies of the draft supplement may be obtained from the Manager, New York Outer Continental Shelf Office, Bureau of Land Management, 26 Federal Plaza, Suite 32-120, New York, New York 10007 (212-264-5580), or from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240 (202-343-5717).

A public hearing has been scheduled to provide the Secretary with public views and suggestions regarding the draft supplement. The time and location of this hearing are:

Date: June 20, 1979
Time: 9:00 a.m.-5:00 p.m.
Location: Holiday Inn, 30 Washington Street, Somerville, Massachusetts (617-628-1000).

Should the expressed interest in testifying indicate a need for additional time, the hearing will remain open beyond 5:00 p.m. on June 20 and, if necessary, reconvene at 9:00 a.m. on June 21 to allow all interested parties to voice their views.

All persons wishing to testify are requested to contact the Manager, New York OCS Office, Bureau of Land Management, at the above address no later than June 13, 1979. Time limitations make it necessary to limit the length of oral presentation to ten minutes. Oral remarks may however, be supplemented by a more complete written statement which should be submitted to a hearing officer at the time of oral presentation. To the extent that time is available following the presentation of testimony by those who gave advance notice, others present will be given an opportunity to speak.

The Department will accept written comments on the draft supplement and accessory written material as part of the hearing record until July 6, 1979. Once all testimony and review comments have been received and evaluated, a final supplement will be prepared.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Approved: May 24, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 79-16826 Filed 5-25-79; 9:33 am]

BILLING CODE 4310-84-M

Outer Continental Shelf, Southern Calif.; Oil and Gas Lease Sale No. 48

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343), as amended, and the regulations issued thereunder (43 CFR 3300).

2. *Filing of Bids.* Sealed bids will be received by the Manager, Pacific Outer Continental Shelf (OCS) Office, Bureau of Land Management, 300 North Los Angeles Street, Room 7127, Los Angeles, California 90012. Bids may be delivered, either by mail or in person, to the above address until 4:00 p.m., p.s.t., June 28, 1979; or by personal delivery to The Biltmore Hotel, Crystal Ballroom, 515 South Olive Street, Los Angeles, California 90013 between the hours of 8:30 a.m., p.s.t., and 9:30 a.m., p.s.t., June 29, 1979. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., p.s.t., June 29, 1979. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 44 FR 24348.

3. *Method of Bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., p.s.t., June 29, 1979," must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned solely for administative purposes and are not the same block numbers found on offical protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, certified check, or money order payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR 3302. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required of bidders under 43 CFR 3302. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Bonus Bidding With a Fixed Sliding Scale Royalty.* Bids on tracts 48-018, 48-019, 48-026, 48-027, 48-028, 48-029, 48-030, 48-037, 48-038, 48-039, 48-040, 48-041, 48-042, 48-043, 48-044, 48-045, 48-055, 48-056, 48-057, 48-058, 48-059, 48-060, 48-060, 48-061, 48-062, 48-066, 48-067, 48-068, 48-069, 48-070, 48-071, 48-072, 48-073, 48-074, 48-077, 48-078, 48-079, 48-080, 48-081, 48-082, 48-083, 48-084, 48-085, 48-086, 48-109, 48-110, 48-111, 48-112, 48-113, 48-114, 48-115, 48-116, 48-123, 48-124, 48-125, 48-126, 48-127, 48-128, 48-131, 48-134, 48-137, 48-138, 48-139, 48-140, 48-167, 48-168, 48-169, 48-170, 48-171, 48-172, 48-173, 48-174, 48-175, 48-176, and 48-177 must be submitted on a cash bonus bid basis with the percent royal due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on prduction during a quarter, the value of production during the quarter will be adjusted for inflaion as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64 and Sec. 6(b) of the lease form.

The fixed sliding scale formula operates in the following way: When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$R_j = b[L_n (v_j/s)]$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j
b = 10.0
Ln = natural logarithm
V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars
S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be rounded to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of the index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 et seq and Sec 6(b) of the lease form. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

Leases awarded on the basis of a cash bonus bid with fixed sliding scale royalty will provide for a yearly rental or minimum royalty payment of $3 per acre or fraction thereof.

Bidders for these tracts should recognize that the Department of Energy is authorized, under Section 302(b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

BILLING CODE 4310-84-M

Figure 1
Form of the Sliding Royalty Schedule

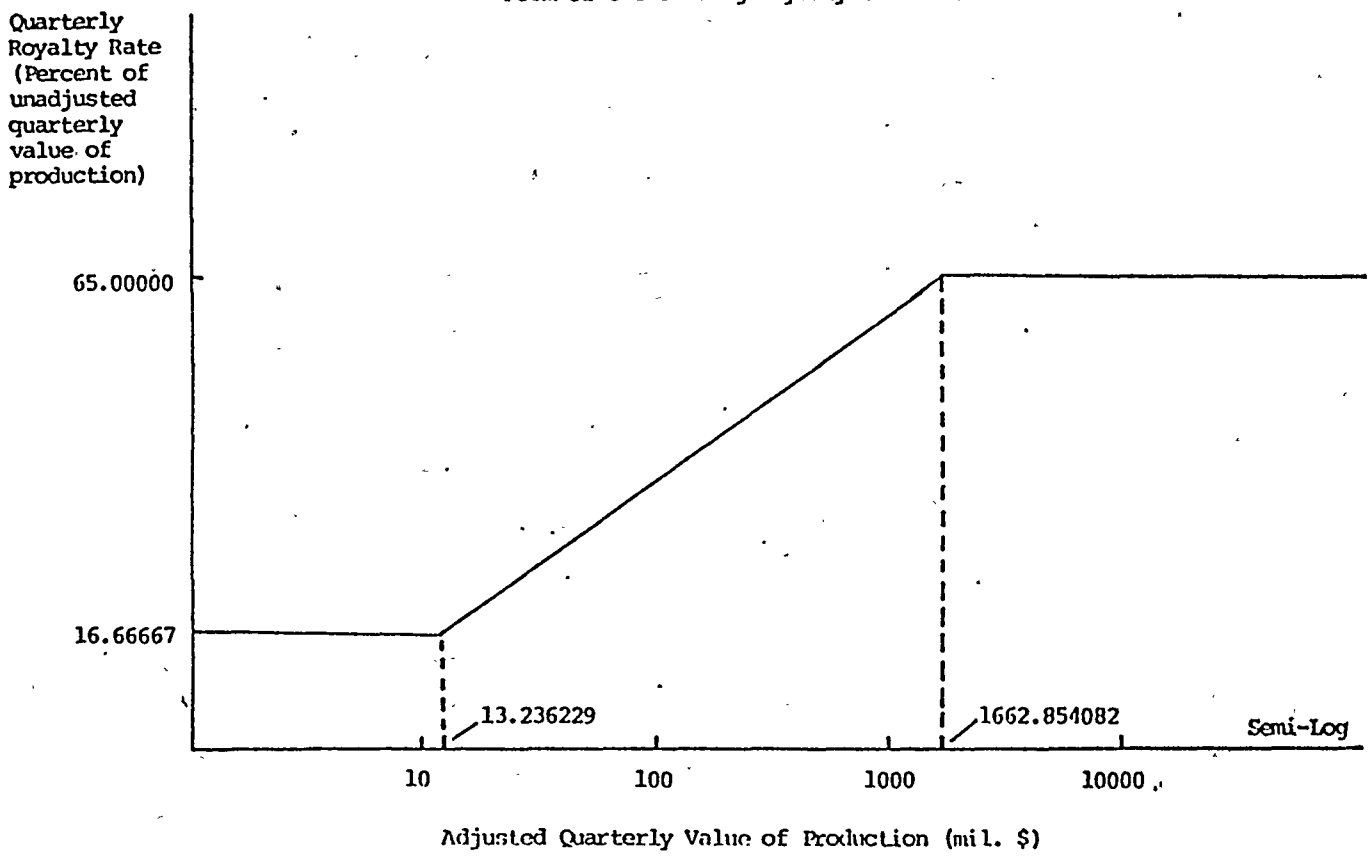

TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(1) Actual Value of Quarterly Production (Millions of Dollars)	(2) GNP Fixed Weighted Price Index	(3) Inflation Factor[a]	(4) Adjusted Value of Quarterly Production[b] (V_j, Millions of $)	(5) Percent Royalty Rate (R_j)	(6) Royalty Payment[c] (Millions of Dollars
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.97225	6.591675
90.000000	200.0	4/3	67.500000	32.95837	29.662533
270.000000	200.0	4/3	202.500000	43.94449	118.650123
810.000000	200.0	4/3	607.500000	54.93061	444.937961
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	19.74081	5.922243
90.000000	250.0	5/3	54.000000	30.72693	27.654237
270.000000	250.0	5/3	162.000000	41.71306	112.625262
810.000000	250.0	5/3	486.000000	52.69918	426.863358

a Column (2) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

b Column (1) divided by Inflation Factor.

c Column (1) times Column (5). All values are rounded for display purposes only.

BILLING CODE 4310-84-C

5. *Bonus Bidding With a Fixed Constant Royalty.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty payment of $3 per acre or fraction thereof or $8 per hectare or fraction thereof. A suggested cash bonus bid form is shown in paragraph 7.

6. *Equal Opportunity.* Each bidder must have submitted by 9:30 a.m., p.s.t., June 29, 1979, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140–8 (November 1973), and the Affirmative Action Representation Form, Form 1140–7 (December 1971).

7. *Bid Opening.* Bids will be opened on June 29, 1979, beginning at 10 a.m., p.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, June 29, 1979, that bid will be returned unopened to the bidder, as soon thereafter as possible.

8. *Deposit of Payment.* Any cash, cashier's checks, certified checks, bank drafts, or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or Rejection of Bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof or $62.000 per hectare or fraction thereof.

11. *Successful Bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

12. *Protraction Diagram/Leasing Maps.* Tracts offered for lease may be located on the following leasing maps/protraction diagrams which are available from the Manager, Pacific Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Leasing Maps, Channel Islands Area: Maps 6A, 6B, 6D and 6E sell for $1.00 each; Map 6C sells for $2.00.

(b) Outer Continental Shelf Official Protraction Diagram NI 11–10, San Clemente, sells for $2.00.

13. *Tract Descriptions.* The tracts offered for bid are as follows:

Note.—There may be gaps in the numbers of the tracts listed, and they are not in sequence. Some of the blocks identified in the final environmental statement may not be included in this notice. When the tracts are found on maps which describe them in acres, the tract list will show acres, as in OCS Leasing maps 6A, 6B, 6C, 6D, and 6E. When the tracts are found on an OCS Official Protraction Diagram such as NI 11–10, which describes tracts in hectares, the list will show hectares.

OCS Leasing Map, Channel Islands Area, Map No. 6A

[Approved July 24, 1967]

Tract	Block	Description	Acres
48-001	55N 87W	All	4451.17
48-002	55N 86W	All	4360.19
48-003	55N 85W	All	4259.12
48-004	55N 84W	All	4177.93
48-005	55N 83W	All	4066.63
48-006	55N 82W	[1]All	1429.80
48-007	54N 87W	All	5760.00
48-008	54N 86W	All	5760.00
48-009	54N 85W	All	5760.00
48-010	54N 84W	All	5760.00
48-011	54N 83W	All	5760.00
48-014	53N 85W	All	5760.00
48-015	53N 84W	All	5760.00
48-016	53N 83W	All	5760.00
48-017	53N 82W	All	5760.00
48-018	53N 77W	S½	2880.00
48-019	53N 72W	[1]All	3374.52
48-021	52N 85W	All	5760.00
48-022	52N 84W	All	5760.00
48-023	52N 83W	All	5760.00
48-024	52N 82W	All	5760.00
48-025	52N 81W	All	5760.00
48-026	52N 76W	All	5760.00
48-027	52N 73W	All	5760.00
48-028	52N 72W	All	5760.00
48-031	51N 84W	All	5760.00
48-032	51N 83W	All	5760.00
48-033	51N 82W	All	5760.00
48-034	51N 81W	All	5760.00
48-035	51N 80W	All	5760.00
48-036	51N 79W	All	5760.00
48-037	51N 78W	All	5760.00
48-038	51N 77W	All	5760.00

OCS Leasing Map, Channel Islands Area, Map No. 6A—Continued

[Approved July 24, 1967]

Tract	Block	Description	Acres
48-039	51N 76W	All	5760.00
48-040	51N 75W	All	5760.00
48-041	51N 74W	All	5760.00
48-042	51N 73W	All	5760.00
48-043	51N 72W	All	5760.00
48-049	50N 83W	All	5760.00
48-050	50N 82W	All	5760.00
48-051	50N 81W	All	5760.00
48-052	50N 80W	All	5760.00
48-053	50N 79W	All	5760.00
48-055	50N 77W	All	5760.00
48-056	50N 76W	All	5760.00
48-057	50N 75W	All	5760.00
48-058	50N 74W	All	5760.00
48-059	50N 73W	All	5760.00
48-060	50N 72W	All	5760.00
48-066	49N 78W	All	5760.00
48-067	49N 77W	All	5760.00
48-068	49N 76W	All	5760.00
48-069	49N 75W	All	5760.00
48-070	49N 74W	All	5760.00
48-071	49N 73W	All	5760.00
48-072	49N 72W	All	5760.00
48-077	48N 78W	All	5760.00
48-078	48N 77W	All	5760.00
48-079	48N 76W	All	5760.00
48-080	48N 75W	All	5760.00
48-081	48N 74W	All	5760.00
48-082	48N 73W	All	5760.00
48-083	48N 72W	All	5760.00
48-109	39N 73W	All	5760.00
48-110	39N 72W	All	5760.00
48-111	38N 73W	All	5760.00
48-112	37N 72W	All	5760.00
48-113	36N 73W	All	5760.00
48-114	36N 72W	All	5760.00

OCS Leasing Map, Channel Islands Area, Map No. 6B

[Approved August 8, 1966; Revised July 24, 1967]

Tract	Block	Description	Acres
48-029	52N 71W	[1]All	5749.62
48-030	52N 70W	[1]W½W½	1196.15
48-044	51N 71W	All	5760.00
48-045	51N 70W	W½W½	1440.00
48-046	51N 63W	S½	2880.00
48-047	51N 62W	SW¼SW¼	360.00
48-061	50N 71W	All	5760.00
48-062	50N 70W	All	5760.00
48-063	50N 65W	All	5760.00
48-064	50N 62W	W½, SE¼, S½NE¼,	5040.00
48-065	50N 61W	NW¼SW¼, S½SW¼, SW¼SE¼.	1440.00
48-073	49N 71W	All	5760.00
48-074	49N 70W	All	5760.00
48-075	49N 62W	All	5760.00
48-076	49N 61W	All	5760.00
48-084	48N 71W	All	5760.00
48-085	48N 70W	All	5760.00
48-086	48N 69W	All	5760.00
48-087	48N 59W	[1]All	2989.90
48-115	35N 55W	All	5760.00
48-116	34N 55W	All	5760.00

OCS Leasing Map, Channel Islands Area, Map No. 6C

[Approved August 8, 1966; Revised April 25, 1977]

Tract	Block	Description	Acres
48-123	34N 39W	All	5760.00
48-124	34N 36W	All	5760.00
48-125	33N 39W	All	5760.00
48-126	33N 38W	All	5760.00
48-127	32N 39W	All	5760.00
48-128	32N 37W	All	5760.00
48-131	32N 33W	[1]All	5758.28
48-134	31N 36W	All	5760.00
48-137	31N 32W	All	5760.00
48-138	30N 36W	All	5760.00
48-139	30N 33W	All	5760.00
48-140	29N 33W	All	5760.00

OCS Leasing Map, Channel Islands Area, Map No. 6D

[Approved August 8, 1966]

Tract	Block	Description	Acres
48-167	20N 66W	All	5760.00
48-168	20N 65W	All	5760.00
48-169	20N 64W	All	5760.00
48-170	20N 63W	All	5760.00
48-171	19N 66W	All	5760.00
48-172	19N 65W	All	5760.00
48-173	19N 64W	All	5760.00
48-174	19N 63W	All	5760.00
48-175	19N 62W	All	5760.00
48-176	19N 61W	All	5760.00
48-177	18N 63W	All	5760.00
48-178	18N 59W	All	5760.00
48-179	17N 61W	All	5760.00
48-180	14N 61W	All	5760.00
48-181	13N 61W	All	5760.00
48-182	13N 58W	All	5760.00
48-183	13N 55W	All	5760.00
48-184	13N 54W	All	5760.00
48-185	13N 53W	All	5760.00
48-186	12N 59W	All	5760.00
48-187	12N 55W	All	5760.00
48-188	12N 54W	All	5760.00
48-189	12N 52W	All	5760.00
48-190	11N 60W	All	5760.00
48-191	11N 59W	All	5760.00
48-192	11N 55W	All	5760.00
48-193	11N 53W	All	5760.00
48-194	11N 52W	All	5760.00
48-195	10N 61W	All	5760.00
48-196	10N 60W	All	5760.00
48-197	10N 58W	All	5760.00
48-198	10N 57W	All	5760.00

OCS Leasing Map, Channel Islands Area, Map No. 6E

[Approved August 8, 1966]

Tract	Block	Description	Acres
48-199	9N 59W	All	5760.00
48-200	9N 58W	All	5760.00
48-206	8N 58W	All	5760.00

OCS Official Protraction Diagram, N1 11-10, San Clemente

[Approved May 17, 1976; Revised September 27, 1977]

Tract	Block	Description	Hectares
48-201	418	All	121.59
48-202	419	All	203.22
48-203	462	All	1474.58
48-204	463	All	2304.00
48-205	464	All	2304.00
48-207	506	All	1456.93
48-208	507	All	2304.00
48-209	508	All	2304.00
48-210	550	All	1439.21
48-211	551	All	2304.00
48-212	552	All	2304.00

[1] That portion seaward of the three geographical mile line.

14. *Lease Terms and Stipulations.* All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued will be on Form 3300-1 (September 1978), available from the Manager, Pacific Outer Continental Shelf Office, at the address stated in paragraph 2. Section 6 of the lease form will be amended for tracts offered on a cash bonus basis with a fixed sliding scale royalty, listed in paragraph 4, as follows:

Sec. 6. *Royalty on Production.* (a) The lessee agrees to pay the lessor a royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value or amount of production is given by

$R_j = b[\text{Ln}\ (V_j/S)]$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 10.0

Ln = natural logarithm

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 2.5

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be rounded to five decimal places (for example, 18.17612 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations the term Supervisor refers to the Pacific Area Oil and Gas Supervisor for Operations of the Geological Survey and the term Manager refers to the Manager of the Pacific OCS Office of the Bureau of Land Management.

Stipulation No. 1

Preface: This stipulation applies to those tracts located in military operating areas. The tracts affected are listed with the appropriate military geographical area coordinator.

Tracts 48-001, 48-002, 48-003, 48-004, 48-005, 48-006, 48-007, 48-008, 48-009, 48-010, 48-011, 48-014, 48-015, 48-016, 48-017, 48-018, 48-019, 48-021, 48-022, 48-023, 48-024, 48-025, 48-026, 48-027, 48-028, 48-029, 48-030, 48-031, 48-032, 48-033, 48-034, 48-035, 48-036, 48-037, 48-038, 48-039, 48-040, 48-041, 48-042, 48-043, 48-044, 48-045, 48-049, 48-050, 48-051, 48-052, 48-053, 48-055, 48-056, 48-057, 48-058, 48-059, 48-060, 48-061, 48-062, 48-066, 48-067, 48-068, 48-069, 48-070, 48-071, 48-072, 48-073, 48-074, 48-077, 48-078, 48-079, 48-080, 48-081, 48-082, 48-083, 48-084, 48-085, 48-086, 48-109, 48-110, 48-111, 48-112, 48-113, 48-114, 48-115, and 48-116: Commander, Space and Missile Test Center (SAMTEC) and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency.

Tracts 48-167, 48-168, 48-169, 48-170, 48-171, 48-172, 48-173, 48-174, 48-175, 48-176, 48-177, 48-178, 48-179, 48-180, 48-181, 48-182, 48-183, 48-184, 48-185, 48-186, 48-187, 48-188, 48-189, 48-190, 48-191, 48-192, 48-193, 48-194, 48-195, 48-196, 48-197, 48-198, 48-199, 48-200, 48-201, 48-202, 48-203, 48-204, 48-205, 48-206, 48-207, 48-208, 48-209, 48-210, 48-211, and 48-212: Commander, Space and Missile Test Center (SAMTEC); Commander, Pacific Missile Test Center (PMTC); and Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency.

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander of the appropriate onshore military installations, listed in the preface. Such coordination and instruction will provide for positive control of boats and aircraft operating into the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations on the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the Supervisor, after consultation with the Commander of the appropriate military installations listed in the preface, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed seventy-two hours; however, any such suspension may be extended by order of the Supervisor. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander of the appropriate onshore military installations, listed in the preface, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within individual, designated warning areas.

Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area: Provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

Stipulation No. 2

In order to indemnify and save harmless the United States, the following stipulations will apply to leases resulting from this lease sale in tracts 48-001, 48-002, 48-003, 48-004, 48-005, 48-006, 48-007, 48-008, 48-009, 48-010, 48-011, 48-014, 48-015, 48-016, 48-017, 48-018, 48-019, 48-021, 48-022, 48-023, 48-024, 48-025, 48-026, 48-027, 48-028, 48-029, 48-030, 48-031, 48-032, 48-033, 48-034, 48-035, 48-036, 48-037, 48-038, 48-039, 48-040, 48-041, 48-042, 48-043, 48-044, 48-045, 48-049, 48-050, 48-051, 48-052, 48-053, 48-055, 48-056, 48-057, 48-058, 48-059, 48-060, 48-061, 48-062, 48-066, 48-067, 48-068, 48-069, 48-070, 48-071, 48-072, 48-073, 48-074, 48-077, 48-078, 48-079, 48-080, 48-081, 48-082, 48-083, 48-084, 48-085, 48-086, 48-109, 48-110, 48-111, 48-112, 48-113, 48-114, 48-115, 48-116, 48-167, 48-168, 48-169, 48-170, 48-171, 48-172, 48-173, 48-174, 48-175, 48-176, 48-177, 48-178, 48-179, 48-180, 48-181, 48-182, 48-183, 48-184, 48-185, 48-186, 48-187, 48-188, 48-189, 48-190, 48-191, 48-192, 48-193, 48-194, 48-195, 48-196, 48-197, 48-198, 48-199, 48-200, 48-201, 48-202, 48-203, 48-204, 48-205, 48-206, 48-207, 48-208, 48-209, 48-210, 48-211, and 48-212:

Whether or not compensation for such damage or injury might be under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Space and Missile Test Center (SAMTEC), the Pacific Missile Test Center (PMTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors of subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 3

To apply to all leases resulting from this lease sale.

If the Supervisor, having reason to believe that a site, structure or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the Supervisor and the Manager, Bureau of Land Management (BLM), Outer Continental Shelf (OCS) Office for review.

If such cultural resource indicators are present the lessee shall (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the Supervisor, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the Supervisor and the Manager, BLM OCS Office for their review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its preservation.

Stipulation No. 4

This stipulation is to be applied to leases resulting from this sale for all or part of tracts 48-001, 48-002, 48-003, 48-004, 48-005, 48-006, 48-007, 48-008, 48-009, 48-010, 48-011, 48-014, 48-015, 48-016, 48-017, 48-018, 48-019, 48-021, 48-022, 48-023, 48-024, 48-025, 48-026, 48-027, 48-028, 48-029, 48-030, 48-031, 48-032, 48-033, 48-034, 48-035, 48-036, 48-037, 48-038, 48-039, 48-040, 48-041, 48-042, 48-043, 48-044, 48-045, 48-046, 48-047, 48-049, 48-050, 48-051, 48-052, 48-053, 48-055, 48-056, 48-057, 48-058, 48-059, 48-060, 48-061, 48-062, 48-063, 48-064, 48-065, 48-066, 48-067, 48-068, 48-069, 48-070, 48-071, 48-072, 48-073, 48-074, 48-075, 48-076, 48-077, 48-078, 48-079, 48-080, 48-081, 48-082, 48-083, 48-084, 48-085, 48-086, and 48-087, which are all or partly within established or developing commercial trawl grounds.

(a) *Wells:* Subsea well-heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, by a shroud which will allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates of these structures along with water depths, shall be submitted to the Supervisor. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) *Pipelines:* All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, they shall be protected by shrouds which will allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 5

To apply to all leases resulting from this lease sale.

(a) If the Supervisor has reason to believe that areas of special biological interest in the lease area contain biological communities or species of such extraordinary or unusual value (even though unquantifiable) that no threat of damage, injury, or other harm to the community or species would be acceptable, he shall give the lessee written notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements: Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as

"operation", the lessee shall conduct site specific surveys as approved by the Supervisor and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones..

(2) A species of limited regional distribution that may be adversely affected by any lease operation.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; (2) establish to the satisfaction of the Supervisor, on the basis of the site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The Supervisor will review all data submitted and determine, in writing, whether a special biological resource exists or may be significantly affected by lessee's operations. The lessee may take no action until the Supervisor has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the biological resource from damage until the Supervisor has given the lessee directions with respect to its protection.

Stipulation No. 6

To apply to all leases resulting from this sale.

(a) Pipelines will be required, (1) if pipeline rights-of-way can be determined and obtained, (2) if laying of such pipelines is technologically feasible and environmentally preferable, and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for leasing and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local government and the industry. Where feasible, and environmentally preferable, all pipelines, including both flow lines and gathering lines for oil and gas, shall be buried to a depth suitable for adequate protection from water currents, sand waves, storm scouring, fisheries' trawling gear, and other uses as determined on a case-by-case basis.

(b) Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Supervisor. Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Ports and Waterways Safety Act of 1972 (46 U.S.C., 391a), as amended.

Stipulation No. 7

This stipulation shall apply to all leases resulting from this lease sale on the following tracts on Tanner-Cortes Bank: 48–182, 48–183, 48–190, 48–191, 48–195, 48–196, 48–197, 48–199, 48–200, 48–203, 48–204, 48–206, 48–207, 48–208, 48–209, 48–210, 48–211, and 48–212.

The lessee shall not, during any phase of operations, discharge drill cuttings, drilling muds, garbage, untreated sewage, or other solid waste within the 80-meter isobath, or within a buffer zone defined by the area 1,500 meters from the 80-meter isobath. Also, any produced formation water which may be discharged within the 80 meter isobath or the buffer zone must be analyzed for salinity, heavy metals and hydrocarbons. Toxicity tests must be performed. A decision, based upon these analyses and upon the volume of discharge, shall then be made by the Supervisor, as to whether the formation waters should be discharged into the sea or disposed of by any other means acceptable to the Supervisor. If it is determined that the discharge of formation water would have a negative effect upon local marine life, the lessee shall not discharge formation waters within the 80-meter isobath or within the buffer zone defined by the area, 1,500 meters from the 80-meter isobath. In addition, the lessee shall conduct a site specific biological survey approved by the Supervisor which is in accordance with prescribed biological survey requirements prior to placing anchors, moorings, bottom-founded vessels or platforms, pipelines or other structures in areas having water depths shallower than 80 meters.

Based upon results of the survey, the lessee may be required to: (1) Relocate the site of such operations so as not to adversely affect the area identified; or (2) modify his operations in such a way as not to adversely affect the area identified; or (3) establish to the satisfaction of the Supervisor, that, on the basis of the biological survey, such operations will not adversely affect the area.

The lessee shall submit all data obtained in the course of biological surveys, conducted pursuant to this stipulation, to the Supervisor. The lessee shall take no action that may result in any effect on this biologically significant area until the Supervisor has given the lessee written approval of operations for the area, and the lessee has complied with the requirements of 43 CFR 6224 (Protection and Management of Viable Coral Communities on the Outer Continental Shelf). If any phase of operations is shown to be adversely affecting the area of the significant biological communities identified, the lessee shall immediately cease or, with the Supervisor's approval, modify his operations by undertaking any measures deemed economically, environmentally, and technologically feasible to halt or mitigate such adverse effect. These measures may include, but are not limited to, the monitoring of the significant biological communities identified to assess the adequacy of any mitigating measures taken, and the impact of lessee-initiated activities.

Stipulation No. 8

To be included in any leases resulting from this sale for the sliding scale royalty tracts listed in paragraph 4 of this notice.

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12(e)). The Director, Geological Survey, may grant a reduction for only one year at a time. Reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in Sec. 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in Sec. 15(d) of this lease; the royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the lease area.

Stipulation No. 9

To apply to leases which result from the sale of tracts 48–004, 48–007, 48–008, 48–011, 48–019, 48–034, 48–049, 48–050, 48–109, 48–110, 48–113, 48–125, 48–127, 48–131, and 48–182.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portion of this lease block unless or until the lessee has demonstrated to the Supervisor's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for mass movement of sediments. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed all potential mass movements of sediments in the lease block must be mapped. Down-hole pressure actuated control devices must be located below the base of the potentially unstable sediments located in the area in order to protect the environment in case such mass movement occurs at the proposed location. This may necessitate all

exploration for and development of oil and gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

Stipulation No. 10

To apply to the lease which would result from the sale of tract 48-174.

A shallow geologic fault trends northwest-southeast across this tract and poses a potential for future movement. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas or emplacement of pipelines will not be allowed in the vicinity of the fault until the lessee has demonstrated to the Supervisor's satisfaction that exploratory drilling operations, structures (platforms), casing, and wellheads can be safely designed to protect the environment in case such fault movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of potential fault movement, either within or outside of the tract.

Stipulation No. 11

To apply to the lease which may result from this sale for tract 48-063.

This lease is within the Pitas Point Unit Area but the mineral interests are not subject to the Pitas Point Agreement. Lessee(s) will not be authorized to commit their mineral interests to the Pitas Point Unit Agreement until the Director Geological Survey finds that the delineation of a reservoir(s) common to this lease and oil and gas lease OCS-P 0234 has been reasonably established by information obtained from the results of exploratory drilling programs approved in accordance with 30 CFR 250.34 and conducted on this lease and OCS-P 0234. The foregoing provisions do not alter the requirements of the provisions of Sec. 16 of the lease.

Stipulation No. 12

To be applied to a lease resulting from this sale for tract 48-075.

No activities or permanent construction will be authorized on southernmost one-third of the lease unless the operator demonstrates to the satisfaction of the Supervisor that such activities and construction will not interfer with a liquified natural gas (LNG) operation on that portion of the lease.

Stipulation No. 13

This stipulation is to be applied to leases resulting from this sale for the following tracts: 48-004, 48-005, 48-006, 48-011, 48-016, 48-017, 48-018, 48-019, 48-024, 48-025, 48-027, 48-028, 48-029, 48-030, 48-044, 48-045, 48-046, 48-047, 48-064, 48-065, 48-066, 48-075, 48-076, 48-077, 48-078, 48-083, 48-084, 48-085, 48-086, 48-087, 48-109, 48-116, 48-123, 48-124, 48-131, and 48-137.

No producing well may be drilled so that the well bore in the producing intervals is closer than 500 feet to the seaward boundary of the State except that the 500 feet constraint shall not apply:

(a) If oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of California are included in a production unit entered into by the relevant lessees and approved by the lessors.

(b) If, in the absence of a production unit as described in (a) above, the State of California permits production from State lands from a point closer than 500 feet from the Federal-State boundary. In the event that such production from State lands does occur, the Federal lessee shall be allowed to produce from offset wells equally close to the boundary in the area of Federal jurisdiction.

Stipulation No. 14

This stipulation is to be applied to leases for tracts 48-127, 48-167, 48-171, 48-172, 48-178, 48-180, 48-185, 48-193 and 48-194.

This lease covers areas with water depths in excess of 750 meters. In reviewing the lessee's exploration, development and production activities pursuant to 30 CFR 250.34, special attention will be given to the assurance that the best available and safest technologies are used as required under Sec. 21(b) of the OCS Lands Act Amendments of 1978.

Stipulation No. 15

This stipulation is to be applied to the lease for tract 48-116.

Surface activities associated with exploration drilling, development or production of oil and gas on this lease shall be approved only if they occur at least three miles from the seaward boundary of the State.

15. *Information to Lessees.* The Department of the Interior will seek the advice of the State of California and Federal agencies to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities, then the Supervisor, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM, and the State will require the lessee to undertake any measures deemed economically, environmentally, and technologically feasible to protect live bottom areas.

On September 18, 1978, Congress passed amendments to the OCS Lands Act of 1953. Some sections of current regulations applicable to OCS leasing operations are inconsistent with this new legislation, and the legislation requires the issuance of some new regulations. The inconsistencies will be corrected by rulemakings and the new regulations will be issued as soon as possible. Nevertheless, bidders are notified that such regulations shall apply to all leases offered at this lease sale and shall supersede all inconsistent provisions in current regulations applicable to OCS leasing operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, or traffic separation schemes. Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the OCS Lands Act, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale the lessor may require a lessee to operate under a unit, pooling or drilling agreement and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a royalty rate based on a sliding scale.

In applying safety, environmental, and conservation laws and regulations, the Supervisor, in accordance with Sec. 21(b) of the OCS Lands Act, as amended, will require the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

16. *OCS Orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific Region Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

17. *Suggested Bid Form.* It is suggested that bidders submit their bids to the Manager, Pacific Outer Continental Shelf Office, in the following form:

18. *Required Joint Bidder's Statement.* In the case of joint bids, each joint bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that ———— (entity submitting bid) is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

Signature

(Please type signer's name under signature)

Sworn to and subscribed before me this ——— day of ——— 19——

NOTARY PUBLIC
State of ————
County of ————

* * * * *

Approved. May 22, 1979.

Arnold B. Petty,

Acting Associate Director, Bureau of Land Management.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 79-16518 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf, Southern Calif.; Outer Continental Shelf Leasing Systems, Sale No. 48

Sec. 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the **Federal Register:**

(A) identifying the bidding systems to be used and the reasons for such use; and

(B) designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

A. *Bidding systems to be used.* In OCS Lease Sale #48, a system employing a cash bonus bid with a constant royalty fixed at 16⅔% will be used on 74 tracts. This system is authorized by Sec. 8(a)(1)(A) of the OCS Lands, Act, as amended. A system employing a cash bonus bid with a royalty established according to a semi-logarithmic sliding scale will be used on the remaining 74 tracts. This system is authorized by Sec. 8(a)(1)(C) of the OCS Lands Act, as amended. The use of the sliding scale royalty system was first introduced in OCS Lease Sale #43 and used again in the last four OCS lease sales as part of the commitment by the Department of the Interior and the Department of Energy to develop and test new bidding systems.

The sliding scale is designed to establish higher royalty rates for larger reservoris with higher production rates. In such cases, the expected bonus would be reduced, which may improve competition for leases. This would also tend to reduce the likelihood of production losses that could result if royalty rates are set by other means, such as royalty bidding, at levels so high that production is made uneconomic. These production losses are dependent upon the different exploration, development and production costs for the specific area. Because the assumed costs were different in the Sale #48 area than other areas, the formula provided for this sale is slightly different from that utilized in the last sale—Sale 49.

The sliding scale used in Sales #43 and #45 was linear in form. Although this form is easy to depict it has three disadvantages which may affect the socially optimal level of production. At certain levels of production, a linear schedule causes erratic fluctuations in the royalty charged on increments in output which may lead producers to make socially non-optimal production decisions in order to minimize these royalty impacts on revenues. Marginal royalty rates also can reach very high levels even though average rates are low. In addition, because production costs are non-linear it can be shown that the royalty rate schedule should more closely conform to the functional form of these costs in order to minimize production loses.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $13.236229 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $13.236230 million, but less than or equal to $1662.854082 million, the royalty percent due on the unadjusted value is given by the formula

$$R_j = b(Ln(V_j/S))$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

$b = 10.0$

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

$S = 2.5$

When the adjusted quarterly value of production is equal to or greater than $1662.854083 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the *Survey of Current Business* by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount of value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64 and Sec. 6(b) of the lease form.

The form of the sliding scale royalty schedule is identical to that used in OCS Sale No. 51. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

The system employing cash bonus bids with a constant fixed royalty has been used extensively since the passage of the OCS Lands Act in 1953. Its use in Sale No. 48 will provide data with which to compare the data for use of the sliding scale royalty system. The use of the two bidding systems in Sale No. 48 is consistent with the requirements of Sec. 8(a)(5)(B) of the OCS Lands Act, as amended.

B. *Designation of Tracts.* The following tracts are to be offered for bonus bidding with a fixed sliding scale royalty: 48-018, 48-019, 48-026, 48-027, 48-028, 48-029, 48-030, 48-037, 48-038, 48-039, 48-040, 48-041, 48-042, 48-043, 48-044, 48-045, 48-055, 48-056, 48-057, 48-058, 48-059, 48-060, 48-061, 48-062, 48-066, 48-067, 48-068, 48-069, 48-070, 48-071, 48-072, 48-073, 48-074, 48-077, 48-078, 48-079, 48-080, 48-081, 48-082, 48-083, 48-084, 48-085, 48-086, 48-109, 48-110, 48-111, 48-112, 48-113, 48-114, 48-115, 48-116, 48-123, 48-124, 48-125, 48-126, 48-127, 48-128, 48-131, 48-134, 48-137, 48-138, 48-139, 48-140, 48-167, 48-168, 48-169, 48-170, 48-171, 48-172, 48-173, 48-174, 48-175, 48-176, and 48-177. Bids on the remaining tracts to be offered at this sale must be on a cash

bonus basis with a fixed royalty of 16⅔ percent.

The selection of tracts to be offered under the sliding scale royalty system was made for the following reasons:

1. A sufficient number of tracts was needed to provide data for valid statistical analysis while limiting the risk of losses caused by unforeseen problems which could arise in the use of any new bidding system. A sample size of approximately 50% (74 tracts) was determined to be appropriate.

2. The range and distribution of the characteristics of sliding scale royalty tracts were to match, as closely as possible, the range and distribution of the characteristics of the tracts being offered in the sale. Such characteristics include estimated resources, water depth, structure depth, favorable vs. unfavorable location of tracts on structures, and the location of tracts across trends.

Approved: May 22, 1979.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 79-16517 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Nevada Department of Fish and Game, P.O. Box 10678, Reno, Nevada 89510.

The applicant requests a permit to capture and release Moapa dace (*Moapa coriacea*) and Pahranagat bonytail (*Gila robusta jordani*) for population inventory.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4228. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 22, 1979.

Larry La Rochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-16557 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Audubon Park and Zoological Garden, P.O. Box 4327, New Orleans, Louisiana 70118.

The applicant requests a permit to purchase in interstate commerce one male and three female swamp deer (*Cervus duvauceli*) from the Catskill Game Farm, Catskill, New York, for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4217. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: May 18, 1979.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-16558 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Maryland Wildlife Adminsitration, Tawes State Office Bldg., Annapolis, Maryland 21401.

The applicant requests a permit to take (capture and kill) for voucher specimens 10 Indiana bats (*Myotis sodalis*) within the state of Maryland for scientific purposes.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4192. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of ths publication. Please refer to the file number when submitting comments.

Dated: May 15, 1979.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-16560 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Mesker Park Zoo, Bement Ave., Evansville, Indiana 47712. PRT 2-4204.

The applicant requests a permit to purchase in interstate commerce two (2) leopard cats (*Felis bengalensis bengalensis*) from the San Antonio Zoo, San Antonio, Texas, for zoological exhibition and enhancement of propagation. The subject cats are presently housed at the Mesker Park Zoo on breeding loan from the San Antonio Zoo.

Applicant: National Zoological Park, Washington, D.C. 20008. PRT 2-4202.

The applicant requests a permit to export eight (8) golden lion tamarins (*Leontideus rosalia rosalia*) to the Zoologischer Garten der Stadt Frankfurt am Main, West Germany, on breeding loan for enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the

date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: May 14, 1979.

Larry LaRochelle,

Chief, Permit Branch, Federal Wildlife Permit Office U.S. Fish and Wildlife Service.

[FR Doc. 79-16591 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Correction

Notice is hereby given that an error occurred in a notice published in the Federal Register, May 14, 1979, Vol. 44, Number 94, page 28115, concerning an application for an amendment to PRT 2-319 to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18). The applicant is the California Department of Fish and Game.

Item number three stated that the permit was for 100 sea otters. This figure should have read 140. This is the number of sea otters originally authorized to be taken in the permit. The amendment requested will not change the number of animals to be taken by the permittee, only some of the research activities to be carried out.

Concurrent with the publication of this notice in the Federal Register the Federal Wildlife Permit Office is forwarding copies of this notice to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-319A. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director.

Dated: May 15, 1979.

Larry La Rochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Branch, U.S. Fish and Wildlife Service.

[FR Doc. 79-16559 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-55

Geological Survey

[Int FES 79-21]

Environmental Impact Statement; Availability of Final Statement Development of Coal Resources, Southern Utah

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final regional environmental impact statement on proposed coal development and associated activities in southern Utah. The final statement concerns a broad area of southern Utah and inlcudes the Henry Mountains, the Kaiparowits Plateau, and the Alton and Kolob coal fields.

The environmental statement is developed in two parts: an analysis of the cumulative impacts of projected coal development in the region, and analyses of the impacts resulting from specific mining and reclamation plans.

Of the projected regional coal production of 12 million tons per year (mty) through the year 1990, 10.5 mty would be supplied by the Alton mine, and 1.5 mty from other proposed mines on the Kaiparowits Plateur and/or from potential development on State land. The Allen-Warner Valley electric power generation project would require 10.5 mty.

Three mining and reclamation plans on existing leases are described: The Red and Blue mines—El Paso Coal Company; the Kaiparowits Nos. 1-5 mines—Mono Power Company, et al.; and the Alton mine—the Nevada Power Company and Utah International, Incorporated.

The mine plans contained in this final statement were submitted prior to the promulgation of interim regulations by the U.S. Office of Surface Mining, pursuant to the Surface Mining Control and Reclamation Act of 1977. The mine plans have not been reviewed for compliance with those requirements. Prior to making any decision on approval of the mining and reclamation plans, the Department will perform a technical review for compliance with the Surface Mining Regulations. Once the mine plans conform to those regulations, the Department will evaluate whether this final environmental impact statement is adequate for mine plan approval action or whether a supplement to this impact statement needs to be prepared and distributed.

Comments received on the draft environmental statement during the comment period were considered in the preparation of an are reproduced in the final environmental statement. Public hearings on the draft environmental statement were held on September 19, 1978, in Salt Lake City, Utah; on September 20, 1978, in Cedar City, Utah; and on September 21, 1978, in Kanab, Utah.

The final environmental impact statement is available for public review in the U.S. Geological Survey (USGS) Library, 1526 Cole Blvd., Golden, Colo.; the USGS Library, Room 4A100, National Center, Reston, Va.; USGS Area Mining Supervisor's Office, 8426 Federal Bldg., 125 South State St., Salt Lake City, Utah, USGS District Mining Supervisor's Office, 126 Elk St., Rock Springs, Wyo.; Office of the Regional Manager, Conservation Division, USGS, 7200 W. Alameda Ave., Lakewood, Colo.; Office of the State Director, U.S. Bureau of Land Management (BLM), Salt Lake City, Utah; BLM District Office, Cedar City, Utah; BLM Vermillion Resource Area Office, Kanab, Utah; BLM Dixie Resource Area Office, St. George, Utah; BLM Paria Resource Area Office, Kanab, Utah; BLM Escalante Resource Area Office, Escalante, Utah; BLM District Office, Richfield, Utah; BLM Henry Mountain Resource Area Office, Hanksville, Utah; Forest Supervisor's Office, Dixie National Forest, P.O. Box 580, Cedar City, Utah; USDA Forest Service, Pine Valley Ranger District, Escalante, Utah; USDA Forest Service, Powell Ranger District, Panguitch, Utah. Copies will also be available for public review in libraries at the following locations: Utah State University, Logan, Utah; University of Utah, Salt Lake City, Utah; Brigham Young University, Provo, Utah; Weber State College, Ogden, Utah; Southern Utah State College, Cedar City, Utah; Dixie College, St. George, Utah; Cedar City Public Library, Cedar City, Utah; Iron County Bookmobile, Cedar City, Utah; Hurricane City Library, Hurricane, Utah; Kanab City Library, Kanab, Utah; Garfield County Bookmobile, Panguitch, Utah; Parowan Public Library, Parowan, Utah; Sevier County Bookmobile, Richfield, Utah; Page Public Library, Page, Ariz.

A limited number of copies are available on request from the USGS Land Information and Analysis Office, Stop 701, Federal Center, Denver, Colo. 80225.

Dated: May 23, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-16589 Filed 5-25-79; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

[INT DES 79-27]

Colorado and Lower Dolores Wild and Scenic Rivers Study, Colorado and Utah; Availability of Draft Report and Draft environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a combined draft report and draft environmental statement for the Colorado and Lower Dolores Wild and Scenic Rivers Study.

The Colorado and Lower Dolores Wild and Scenic Rivers Study recommends inclusion of a 55.7-mile segment of the Colorado River and approximately 25,000 acres of adjacent land in Colorado and Utah to the National Wild and Scenic Rivers System, classified as 13 miles of wild river, 38.7 miles of scenic river, and 4 miles of recreational river. Also recommended are 20 miles of the dolores River in Colorado and Utah, with approximately 8,000 acres of adjacent land, to be classified as 6 miles of wild river and 14 miles of scenic river. Both rivers would continue to be managed by the Bureau of Land Management. The Colorado River segment is situated between the Loma Launch in Colorado and the confluence with the Dolores River in Utah, while the Dolores River segment is situated between Gateway, Colorado, and Bridge Canyon in Utah.

Inclusion of 75.7 miles of the river segments in the national system will have the overall effect of preserving the existing scenic, geologic, cultural, recreation, and fish and wildlife values for present and future generations. Land uses would remain relatively unchanged. Water resource developments in the corridors will be prohibited.

In addition to the proposed action, other alternatives considered were (1) no action (2) a National Economic Development option involving increased action, and (3) classification options.

Comments on the draft report and draft environmental statement are invited and, as provided by law, will be accepted for a period of forty-five (45) days for the environmental statement and ninety (90) days for the report. However, due to the combining of these two documents and to facilitate meeting of the October 2, 1979, congressional deadline for this study, it will be appreciated if all comments are furnished so as to be received within 45 days after the date of this notice.

Copies of the draft report and draft environmental statement are available from or for inspection at the following locations:

Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225.
District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501.
District Manager, Bureau of Land Management, 125 W. 2nd South, P.O. Box 970, Moab, Utah 84532.

Dated: May 23, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-16590 Filed 5-25-79; 8:45 am]
BILLING CODE 4310-70-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before May 18, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by June 8, 1979.

William J. Murtagh,

Keeper of the National Register.

ARKANSAS

Arkansas County

Stuttgart, *Standard Ice Company Building*, 517 S. Main St.

Garland County

Bear vicinity, *Green, Harley E., House*, N of Bear

Pulaski County

Little Rock, *Bragg, Richard, House*, 305 E. 16th St.

Pulaski County

Little Rock, *Little Rock Y.M.C.A.*, 524 Broadway St.

COLORADO

Denver County

Denver, *Campbell, Richard Crawford, House*, 909 York St.

FLORIDA

Dade County

Homestead, *Cooper, Neva King, Elementary School*, 520 NW. 1st Ave.

Duval County

Jacksonville, *Sammis, John S., House*, 207 Noble Circle West

Escambia County

Pensacola, *St. Joseph's Church Buildings*, 140 W. Government St.

Pinellas County

Clearwater, *Ducros, Louis, House*, 1324 S. Fort Harrison St.

ILLINOIS

Cook County

Chicago, *Chapin and Gore Building*, 63 E. Adams St.

Macon County

Mount Zion vicinity, *Ulery, Eli, House*, SE of Mount Zion on SR 60.

IOWA

Franklin County

Hampton vicinity, *Reeve, Leander, House*, SE of Hampton on IA 134.

Polk County

Des Moines, *Fire Station No. 4*, 1041 8th St.

Pottawattamie County

Council Bluffs, *Y.M.C.A. Building*, 628 1st Ave.

KENTUCKY

Anderson County

Lawrenceburg, *Dowling House*, 321 S. Main St.

Clark County

Clark County Multiple Resource Area

Franklin County

Frankfort vicinity, *Allen, Col. R. T. P., House*, S of Frankfort on Johnson Rd.

Henry County

Smithfield vicinity, *Highlands*, SW of Smithfield on KY 22.

Montgomery County

Mount Sterling, *Church of the Ascension*, High and Broadway Sts.

Oldham County

Brownsboro vicinity, *Keller, Abraham, House*, W of Brownsboro off KY 329.

MINNESOTA

Pope County

Terrace, *Terrace Flour Mill Historic District*, Skarpness Rd. and SR 21

MISSOURI

Adair County

Kirksville, *Grim Building*, 113-115 E. Washington

Boone County

Centralia, *Chance, Albert Bishop, House and Gardens,* 319 E. Sneed St.

Cass County

Garden City vicinity, *O'Bannon Homestead (Schuyler Stock Farm),* NE of Garden City

Greene County

Springfield, *U.S. Customhouse and Post Office,* 830 Boonville Ave.

Holt County

Forest City, *City Hall,* MO 111.

Iron County

Ironton, *Iron County Courthouse Buildings,* Courthouse Sq. and 220 S. Shepherd St.

Jackson County

Kansas City, *Professional Building,* 1101–1107 Grand Ave.
Kansas City, *Uptown Building and Theatre,* 3700–3712 Broadway

Saline County

Marshall, *Chicago and Alton Depot,* Sebree St.
St. Louis (independent city)
St. Stanislaus Kostka Church, 1413 N. 20th St.

Scotland County

Memphis, *Downing House,* 311 S. Main St.

NEVADA

Clark County

Bunkerville, *Bunkerville Historic District,* Main, 1st, 2nd and Mill Sts.

NEW JERSEY

Somerset County

Neshanic, *Neshanic Historic District,* Amwell and Zion Rds.

NEW YORK

Greene County

Leeds vicinity, *Newkirk Homestead,* NW of Leeds on Sandy Plains Rd.

Nassau County

Mill Neck, *Dodge, Lillian Sefton, Estate,* Frost Mill Rd.

New York County

New York, *Ottendorfer Public Library and Stuyvesant Polyclinic Hospital,* 135 and 137 2nd Ave.

Tompkins County

Ithaca, *Ithaca Pottery Site*

Ulster County

Kingston, *Community Theatre (Broadway Theatre),* 601 Broadway

OKLAHOMA

Garfield County

Enid, *Rock Island Depot,* 200 Owen K. Garriott Blvd.

Kay County

Braman vicinity, *Rock Falls Townsite,* W of Braman.

Kiowa County

Roosevelt vicinity, *Gold Bell Mine,* SE of Roosevelt
Snyder, *Old Livery Stable,* 6th and D Sts.

Muskogee County

Fort Gibson, *Nash-Swindler House,* Maple and Jackson Sts.

Oklahoma County

Oklahoma City, *Maney Historic District,* 725 NW. 11th St., 1200 and 1224 N. Shartell Ave.

Osage County

Hominy vicinity, *Bug Creek Indian Camp,* W of Hominy.

Pottawatomie County

Asher vicinity, *Sacred Heart Mission,* E of Asher.

Roger Mills County

Cheyenne vicinity, *Impoundment No. 20, Sandstone Creek Watershed,* SE of Cheyenne.

Tulsa County

Tulsa, *Cain's Ballroom,* 423 N. Main St.
Tulsa, *Nine East Fourth Building,* 9 E. 4th St.
Tulsa, *Tribune Building,* 20 E. Archer St.
Tulsa, *U.S. Post Office,* 224 S. Boulder St.

PENNSYLVANIA

Allegheny County

McKeesport vicinity, *Bowman Homestead,* N of McKeesport at 3500 The Lane.

RHODE ISLAND

Providence County

North Scituate, *Smithville-North Scituate,* U.S. 6 and RI 116.

TENNESSEE

Cheatham County

Ashland City, *Sycamore Mills Site,* N of Ashland City on TN 49.

Shelby County

Memphis, *Vance-Pontotoc Historic District,* irregular pattern along Vance and Pontotoc Aves.

TEXAS

Culberson County

Van Horn, *Clark Hotel,* 112 Broadway St.

El Paso County

El Paso, *Women's Club of El Paso,* 1400 N. Mesa St.

Newton County

Newton, *Newton County Courthouse,* off TX 190

Tarrant County

Fort Worth, *Hotel Texas,* 815 Main St.
Fort Worth, *Waggoner, W.T., Building,* 810 Houston St.

WASHINGTON

Clark County

Camas vicinity, *Pittock House (Lakeside),* N of Camas at 114 NE. Leadbetter Rd.

WEST VIRGINIA

Randolph County

Beverly, *Beverly Historic District,* WV 92 and U.S. 219/250

Wayne County

Ceredo, *Ceredo Petroglyphs,* 491 Main St.
Fort Gay vicinity, *Wildcat Branch Petroglyphs,* N of Fort Gay on SR 1

WISCONSIN

Dane County

Middleton, *Stricker Pond I Site (47 Da 424).*

[FR Doc. 79-16337 Filed 5-25-79; 8:45 am]
BILLING CODE 4310-03-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of exisitng competitive commercial or industrial enterprises, unless such financial or other assistance

will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment an unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 22nd day of May 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

Applications Received During the Week Ending May 22, 1979

Name of applicant and location of enterprise	Principal product or activity
Franklin County Health Care Facilities, Inc., Winchester, Tenn.	Long term health care facilities.
Farrish Gravel Company, Inc., Greenwood, Miss.	Mining and production of gravel and asphalt.
Chemier & King, Kenai, Alaska	Processing, freezing, and custom packing of salmon and salmon roe.
Center Plains Industries, Inc., Dumas, Moore County, Tex.	Anhydrous ammonia and dry fertilizer facility.
Honey Creek Provisions Co., Nevada, Ohio	Canned meat processing plant.
Angelicia & Tara Nursing Home	Nursing home.
Gatlinburg, Place, Inc., Gatlinburg, Tenn.	Multipurpose cultural educational, and family entertainment complex.
Craddock Development Co., Vail, Col.	Hotel, restaurant and commerical retail area.
General Recreation Inc., Ithaca, N.Y.	Manufacture and sales of long guns.

[FR Doc. 79-16619 Filed 5-25-79; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 79-54]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC), Meeting

The Informal Ad Hoc Advisory Subcommittee on NASA Avionics and Controls Plan will meet June 13-14, 1979, in the Committee Meeting Room of the Administration Building M-200 at the NASA Ames Research Center, Moffett Field, California. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Subcommittee members and participants).

The Subcommittee was established to review the NASA Avionics and Controls program assessment and proposed plan for future Research and Technology programs. The Chairperson is Mr. Duane T. McRuer. There are currently 12 members on the Subcommittee. Following is the approved agenda for the meeting:

Agenda

June 13, 1979

8:00 a.m.—Chairperson's and Executive Secretary's Report.
9:00 a.m.—Executive Summary Briefing of the Proposed Avionics and Controls Plan.
1:00 p.m.—Discussion of Proposed Plan.
4:30 p.m.—Adjourn.

June 14, 1979

8:00 a.m.—Formulation of the Advisory Subcommittee's Assessment and Report.
4:00 p.m.—Adjourn.

For further information contact Dr. Herman A. Rediess, Executive Secretary of the Subcommittee, Code RTE-6, NASA Headquarters, Washington, DC 20546. Telephone 202/755-2243.

Dated: May 22, 1979.

Arnold W. Frutkin,

Associate Administrator for External Relations.

[FR Doc. 79-16583 Filed 5-25-79; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel to the National Council on the Arts will be held June 11, 1979, from 9:00 a.m. to 5:00 p.m. and June 12, 1979, from 9:00 a.m. to 5:30 p.m., in Room 1422, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

A portion of this meeting will be open to the public on June 11, 1979, from 9:00 a.m. to 5:00 p.m. The topic of discussion will be the Federal Council on the Arts Working Group and the Museum Program Guidelines.

The remaining sessions of this meeting on June 12, 1979, from 9:00 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 21, 1979.

[FR Doc. 79-16616 Filed 5-25-79; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Event; Deficiencies in Piping Design

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 incident was determined to be an abnormal occurrence using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). Appendix A (Example I.D.2) of the Policy Statement notes that a major deficiency in design, construction or operation having safety implications (affecting five plants in this case) requiring immediate remedial action can be considered an abnormal occurrence. The following description of the event also contains the remedial actions taken.

Date and Place—During design and construction, an incorrect summation of earthquake loads affected the design of safety related piping systems and associated pipe supports at five nuclear power plants. On December 6, 1978, a Licensee Event Report from Duquesne Light Company mentioned differences between computer codes used in analyses of force summations, but did not elaborate on them. Then, the NRC learned of an incorrect summing of loads in one of the codes on March 8, 1979, at a meeting in Bethesda, Maryland with Stone and Webster, an architect engineering firm and the Duquesne Light Company (DLC), the licensee for Beaver Valley Unit 1, a pressurized water nuclear plant located in Beaver County, Pennsylvania. On March 9, NRC learned that the incorrect summation technique affected four other plants:

Plant	Location
FitzPatrick	Oswego County, N.Y.
Maine Yankee	Lincoln County, Maine
Surry 1 and 2	Surry County, Va.

Nature and Probable Consequences—In October 1978, Duquesne Light Company, the licensee of the Beaver Valley plant, was informed by Stone and Webster that for loading conditions associated with postulated earthquakes, pipe supports associated with Safety Injection System piping would be overstressed. Stone and Webster (S&W) was reanalyzing stresses in connection with a system modification required by the NRC staff to correct a design deficiency not related to protection against postulated earthquakes. During this reanalysis effort, the S&W engineers also came across information that had been provided to them by Westinghouse in May 1978 that showed some check valves in these lines were actually heavier than assumed in the earlier analysis.

Sometime during this reanalysis, either in connection with the planned modification or in reexamining the effect of the increased valve weights, S&W discovered a misapplication of a hand calculation method. In correcting this misapplication, S&W found some instances of local overstress. The correction consisted of adding a snubber and modifying one support. In doing the analysis related to making this correction, S&W used two computer programs. A new one, NUPIPE, predicted much higher stresses than the one, PIPESTRESS, used during a 1974 as-built check of these lines. On October 26, 1978, the licensee orally notified the NRC Office of Inspection and Enforcement about the design error (hand calculations method misapplication) which required correction. No explanation was provided for the differences in stresses predicted by the two codes at that time.

Repeated NRC contacts with the licensee and S&W to identify the reason for the differences were not effective, since without the actual computer runs to look at there was a communications problem. During a meeting held on March 8, 1979 to discuss these matters, the Beaver Valley licensee informed the NRC staff that the differences in predicted piping stresses between the two computer codes were attributable to the fact that the SHOCK2 subroutine of the PIPESTRESS code uses an algebraic summation of the loads calculated separately for the horizontal and the vertical component of earthquake motion.

The use of algebraic summation is only acceptable if the time phasing of these loads is known. The algebraic technique as used in SHOCK2 is not conservative for response spectrum modal analysis because, in such analyses, time phasing is not considered.

The analytical treatment of load combinations becomes significant because horizontal earthquake motions can produce piping movement in both the horizontal and vertical direction and the vertical earthquake motions can also produce piping movement in both horizontal and vertical directions. For some designs the calculated piping stresses may differ significantly depending on the load summation techniques used in each mode of response.

Based on the three piping systems that had been reanalyzed by the newer code on Beaver Valley at the time of the March 8, 1979 meeting, stresses over allowable values were expected to be found primarily in piping supports although significant increases in piping stresses had been observed.

NRC staff reviewers were sent to S&W's Boston office to determine the extent of this problem on Beaver Valley 1 and other potentially affected plants.

In following the course of the reanalysis at the S&W offices over the weekend of March 10, 11 and 12, based on the information then available, it became apparent that, when the NUPIPE code was used, a number of piping systems had calculated stresses over the allowable value for the design basis earthquake. Also, for a few of these systems the more probable operating basis earthquake resulted in stresses above the allowable value. In addition, the structural integrity and performance of pumps, valves and other essential equipment could be degraded. Although results were still incomplete on March 12, information available at that time indicated that high stresses were calculated in a number of systems important to safety.

Because the overstressing of piping and supports was predicted even for earthquakes which might occur during the lifetimes of these facilities, the problem took on considerable safety significance. Some of the systems identified at that time as having overstressed conditions under earthquake loadings were part of the reactor coolant pressure boundary, whose failure could cause a loss of coolant accident. In addition, systems which would be needed to shut the plant down safely in the event of a loss of coolant accident were also affected. Thus an earthquake, of not extremely low likelihood, would have the potential both for causing an accident and for preventing safety systems, designed to cope with that accident, from operating. A secondary concern was whether or not systems needed to provide adequate long term cooling for the plant in the event of an earthquake with a LOCA could be assured.

Concurrent with the NRC Beaver Valley review, NRC staff records were reviewed to determine whether or not other facilities had used these same analysis techniques. Based on the review of these records and information provided by S&W, the NRC staff concluded that four other facilities used the same techniques. The four facilities are Maine Yankee, FitzPatrick and Surry Units 1 and 2.

The NRC staff concluded the potential for serious adverse effects in the event of an earthquake was sufficiently widespread that the basic defense in depth provided by redundant safety systems may be compromised. The NRC

Director for Nuclear Reactor Regulation concluded that the public health and safety required that the affected facilities be placed in a cold shutdown condition pending further order of the Commission. Orders to this effect were issued to the licensees of the above reactors.

The Orders provide that within 20 days each licensee must respond with respect to:

(1) why the licensee should not reanalyze the facility piping systems for seismic loads on the piping system and any other affected safety systems using an appropriate piping analysis computer code which does not combine loads algebraically,

(2) why the licensee should not make any modifications to the facility piping systems indicated by the reanalysis, and

(3) why facility operation should not continue to be suspended until completion of the reanalysis and any required modifications.

All of the plants are now in a cold shutdown condition. (Surry Unit 2 was already in an extended outage for steam generator replacement.)

Cause or Causes—The uncertainty in the calculated piping stresses and support loadings in safety-related piping systems at the five plants is attributable to the incorrect application of the algebraic summation technique in the SHOCK2 subroutine of the PIPESTRESS computer code, proprietary to Stone and Webster.

Actions Taken to Prevent Recurrence

Licensee/Architect Engineer—Identification of all safety related systems that have been analyzed with a piping computer code involving a program deficiency is underway. Computer inputs are being checked to assure that all reanalyzed piping will reflect the as-built condition at each plant. Piping analyses are being rerun and piping and supports exceeding allowable stresses will be identified. Modifications will be made as necessary.

NRC—The NRC ordered each of the utilities of the five identified nuclear power plants to shutdown their plants within 48 hours. The utilities are to remain shutdown pending further order of the Commission. The NRC is in contact with the licensees and the architect engineer on actions being taken. Piping stress computer codes to be used for reanalysis of the piping will be tested with NRC established benchmark problems. Also, an independent audit of selected piping runs will be conducted by NRC consultants to verify the piping stress reanalysis.

In addition to reviewing the licensees' corrective actions, the NRC is reviewing any generic implications at other facilities. The NRC's Office of Inspection and Enforcement issued Information Notice (IN) No. 79-06, which described the event, on March 23, 1979, to all holders of reactor operating licenses and construction permits. On April 14, 1979, the NRC's Office of Inspection and Enforcement issued Bulletin No. 79-07 to applicable licensees which identified actions to be taken. This includes identification of the methods of analyses used, how they were verified, safety systems affected, and a plan of action to assure plant safety. As of May 9, 1979, the NRC has received responses to Bulletin No. 79-07 from all licensees of operating reactors except for Three Mile Island Units 1 and 2 which are shutdown. The NRC staff is reviewing these responses on a high priority basis. Additional actions will be taken as appropriate.

Dated: At Washington, D.C. this 14th day of May 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-16369 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Operating Reactors; Meeting

The ACRS Subcommittee on Operating Reactors will hold a meeting on June 13, 1979, in Room 1046, 1717 H Street, NW., Washington, DC 20555 to review a request for a power level increase at the Millstone Nuclear Power Station, Unit 2, and to discuss the 1979 Review and Evaluation of the NRC Safety Research Program on Operational Safety. Notice of this meeting was published in the Federal Register on May 24, 1979.

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, June 13, 1979

8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Northeast Nuclear Energy Company (NNECO), and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Richard K. Major, (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555 and, regarding the Millstone Station, at the Waterford Public Library, Route 156, Rope Ferry Road, Waterford, CT 06385.

Dated: May 22, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-16553 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability and Probabilistic Assessment; Addition to Agenda

An addition, noted below, has been made to the agenda of the June 2, 1979 meeting of the ACRS Subcommittee on

Reliability and Probabilistic Assessment, announced in the Federal Register, May 18, 1979 (44 FR 29182).

Change the first paragraph of cited Federal Register notice to read:

"* * * *to discuss detailed procedures to ensure the proper and effective use of risk assessment theory, methods, data development and statistical analyses by the Staff, and* to discuss the 1979 Review and Evaluation of the NRC Safety Research Program. *As time permits, the Subcommittee will also discuss the reliability of BWR (boiling water reactor) piping with regard to the frequency of appearance of stress corrosion cracking."*

All other items pertaining to this meeting remain the same as announced in the Federal Register on May 18.

Further information can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Richard K. Major, (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 22, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-16568 Filed 5-25-79; 8:45 am]

BILLING CODE 7570-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold an open meeting, on June 13, 1979, in Room 1010, 1717 H St., NW., Washington, DC 20555. Notice of this meeting was published in the Federal Register on May 24, 1979.

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45926) oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, June 13, 1979

The meeting will commence at 8:45 a.m.

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Regulatory Guide 1.9, Revision 2, "Selection, Design, and Qualification of Diesel-Generator Units Used as Standby (Onsite) Electric Power Systems at Nuclear Power Plants (Post Comment)

(2) Proposed Regulatory Guide, "Guidance on Applications for Amendments to Operating Licenses for LWR Core Reloads" (Pre Comment)

(3) Proposed Regulatory Guide 1.94, Revision 2, "Quality Assurance Requirements for Installation, Inspection, and Testing of Structural Concrete, Structural Steel, Soils and Foundations During the Construction Phase of Nuclear Power Plants." (Pre Comment)

(4) Proposed General Revision of Appendix G to 10 CFR 50, "Fracture Toughness Requirements," and Appendix H to 10 CFR 50, "Reactor Vessel Surveillance Program Requirements." (Pre Comment)

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guide 1.9, Revision 2, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Gary R. Quittschreiber (ARCS), the Designated Federal Employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, D.C. 20555 or telecopy them to the Designated Federal Employee (202-634-3319) as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., NW, Washington, DC 20555.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary R. Quittschreiber, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 23, 1979.

John C. Hoyle,

Advisory Committee Managment Officer.

[FR Doc. 79-16567 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 OL; 50-339 OL]

Atomic Safety and Licensing Appeal Board; Hearing

May 21, 1979.

Alan S. Rosenthal, Chairman Dr. John H. Buck Michael C. Farrar; In the matter of Virginia Electric and Power Company [Docket Nos. 50-338 OL; 50-339 OL] (North Anna Nuclear Power Station, Units 1 and 2).

Order

The evidentiary hearing on the pumphouse settlement and turbine missile issues [1] will commence at *9:30 a.m. on Monday, June 18, 1979* in the Commission's Public Hearing Room, 5th floor, 4350 East-West Highway, Bethesda, Maryland. The pumphouse settlement issue will be heard first, to be followed by the turbine missile issue.

The parties to the proceeding shall provide the secretary to this Board, by letter mailed no later than June 8, 1979, with the names of (1) the counsel who will appear on their behalf; and (2) the witnesses to be presented by them on each issue.

It is so ordered.

For the Appeal Board.

Romayne M. Skrutski,

Secretary to the Appeal Board.

[FR Doc. 79-16563 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Provisional Operating License No. DPR-45, issued to the Dairyland Power Cooperative (the licensee), which revised the license for operation of the LaCrosse Boiling Water Reactor (the facility), located in Vernon County, Wisconsin. The provisions of the amendment became effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filing 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

[1] See ALAB-529, 9 NRC —— (February 28, 1979).

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 enviromental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated June 16, 1978, as revised February 16, 1979 and April 19, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 912.

For further details with respect to this action, see (1) Amendment No. 15 to License No. DPR–45 and (2) the Commission's related letter to the licensee dated May 16, 1979. These items are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, D.C. and at the LaCrosse Public Library, 800 Main Street, LaCrosse, Winsconsin 54601. A copy of items (1) and (2) 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 16th day of May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-16562 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, which revised Technical Specificaions for operation of the Millstone Nuclear Power Station, Unit No. 2, located in the Town of Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment authorizes Cycle 3 operation at 2560 MWt with modified (sleeved and reduced flow) guide tubes for the control element assemblies, credit taken for charging pump flow in the loss-of-coolant accident analysis, a new reactor protection system trip from a reactor coolant pump speed sensing signal, installation of a new neutron shield; and revises the Appendix A Technical Specifications by: (1) incorporating changes resulting from the analyses of Cycle 3 reload fuel at 2700 MWt; (2) adding a containment air recirculation system response time; (3) approving operation at reduced power level with inoperable main steam line safety valves; and (4) removing the completed special steam generator surveillance requirements.

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. Notice of Proposed issuance of Amendment to Facility Operating License in connection with operation at 2700 MWt (a 5 percent increase above the current licensed power level was published in the Federal Register on February 21, 1979 (44 FR 10556). Action on the power level increase is postponed until the Advisory Committee on Reactor Safeguards review is completed. No request for a hearing or petition for leave to intervene was filed following this notice of proposed action. Prior public notice of the other actions mentioned above was not required since these actions do 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 futher details with respect to this action, see (1) the applications for amendment dated December 16, 1977, December 15, 1978, February 12, 1979 and March 2, 1979 as supplemented on numerous other dates, (2) Amendment No. 52 to License No. DPR–65, 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, NW., 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 12th day of May 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-16564 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR–59, issued to Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the James A. FitzPatrick Nuclear Power Plant (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to establish Limiting Conditions for Operation pertaining to chemical concentrations in cooling water systems discharges.

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 prepared an environmental impact appraisal for this action and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action other than that which has already been predicted and described in the

Commission's Final Environmental Statement for the facility.

For further details with respect to this action, see (1) the application for amendment submitted by letter dated September 1, 1978, (2) Amendment No. 46 to License No. DPR-59, and (3) the Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Oswego County Office Building, 46 East Bridge Street, Oswego, New York. 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 17th day of May 1979.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Acting Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 79-16565 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

Three Mile Island; Preservation of Records

Order

Subject: Nuclear Regulatory Commission [1] orders preservation of all records on Three Mile Island accident.

The Commission has begun a wide-ranging investigation into all aspects of the Three Mile Island accident. This investigation will be one of the major vehicles by which the Commission will seek to uncover the causes of that accident and to prevent similar accidents. In order to assure the effectiveness of the investigation it is essential that the investigators have access to every potential source of data that may be relevant to their work, and it is equally essential that those potential sources be retained until such time as the investigators can decide what lines of inquiry to follow and what data they need.

Accordingly, under the authority of sections 161(c) and 161(o) of the Atomic Energy Act, 42 U.S.C. 2201 (c) and (o), the Commission hereby orders the presevation of such records. Until further order all records that may be related to the accident at Three Mile Island, or to understanding of all events incident thereto, shall be preserved intact by persons in possession of such records including, but not limited to, Metropolitan Edison Company (the licensee), General Public Utilities (its holding company), Babcock & Wilcox Company (the reactor vendor) and their consultants, agents and employees. Other reactor vendors, utilities, corporations, and laboratories who participated in the joint remedial efforts which commenced during and immediately after the accident and the consultants, agents and employees of any of the above are to preserve all similar records for the period commencing March 28 and continuing through April 30, 1979. Agencies of the United States and of the Commonwealth of Pennsylvania who assisted in those efforts are requested to preserve any similar records in their possession. The term "records" is used broadly and is meant to encompass all sources of data including, but not limited to, reports, memoranda, engineering analyses, experimental results, lists of references consulted, telephone memoranda, preliminary drafts of any record, and any similar potential source of information whether formal or informal. These records are to be preserved intact until they are released either by the Commission's investigative authorities as authorized hereafter or by subsequent order of the Commission.

The Director of the Commission's Special Investigation of Three Mile Island is authorized to interpret this Order and to authorize exceptions to it. The Director or the Acting Director shall bring to our attention any violations of this Order or similar matters believed to require our attention.

It is so ordered.

Dated at Washington, D.C., this 22nd day of May 1979.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-16570 Filed 5-25-79; 8:45 am]

BILLING CODE 7590-01-M

[1] Commissioners: Joseph M. Hendrie, Chairman, Victor Gilinsky, Richard T. Kennedy, Peter A. Bradford, John F. Ahearne.

OFFICE OF MANAGEMENT AND BUDGET AGENCY FORMS UNDER REVIEW

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeing requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies used a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy

and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Office—Donald W. Barrowman—447–6202

New Forms

Departmental and Other Recipient Self Evaluation Requirement on Occasion
Fed.-Assisted prog. immed. accessible to handicapped persons
Charles A. Filett, 395–5080

EXTENSIONS

Economics, Statistics, and Cooperatives Service
*Egg and Poultry Prices, FOB City to Retail Stores, Washington, D.C. Monthly
Poultry and egg dealers and retail stores, 120 responses; 30 Hours
Charles A. Filett, 395–5080

DEPARTMENT OF ENERGY

Agency Clearance Officer—Albert H. Linden—633–8477

New Forms

Revised Interim Regulations for the Fuels Decision
Report
ERA–326R
Single time
New powerplants and meet's 250 responses, 625,000 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John T. Murphy—755–5190

New Forms

Housing Management
Application for tenant eligibility and recertification HUD–52659
On occasion
Section 8 owners and program administrators, 586,500 Responses; 193,545 hours
Arnold Strasser, 395–5080

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

New Forms

Departmental and Other.
Survey of Labor-Management Relations in the Coal Industry
OS–PCC–2
Single time
Miners in mines of 125 or more employees, 450 responses; 675 hours
Off. of Federal statistical policy and standard, 673–7974

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426–1887

New Forms

Federal highway Administration
Survey of Trucking Service to Small Communities
Single time
Shippers and Receivers in small rural communities, 600 responses; 210 hours
Susan E. Geiger, 395–5867
National Highway Traffic (Safety Administration
*Owner usage and Acceptance of Passive Safety Belts HS–417 and HS 417A
Annually
Owners of passive and active belt equipped cars, 2,400 responses, 800 hours
Susan B. Geiger, 395–5867

COMMUNITY SERVICES ADMINISTRATION

Agency Clearance Officer—Jack Stolhr—254–5300

New Forms

Interview guide—BAC Revolving Loan Fund Clients
Single time
HAC Ican Fund clients. 45 Response; 23 hours
Barbara F. Young, 395–6132

FEDERAL RESERVE SYSTEM

Agency Clearance Officer—Carolyn E. Doying—452–3512

Extensions

Annual dealer reports of condition FR 2002, 2003 Annually
Primary dealer in U.S. Gov't securities 34 Responses; 2,040 hours
Off. of Federal Statistical Policy and Standard, 673–7974

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312–751–4693

Revisions

Annual Report of Creditable Compensation
BA–3A
Annually
Railroad employees, 400 responses; 600 hours
Barbara F. Young, 395–6132
Summary Report of Compensation of Employees
BA–5
Quarterly
Railroad employers, 1,600 reponses, 266 hours
Report of Creditable Compensation Adjustments
BA–4
On occasion
Railroad employers, 600 responses; 1,200 hours
Barbara F. Young, 395–6132

Stanley E. Morris,

Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-16669 Filed 5-25-79; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Termination of Central Essex Health Plan's Participation in the Program

AGENCY: Office of Personnel Management.

ACTION: Notice.

EFFECTIVE DATE: May 19, 1979.

SUMMARY: Pursuant to the authority contained in Section 8902 of title 5, United States Code, the Office of Personnel Management hereby announces that the participation of the Central Essex Health Plan, Orange, New Jersey, in the Federal Employees Health Benefits (FEHB) Program has been terminated effective May 19, 1979.

Each Federal employee or annuitant enrolled in the Central Essex Health Plan who wishes to continue coverage under the FEHB Program must change to another health plan offered in the area. The effective date of the change will be the first day of the first pay period beginning on or after May 19, 1979. To effect this change in health plans, the employee or annuitant must submit a completed Standard Form 2809 to his or her personnel office or retirement system.

FOR FURTHER INFORMATION CONTACT: Robert C. Gettys, Chief, Comprehensive Plans, Compensation, Office of Personnel Management, Washington, D.C., 202–632–6127.

Office of Personnel Management.

Roderick S. Speer,

Assistant Issuance System Manager.

[FR Doc. 79-16603 Filed 5-25-79; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

American Utility Shares, Inc.; Filing of Application for an Order Pursuant to Section 8(f) of the Act Declaring that Applicant has Ceased to be an Investment Company

[Release No. 10705; 811-2289]

May 21, 1979.

In the matter of American Utility Shares, Inc., 63 Wall Street, New York, New York 10005.

Notice is hereby given that American Utility Shares, Inc. ("Applicant"), a closed-end, diversified management company registered under the Investment Company Act of 1940 ("Act"), filed an application on Form N-8F on April 26, 1979, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On May 23, 1972, Applicant, a Maryland corporation, registered under the Act and filed a registration statement under the Securities Act of 1933 with respect to $35,200,000 of common stock ($1 par value). Such registration statement became effective on August 16, 1972, and Applicant commenced offering its shares to the public on that date. On November 3, 1972, Applicant filed a second registration statement under the Securities Act of 1933 with respect to a rights offering covering $6,133,419 of common stock. Applicant's second registration statement became effective on November 28, 1972, the date on which the public offering commenced.

Applicant represents that its legal existence under the laws of Maryland terminated on July 31, 1978, as a result of a statutory merger into Lord Abbett Income Fund, Inc. ("Lord Abbett Income"), a diversified, open-end, management company registered under the Act. The investment manager of and principal underwriter for Lord Abbett Income is Lord, Abbett & Co., which, since August 1, 1975, also served as investment manager of Applicant. Applicant and Lord Abbett Income received an order (Investment Company Act Release No. 10317) on July 10, 1978, permitting the merger. As a result of the merger, Applicant's stockholders received stock of Lord Abbett Income at a conversion rate based on the relative per share net asset values of the two companies. Applicant further states that it has no assets or liabilities, that it is not a party to any litigation or administrative proceeding, and that it currently has no security holders. Applicant represents that it is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than June 15, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16519 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5722; File No. 81-482]

AMIC Corp.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that AMIC Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an Order exempting the Applicant from the requirements to file reports pursuant to Sections 13 and 15(d) of that Act.

The Applicant states in part:

1. Pursuant to a merger effected on February 14, 1979, the Applicant was merged with MLAMI Corporation, a wholly-owned subsidiary of Merrill Lynch and Co., Inc., and each outstanding share of the Applicant was converted into a right to receive $26.75 principal amount of 8¾% installment notes of Merrill Lynch, or $26.75 in cash. As a result of the merger, the Applicant became a wholly-owned subsidiary of Merrill Lynch.

2. The common stock of Merrill Lynch is registered with the Commission pursuant to Section 12(b) of the 1934 Act, and is publicly traded on the New York Stock Exchange.

3. The results of the Applicant's operations will be reflected in the reports of Merrill Lynch for the same periods.

4. As as result of the merger, there are no securities of the Applicant in the hands of the public, and there is no longer any trading market for the Applicant's securities.

In the absence of an exemption, Applicant is required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder for the fiscal year ended December 31, 1978 and for the fiscal year ending December 31, 1979. Applicant believes that its request for an order exempting it from the reporting provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort and expense involved in the preparation of additional periodic reports will be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application, which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person no later than June 12,

1979, may submit to the Commission his view or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the persons submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after such date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16520 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7455]

Automated Medical Laboratories, Inc., Application To Withdraw From Listing and Registration

May 21, 1979.

In the matter of Automated Medical Laboratories, Inc., Common Stock, $.01 Par Value.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Automated Medical Laboratories, Inc. (the "Company") has been listed for trading on the Exchange since September 25, 1974. The Company has decided that it no longer wishes to have its common stock listed on the Exchange and has determined that the trading of such stock can be accommodated by the over-the-counter market.

Any interested person may, on or before June 22, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16521 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15837; File Nos. SR-BSE-78-4, SR-NYSE-77-33, and SR-PHLX-77-15, Amendment No. 2]

Boston Stock Exchange, Inc.; Order Approving Rule Changes Submitted by Three National Securities Exchanges Amending Certain of Their Transaction Completion Rules

May 18, 1979.

In the matter of proposed rule changes submitted by Boston Stock Exchange, Inc., (File No. SR-BSE-78-4), New York Stock Exchange, Inc. (File No. SR-NYSE-77-33), Philadelphia Stock Exchange, Inc. (File No. SR-PHLX-77-15, Amendment No. 2).

By letter dated September 27, 1977, the Commission gave final notice under Section 31(b) of the Securities Acts Amendments of 1975 ("1975 Amendments") to national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD") with respect to their transaction completion rules which do not comply with the Securities Exchange Act of 1934 ("the Act") as amended. The notice requested those organizations to submit proposed rule changes to conform to the Act or to submit further data, views or arguments explaining why such rules are in compliance with the Act.

In response to this request, the self-regulatory organizations submitted, pursuant to Rule 19b-4 under the Act, proposed rule changes designed to conform certain of their rules to sections of the 1975 Amendments relating to the comparison, clearance and settlement of securities transactions. On April 7, 1978, the Commission announced the approval of one hundred and fifteen of these proposed rules changes which, among other things, eliminated references to an affiliated clearing agency in rules governing the completion of securities transactions.

Several of the exchanges submitted further amendments to certain of their transaction completion rules which, among other things, delete the references to the exchanges' affiliated clearing agencies. Generally speaking, the organizations proposed to retain these rules (as amended) for application to transactions which are not cleared through registered clearing agencies.

Notices of the proposed rule changes together with the terms of substance of the proposed rule changes were given by publication of Commission releases and by publication in the Federal Register.[1] No letters of comment were received on the rules approved by this order.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 6, 11A and 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the following proposed rule changes [2] be, and hereby are, approved:

SR-BSE-78-4—Section 10 of Chapter V.

SR-NYSE-77-33—Rule 200.

SR-PHLX-77-15, Amendment No. 2—Rules 274, 276, 301, 421 and 1050.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16522 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21051; 70-5799]

Consolidated Natural Gas Co.; Post-Effective Amendment Regarding Issuance of Common Stock

May 17, 1979.

In the matter of consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020.

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[1] SR-BSE-78-4, Securities Exchange Act Release No. 14832 (June 6, 1978), 43 FR 25506 (June 13, 1978) with a technical amendment submitted on May 15, 1978; SR-NYSE-77-33, Securities Exchange Act Release No. 14279 (December 15, 1977), 42 FR 63979 (December 21, 1977); SR-PHLX-77-15, Amendment No. 2, Securities Exchange Release No. 15045 (August 9, 1978), 43 FR 36545 (August 17, 1978).

[2] The Commission's order does not include all of the remaining proposed changes to the transaction completion rules submitted by the exchanges and the NASD in response to the Commission's September 27, 1977 notice under Section 31(b). Those proposed rule changes, together with other transaction completion rules that were included in the September notice but have not been proposed for amendment, are under consideration.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By supplemental orders in this proceeding dated July 19, 1976, and March 14, 1978 (HCAR Nos. 19616 and 20502), the Commission authorized Consolidated until December 31, 1979, to issue and sell up to an aggregate of 750,000 shares of Common Stock, $8 par value, to its Dividend Reinvestment Plan ("DRP") and to the trustees of the Employee Stock Ownership Plan ("ESOP"). Consolidated now seeks to extend to June 30, 1980, the authorization to issue and sell the remainder of said 750,000 shares of its Common Stock, $8 par value, to the DRP Agents and ESOP trustees. It is stated that as of February 20, 1979, 522,315 shares had been issued to the DRP and ESOP and that approximately 30,000 shares are expected to remain unissued at December 31, 1979.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 18, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16523 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5709; File No. 81-502]

Cosco, Inc., Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Cosco, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. The Applicant was a publicly-held company with a class of securities registered pursuant to Section 12(b) of the 1934 Act, and was thus subject to the reporting provisions of Section 13 of the 1934 Act.

2. On December 28, 1978, the Applicant was merged with a wholly owned subsidiary of Walter Kidde & Company, Inc. ("Kidde").

3. As a result of the merger, all the issued and outstanding shares of common stock of the Applicant are now owned by Kidde.

In the absence of an exemption, Applicant will be required to file certain periodic reports with the Commission for periods ending in 1978.

The Applicant contends that no useful purpose would be served in filing the periodic reports because Kidde now owns all of the Applicant's common stock, and its common stock is no longer publicly traded.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Office of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than June 12, 1979, may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16524 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5708; File No. 81-494]

Del Monte Corp.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Del Monte Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the provisions of Section 15(d) of that Act.

The Application states, in part:

1. On February 2, 1979, the Applicant was merged with and into Reynolds Merger Corp., a wholly-owned subsidiary of R. J. Reynolds Industries, Inc. which is a reporting company under the 1934 Act.

2. As a result of the merger, the number of shareholders of Applicant has been reduced to zero.

In the absence of an exemption, Applicant would be required to file a report on form 10-Q for the period ended February 28, 1979 and a report on Form 10-K for the period ending May 31, 1979. Applicant believes that its request for an order exempting it from the reporting provisions of Section 15(d) of the 1934 Act is appropriate since it has no publicly held securities, there is no trading market for any of its securities, and the time, effort and expense involved in preparation of the reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are

referred to the application which is on file in the offices of the Commission at 1100 L St., N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capital Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16525 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5726; File No. 81-524]

Falcon Seaboard Inc.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Falcon Seaboard Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the reporting requirements of Sections 13 and 15(d) of the 1934 Act.

The Application states, in part:

1. Applicant is a Delaware corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

2. On February 23, 1979, Applicant became a wholly-owned subsidiary of Diamond Shamrock Corporation as the result of a merger.

3. There is only one holder of any class of Applicant's securities.

4. There is no trading in Applicant's securities.

In the absence of an exemption, Applicant is required to file certain periodic reports with the Commission pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant argues that no useful purpose would be served in filing such reports.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16526 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5715; File No. 81-471]

Great Southwest Corp.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Great Southwest Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") seeking an exemption from the requirements to file reports pursuant to Sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. The Applicant is a Delaware corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

2. On December 22, 1978, Pennsylvania Company ("Pennco") became the sole shareholder of the Applicant when it acquired 100% of Applicant's outstanding equity securities as a result of a merger of the Applicant with and into a wholly owned subsidiary of Pennco. Pennco is a wholly owned subsidiary of The Penn Central Corporation, formerly known as Penn Central Transportation Company, which on October 24, 1978, consumated a Reorganization Plan under Section 77 of the Federal Bankruptcy Act.

3. Upon the terms of the merger, the shares of the Applicant's common stock not held by Pennco and outstanding prior to the merger were each converted into $19.00 cash.

4. The holders of such shares do not have any continuing interest in, or rights as shareholders of the Applicant.

5. Thirteen persons holding 1,442 shares of common stock have taken the actions required under Delaware law in order to dissent from the merger and demand a judicial appraisal of the shares.

In the absence of an exemption, Applicant is required to file pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder, an annual report on Form 10-K for its fiscal year ended December 31, 1978. Applicant believes that its request for an order exempting it from the provisions of Sections 13 and 15(d) of the 1934 Act if appropriate in view of the fact that Applicant believes that the time, effort and expenses involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20005.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will

receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16527 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5716; File No. 81-520]

Green Giant Co.; Application and Oportuntity for Hearing

May 18, 1979.

Notice is hereby given that Green Giant Company ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant states in part:

1. The Applicant was a publicly held company with three classes of its securities registered pursuant to Section 12(b) of the 1934 Act, two classes of its securities registered pursuant to Section 12(g) of the 1934 Act, and was thus subject to the reporting provisions of Section 13 of the 1934 Act.

2. On March 9, 1979, the Applicant was merged with a wholly-owned subsidiary of the Pillsbury Company pursuant to an Agreement and Plan of Merger dated October 9, 1978.

3. As a result of the merger, all the issued and outstanding shares of Common Stock, 5% Cumulative Preferred Stock, and Series D Convertible Preference Stock of the Applicant have now been exchanged for cash or Common Stock of the Pillsbury Company with the exception of certain shares as to which dissenters' appraisal rights have been exercised. The Applicant's 4¼% Convertible Subordinated Debentures continue to be listed on the New York Stock Exchange as assumed obligations of the Pillsbury Company.

4. Certification has been made that with the exception of two holders of an aggregate of 333 shares of common stock of Applicant as to which certain steps have been taken pursuant to applicable state law to exercise dissenters' appraisal rights, there are no longer any holders of the Applicant's Common Stock, 5% Cumulative Preferred Stock, or Series D Convertible Preference Stock.

5. After termination of its Section 12(b) registration on March 30, 1979, and the above certifications, Applicant is subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act for the remainder of its fiscal year ended May 26, 1979.

The Applicant contends that no useful purpose would be served in filing the required reports because, other than as indicated above, there are no holders of the Applicant's Common Stock, 5% Cumulative Preferred Stock, or Series D Convertible Preference Stock, and such securities are no longer publicly traded.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16528 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5691; File No. 81-488]

Jenn-Air Corp.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Jenn-Air Corporation ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant states in part:

1. The Applicant was a publicly-held company with a class of securities registered pursuant to Section 12(g) of the 1934 Act, and was thus subject to the reporting provisions of Section 13 of the 1934 Act.

2. On January 15, 1979, the Applicant was merged with Carrier Corporation pursuant to an Agreement and Plan of Reorganization dated October 4, 1978.

3. As a result of the merger, all the issued and outstanding shares of common stock of the Applicant were exchanged for common stock of Carrier Corporation.

4. After termination of its Section 12(g) registration on October 11, 1978, Applicant is subject to the reporting provisions of Section 15(d) of the 1934 Act.

In the absence of an exemption, Applicant will be required to file certain periodic reports with the Commission, including an annual report on Form 10-K for the fiscal year ended December 31, 1978, pursuant to Section 13 of the 1934 Act, and further reports for periods ending in 1979, pursuant to Section 15(d) of the 1934 Act.

The Applicant contends that no useful purpose would be served in filing the periodic reports because none of its securities is publicly held, and its common stock is no longer publicly traded.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Office of the Commission at 500 North Capitol Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and

orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16529 Filed 5-25-79; 8:45 am]
BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5719; File No. 81-514]

Koppers Company, Inc.; Application and Opportunity for Hearing

May 18, 1979.

In the matter of Koppers Company, Inc., successor to Ivy Corporation.

Notice is hereby given that Koppers Company, Inc. ("Koppers") has filed as successor to Ivy Corporation ("Ivy") an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking for Ivy an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

The Application states in part:

1. Upon the approval of Ivy shareholders, Ivy, a Delaware corporation, was merged with a wholly-owned subsidiary of Koppers on January 24, 1979 and each outstanding share of Ivy common stock was convested into 0.6 of a share of Koppers common stock. Prior to such merger, Ivy was the issuer of a class of securities registered under Section 12(g) of the 1934 Act.

2. Stockholders of Ivy at the time of the merger had the right to appraisal under Delaware law.

3. In connection with the merger, a registration statement was filed by Koppers on Form S-14, File No. 2-63298, and declared effective on December 29, 1978.

4. Certifications on Forms 12g-4 and 15d-6 were filed by Koppers for Ivy with the Commission on February 9, 1979 to terminate registration of its common stock, par value $.10 per share, pursuant to Section 12(g)(4) of the 1934 Act and Rule 15(d)(6) under that Act.

In the absence of an exemption, Koppers, as successor to Ivy, is required to file pursuant to Sections 13 and 15(d) of the 1934 Act and rules and regulations thereunder, any further reports required to be filed for Ivy which has a February 28 fiscal year end. Koppers states that no useful purpose would be served in filing any further reports on behalf of Ivy and that its request for an order exempting Ivy from the provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Koppers believes that the time, effort and expense involved in the preparation of any further reports for Ivy would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol St., N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, an order granting the application in whole or in part may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16530 Filed 5-25-79; 8:45 am]
BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5645; File No. 81-454]

Leggett & Platt, Inc.; Application and Opportunity for Hearing

May 18, 1979.

In the matter of Leggett & Platt, Incorporated, on behalf of Leggett Wire Company, successor to Adcom Metals Company, Inc.

Notice is hereby given that Leggett & Platt, Incorporated ("LPI"), on behalf of Leggett Wire Company ("LWC"), a Delaware corporation, successor to Adcom Metals Company, Inc. ("AMCI"), a Georgia corporation, has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking for LWC an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

The Application states in part:

1. Leggett & Platt Metals Company ("LPMC"), a wholly-owned subsidiary of LPI was merged with AMCI, a reporting company under Section 15(d) of the 1934 Act, on May 31, 1978 in a cash merger. Prior to the merger LPMC owned approximately 98 percent of AMCI's outstanding common stock with the remaining 2 percent held by approximately 107 persons. Under Delaware and Georgia law the merger required only the approval of both boards of directors. The minority shareholders of AMCI received $5.05 for each share.

2. Stockholders of AMCI at the time of the merger had the right to appraisal under Georgia law.

3. After the merger of AMCI into LPMC, LPI was th sole shareholder of the surviving corporation which subsequently changed its name to LWC.

4. A current report on Form 8-K dated May 31, 1978 was filed by LPMC with the Commission in connection with its merger with AMCI. See File No. 2-31500.

5. A certification on Form 15d-6 was filed by LWC with the Commission on November 9, 1978 to terminate registration of its common stock, par value $.10 per share, pursuant to Rule 15(d)(6) under the 1934 Act.

In the absence of an exemption, LWC, as successor to AMCI, is required to file pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder, an annual report on Form 10-K for LWC's fiscal year ending October 31, 1978. LPI states that no useful purpose would be served in filing such annual report on Form 10-K and that its request for an order exempting LWC from the provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that LPI believes that the time, effort and expense involved in preparation of such annual report on Form 10-K would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any

such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol St. NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, an order granting the application in whole or in part may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16531 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15832; SR-MSE-79-13]

Midwest Stock Exchange, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

May 17, 1979.

In the Matter of Midwest Stock Exchange, Inc., 120 South LaSalle Street, Chicago, Illinois 60603 (SR-MSE-79-13).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") notice is hereby given that on May 17, 1979, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission copies of a proposed rule change which amends MSE Rule 2, Article XLVI. The proposed rule change would prohibit all broker-dealers from placing proprietary orders on the order book official's book. Under current MSE rules only the proprietary orders of MSE members are prohibited from being placed on the book.

Publication of notice of the proposed rule change is expected to be made in the Federal Register during the week of May 21, 1979. Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-79-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

In particular, the Commission finds that the proposed rule change which would preclude non-member broker-dealers, in addition to MSE members, from gaining priority afforded to limit orders placed on an order book official's book is consistent with the protection of investors, as set forth in Section 6 of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Since the MSE trading floor is now contiguous with the floor of the Chicago Board Options Exchange, Incorporated ("CBOE"),[1] the Commission believes it is important for the two options exchanges to remain distinct. This rule proposal will ensure that the CBOE members will not take advantage of the time and place advantage of being on the MSE floor by placing orders on the book of a MSE order book official and thereby obtain priority which is afforded public limit orders placed on the MSE book.

In addition, the Commission notes that the CBOE filed, on December 22, 1976, a similar rule proposal on which the public and interested persons, have had the opportunity to comment. Notice of that proposed rule change, together with its terms of substance, was given by publication of a Commission Release (Securities Exchange Act Release No. 13159 (January 13, 1977) and by publication in the Federal Register (42 FR 3909 (January 21, 1977)). All written statements with respect to that proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and were made available to the public at the Commission's Public Reference Room. The Commission approved the proposed rule change on April 18, 1978.[2]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16532 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15832; File No. SR-MSE-79-13]

Midwest Stock Exchange, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on May 17, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms and Substance of the Proposed Rule Change

Article XLVI, Rule 2 is hereby amended as follows:

Additions Italicized—[Deletions Bracketed]

Article XLVI

Obligations for Orders

Rule 2. (a) Acceptance. An Order Book Official will, for all option contracts of the class or classes assigned to him, accept and maintain a written record of orders that are placed in his custody. Such orders shall include limit orders (as defined in Rule 13 of Article XLIV) and such other orders as may be designated by the Options Floor Procedure Committee. An Order Book Official will not accept orders of any other type or from any source other than a member. No member shall place, or permit to be placed, an order with an Order Book Official for an account in which such member or his organization or any other member or member organization *or any non-member broker-dealer* has an interest.

(b) No change in text.

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[1] *See* Securities Exchange Act Release No. 15761 (April 24, 1979), 17 SEC Docket 356 (May 9, 1979).

[2] See Securities Exchange Act Release No. 14677 (April 18, 1978), 14 SEC Docket 828 (May 2, 1978).

Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change to Article XLVI, Rule 2 is to clarify that Order Book Officials shall accept only public customer orders. This provision will effectively preclude non-member broker-dealers, in addition to MSE members, from gaining the priority afforded to the orders placed on the Order Book Official's book and is consistent with the Investor Protection purposes of Section 6 of the Act. In addition, this proposal would further the purposes of Section 11A(a)(1)(C)(v) of the Act by enhancing the ability of investors orders to meet without participation by a dealer.

The proposed rule change is consistent with the requirements of Section 6 that the rules of an exchange not be designed to permit unfair discrimination between brokers and dealers.

The basis of this rule change, is Section 6(b)(5) of the Act, which states that the rules of the exchange be designed to promote just and equitable principles of trade.

The Midwest Stock Exchange, Incorporated has neither solicited nor received any comments.

The Midwest Stock Exchange, Incorporated believes that no burdens have been placed on competition.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 17, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16541 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5714; File No. 81-453]

Mouldings, Inc.; Application and Opportunity for Hearing

May 18, 1979.

In the matter of Mouldings, Inc., File No. 81-453.

Notice is hereby given that Mouldings, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") seeking an exemption from the requirements to file reports pursuant to Sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. The Applicant is a Oregon corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

2. On November 21, 1978, Mr. and Mrs. James Rash became the sole shareholders of the Applicant when they acquired 100% of Applicant's outstanding equity securities as a result of a merger of a wholly owned corporation of Mr. and Mrs. Rash with and into the Applicant.

3. Upon the terms of the merger, the shares of the Applicant's common stock outstanding prior to the merger were each converted into $3.25 cash.

4. The holders of such shares do not have any continuing interest in, or rights as shareholders of the Applicant.

In the absence of an exemption, Applicant is required to file pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder, an annual report on Form 10-K for its fiscal year ended April 30, 1979, and its quarterly report on Form 10-Q for the period ended January 31, 1979. Applicant believes that its request for an order exempting it from the provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are refered to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20005.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16533 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15808; SR-Phlx-78-15]

Philadelphia Stock Exchange, Inc.; Order Approving Rule Change

May 9, 1979.

In the matter of Philadelphia Stock Exchange, Inc. 17th and Stock Exchange Place Philadelphia, Pennsylvania 19105.

On July 24, 1978, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change modifying Phlx Rule 229 principally to clarify stated parameters for executing both market and limit orders entered into the Phlx Automated Communication and Execution System ("PACE").[1] Phlx

[1] PACE provides a system for automatic execution of agency orders on the Phlx stock floor under predetermined conditions. Orders accepted under

Footnotes continued on next page

submitted a single amendment to SR–Phlx–78–15 on April 20, 1979. The amendment contained several nonsubstantive changes in the text of the original proposal, including deletion from Rule 229 of the maximum share amounts for individual market and limit orders which may be executed through PACE. Nevertheless, the amended proposal does not alter the current maximum of 399 shares which was established by the Phlx Committee on Floor Procedure and applies both to PACE market and limit orders.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 15014, July 28, 1978) and by publication in the Federal Register (43 FR 35417, August 9, 1978). No comments were received with respect to the proposed rule filing.

The proposed rule change, by clarifying execution parameters for PACE orders, is designed, in general, to protect investors and the public interest. Further, enhancement of the PACE system through implementation of SR–Phlx–78–15 should foster more efficient execution of securities transactions and promote fair competition among brokers and dealers as well as among exchange markets. By enhancing a system which provides for execution of orders against the best prevailing bid (or ask) in more than one market place, the proposal also makes it more practicable for brokers to execute investors' orders in the best market. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 6(b) and 11(A)(a)(1)(C), and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16534 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 0-5710; File No. 81-496]

Skil Corp.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Skil Corporation has filed an application pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting Applicant and exemption from the provisions of Section 13 of the 1934 Act.

The Applicant states, in part:

1. On March 23, 1979, Applicant was merged into a wholly owned subsidiary of Emerson Electric Co. ("Emerson"). As a result of the merger, Emerson is the sole stockholder of the successor corporation.

2. In connection with the merger, Applicant, Emerson and the Indenture Trustee for Applicant's debentures entered into a First Supplemental Indenture dated as of March 23, 1979 which provided for the assumption by Emerson of Applicant's obligations under the Indenture except for the conversion rights contained therein, for the assumption by Emerson to pay principal, premium and interest on the debentures, and that debenture holders would have the right to convert debentures into Emerson common stock.

3. Emerson will fulfill all reporting requirements for Applicant's debentures.

4. Applicant filed a report on Form 8–K indicating the assumption by Emerson of reporting requirements with respect to the debentures.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979 may submit to the Commission in writing his views on any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest or the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16535 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5705; File No. 81-500]

Uarco Inc.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Uarco Incorporated (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under Section 15(d) of the 1934 Act.

The Applicant states,

(1) On February 1, 1979, Applicant became a wholly-owned subsidiary of City Investing Company, Inc. As a result of the merger Applicant no longer has any public security holders.

(2) The merger was approved by the stockholders of Applicant at a special meeting held on February 1, 1979, proxies for which were solicited in accordance with the requirements of Regulation 14A under the 1934 Act.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N. W., Washington, D. C. 20549.

Notice is further given that any interested person no later than June 12, 1979, may submit to the Commission in writing his view or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N. W., Washington, D. C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after

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Footnotes continued from last page

the system may be executed on a fully automated or manual basis in accordance with the provisions of Phlx Rule 229; currently, all limit orders are executed manually. Stocks which are dually-traded on the Phlx and the New York Stock Exchange, Inc. are eligible for trading in PACE, but participation by Phlx specialists and member organizations is voluntary. Phlx Rule 229 pertains exclusively to the execution of PACE orders and does not affect the application of other Phlx rules to non-PACE orders.

[2] Should the Phlx determine to alter the maximum, it must submit an appropriate rule filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(d) thereunder.

said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16536 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15834; File No. SR-SCCP 79-5]

Stock Clearing Corp. of Philadelphia; Self-Regulatory Organizations; Proposed Rule Change.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 30, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed Rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP), proposes an amendment to its Rule 25 granting the Board of Directors authority to take disciplinary action after 30-day delinquencies of SCCP members for dues, fees, fines and other SCCP charges.

Rule 25. There shall be imposed upon any clearing member using the facilities or services of the Clearing Corporation, or enjoying any of the privileges therein, a late charge until payment is received of dues, fees, fines or other charges imposed by the Clearing Corporation and not paid within thirty (30) days after notice thereof has been mailed. The amount of such late charge shall be fixed from time to time by the Board of Directors. [If any clearing member shall fail to pay such dues, fees, fines, or other charges, including late charges, within ninety (90) days after notice thereof has been mailed, the Controller shall so notify the Board of Directors which shall take such action as it may deem appropriate.] *Such delinquent clearing member shall, at the same time, be notified to appear before the Board of Directors and show cause why he should not suffer suspension or termination of his clearing privileges, or such other penalties as the Board may deem appropriate under the circumstances.*

Basis and Purpose of Proposed Rule Change

The purpose of the Proposed Rule change is to promote efficiency of operation and adequate cash flow for provision of services in a membership organization.

The proposed Rule change is consistent with the requirement of Section 17A(b)(3)(G) of the Act that the rules of a clearing agency provide for the appropriate disciplining of participants for violation of its rules. Delinquent members should not expect to be subsidized indirectly by SCCP and other members whose payments are timely.

No comments have been solicited or received regarding the proposed Rule change.

No burden on competition will be imposed by the proposed Rule change.

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed Rule change, or

(B) institute proceedings to determine whether the proposed Rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof, with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submission will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within twenty-one days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 18, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16542 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5720; File No. 81-517]

Union Carbide International Capital Corp. Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Union Carbide International Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act"), seeking an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

The Application states in part:

1. The Applicant, which has a December fiscal year end, is a wholly-owned subsidiary of Union Carbide Corporation ("Union Carbide").

2. Union Carbide is subject to the reporting provisions of Section 13 of the 1934 Act.

3. The Applicant has only one class of securities registered under the 1934 Act: its 4¾% Guaranteed Debentures Due 1982 (the "Debentures").

4. Union Carbide holds all outstanding securities of the Applicant except the Debentures.

5. Union Carbide has unconditionally guaranteed the payment of the Debentures.

6. The Debentures are convertible into Common Stock of Union Carbide.

7. The Debentures are listed on the New York Stock Exchange, but trading in the Debentures on that Exchange has been negligible since the Debentures were admitted to trading in 1967.

Accordingly, the Applicant believes that the requested exemption is appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than June 12, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should

be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol St., N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, an order granting the application in whole or in part may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16537 Filed 5-25-79; 8:45 am]

BILLING CODE: 8010-01-M

[Release No. 10704; 812-4321]

Vance, Sanders Exchange Fund; et al.; Filing of Application

May 21, 1979.

In the matter of Vance, Sanders Exchange Fund (A California Limited Partnership), Vance, Sanders Municipal Bond Fund, Ltd., Vance, Sanders & Company, Inc., One Beacon Street, Boston, Massachusetts 02108; William M. Griffin, c/o Hartford Fire Insurance Company, Hartford Plaza, Hartford, Connecticut 06115; and Jack L. Treynor, 219 East 42nd Street, New York, New York 10017, notice of filing of application.

Notice is hereby given that Vance, Sanders Exchange Fund (A California Limited Partnership) ("Exchange Fund"), and Vance, Sanders Municipal Bond Fund, Ltd. ("Bond Fund") (collectively, "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, Vance, Sanders and Company, Inc. ("Vance, Sanders"), investment adviser to the Funds and principal underwriter for the Bond Fund, William M. Griffin ("Griffin") and Jack L. Treynor ("Treynor") (the Funds, Vance, Sanders, Griffin and Treynor are hereinafter referred to collectively as "Applicants"), filed an application on June 2, 1978, and amendments thereto on September 14, 1978, January 12, 1979, and March 19, 1979, pursuant to Section 6(c) of the Act, for an order of exemption from the definition of "interested person" contained in Section 2(a)(19) of the Act to the effect that: (1) Griffin shall not be deemed to be an "interested person" of the Bond Fund or Vance, Sanders by reason of his status as (a) a director, executive vice president and chairman of the finance committee of Hartford Fire Insurance Company ("Hartford Fire"); (b) a director and president of Hartford Securities Company, Inc. ("Hartford Securities"); (c) a director, vice president and chairman of the finance committee of Hartford Life Insurance Company ("Hartford Life"); or (d) a director, vice president and chairman of the finance committee of Hartford Variable Annuity Life Insurance Company ("Hartford Variable Annuity"), and (2) Treynor shall not be deemed to be an "interested person" of the Funds or Vance, Sanders by reason of his status as a director of and consultant to Wilshire Associates, Inc. ("Wilshire") (formerly O'Brien Associates, Inc.). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Funds are limited partnerships organized under California law, and that Vance, Sanders serves both Funds as investment adviser and the Bond Fund as principal underwriter. The application states that Griffin has agreed to serve as a Director General Partner of the Bond Fund, but that Griffin's election as a Director General Partner will only become effective if and when the requested exemptive order is issued. Applicants submit that it is in the public interest, as well as in the interest of the Bond Fund and its shareholders, that Griffin be permitted to serve as a disinterested director of the Bond Fund.

The application further states that Treynor presently serves as a Director General Partner of the Bond Fund and as a managing General Partner of the Exchange Fund. According to the application, Treynor wishes to serve as a director of and consultant to Wilshire. Applicants state that they have requested an exemptive order so that Treynor may continue to serve as a disinterested director of the Funds.

The Bond Fund, Vance, Sanders and Griffin state that Griffin's principal occupation is executive vice president, director and chairman of the finance committee of Hartford Fire, a property and liability insurer which is a 99 percent owned subsidiary of International Telephone and Telegraph Corporation, and that he is also an officer and director of a number of subsidiary companies of Hartford Fire, including Hartford Securities, Hartford Life and Hartford Variable Annuity. According to the application, Hartford Securities, a wholly-owned subsidiary of Hartford Fire, is a registered broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") solely to enable it to engage in securities transactions on behalf of Hartford Fire and its affiliates. They further state that Hartford Life is another wholly-owned subsidiary of Hartford Fire, and that Hartford Variable Annuity is a wholly-owned subsidiary of Hartford Life. The application states that Hartford Equity Sales Company, Inc., ("Equity Sales"), a wholly-owned subsidiary of Hartford Variable Annuity, is registered with the Commission as a broker-dealer under the Exchange Act solely to enable it to engage in the business of selling variable annuity contracts issued by Hartford Variable Annuity.

The Funds, Vance, Sanders and Treynor state that Treynor is a shareholder of Wilshire, owning less than five percent of its outstanding stock, and that Wilshire, a broker-dealer registered under the Exchange Act and an investment adviser registered under the Investment Advisers Act of 1940, was organized in 1972 to provide computer related portfolio analyses and services to pension and endowment trusts and their institutional managers. The application states that Wilshire: (1) does not manage money or engage in a general brokerage business; (2) is not a "full service" broker-dealer; (3) is not a member of any stock exchange; and (4) does not make a market either in over-the-counter securities or in exchange listed securities. The application further states that Wilshire does not sell mutual fund shares or participate in underwritings, and that it does not recommend specific securities to its clients. According to the application, Wilshire does not provide brokerage services, except as a manner of payment by its clients which have the option of paying Wilshire for its other services either in cash or in brokerage.

The application states that Treynor expects to spend a maximum of 12 days per year providing advice to Wilshire or its clients, and that he might be called upon to give advice with respect to computer programs being designed or modified by Wilshire, or to comment on reports being prepared by Wilshire for its clients. The application further states that Treynor may also be asked to assist clients of Wilshire concerning policy decisions on the long-range risk policies of investment portfolios or to advise

them on their decision-making processes and the manner in which they conduct their investment management functions. According to the application, Treynor: (1) may refer potential clients to Wilshire, and explain Wilshire's services or reports to clients and potential clients; (2) will not advise Wilshire or its clients on short-term risk policies or on the investment merit of specific companies or industries; (3) will be paid a consultant's fee [currently at the rate of $1,000 per day]; and (4) will not have an office at Wilshire's place of business or paritcipate in any officer or employee benefits of Wilshire.

Section 2[a][19] of the Act, in pertinent part, defines an "interested person" of an investment company, and of any investment adviser of or principal underwriter for an investment company, to include, *inter alia*, any broker or dealer registered under the Exchange Act or any affiliated person of such broker or dealer. Section 2[a][3] of the Act defines an "affiliated person" of another person to include, *inter alia*, any director, officer or employee of such other person. Applicants state that: (1) Griffin, as a result of his positions with Hartford Fire, Hartford Securities, Hartford Life and Hardford Variable Annuity, would be considered to be an affiliated person of Hartford Securities and possibly of Hartford Equity Sales and thus, an interested person of the Bond Fund and Vance, Sanders, and (2) Treynor, as a director of Wilshire, would be an "affiliated person" of a broker or dealer and, therefore, an "interested person" of the Funds and Vance, Sanders.

Section 6[c] of the Act provides, in part, that the Commission may upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any of the provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Bond Fund, Vance, Sanders and Griffin asserts that Griffin's relationships with Hartford Fire and its subsidiaries will not impair his independence in acting on behalf of the Bond Fund. They state that Hartford Securities has never acted as a broker or dealer or engaged in securities transactions for any person not an affiliate of Hartford Fire, and that the business of Hartford Equity Sales relates solely to the marketing of variable annuity contracts issued by Hartford Variable Annuity. They further state that: (1) Hartford Securities and Hardford Equity Securities do not intend to sell securities to, or to purchase any securities from the Bond Fund; (2) the Bond Fund will not purchase securities from or through, or sell securities to or through, Hartford Securities or Hartford Equity Sales; and (3) such undertaking will not adversely affect the Bond Fund.

According to the application, Griffin is a man of recognized integrity, experience and competence in the investment industry and in the area of financial institutions, and that is is therefore in the public interest, as well as in the interest of the Bond Fund and its shareholders, that Griffin be permitted to serve as a disinterested director of the Bond Fund.

On August 10, 1977, an order of the Commission (Investment Company Act Release No. 9893) was issued to Vance, Sanders, Griffin, and 13 funds advised by Vance, Sanders ("Vance, Sanders Group"), pursuant to Section 6(c) of the Act, declaring that Griffin shall not be deemed to be an interested person of the Vance, Sanders Group, or their investment adviser or their principal underwriter, within the meaning of Section 2(a)(19) of the Act by reason of Griffin's association with Hartford Fire, Hartford Securities, Hartford Life, and Hardford Variable Annuity.

The Funds and Vance Sanders assert that they have no financial interest in or relationship with Wilshire, and state that Treynor would be subject to no conflicts of interest as a result of his relationships with Wilshire. The Funds and Vance Sanders have undertaken that as long as Treynor is a director of the Funds and is concurrently a director of or consultant to Wilshire, they will not enter into any transaction which might confer a benefit on Wilshire. The Funds and Vance Sanders agree that if at any time following the issuance of an order pursuant to the application, either Fund, Vance Sanders or any other investment company advised by Vance Sanders, transacts any business with Wilshire, such order shall thereafter have no effect with respect to Treynor.

On April 1, 1974, an order of the Commission (Investment Company Act Release No. 8294) was issued to the Vance, Sanders Group (other than the Exchange Fund) and Treynor, pursuant to Section 6(c) of the Act, declaring that Treynor shall not be deemed to be an interested person of those funds, or their investment adviser or their principal underwriter, within the meaning of Section 2(a)(19) of the Act by reason of Treynor's proposed status as a director and shareholder of and consultant to O'Brien Associates, Inc. (Wilshire's predecessor corporation). According to the application, subsequent to the issuance of such order, Treynor became a director of and consultant to that company, but at present his only association with Wilshire is as a shareholder. The Funds and Vance Sanders state that (1) Treynor is a man of recognized integrity, experience and competence in the investment company industry and in the investment management consultant field; (2) Treynor is familiar with the application of new technology and concepts to investment research and decision making processes; and (3) it is in the public interest and in the interests of the Funds and their shareholders that he continue to serve as a disinterested director of the Funds.

Notice is further given that any interested person may, not later than June 12, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed; Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16533 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Administrative Proceeding File No. 3-5730; File No. 81-527]

Vapor Corp.; Application and Opportunity for Hearing

May 18, 1979.

Notice is hereby given that Vapor Corporation (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of Section 15(d) of the Exchange Act.

The Applicant states, in part:

1. Pursuant to a statutory merger effected on September 15, 1978, a wholly owned subsidiary of Brunswick Corporation ("Brunswick") was merged with and into Applicant. Each share of Applicant's common stock held by the public was converted into and exchanged for Brunswick preferred stock and or cash. As a result of this merger, Applicant is now a wholly owned subsidiary of Brunswick and no longer has any public shareholders.

2. Audited financial statements for Applicant for its latest fiscal year ended December 31, 1977, in addition to unaudited results for the three month period ended March 31, 1978, were contained in the proxy statement sent to Applicant's shareholders in connection with the merger.

3. Brunswick is subject to the reporting requirements of the Exchange Act pursuant to Section 12(b) of such Act, and the results of Applicant's operations will be reported by Brunswick in such reports.

In the absence of an exemption, Applicant is required to file reports pursuant to Section 15(d) of the Exchange Act and the rules and regulations thereunder for its fiscal year ended December 31, 1978. Applicant believes that the preparation and filing of such additional reports required by Section 15(d) would entail additional expense not justified by the disclosure generated.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notices if further given that any interested person no later than June 12, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16539 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21052; 31-769]

The Wiser Oil Co.; Application for Exemption

May 18, 1979.

In the matter of the Wiser Oil Co., P.O. Box 192, Sisterville, West Virginia 26175; application for exemption pursuant to section 3(a)(3).

Notice is hereby given that The Wiser Oil Company ("Wiser Oil"), a holding company, has filed an application for exemption with this Commission on behalf of itself and its subsidiary, Peoples Gas Company of Kentucky ("Peoples"), a gas utility company, pursuant to the Public Utility Holding Company Act of 1935 ("Act"). All interested persons are referred to the application, which is summarized below, for a description of Wiser Oil and Peoples and a statement as to the basis upon which an exemption is sought.

Wiser Oil, a Delaware corporation, is engaged in the exploration, production and transportation of crude oil and natural gas. The company has production operations in fifteen states and Canada. At December 31, 1978, Wiser Oil's total assets were $63,621,933, and for the year then ended, its gross revenues were $32,403,918 and net income $10,740,958.

Wiser Oil owns all of the issued and outstanding common stock of Peoples, its only subsidiary. Peoples, also a Delaware corporation, distributes natural gas at retail to approximately 8000 customers in the communities of Corbin, Barbourville and Manchester in southeastern Kentucky. Peoples purchases all of its natural gas supply from Wiser Oil and is Wiser Oil's largest wholesale utility customer. At December 31, 1978, Peoples reported total assets of $3,143,976, and, for the year then ended, gross revenues of $4,150,096 and net income of $171,013. The rates and service of Peoples are regulated by the Public Service Commission of Kentucky.

Peoples has no publicly-held securities. Its only funded debt is $497,000, borrowed from Wiser Oil and evidenced by notes bearing interest at the rate of 8½% per annum. Peoples pays about $1.70/MCF for natural gas delivered by Wiser Oil.

Section 3(a)(3) provides an exemption for a holding company and every subsidiary company thereof as such if:

> such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all of the outstanding securities of such companies are owned, directly or indirectly, by such holding company * * *

Based on the foregoing statement of the relationship between Wiser Oil and Peoples and the materiality of the income derived from Peoples' operations, Wiser Oil claims exemption under either clause (A) or clause (B) of Section 3(a)(3) from all provisions of the Act. Under Section 3(a), the Commission may grant a holding company and its subsidiaries and exemption from any provision or provisions of the Act which apply to them in their capacity as such "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers . . ."

Notice is further given that any interested person may, not later than June 14, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange

Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted in the manner provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it deems appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16540 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21057; 70-6316]

Louisiana Power & Light Co.; Proposed Charter Amendments Regarding Preferred and Common Stock

May 22, 1979.

Notice is hereby given that Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), 142 Delaronde Street, New Orleans, Louisiana 70174, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Comapny Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Under its Articles of Incorporation, as heretofore amended ("Charter"), Louisiana is authorized to have outstanding only one class of preferred stock consisting of 2,055,000 shares having a par value of $100 per share ("$100 Preferred Stock"), of which 1,455,000 shares have been issued in twelve series and are presently outstanding and 600,000 authorized but unissued shares remain available for issuance. Louisiana's Charter also authorizes 100,000,000 shares of common stock without nominal or par value, of which 61,352,000 shares have been issued and are outstanding, all owned by Middle South, and 38,648,000 authorized but unissued shares remain available for issuance.

The declaration states that, because its Charter does not provide therefor, Louisiana is unable to take advantage of a market for preferred stock having a par value of $25 per share. The company believes that its ability to sell preferred stock on favorable terms would be strengthened by the creation of a new class of preferred stock having a par value of $25 per share, thus enabling it to issue and sell preferred stock having a par value of either $25 per share or $100 per share depending on market conditions at the time of sale.

Louisiana therefore proposes to amend its Charter to provide for 12,000,000 shares of a new class of preferred stock having a par value of $25 per share ("$25 Preferred Stock") and to increase the authorized number of shares of $100 Preferred Stock from 2,055,000 shares to 4,500,000 shares, thereby providing authorization for 3,045,000 shares of $100 Preferred Stock over and above the 1,455,000 shares thereof presently issued and outstanding. Assuming that, due to future market conditions, the company were to issue only one class of preferred stock over approximately the next three years and that earnings coverages do not limit the amounts of preferred stock financing contemplated by the company, Louisiana estimates that the shares of such class so authorized and available for issuance would be exhausted in approximately three years.

At the same time, Louisiana proposes further to amend its Charter to increase the authorized number of shares of its common stock from 100,000,000 shares to 150,000,000 shares, thereby providing authorization for 88,648,000 shares of such stock over and above the 61,352,000 thereof presently issued and outstanding. The company estimates that the shares of common stock so authorized and available for issuance would be exhausted in approximately five years and believes it would be desirable to provide for this additional common stock at this time.

Finally, Louisiana proposes further to amend its Charter to eliminate therefrom certain "deadwood" consisting of language relating to redemptions and restrictions on redemptions of certain series of the company's presently outstanding preferred stock during periods of time which are now past.

Upon the amendment of the company's Charter as proposed herein, the $100 Preferred Stock and the $25 Preferred Stock would be of equal rank and, except as to matters relating to par value, certain voting rights (including matters relating to quorums and adjournments), and variations between the respective series thereof, would confer equal rights upon the holders thereof. Each class of preferred stock would be issuable in series from time to time. Generally, the voting rights of the $100 Preferred Stock would be one vote per share and the voting rights of the $25 Preferred Stock would be one quarter vote per share.

The proposed Charter amendments will require favorable action by Middle South as holder and owner of all of the outstanding common stock of Louisiana, which is the only stock of the company entitled to vote on the matter. Middle South has indicated its willingness to take such action.

Louisiana's construction program contemplates expenditures of approximately $268,600,000 in 1979, and the company estimates that its construction expenditures will amount to approximately $289,000,000 in 1980 and $280,000,000 in 1981 (in each case, excluding nuclear fuel expenditures). A major portion of these funds is expected to be obtained from external sources through the sale of securities, including preferred stock.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $8,100, including legal fees of $4,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 18, 1979, request in writing that a hearing be held on such matter, stating the nature of this interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such action as it

may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16671 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15858; Sr-Phlx-79-3]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

May 22, 1979.

On March 30, 1979, the Philadelphia Stock Exchange, Inc. (the "Phlx") 17th Street and Stock Exchange Place, Philadelphia, Pa. 19103, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would rescind Phlx Rules 651 and 653, and amend Phlx Rule 652. Under the proposal, member firms would no longer be required to submit advertising or radio broadcasting material to the Phlx prior to publication, but would be required to have prior approval by a member, general partner, or holder of voting stock in a member organization of all advertising, research reports, market letters or sales literature issued by such member organization.[1] The standards relating to the content of such material continue to be applicable.

Notice of the proposed rule change together with the terms of substance of the proposd rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15712, April 10, 1979) and by publication in the Federal Register (44 FR 22865, April 17, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b) and the rules and regulations thereunder.

[1] The provisions of Phlx Rule 652, as amended, apply only to member firms' public communications with respect to equity securities. Advertisements, market letters and other literature issued by members pertaining to options are governed by Phlx Rule 1049.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16672 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21055; 70-6315]

Transgas Inc.; Proposal by Non-Utility Subsidiary to Finance the Purchase of Cryogenic Trailers Through Short Term Borrowings

May 21, 1979.

Notice is hereby given that Transgas Inc. ("Transgas"), a non-utility subsidiary of Colonial Gas Energy System ("Colonial"), 95 East Merrimack Street, Lowell, Massachusetts 01853, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6 and 7 of the Act and Rule 50(a)(4) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

On October 7, 1977, Colonial filed an application for an unqualified exemption under Section 3 (a)(1) of the Act (File No. 31-763). Its application for exemption is ending. As a result of discussions subsequent to the filing of Colonial's application, the Division of Corporate Regulation ("Division") and Colonial have agreed by Stipulation and Agreement ("Stipulation") dated January 26, 1978, that, pending the development of a plan of financial simplification or recapitalization by colonial appropriate to the requirements for exemption under Section 3 (a)(1), Colonial would register as a public utility holding company under Section 5(a) for certain limited purposes. On February 2, 1978, pursuant to the Stipulation, Colonial filed the required notification of registration under Section 5 (a) of the Act for the limited purpose of complying with the provisions of Sections 6, 7 and 12 (b) of the Act.

Transgas engages in the businesses of transporting and delivering liquid propane gas, liquified natural gas, liquid ethelyne, other cryogenic or bulk gases and other similar and related products, together with containers for such products, and of constructing, servicing and installing tanks and related equipment for the storage of such gases and facilities and equipment for use by public utilities and industrial companies. Transgas owns and operates various service and delivery vehicles and trailers used in connection with the activities outlined above.

Transgas has obtained an opportunity to acquire from an unaffiliated company six additional used double-walled cryogenic trailers, which it needs in its business of transporting cryogenic gases as a common carrier. Transgas will acquire these trailers either directly from the seller or indirectly through Colonial. Transgas proposes to permanently finance the acquisition of these trailers with a short term loan in the amount of $175,000 from Maryland National Leasing Corporation or its nominee ("Maryland National").

The terms of the loan from Maryland National to Transgas are proposed to be as follows: Maryland National will lend to transgas the amount of $175,000 for the purchase of the six used double-walled cryogenic trailers delivered to Transgas prior to June 30, 1979. The loan will bear interest at the rate of 13% per annum on the outstanding principal balance and will be repaid as follows: Transgas will pay interest only monthly in arrears from the date of Maryland National's advance to August 1, 1979. thereafter, Transgas will be required to make six monthly loan payments, each in arrears, equal to 17.3043 percent of the loan amount.

Upon acceptance of Maryland National's proposal, Transgas will be required to pay a commitment fee of $1,750. the commitment fee will be returned if Maryland National fails to make a firm commitment but is otherwise non-refundable. A statement of the remaining fees, commissions and expenses incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 14, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington D.C. 20549. A copy of such request should be served personally or

by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may dem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-16573 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 79-078]

New York Harbor Vessel Traffic Service Advisory Committee; Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972 that the United States Coast Guard's New York Harbor Vessel Traffic Service Advisory Committee has been renewed by the Secretary of Transportation for a two year period beginning May 21, 1979 through May 21, 1981.

The New York Harbor Vessel Traffic Service Advisory Committee was originally established in 1973. It's purpose is to provide consultation and advise on the need for, and the development of, installation and operation of a Vessel Traffic Service for the Port of New York, pursuant to the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978.

Interested persons may seek additional information by writing:

Cdr. W. P. Leahey, Jr., USCG,
Commanding Officer, Coast Guard Vessel Traffic Service, Precom Detail,
Governors Island, New York, N.Y. 10004

or by calling: (202) 668-7954.

C. W. Swickley,

Deputy Chief, Office of Public & International Affairs.

[FR Doc. 79-16623 Filed 5-25-79; 8:45 am]

BILLING CODE 4910-14-M

Materials Transportation Bureau

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted March 1979. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1-Motor vehicle, 2-Rail freight, 3-Cargo-vessel, 4-Cargo-only aircraft, 5-Passenger-carrying aircraft.

Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS		
3051-X	DOT-E 3051	Chemetron Corp., Chicago, Ill	49 CFR 173.302(a), 175.3	To ship certain nonflammable, nonliquefied compressed gases in a non-DOT specification stainless steel cylinder. (Modes 1, 2, 4.)
3187-X	DOT-E 3187	PPG Industries, Pittsburgh, Pa	49 CFR 173.21(b), 173.119(r), 173.221(a)(3).	To ship flammable liquids or organic peroxides in DOT Specification 2U polyethylene bottles in a DOT Specification 12P fiberboard box or in accordance with 49 CFR 173.221(a)(3). (Mode 1.)
3822-X	DOT-E 3822	Dow Chemical Co., Midland, Mich	49 CFR 173.252(a)(4)	To ship a certain corrosive material in DOT Specification MC-310 or MC-312 cargo tank motor vehicles. (Mode 1.)
3992-X	DOT-E 3992	Hooker Chemicals and Plastics Corp., Niagara Falls, N.Y.; Union Carbide Corp., Bound Brook, N.J.; Stauffer Chemical Co., Westport, Conn.; Linden Chloride Products, Inc., Cranford, N.J.; Olin Chemicals Group, Stamford, Conn.	49 CFR 173.314	To ship a nonflammable gas in DOT Specification 105A500W tank cars meeting the requirements of AAR Specifications. (Mode 2.)
4575-X	DOT-E 4575	Union Carbide Corp., Bound Brook, N.J.; Pennwalt Corp., Philadelphia, Pa; Rasco, Inc., Wichita, Kans.; Kaiser Aluminum and Chemical Corp., Oakland, Calif.	49 CFR 173/314(c), 173.315(a)(1)	To ship certain liquefied compressed gases in DOT Specification MC-330, and MC-331 cargo tanks; DOT Specification 105A500X and 110A500W multi-unit tank car tanks; DOT Specification 105A300W, 112A340W, 114A340W tank car tanks and the proposed 120A300W, 120A400W tank cars. (Modes 1, 2, 3.)
4734-X	DOT-E 4734	General Electric Co., Waterford, N.Y.	49 CFR 173.135(a)(3), 173.136(a)(3), 173.220(a)(3).	To ship certain flammable liquids and corrosive materials in a DOT Specification MC-331 cargo tank-(Mode 1.)
4932-X	DOT-E 4932	Federal Laboratories, Saltsburg, Pa	49 CFR 173.306(a), 172.101, 175.3	To ship tear gas devices in a non-DOT telescopic type, cylindrical, wound-draft container, overpacked in a DOT Specification 12B fiberboard box. (Modes 1, 2, 4.)
5208-X	DOT-E 5208	Monsanto Co., St. Louis, Mo.; Austin Powder Co., Cleveland, Ohio; Gulf Oil Chemicals Co., Merriam, Kans.	49 CFR 173.182(c)	To ship an oxidizing material in non-DOT privately operated bulk hopper-type vehicles. (Mode 1.)
5736-X	DOT-E 5736	Northern Petrochemical Co., Des Plaines, Ill	49 CFR 172.101, 173.314(c)	To ship a flammable gas in non-DOT specification tank car tanks constructed to comply with AAR proposed Specification 113C120W. (Modes 2, 3.)
6080-X	DOT-E 6080	Air Products and Chemical, Inc., Allentown, Pa	49 CFR 173.301(d), 173.327(a), 173.337(a)(1).	To ship a certain Class A poison in DOT Specification 3A2400 or 3AA2500 cylinders. (Mode 1.)
6218-X	DOT-E 6218	Chemetron Corp., Chicago, Ill	49 CFR 173.315(a)	To ship certain nonflammable liquefied compressed gases in a non-DOT specification cargo tanks. (Mode 1.)
6348-X	DOT-E 6348	Olin Chemicals Group, Stamford, Conn	49 CFR 173.217, 172.101	To ship certain dry oxidizing materials in a single-trip, molded, open head polyethylene container. (Modes 1, 2.)

RENEWALS—Continued

6403-X	DOT-E 6403	Ethyl Corp., Baton Rouge, La.; El Paso Products Co., Odessa, Tex.	49 CFR 172.101, 173.315(a)	To ship a flammable gas in a non-DOT specification cargo (Mode 1.)
6432-X	DOT-E 6432	Chemetron Corp., Chicago, Ill	49 CFR 173.315(a)	To ship certain nonflammable gases in a non-DOT specification vacuum insulated cargo tank designed and constructed in accordance with Section VIII of the ASME Code. (Mode 1.)
6545-X	DOT-E 6545	San Diego Gas and Electric Co., San Diego, Calif	49 CFR 172.101, 173.315(a)	To ship a flammable gas in a non-DOT specification vacuum insulated cargo tank complying with Section VIII of the ASME Code. (Mode 1.)
6564-X	DOT-E 6564	Castle and Cooke, Inc., San Francisco, Calif	49 CFR 173.119, 173.128	To ship certain flammable liquids in a non-DOT specification portable tanks. (Modes 1, 3.)
6607-X	DOT-E 6607	Bio-Lab, Inc., Conyers, Ga	49 CFR 173.217(a)	To ship a certain oxidizing material in a non-DOT fiberboard box. (Mode 1.)
6668-X	DOT-E6668	Union Carbide Corp., Tarrytown, N.Y	49 CFR 173.304(a)(2), 178.57	To ship a liquefied compressed gas in non-DOT specification cylinders. (Modes 1, 2.)
6694-X	DOT-E6694	Ugine Kuhlmann of America, New York, N.Y	49 CFR 173.315	To ship a certain nonflammable compressed gas in a non-DOT specification portable tank. (Modes 1, 2, 3.)
6695-X	DOT-E 6695	Ugine Kuhlmann of America, New York, N.Y	49 CFR 173.315	To ship a certain nonflammable compressed gas in a non-DOT specification uninsulated portable tank. (Modes 1, 2.)
6699-X	DOT-E 6699	Virginia Chemicals, Inc., Portsmouth, Va	49 CFR 173.249(a)(5), 179.200-4	To ship a corrosive liquid in DOT Specification 111A100W1 tank car tanks. (Mode 2.)
6765-P	DOT-E 6765	Cities Service Co., Tulsa, Okla.; L'Air Liquide Inc., Paris, France; Jack B. Kelley, Inc., Amarillo, Tex.	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6765. (See Application No. 6765-X.) (Modes 1, 3.)
6858-P	DOT-E 6858	Johnson Lines, San Francisco, Calif.; Compagnie des Containers Reservoirs, Neuilly-sur-Seine, France.	49 CFR 173.119, 173.125, 173.245, 173.346; 46 CFR 90.05-35.	To become a party to Exemption 6858. (See Application No. 6858-X.) (Modes 1, 2, 3.)
6864-X	DOT-E 6864	Contrans, Hamburg, West Germany; Bacardi International Limited, Hamilton, Bermuda; Bacardi and Co., Limited, Nassau, Bahamas.	49 CFR 173.119(b), 173.125	To ship hazardous materials in a non-DOT specification portable tank. (Modes 1, 2, 3.)
6874-P	DOT-E 6874	Degussa, Federal Republic of Germany	49 CFR 173.370(a)(13)	To become a party to Exemption 6874. (See Application No. 6874-X.) (Modes 1, 3.)
6925-X	DOT-E 6925	Economics Laboratory, Inc., St. Paul, Minn	49 CFR 173.245(a), 173.249(a), 173.277(a).	To ship certain corrosive liquids in non-DOT specification polyethylene bottles in fiberboard boxes. (Modes 1, 2, 3.)
6971-X	DOT-E 6971	Chem Service, Inc., West Chester, Pa	49 CFR 173.286(b), 175.3	To ship chemical kits (metal boxes or single or multiple-drawer metal cases) in wooden or fiberboard overpack. (Modes 1, 2, 3, 4.)
6998-X	DOT-E 6998	Greer Hydraulics, Inc., Los Angeles, Calif.; Rockwell International, Raleigh, N.C.	49 CFR 173.34(d), 173.302(a)(1), 175.3.	To ship a nonflammable compressed gas in non-DOT specification steel pressure vessel made to comply with Section VIII of the ASME Code. (Modes 1, 2, 3, 4.)
7023-X	DOT-E 7023	Hi Pure Chemicals, Inc., Nazareth, Pa	49 CFR Part 173	To ship an oxidizer or corrosive material in non-DOT specification steel portable tanks built in compliance with DOT Specification 60 with certain exceptions. (Mode 1.)
7051-X	DOT-E 7051	Ozark-Mahoning Co., Tulsa, Okla	49 CFR 173.246(a), 175.3	To ship a certain corrosive liquid in a DOT Specification 12A or 12B fiberboard boxes. (Modes 1, 4.)
7052-X	DOT-E 7052	Tadiran-Israel Electronic Industries, Tel Aviv, Israel.	49 CFR 172.101, 173.206(e)(1), 175.3	To ship lithium batteries subject to certain qualification and specialized packaging. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Texas Instruments Inc., Dallas, Tex.; EG&G Environmental Equipment, Herndon, Va.; Hercules Inc., Wilmington, Del.	49 CFR 172.101, 173.206(e)(1), 175.3	To become a party to Exemption 7052. (See Application No. 7052-X.) (Modes 1, 2, 3, 4.)
7060-P	DOT-E 7060	Summit Airlines, Philadelphia, Pa	49 CFR 175.75(a)(3), 175.700(a)	To become a party to Exemption 7060. (See Application No. 7060-X.) (Mode 4.)
7207-X	DOT-E 7207	Matheson Gas Products, Lyndhurst, N.J	49 CFR 172.101, 173.315(a)(1)	To ship a flammable gas in non-DOT specification cargo tank. (Mode 1.)
7426-X	DOT-E 7426	Martin Marietta Chemicals, Charlotte, N.C	49 CFR 173.245(a)(29)	To ship a corrosive liquid in DOT Specification MC-303 cargo tanks. (Mode 1.)
7444-X	DOT-E 7444	James Russell Engineering Works, Boston, Mass	49 CFR 172.101, 173.315(a)	To manufacture, mark, and sell non-DOT specification cargo tanks for shipment of certain flammable gases. (Mode 1.)
7590-X	DOT-E 7590	National Motor Freight Traffic Assn., Washington, D.C.	49 CFR 177.841(e)	To transport Class B poisons in a special designed reusable overpack in the same vehicle with foodstuff. (Mode 1.)
7594-X	DOT-E 7594	Bromine Compounds Limited, Beer Sheva, Israel.	49 CFR 173.353	To ship a Class B poison liquid in a non-DOT specification portable tank. (Modes 1, 3.)
7613-P	DOT-E 7613	Miller-Stephenson Chemical Company, Inc., Danbury, Conn.	49 CFR 173.245(a)(17), 175.3	To become a party to Exemption 7613. (See Application No. 7613-X.) (Modes 1, 2, 3, 4.)
7615-X	DOT-E 7615	The Norac Co., Inc., Azusa, Calif	49 CFR 173.157	To ship benzoyl peroxide slurry in a non-DOT specification liqui-pak fiber drum. (Mode 1.)
7617-X	DOT-E 7617	White Pass and Yukon Route, North Vancouver, British Columbia.	49 CFR 173.182(b), 176.415(c)(4)	To ship ammonium nitrate in sift-proof aluminum freight containers. (Mode 3.)
7727-X	DOT-E 7727	Albert O. Pollard Co., Wilmington, Del	49 CFR 173.346, 173.28(m)	To ship phenol, liquid in a DOT Specification 17E drum qualified for reuse. (Mode 1.)
7823-P	DOT-E 7823	Air Products and Chemicals, Inc., Allentown, Pa	49 CFR 173.246	To become a party to Exemption 7823. (See Application No. 7823.) (Modes 1, 2, 3.)
7830-X	DOT-E 7830	Orval-Manutention, Paris, France; Sea Containers, New York, N.Y.	49 CFR 173.119, 173.125, 173.245, 173.346, 173.630; 46 CFR 90.05-35.	To ship certain hazardous materials in a non-DOT specification IMCO Type 2 insulated stainless steel portable tank. (Modes 1, 2, 3.)
7834-X	DOT-E 7834	Magnaflux Corp., Chicago, Ill	49 CFR 173.306(b)(4), 175.3	To transport nonliquefied sulfur hexafluoride in certain X-ray machines. (Modes 1, 2, 3, 4, 5.)
7879-X	DOT-E 7879	Gearhart Owen Industries, Fort Worth, Tex	49 CFR 173.246, 175.3, 178.42	To ship an oxidizer and poison liquid in a non-DOT specification seamless cylinder. (Modes 1, 2, 3, 4.)
7893-X	DOT-E 7893	Orval-Manutention, Paris, France; L'Air Liquide, Paris, France.	49 CFR 173.266	To ship hydrogen peroxide solution in a non-DOT specification stainless steel portable tank. (Modes 1, 2, 3.)
7897-P	DOT-E 7897	Compagnie des Containers Reservoirs, Neuilly-sur-Seine, France.	49 CFR Part 173; 46 CFR 90.05-35	To become a party to Exemption 7897 (See Application No. 7897-X.) (Modes 1, 2, 3.)
7925-X	DOT-E 7925	A/S Cheminova, Lemvig, Denmark	49 CFR 173.245	To ship certain hazardous materials in a non-DOT specification rubber-lined portable tank. (Modes 1, 2, 3.)
8002-P	DOT-E 8002	Compagnie des Containers Reservoirs, Neuilly-sur-Seine, France; Transcontainer Leasing, S.A., Geneva, Switzerland; Eurotainer, Paris, France.	49 CFR Part 173; 46 CFR 90.05-35	To become a party to Exemption 8002. (See Application No. 8002-X.) (Modes 1, 2, 3.)

RENEWALS—Continued

6012-P	DOT-E 6012	Compagnie des Containers Reservoirs, Neuilly-sur-Seine, Paris, France.	49 CFR 173.266	To become a party to Exemption 6012. (See Application No. 6012-N.) (Modes 1, 2, 3.)

NEW EXEMPTIONS

7944-N	DOT-E 7944	Dow Chemical Co., Midland, Mich	49 CFR 173.118a, 173.119, 173.125, 173.245; 46 CFR 64.9.	To ship certain flammable, corrosive, and combustible liquids in non-DOT marine portable tanks. (Modes 1, 3.)
7984-N	DOT-E 7984	Air Products and Chemicals, Inc., Allentown, Pa	49 CFR 173.154	To ship an oxidizer in DOT Specification 105A200ALW tank car. (Mode 2.)
7985-N	DOT-E 7985	Process Engineering, Inc., Plaistow, N.H	49 CFR 173.315(a)	To manufacture, mark and sell non-DOT specification portable tanks designed and constructed in accordance with Section VIII of the ASME Code, for shipment of nonflammable gases. (Modes 1, 3.)
8020-N	DOT-E 8020	Bernzomatic Corp., Rochester, N.Y	49 CFR 173.34(d), 173.357	To ship a poison B liquid in a DOT Specification 39 cylinder. (Modes 1, 2, 3.)
8030-N	DOT-E 8030	Halliburton Co., Duncan, Okla	49 CFR 173.93(b)	To ship charged oil well jet perforating guns with detonating fuze installed therein. (Mode 1.)
8044-N	DOT-E 8044	Nalco Chemical Co., Oakbrook, Ill	49 CFR 173.119, 173.245	To ship certain flammable and corrosive liquids in a non-DOT specification marine portable tank designed and constructed in accordance with Section VIII of the ASME Code. (Modes 1, 3.)
8074-N	DOT-E 8074	Matheson, Lyndhurst, N.J	49 CFR 173.34(d)	To ship certain flammable and nonflammable gases in a DOT Specification 3E cylinder. (Modes 1, 2, 3, 4, 5.)
8080-N	DOT-E 8080	Diamond Shamrock Corp., Cleveland, Ohio	49 CFR 173.164	To ship an oxidizer in a DOT Specification 111A100W tank car equipped with a sparger system. (Mode 2.)
8081-N	DOT-E 8081	National Aeronautics and Space Administration, Washington, D.C.	49 CFR 172.101(f)(3), 175.30(a)(1)	To ship rocket motors, Class B explosive, exceeding the weight limitation presently authorized by cargo-only aircraft. (Mode 4.)
8088-N	DOT-E 8088	Inland Steel Container, Chicago, Ill	49 CFR Part 178, 178.3	To manufacture, mark and sell Specification 5 and 6 series steel drums, fitted with rolling hoops of round pipe section for shipment of certain hazardous materials. (Modes 1, 2, 3, 4.)
8093-N	DOT-E 8093	Gibson Cryogenics, Lakeside, Calif	49 CFR 172.101, 173.315(a)	To ship a flammable gas in a non-DOT specification portable tank. (Mode 1.)
8099-N	DOT-E 8099	Union Carbide Corp., Bound Brook, N.J	49 CFR 173.365(a)(15)	To ship a class B poisonous solid in a non-DOT specification corrugated fiberboard box. (Modes 1, 2, 3.)
8106-N	DOT-E 8106	Olin Corp., East Alton, Ill	49 CFR 173.93(b)	To ship certain Class A and Class B explosives in water in DOT Specification 6J steel barrel or drum. (Modes 1, 2, 3.)
8107-N	DOT-E 8107	Billings Energy Corp., Provo, Utah	49 CFR 173.302(a), 173.303, 175.3	To ship hydrogen in DOT Specification 3A, 3AA, 3AY, 3AAX, 3E cylinders and certain aluminum cylinders. (Modes 1, 2, 3, 4.)
8110-N	DOT-E 8110	Fauvet-Girel, Paris, France	49 CFR Part 173; 46 CFR 90.05-35	To ship certain hazardous material in non-DOT specification intermodal portable tanks. (Modes 1, 2, 3.)
8110-P	DOT-E 8110	Lowaco, S.A., Geneva, Switzerland	49 CFR Part 173; 46 CFR 90.05-35	To become a party to Exemption 8110. (See Application No. 8110-N.) (Modes 1, 2, 3.)
8130-N	DOT-E 8130	Union Oil Co. of California, Los Angeles, Calif	49 CFR 173.1030(a)	To ship sulfur, dry, in specially designed freight containers. (Mode 2.)
8136-N	DOT-E 8136	Eastman Kodak Co., Rochester, N.Y	49 CFR 173.245	To ship phosphoric acid solutions in DOT Specification 57 portable stainless steel tanks. (Mode 1.)
8137-N	DOT-E 8137	Ensign Bickford Co., Simsbury, Conn	49 CFR 173.63(a)	To ship blasting caps (Class C explosives) in DOT Specification 12H fiberboard boxes. (Mode 1.)
8141-N	DOT-E 8141	GTE Products Corp., Needham Heights, Mass	49 CFR 172.101, 173.206, 173.247	To transport modules consisting of three cells containing lithium metal and thionyl chloride. (Mode 1.)
8144-N	DOT-E 8144	Hercules Inc., Wilmington, Del	49 CFR 173.103, 175.3	To ship a solution of nitroglycerin and propylene glycol as spirits of nitroglycerin in accordance with 49 CFR 173.133(a)(1). (Modes 1, 2, 3, 4.)
8150-N	DOT-E 8150	Herbert-Verkamp-Calvert Chemical Co., Cincinnati, Ohio.	49 CFR 177.848	To transport certain packages of a corrosive material and an oxidizing material loaded in the same motor vehicle. (Mode 1.)
8153-N	DOT-E 8153	Browning Ferris Industries Chemical Services, Inc., Houston, Tex.	49 CFR 173.119(a)(17), 173.245(a)(30), (31), 173.249-7, 178.342-5, 178.343-5.	To transport certain flammable and corrosive liquids in a non-Dot specification cargo tank. (Mode 1.)
8154-N	DOT-E 8154	Rohm and Haas Co., Philadelphia, Pa	49 CFR 173.240(a)(4)	To ship spent sulfuric acid in DOT Specification 111A100W1 and 111A100W3 tank cars having bottom outlets permanently closed. (Mode 2.)

DENIALS

4108-X Request by Chemetron Corporation, Chicago, Ill.—For reconsideration of certain requirements of DOT-E 4108 for shipment of certain flammable gases in non-DOT Specification cargo tanks, denied March 13, 1979.

EE6497-X Request by FMC Corp., Philadelphia, Pa.—For an emergency exemption to ship Class B poison solid in DOT Specification 59 metal portable tanks, denied March 15, 1979.

6908-P Request by Hughes Aircraft Co., Culver City, Calif.—To become a party to Exemption 6908 for shipment of certain compressed gases in non-DOT specification steel spherical pressure vessels, nonrefillable, constructed in accordance with DOT Specification 39 with certain exceptions, denied March 15, 1979.

7981-N Request by Applied Equipment Co., Van Nuys, Calif.—For reconsideration of denial of application to ship nonflammable gases in non-DOT specification welded high-pressure cylinders made of PH 15-7Mo corrosion resistant steel, denied March 9, 1979.

7986-N Request by The Aluminum Association, Inc., Washington, D.C.—To authorize the shipment of metallic aluminum powder in packages and weights, denied March 21, 1979.

8036-N Request by Lear Siegler, Inc., Anaheim, Calif.—For reconsideration of denial of application for shipment of compressed air in non-DOT specification coiled steel tubing apparatus, denied March 9, 1979.

8077-P Request Corning Glass Works, Corning, N.Y.—To become a party to Exemption 8077 to ship a corrosive material in non-DOT specification steel drums, denied March 13, 1979.

8085-N Request by Railgard, Inc., Daggett, Calif.—To allow DOT 112A and 114A tank cars to be equipped with head shields having certain design deviations from those prescribed, denied March 8, 1979.

8148-N Request by U.S. Department of Energy, Washington, D.C.—To ship liquified natural gas in DOT 4L-200 cylinders, denied March 19, 1979.

8155-N Request by Badger-Powhatan, Charlottesville, Va.—To ship bromochlorodifluoromethane charged with nitrogen in a DOT Specification 4B195 cylinder, denied March 8, 1979 as being unnecessary.

EE8172-N Request by Falcon Airways, Inc., Addison, Tex.—For an emergency exemption to transport a shipment of high explosives (shaped charge) and certain other hazardous materials to an overseas destination, denied March 5, 1979.

WITHDRAWALS

7491-X Request by Process Engineering Inc., Plaistow, N.H.—To provide for the shipment of liquefied natural gas in a non-DOT specification vacuum insulated tank car, withdrawn March 6, 1979.
7576-P Request by Permal International, Inc., New York, N.Y.—To become a party to Exemption 7576 to ship ORM-A in non-DOT specification portable tanks, withdrawn March 20, 1979.
7620-P Request by American Tank Container, New York, N.Y.—To become a party to Exemption 7620 to ship certain hazardous materials in non-DOT specification portable tanks, withdrawn March 15, 1979.

J. R. Grothe,
Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 79-16259 Filed 5-25-79; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1978 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation

On December 31, 1978, Equitable General Insurance Company, a Texas corporation, changed its State of incorporation from Texas to Iowa. The company was last listed as an acceptable surety on Federal bonds at 43 FR 28695, June 30, 1978.

A certificate of authority as an acceptable surety on Federal bonds is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Equitable General Insurance Company, incorporated in the State of Iowa. This new certificate replaces the company's former Treasury certificate, effective December 31, 1978. An underwriting limitation of $2,948,000 has been established for the company. The underwriting limitation is the same as was established as of July 1, 1978, under the certificate issued to the company in its previous State of incorporation.

Federal bond-approving officers need take no action with respect to bonds accepted prior or subsequent to the change in the company's state of incorporation. They may, however, annotate their reference copies of Treasury Circular 570, 1978 Revision at page 28695 to reflect the change.

Certificates of authority expire on June 30, each year, unless sooner revoked, and new certificates are issued on July 1, as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: May 16, 1979.

D. A. Pagliai,
Commission, Bureau of Government Financial Operations.

[FR Doc. 79-16571 Filed 5-25-79; 8:45 am]
BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 77 Rev. 13]

Delegation Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order is revised to reflect the new titles resulting from the establishment of the Compliance Division in the service centers.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for November 8, 1978.

EFFECTIVE DATE: May 24, 1979.

FOR FURTHER INFORMATION CONTACT: Bernard L. Meehan, 1111 Constitution Avenue NW., Room 2505, Washington, D.C. 20224, (202) 566-6849 (Not toll free).

Franklin L. Finley,
Staff Assistant to Assistant Commissioner (Compliance).

Date of issue: May 24, 1979.

Effective date: May 24, 1979.

Authority To Issue Statutory Notices of Deficiency

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 26 CFR 301.7701-9, 26 CFR 301.6212-1, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any statutory notice of deficiency is hereby delegated to the following officials:

a. Regional Director of Appeals;
b. Chiefs and Associate Chiefs of Appeals Offices;
c. Director of International Operations;
d. Service Center Directors;
e. Assistant District Directors;
f. Assistant Service Center Directors;
g. Chiefs of Examination Divisions;
h. Chiefs of Correspondence and Processing Sections; and
i. Chiefs of Employee Plans and Exempt Organizations Divisions.

2. This authority may be redelegated only by District Directors, Service Center Directors and the Director of International Operations, but not lower than Reviewers, Grade GS-9 in the Examination Division, Revenue Agents (GS-11) in streamlined district Examination Sections and/or groups, Examination Tax Examiners (Reviewers, GS-6) in Service Center Compliance Divisions, and Reviewers, Grade GS-12, in Employee Plans and Exempt Organizations Divisions.

3. This Order supersedes Delegation Order No. 77 (Rev. 12), issued January 29, 1979.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-16689 Filed 5-25-79; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 42, Rev. 12]

Delegation Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order is revised to reflect the new titles resulting from the creation of the Compliance Division in the service centers, and establishment of Technical and Office Compliance Branch in the districts.

This document does not meet the cirteria for significant regulations set forth in paragraph 8 of the Treasury directory appearing in the Federal Register for November 8, 1978.

EFFECTIVE DATE: May 24, 1979.

FOR FURTHER INFORMATION CONTACT: Bernard L. Meehan, 1111 Constitution Avenue NW., Room 2505, Washington, D.C. 20224, (202) 566-6849 (Not toll free).

Franklin L. Finley,

Staff Assistant to Assistant Commissioner (Compliance)

Date of issue: May 24, 1979.
Effective Date: May 24, 1979.

Authority to Execute Consents fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939 and 1954 Internal Revenue Codes.

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 120, dated July 31, 1950; Order No. 150-2, dated May 15, 1952; 26 CFR 301.6501(c)-1; 26 CFR 301.6502-1; 26 CFR 301.6901-1(d); and 26 CFR 301.7701-9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Regional Directors of Appeals;
b. Service Center Directors;
c. District Directors;
d. Director of International Operations.

2. This authority may be redelegated but not below the following levels for each activity:

a. Service Centers—Chief, Accounting Branch; Chief, Correspondence and Processing Section; Revenue Officers; and Chief, Quality Review Staff.

b. Collection—Chiefs, Office Branches and Office Groups; Revenue Officers; Chiefs, Technical and Office Compliance Branches and Groups

c. Examination—Reviewers, Grade GS-11; Group Managers; Case Managers; and Returns Program Managers;

d. Criminal Investigation—Chiefs, Criminal Investigation Divisions, except this authority in streamlined districts is limited to the District Director;

e. Appeals—Appeals Officers;

f. Office of International Operations—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels b, s, and d, above; and

g. District Employee Plans and Exempt Organizations—Reviewers, Grade GS-11; Group Managers.

This Order supersedes Delegation Order No. 42 (Rev. 11), dated January 29, 1979.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-16687 Filed 5-25-79; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Number: 101-6]

Establishment of the Office of Small and Disadvantaged Business Utilization

May 16, 1979.

By virtue of the authority vested in me as Secretary of the Treasury including the authority of Reorganization Plan No. 26 of 1950, there is hereby established in the Office of the Secretary the Office of Small and Disadvantaged Business Utilization. This Office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The duties of the Director shall be performed under the direct supervision of the Deputy Secretary of the Treasury.

The Director shall perform these duties and responsibilities as required by Public Law 95-507, and in accordance with Sections 8 and 15 of the Small Business Act as amended, and such other functions and duties that may be delegated to the Director.

W. Michael Blumenthal,

Secretary of the Treasury.

[FR Doc. 79-16675 Filed 5-25-79; 8:45 am]

BILLING CODE 4810-25-M

[Department Circular Supplement, Public Debt Series—No. 11-79]

Treasury Notes of Series T-1981; Interest Rate

May 23, 1979.

The Secretary announced on May 22, 1979, that the interest rate on the notes designated Series T-1981, described in Department Circular—Public Debt Series—No. 11-79, dated May 17, 1979, will be 9¾ percent. Interest on the notes will be payable at the rate of 9¾ percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-16620 Filed 5-25-79; 8:45 am]

BILLING CODE 4810-40-M

WATER RESOURCES COUNCIL

Improving Government Regulations

ACTION: Final report.

SUMMARY: The Water Resources Council presents its final report on how it will implement Executive Order 12044, Improving Government Regulations. The Council published its report in the Federal Register, Volume 43, 23199, on May 30, 1978. No public comments were received. This final report is submitted as required by section 5 of Executive Order 12044.

(1) In developing regulations, the Water Resources Council (WRC) has and shall continue to follow the Administrative Procedures Act. The Director shall overview the development of all significant new regulations in accordance with section 2(b) of the order and shall approve such regulations before they are published. The Council will continue to notify directly interested parties or their representatives.

In order to comply with provisions of 2 (a) and (c) of the order, WRC will publish, twice each year, significant regulations under development or review. In addition, the Council will publish an advance notice of proposed rulemaking, will give the public at least 60 days to comment, and will continue to notify directly interested parties and their representatives. In those instances where it is not possible to give the public at least 60 days to comment, the regulation will be accompanied by a brief statement of the reasons for a shorter period.

(2) WRC is not a major regulatory or enforcement agency. The only present regulations which might therefore be considered significant under the criteria of section 2(e) of the order is Part 703—Grants to States for Comprehensive Water and Related Land Resources Planning. There are no other subject areas within the present jurisdiction of the agency in which regulations significant under those criteria would be necessary.

(3) WRC neither has in effect nor contemplates any regulations with major economic consequences within the meaning of section 3 of the order.

(4) Pursuant to section 4 of the order, WRC will select regulations for review in accordance with the criteria of section 4. In selecting regulations, the agency will also examine the question of whether the procedures set forth in the regulations can be improved. We will be reviewing our regulations covering grants to States for comprehensive water and related land resources planning (18 CFR Part 703), with a view to simplifying procedures and minimizing the reporting burden.

FOR FURTHER INFORMATION CONTACT: Mr. Handley C. Oswalt, Administrative Officer, U.S. Water Resources Council, 2120 L Street NW., Washington, D.C. 20037, telephone 202–254–6448.

Leo M. Eisel,

Director.

[FR Doc. 79–16622 Filed 5–25–79; 8:45 am]

BILLING CODE 8410–01–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–126]

General Temporary Authority—Regular-Route Passenger Operations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of request for issuance of general temporary authority.

SUMMARY: By letter dated April 30, 1979, Trailways, Inc., proposes that the Commission consider granting temporary authority to existing fit bus carriers which request 90 days or less authority to provide daily interstate service over routes which they can conveniently operate and serve the public.

DATES: Comments must be received on or before June 13, 1979.

ADDRESS: Send comments to:

Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.
Petitioner's Representative: J. Kevin Murphy, President, Trailways, Inc., 1500 Jackson, Dallas, TX 75201.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275–7292, or James L. Brown, (202) 275–7898.

SUPPLEMENTARY INFORMATION: Trailways, Inc., has submitted this proposal as a temporary but important solution to the possibility of gasoline shortages during the upcoming summer vacation season, generally from June 15 through September 15, 1979. Such shortages would seriously hamper vacation plans and thus cause adverse effects in the tourism industry.

Trailways asserts, however, that there are in many States existing bus carriers with the capacity to provide more bus service than is now available if they had temporary authority to do so.

Trailways suggests that a general grant of temporary authority would assure more passenger service, help conserve fuel, and address the current summer travel time needs of the nation. It contends that carriers could expand their service to additional cities without capital investment or expense for this short temporary period, while existing carriers holding permanent authority would not be threatened because of the large demand for public transportation service which is expected this summer.

We are requesting comments on this proposal because of the objections to other recent Trailways proposals which have been raised by various small carriers, including the Independent Bus Operators Committee on Regulation. No oral hearing is contemplated. Furthermore, because of the short time available before the start of the summer vacation travel season, we are requiring that comments be filed within 15 days. Otherwise, if a longer period for filing comments were permitted, it would not be possible to reach a meaningful decision on this proposal in a timely manner.

Any person (including petitioner) desiring to participate in this proceeding shall file an original and fifteen (15) copies (wherever possible) or written representations, views, or arguments. A copy of each representation shall be served on petitioner's representative.

Written material or suggestions submitted will be available for public inspection at the Office of the Interstate Commerce Commission, 12th St. and Constitution Avenue, N.W., Washington, DC, during regular business hours.

Notice to the general public of these matters will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy with the Director, Office of the Federal Register.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79–16660 Filed 5–25–79; 8:45 am]

BILLING CODE 7035–01–M

[No. MC–138468 (Sub-No. 3)]

Bi-County Trucking, Inc., Common Carrier Application, (Warden, Wash.); Decision

Decided: May 21, 1979.

By an appropriately filed application, Bi-County Trucking, Inc., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, (1) of dry fertilizer, between points in Adams, Benton, Franklin, Grant, Walla Walla and Yakima Counties, WA, and Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union and Wasco Counties, OR, and Latah, Kootenai, Nez Perce and Shoshone Counties, ID; (2) of liquid fertilizer, between points in Whitman County, WA and Benewah, Latah and Lewis Counties, ID; and (3) liquid feed supplements, between points in Grant County, WA and Missoula, Ravalli and Teton Counties, MT.

By decision dated October 26, 1978, the Commission, Review Board Number 2 concluded that the evidence of record demonstrated a need for service, albeit not of the scope sought by applicant. Accordingly, the review board granted authority which it rephrased to conform to the evidence and needs of the supporting parties as set forth in the appendix. The authority granted was broader than that published in the Federal Register, since both liquid and dry fertilizer are authorized within territories in which *either* liquid *or* dry fertilizer was sought. This authority was granted conditioned upon the filing of an appropriate section 5(2) application (now 49 U.S.C. 11344), or the filing of an affidavit indicating why approval of common control is unnecessary.

By petition filed January 22, 1979, protestants Inland Transportation Co., Inc., Lee & Estes Tank Lines, Inc., and Arrow Transportation Co., Inc., contend that the authority granted by the review board would actually be operating authority in excess of that requested in the application and that such action is improper and in violation of applicable administrative procedures. Petitioners argue that at a minimum there would have to be a republication and a new opportunity for interested parties to protest. By petition filed January 26, 1979, protestant K-Lines, Inc. presents substantially the same contentions. In its reply to the petitions for reconsideration, applicant argues that the review board's decision is fully justified and that, in any event, protestants have in no manner been prejudiced by the authority granted after the review board's determination of need for service by the supporting parties.

We conclude that the determination made by the review board of need for service based upon the evidence of record was proper. Applicant's request for authority and its presentation were

deficient in that they did not provide for an actual meeting of the demonstrated needs of the supporting firms. The broadening of the grant of authority beyond that requested in the application has not been shown to have any greater effect upon the operations of the protestants than would a grant of the authority as sought by applicant originally. However, because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the broader commodity description granted by the review board, it was error on the part of the board not to provide for such republication. Accordingly, a notice of the authority actually granted will be published in the Federal Register and issuance of a certificate will be withheld for a period of 30 days from the date of publication during which period any interested person may file an appropriate petition for intervention setting forth in detail the precise manner in which it has been prejudiced by the broader commodity description. Cf. *Jones, Inc., Extension—Iron and Steel,* 108 M.C.C. 424, 432, (1969).

It is ordered: The October 26, 1978 decision of Review Board Number 2, in this proceeding is modified by addition of a condition requiring publication in the Federal Register of the authority actually granted.

The petitions for reconsideration filed by protestants are denied because the findings of Review Board Number 2 are, subject to the publication condition, in accordance with the evidence and applicable law.

Operations may begin only following the service of a certificate which will be issued if applicant complies with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310) and the special conditions set forth in the appendix.

Compliance with these requirements must be accomplished within 90 days after the date of final determination of the required common control application (if any is required to be filed) or within such additional time as may be authorized by the Commission.

By the Commission, Division 1, Acting as an Appellate Division, Commissioners Gresham, Brown, and Clapp.

H. G. Homme, Jr.,
Secretary.

Appendix

Service Conditionally Authorized: Authority to conduct the following operations will be issued in an appropriate document after the special conditions specified here have been satisfied. This decision does not constitute authority to operate.

To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *liquid and dry fertilizer,* (a) between points in Adams, Benton, Franklin, Grant and Yakima Counties, WA, on the one hand, and, on the other, points in Morrow and Umatilla Counties, OR, and (b) from points in Whitman County, WA, to points in Benewah, Latah, and Lewis Counties, ID; and (2) *liquid feed supplement,* from points in Grant County, WA to points in Missoula, Ravalli and Teton Counties, MT.

Special Conditions for Issuance of Certificate: The person or persons engaged in common control or management of applicant and any other carrier operating in interstate or foreign commerce, must apply for appropriate approval under 49 U.S.C. 11343, 11344, or submit an affidavit[1] indicating why approval is unnecessary. Issuance of the certificate is subject to prior publication in the Federal Register of a notice of the authority granted. Issuance of a certificate will be withheld until 30 days after publication and the disposition of any petitions to intervene filed within that time.

[FR Doc. 79-16663 Filed 5-25-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28997 (Sub-No. 1F)]

The Chesapeake and Ohio Railway Co.—Trackage Rights—Over Consolidated Rail Corporation From Alexis, Ohio to Rockwell Junction, Ohio

The Chesapeake and Ohio Railway Company (C&O), P.O. Box 6419, Terminal Tower, Cleveland, OH 44101, represented by Harry N. Babcock, General Attorney, P.O. Box 6419, Cleveland, OH 44101, hereby give notice that on the 2nd day of May, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 11343 (formerly Section 5(2) of the Interstate Commerce Act) for a decision approving and authorizing the C&O to acquire trackage rights over the line of railroad of Consolidated Rail Corporation from Alexis, OH, to Rockwell Junction, OH, a total distance of approximately 10.50 miles, all in Lucas County, OH.

Under the proposed ordinary trackage agreement Consolidated Rail Corporation (Conrail) will grant trackage rights to C&O between Alexis, OH, and Rockwell Junction, OH, i.e., between Conrail connection with C&O at Alexis, OH (Valuation Section 208C, Station 353+62) to Swan Creek (Toledo, OH) (Valuation Section 208B, Station 0+00) and from Swan Creek (Toledo, OH) (Valuation Section 208B, Station 7954+45) to Rockwell Junction (Toledo, OH) Valuation Section 208A, (Station 5835+10), a distance of 10.50 miles.

By the proposed transaction, C&O seeks more rapid movement of its traffic through the Toledo Terminal.

In the opinion of the Applicant C&O, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submission shall indicate the proceeding designation (Finance Docket No. 28997 (Sub-No. 1F)) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, on or before July 13, 1979. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the

[1] Any affidavit should be submitted to the Deputy Director, Section of Operating Rights, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423. If an application is filed the applicant should also notify the Deputy Director of the Section of Operating Rights and provide the docket number assigned to the finance proceeding.

public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the Applicant, the Secretary of Transportation and the Attorney General.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-16662 Filed 5-25-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier, Broker, Water Carrier and Freight Forwarder Operating Rights Applications

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the applications if published in the Federal Register. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such a authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected.

MC-61788 (Sub-36F), filed August 25, 1978, previously published in the Federal Register issue of October 12, 1978. Applicant: GEORGIA-FLORIDA-ALABAMA TRANSPORTATION COMPANY, a Corporation, P.O. Box 2268, Dothan, AL 36302. Representative: Maurice F. Bishop, 601-09 Frank Nelson Bldg., Birmingham, AL 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities*) except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Mobile, AL, and Gulfport, MS, (1) over U. S. Hwy 90, and (2) over Interstate Hwy 10, serving all intermediate points, and restricted in (1) and (2) above (a) such that any authority granted herein shall not be severable by sale or otherwise from the irregular-route authority held by carrier between points within 75 miles of Bay Minette, AL, including Bay Minette, and (b) no irregular-route operations may be conducted between Mobile, AL, and Gulfport, MS.

Hearing: The above-entitled proceeding is assigned for hearing on the 4th day of June, 1979, at 9:30 a.m. local time at Room No. 440, Federal building and U. S. Court House, 113 St. Joseph Street, Mobile, AL 36602.

Note.—The purpose of this republication is to notice applicant's intent to tack this authority at Mobile, AL to provide service between Gulfport, MS and points on applicant's regular and irregular routes in AL, MS, FL, and GA.

By the Commission.

H. G. Homme, Jr.

Secretary.

[FR Doc. 79-16661 Filed 5-25-79; 8:45 am]

BILLING CODE 7035-01-M

SMALL BUSINESS ADMINISTRATION

Eligibility under Section 211 of Pub. L. 95-507—The Subcontracting Program

This constitutes notice of the intent of the Small Business Administration to interpret Section 211 of Pub. L. 95-507, section 8(d) of the Small Business Act, 15 U.S.C. 637(d), (the subcontracting program) as follows:

For the purpose of this section, a contractor of the Federal Government shall presume that socially and economically disadvantaged individuals are: (1) Black Americans, (2) Hispanic Americans, (3) Native Americans, (4) any person who has been determined to be socially and economically disadvantaged by SBA within the provisions of 13 CFR 124.1-1(3)(i) and (4) [the 8(a) program] and (5) members of such minority groups as are designated as such by SBA pursuant to the procedure set forth at 13 CFR 124.1-1(3)(iii).

For further information regarding elegibility under section 211 of Pub. L. 95-507, all inquiries should be made to: William A. Clement, Jr., Associate Administrator for Minority Small Business, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, 202-653-6407.

Dated: May 24, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-16785 Filed 5-25-79; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 104
Tuesday, May 29, 1979

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).

CONTENTS

	Items
Civil Aeronautics Board	1
Federal Election Commission	2
Federal Energy Regulatory Commission	3
Federal Maritime Commission	4
Federal Mine Safety and Health Review Commission	5
Federal Reserve System [Board of Governors]	6, 7
Legal Services Corporation	8
Nuclear Regulatory Commission	9
White House Conference on Library and Information Services	10

1

[M-222, Amdt. 5; May 23, 1979]

CIVIL AERONAUTICS BOARD.

Notice of Closure and Short Notice of Meeting to the May 24, 1979, Agenda.

TIME AND DATE: 9:30 a.m., May 24, 1979.

PLACE: Room 1027—Open; Room 1011—Closed; 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 37. Review of Recent Pricing Consultations with the Government of France (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: To brief the Board on the recent developments in the U.S.-France negotiations requires a Board Meeting. Accordingly, the following Members have voted that agency business requires the addition of Item 37 to the May 24, 1979 agenda and that no earlier announcement of this addition was possible.

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies in the discussions could seriously compromise the ability of the United States Delegation to achieve an agreement which would be in the best interest of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(9)(B) and 14 CFR 310b.5(9)(B) and that any such meeting should therefore be closed:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected To Attend

Board Members.—Chairman, Marvin S. Cohen; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.
Assistants to Board Members.—Mr. David M. Kirstein, Mr. James L. Deegan, and Mr. Stephen H. Lachter.
Office of the Managing Director.—Mr. Cressworth Lander.
Office of the General Director.—Mr. Michael E. Levine.
Bureau of Domestic Aviation.—Ms. Barbara Clark and Mr. Paul Gretch.
Bureau of International Affairs.—Mr. Sanford Rederer, Mr. Donald Litton, Mr. Douglas Leister, Mr. John Kiser, Mr. Anthony Largay, and Mr. Herbert Aswall.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary Edles, Mr. Peter Schwarzkopf, and Mr. Mark Kahan.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson.
Office of Economic Analysis.—Mr. Robert H. Frank.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Patrick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C 552(9)(B) and 14 CFR 310b.5(9)(B) and that this meeting may be closed to public observation.

Philip Bakes, Jr.,
General Counsel.

[S-1054-79 Filed 5-24-79; 2:29 pm]
BILLING CODE 6320-01-M

2

FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO.: FR-S-79-1009.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 24, 1979 at 10 a.m.

CHANGE IN MEETING: The following item has been added to the portion of the meeting closed to the public:

Washington Post request for information concerning the audit of the Democratic Presidential Campaign Committee, Inc., under the Freedom of Information Act.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, telephone 202-523-4065.

Lena L. Stafford,
Acting Secretary to the Commission.

[S-105-79 Filed 5-24-79; 1:21 pm]
BILLING CODE 6715-01

3

May 23, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., May 30, 1979.

PLACE: 825 North Capitol St., N.E., Washington, D.C. 20426, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

Power Agenda—294th Meeting, May 30, 1979, Regular Meeting (10 a.m.)

CAP-1. Docket No. HB63-77-4, Headwater Benefits, St. Louis River Basin.
CAP-2. Project No. 2763, City of Golden, Colorado and Vidler Tunnel Water Co. Project No. 2773, Oak Creek Power Co. Project No. 2779, Colorado River Water Conservation District.
CAP-3. Docket No. ER79-264, Pennsylvania-New Jersey-Maryland Interconnection.
CAP-4. Docket No. ER79-213, Public Service Co. of Indiana.
CAP-5. Docket No. ER79-230, Long Island Lighting Co.
CAP-6. Docket No. ER76-285, (Phase II), Public Service Co. of New Hampshire.

Miscellaneous Agenda—294th Meeting, May 30, 1979, Regular Meeting

CAM-1. New Orleans Public Service Inc.

Gas Agenda—294th Meeting, May 30, 1979, Regular Meeting

CAG-1. Docket No. RP79-67, Louisiana-Nevada Transit Co.
CAG-2. Docket No. RP79-65, Equitable Gas Co.
CAG-3. Docket No. RP72-41, (PGA 79-3), Western Transmission Corp.

CAG–4. Docket No. RP73–91, (PGA 79–2), McCulloch Interstate Gas Corp.
CAG–5. Docket No. RP78–58, South Texas Natural Gas Gathering Co.
CAG–6. Docket No. RP79–61, West Texas Gathering Co.
CAG–7. Docket Nos. RP76–37 and RP72–121, Southwest Gas Corp.
CAG–8. Docket No. RP78–49, Alabama-Tennessee Natural Gas Co.
CAG–9. Docket Nos. CI75–16, et al., Exxon Corp. Docket Nos. G–11083, et al., Exxon Corp.
CAG–10. Docket No. CI78–272, Union Texas Petroleum, a division of Allied Chemical Corp. Docket No. CS66–5, et al., Estate of Scott B. Appleby, deceased, W. O. Anderson and Demova K. Frost. Docket No. CS74–189, Texas Production Co. Docket No. CS75–474, Edna Lou Robinson, et al. Docket No. CS75–493, W. W. Rucks, III. Docket No. CS75–452, James W. Staples. Docket No. CS75–457, Mellena Fox Wright Rogers. Docket No. CI78–1094, Anadarko Production Co. Docket No. CS73–273, et al., John G. Arnold, Trustee, et al. Docket No. CS75–542, H. L. Bammert. Docket No. G–11083, Continental Oil Co. Docket No. CI690262, Exxon Corp. Docket No. CI77–224, Exxon Corp. Docket No. CI79–189, Getty Oil Co. Docket No. CS66–74, et al., Magdalene C. Hammonds, et al. Docket No. CS78–522, et al., C. R. McClennahan, et al. Docket No. CI78–861, McCulloch Oil & Gas Corp. Docket No. CI79–330, Mesa Petroleum Co. Docket No. CI79–53, Amoco Production Co. Docket No. CI79–148, Mobil Oil Corp. Docket No. CI75–495, Monsanto Co. (Operator), et al. Docket No. CI75–500, Inexco Oil Co. Docket No. CS71–808, CEJA Corp. (A. G. Oliphant) Docket No. CS66–56, et al., Penrose-Zachery Operating Co. (Penrose Production Co.), et al. Docket No. CI78–30, Phillips Production Co. Docket No. CI78–577, Phillips Production Co. Docket No. CI78–540, Pioneer Production Corp. Docket No. CS75–287, et al., the Polumbus Corp., et al. Docket No. CS71–579, et al., Harry Spooner, Jr. and Spooner Petroleum Co. (Barry Spooner, Jr.), et al. Docket No. CI79–335, Transco Exploration Co.
CAG–11. Docket Nos. CI78–764 and CI78–783, TBP Offshore Co. Docket No. CI78–782, VSEA, Inc. Docket No. CI78–784, ECEE, Inc. Docket Nos. CI78–785 and CI78–787, Pinto, Inc.
CAG–12. Docket No. CS78–111, Petroleum, Inc.
CAG–13. Texas Eastern Transmission Corp.
CAG–14. Docket No. CP78–457, El Paso Natural Gas Co. Docket No. CP78–481, Northern Natural Gas Co.
CAG–15. Docket No. CP79–89, El Paso Natural Gas Co. Docket No. CS72–621, Bixco, Inc.
CAG–16. Docket Nos. CP78–520 and CP79–233, El Paso Natural Gas Co. Docket No. CP79–230, Transcontinental Gas Pipe Line Corp.
CAG–17. Docket No. C79–160, Florida Gas Transmission Corp.
CAG–18. Docket No. CP78–351, Transcontinental Gas Pipe Line Corp.
CAG–19. Docket No. CP77–144, Consolidated Gas Co. Supply Corp. and Texas Gas Transmission Corp.
CAG–20. Docket No. CP76–341, United Gas Pipe Line Co.
CAG–21. Docket No. CP79–147, Natural Gas Pipeline Co. of America.
CAG–22. Docket No. CP79–223, Michigan Wisconsin Pipe Line Co.
CAG–23. Docket No. CP78–541, Transcontinental Gas Pipe Line Corp.

Power Agenda—294th Meeting, May 30, 1979, Regular Meeting

I. Electric Rate Matters

ER–1. Docket No. E–7796 and E–7777 (Phase II), Pacific Gas & Electric Co.
ER–2. Docket No. E–9161, Nantahala Power & Light Co.

Miscellaneous Agenda—294th Meeting, May 30, 1979, Regular Meeting

M–1. Reserved.
M–2. Reserved.
M–3. Docket No. RM79–14, Regulations Implementing Incremental Pricing Provisions of NGPA.
M–4. Docket No. RM79– . , Final Regulations for Subparts A, B, and D of Part 284, Regulations for Emergency Natural Gas Transaction, to be included as Subpart E of Part 284 and Amendments to Subpart C of Part 284.
M–5. Docket No. RM78–12, Incentive Rate of Return for the Alaska Natural Gas Transportation System.
M–6. Notice of Well Category Determination by U.S. Geological Survey—Santa Fe Energy Co. (JD79–3049).
M–7. Notices of Well Category Determination of the North Dakota State Industrial Commission, Oil and Gas Division (JD79–5271, JD79–5272, JD79–5273, JD79–5274).
M–8. Docket No. OR78–6, *Powder River Pipeline Corp. and the Crude Co.* v. *Amoco Pipeline Co.*
M–9. Docket No. RA79–4, Arizona Fuels Corp.

Gas Agenda—294th Meeting, May 30, 1979, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP79–70, Oklahoma Natural Gas Gathering Corp.
RP–2. Docket No. RP79–66, Western Gas Interstate Co.
RP–3. Docket No. RP79–68, North Penn Gas Co.
RP–4. Docket No. CP74–289, et al., CP77–289, CP78–500 and CP78–488, El Paso Natural Gas Co.
RP–5. Docket No. RP78–12, East Tennessee Natural Gas Co.
RP–6. Docket Nos. RP77–54, RP77–55, RP76–10 (PCA77–5), and RP74–61 (PCA77–5), Arkansas Louisiana Gas Co.
RP–7. Docket No. RP75–74, Transwestern Pipeline Co.

II. Producer Certificate Matters

CI–1. Docket No. RI79–28, Kaiser-Francis Special Account C.
CI–2. Docket No. CI79–415, Continental Oil Co.
CI–3. Docket Nos. CI75–45, et al., Tenneco Oil Co., et al.

III. Pipeline Certificate Matters

CP–1. Docket No. RP72–89 and TC79–127, Columbia Gas Transmission Corp. Docket No. RP72–6 (Ignition and Flame Stabilization), El Paso Natural Gas Co. Docket No. RP73–6, Mississippi River Transmission Corp. Docket Nos. RP76–91 and CP76–167, Montana Dakota Utilities Co. Docket No. RP75–62, Cities Service Gas Co. Docket No. RP72–6, El Paso Natural Gas Co. Docket No. RP76–90, Kansas-Nebraska Natural Gas Co. Docket No. RP75–79, *Lehigh Portland Cement Company* v. *Florida Gas Transmission Company. Docket No. CP76–52, et al., Northern Natural Gas Co.*
CP–2. Docket Nos. RP74–6 and RP72–74, Southern Natural Gas Co.
CP–3. Docket No. CP70–196, et al., Distrigas Corp. and Distrigas of Massachusetts Corp.
CP–4. Docket No. CP78–478, Michigan Wisconsin Pipe Line Co.

Kenneth F. Plumb,

Secretary.

[S–1053–79 Filed 5–24–79; 2:19 pm]

BILLING CODE 6450–01–M

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 2 p.m., May 29, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Agreements Nos. 9902–10 and 9902–11: Modifications of the Euro-Pacific Joint Service Agreement to conform with Commission Order in Docket No. 77–4 and to add Intercontinental Transport as party.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, 202–523–5725.

[S–1049–79 Filed 5–24–79; 9:43 am]

BILLING CODE 6730–01

5

May 23, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., May 30, 1979.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

Secretary of Labor v. *Old Ben Coal Co.*, VINC 79–119–P. (Petition for Discretionary Review.)
Secretary of Labor v. *B B & W Coal Co.*, PIKE 77–89–P, IBMA 77–67.
Secretary of Labor, on behalf of John Koerner, v. *Arch Mineral Coal Co.*, DENV 78–564.

Peter White Coal Co. v. *Secretary of Labor*, HOPE 78-42, HOPE 78-615-P. (Petition for Discretionary Review.)

It was determined by unanimous vote of the Commissioners that Commission business required that a meeting be held on these items and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Joanne Kelley, 202-653-5632.

[S-1055-79 Filed 5-24-79; 3:30 pm]

BILLING CODE 6820-12-M

6

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, May 30, 1979.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20661.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed guidelines for the Federal Reserve System's health insurance coverage.

Discussion Agenda

1. Proposed amendments to Regulation K (International Banking Operations) to implement the International Banking Act. (Proposed earlier for public comment: Docket No. R-0204.)

2. Proposed amendment to regulation Q (Interest on Deposits) concerning (a) five year fixed rate, variable ceiling time deposit: (b) rising rate time deposits; (c) bonus savings deposits; and (d) reduction of minimum denomination requirements. (Proposed earlier for public comment: Docket No. R-0215.) The Board will also consider a proposed amendment to the early withdrawal penalty.

3. Proposed statement to be presented to the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing, and Urban Affairs regarding S. 15, legislation to prohibit discrimination on the basis or geography in the issuance of credit cards.

4. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be avaliable for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452-3884 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, 202 452-3204.

[S-1047-79 Filed 5-24-79; 9:27 am]

BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM.

TIME AND DATE: Approximately 12 noon, Wednesday, May 30, 1979 (following a recess at the conclusion of an open meeting to be held earlier the same day).

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Construction management agreement for the proposed new Baltimore Branch building of the Federal Reserve Bank of Richmond.

2. Proposed revisions to the Board's policy regarding consultants.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: May 23, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-1048-79 Filed 5-24-79; 9:27 am]

BILLING CODE 6210-01-M

8

LEGAL SERVICES CORPORATION: (Committee on Operations).

TIME AND DATE: 7:30 p.m., Thursday, May 31, 1979.

PLACE: Room 405, George Washington University, 800 21st Street, N.W., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Part 1624—Proposed Final Regulation Prohibiting Discrimination on the Basis of Handicap.

2. Issues Relating to Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR MORE INFORMATION: Dellanor Young, Office of the President, telephone (202) 376-5100.

Issued: May 22, 1979.

Alice Daniel,

Acting President.

[S-1050-79 Filed 5-24-79; 10:40 am]

BILLING CODE 6820-35-M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: May 24, 1979 (Revised).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

9:30 a.m.

1. Briefing by Oak Ridge on "Another Perspective of the 1958 Soviet Nuclear Accident" (approx. 1 hour, public meeting as scheduled).

2. Affirmation Session (approx. 10 minutes, public meeting as scheduled):

a. Petition on Security Personnel, and

b. NRDC Petition for Rule Making.

Additional item

3. Discussion of City of Lancaster lawsuit (approx. 1 hour) (First portion open; remainder closed—exemption 10).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

May 23, 1979.

[S-1051-79 Filed 5-24-79; 11:32 am]

BILLING CODE 7590-01-M

10

WHITE HOUSE CONFERENCE ON LIBRARY AND INFORMATION SERVICES: Information Organization Heads Meeting.

TIME: 9:00 a.m.

DATE: May 29-30, 1979.

PLACE: Washington Hilton Hotel, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Discuss means for effectively involving each organization in the White House Conference process.

Develop issue positions with input from organizational memberships, which will be accepted by the White House Conference as formal input to its planning.

Determine participating organizations' roles in implementing recommendations of the White House Conference.

CONTACT PERSON FOR MORE INFORMATION: Heather Nicoll, Coordinator, 202-653-6252.

Marilyn K. Gell,

Director.

May 23, 1979

[S-1049-79 Filed 5-24-79; 9:27 am]

BILLING CODE 7527-01-M

11

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 A.M., May 31, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling [202–377–6677].

MATTERS TO BE CONSIDERED:

Consideration of Federal Savings and Loan Advisory Council Travel Voucher Resolution.
Consideration of Appointment of Director—Sunwood Corporation, Parker, Colorado.
Consideration of Association Request for Remission of Liquidity Penalty—Expressway Federal Savings and Loan Association, Lake Ronkonkoma, New York.
Consideration of Designation of Robert J. Knecht as Supervisory Agent.
Branch Office Application—Bradford Federal Savings and Loan Association—Baltimore, Maryland.
Concurrent Consideration of Limited Facility Applications: (1) Indian River Federal Savings and Loan Association, Vero Beach, Florida; and, (2) Heritage Federal Savings and Loan Association, Daytona Beach, Florida.
Consideration of Vietnam Veterans Week.
Consideration of Service Corporation Activity Application (Purchase of Insurance Agency)—First Federal Savings and Loan Association of Chicago, Chicago, Illinois.
Application for Merger; Maintenance of Branch Offices; Cancellation of Membership and Insurance and Transfer of Stock—First Federal Savings and Loan Association of Hendricks County, Plainfield, Indiana into Ladoga Federal Savings and Loan Association, Crawfordsville, Indiana.
Consideration of Regulations Regarding 100-Mile Restriction on Branching.
Consideration of Regulations Regarding Interstate Branching within an SMSA
Consideration of Regulations Regarding Restrictions on Real Property Transactions with Affiliated Persons.
Consideration of Regulations Regarding Transactions with Affiliated Persons.
Consideration of Regulations Regarding Revision of the Rules and Regulations for the Federal Savings and Loan System.

May 24, 1979.

[S–1057–79 Filed 5–25–79; 9:03 am]

BILLING CODE 6720–01–M

12

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 A.M, May 30, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling [202–377–6677].

MATTERS TO BE CONSIDERED:

Consideration of Regulations Regarding Nationwide Variable Rate Mortgages
Consideration of Regulations Regarding Revised Rates on Savings Accounts.

Announcement is being made at the earliest practicable time.

May 25, 1979.

[S–1058–79 Filed 5–25–79; 9:03 am]

BILLING CODE 6720–01

Tuesday
May 29, 1979

Part II

Office of Personnel Management

Personnel Records and Files; Protection of Privacy in Personnel Records

OFFICE OF PERSONNEL MANAGEMENT

[5 CFR Parts 293 and 297]

Personnel Records and Files; Protection of Privacy In Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to propose rules that designate Civil Service Commission regulations at 5 CFR 293 and 297 as Office of Personnel Management regulations and amend these regulations to implement both the President's Reorganization Plan No. 2, dated May 23, 1978, and the Privacy Act of 1974, 5 U.S.C. 552a.

COMMENT DATES: Interested parties may submit written comments regarding these regulations. To be considered, comments must be received on or before July 30, 1979.

ADDRESS: Address comments to the Deputy Assistant Director for Workforce Information, Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415. Comments received will be available for public inspection at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Lynch, Agency Compliance and Evaluation, 202/254–9778.

SUPPLEMENTARY INFORMATION: Under the President's Reorganization Plan No. 2 of 1978, effective January 1, 1979 (43 FR 36037), the Office of Personnel Management (OPM) became operational. On the same date, OPM assumed responsibility for many of the personnel policy making functions the Civil Service Commission performed for the Executive Branch. Included among those functions is the responsibility for issuing regulations concerning those Personnel Records and Files maintained by agencies on most current and former Federal employees which are either part of OPM's records or subject to control by OPM. Therefore, it is necessary to effect changes in the former Commission's regulation at 5 CFR 293 that designate this as an OPM regulation and that implements OPM's responsibilities in this area.

Additionally, other changes were made to those regulations and also to the Commission's regulations at 5 CFR 297, necessary to implement the Privacy Act of 1974, 5 U.S.C. 552a. Pursuant to 5 U.S.C. 552a(f), OPM, as an agency that maintains records subject to the Privacy Act, must publish regulations implementing that Act. Therefore, it is necessary to designate Part 297 as an OPM regulation and to effect changes to both Parts 293 and 297 that will describe OPM's regulations implementing the Act. Some Privacy Act requirements have been moved from Part 293 to Part 297 and the regulations have been made more detailed so that covered individuals, agencies, and the general public are better informed.

The former Civil Service Commission published its rules on improving regulations (required by Executive Order 12044) at 43 FR 56253 et. seq., and, under the saving provisions of section 902 of the Civil Service Reform Act, Pub. L. 95–454, the Office of Personnel Management (OPM) remains subject to these regulations until OPM supersedes them. Therefore, in compliance with section 3b(4) of these regulations, the public will have a full 60-day comment period.

The complete revised Parts 293 and 297 follow.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

PART 293—PERSONNEL RECORDS

Subpart A—Basic Policies on Maintenance of Personnel Records

Sec.

293.101 Purpose and scope.
293.102 Definitions.
293.103 Recordkeeping standards.
293.104 Collection of information.
293.105 Restrictions on collection and use of information.
293.106 Safeguarding information about individuals.
293.107 Special safeguards for automated records.
293.108 Rules of conduct.

Subpart B—Personnel Records Subject to the Privacy Act

293.201 Purpose.
293.202 Records subject to Office or agency Privacy Act regulations.
293.203 Review of Office or agency practices.

Subpart C—Official Personnel Folder

293.301 Applicability of regulations.
293.302 Establishment of official personnel folder.
293.303 Ownership of folder.
293.304 Maintenance and content of folder.
293.305 Type of folder to be used.
293.306 Use of existing folders upon transfer or reemployment.
293.307 Disposition of folders of former Federal employees.
293.308 Removal of temporary records from folders.

Authority: 5 U.S.C. 552a; Executive Order 12107, (December 28, 1978), 5 U.S.C. 1302, 3 CFR 1954–1958 Compilation; 5 CFR 7.2; Executive Order 9830, 3 CFR 1943–1948 Compilation.

Subpart A—Basic Policies on Maintenance of Personnel Records

§ 293.101 Purpose and scope.

(a) This subpart sets forth basic policies governing the creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records which the Office of Personnel Management requires agencies to maintain in the personnel management or personnel policy setting process.

(b) Agencies in the Executive Branch of the Federal Government are subject to specific Office of Personnel Management recordkeeping requirements to varying degrees, pursuant to statute, Office regulation, or formal agreements between the Office and agencies. This subpart applies to any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation or Government controlled corporation, except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and that agency.

§ 293.102 Definitions.

In this part:

"Agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive Branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"Data subject" means the individual about whom the Office or agency is maintaining information in a system of records;

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

"Information" means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials, regardless of physical form or characteristics, containing data about an individual and required by the Office in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

"Maintain" includes collect, use, or disseminate;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policysetting process. (For purposes of this part, this term is not limited just to those personnel records in a system of records and subject to the Privacy Act);

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, criminal history, or employment history;

"System of records" means a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 293.103 Recordkeeping standards.

(a) The head of each agency shall ensure that persons having access to or involved in the creation, development, processing, use, or maintenance of personnel records are informed of pertinent recordkeeping regulations and requirements of the Office of Personnel Management and the agency. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because it may be useful; both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish the Federal personnel management purposes required by statute, Executive order, or Office regulation.

(b) The Office is responsible for establishing minimum standards of accuracy, relevancy, necessity, timeliness, and completeness for personnel records it requires agencies to maintain. These standards are discussed in appropriate chapters of the Federal Personnel Manual. Before approval of any agency requests for changes in recordkeeping practices governed by the Federal Personnel Manual, the Office will examine the proposal or request in the context of such standards set forth by the agency in support of the proposal and in light of the personnel program area that requires these records.

§ 293.104 Collection of information.

(a) Any information in personnel records, whether or not those records are in a system of records, used in whole or in part in making a determination about an individual's rights, benefits, or privileges under Federal personnel programs should, where feasible, be collected directly from the individual concerned. Factors to be considered in determining whether to collect the data from the individual concerned or a third party are when:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) There are provisions made, where feasible, to verify information collected from another party with the individual concerned.

§ 293.105 Restrictions on collection and use of information.

(a) First Amendment. Personnel records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by statute, or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the government.

(b) Social Security Number.

(1) Agencies may not require individuals to disclose their Social Security Number unless disclosure would be required:

(i) Under Federal statute; or

(ii) Under any statute, Executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the Social Security Number as a necessary means of verifying the identity of an individual.

(2) Individuals asked to voluntarily provide their Social Security Number shall suffer no penalty or denial of benefits for refusing to provide it.

§ 293.106 Safeguarding information about individuals.

(a) To ensure the security and confidentiality of personnel records, in whatever form, each agency shall establish administrative, technical, and physical controls to protect information in personnel records from unauthorized access, use, modification, destruction, or disclosure. As a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access.

(b) Personnel records must be stored in metal filing cabinets which are locked when the records are not in use, or in a secured room. Alternative storage facilities may be employed provided they furnish an equivalent or greater degree of security than these methods. Except for access by the data subject, only employees whose official duties require access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned on a timely basis.

(c) Disposal and destruction of personnel records shall be in accordance with the General Record Schedule issued by the General Services Administration for the records or, alternatively, with Office or agency records control schedules approved by the National Archives and Records Service of the General Services Administration.

§ 293.107 Special safeguards for automated records.

(a) In addition to following the security requirements of § 293.106 of this part, managers of automated personnel records shall establish administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and on-line computer storage. The safeguards must be in writing to comply with the standards on automated data processing physical security issued by the National Bureau of Standards, U.S. Department of Commerce, and, as a minimum, must be sufficient to:

(1) Prevent careless, accidental, or unintentional disclosure, modification,

or destruction of identifiable personal data;

(2) Minimize the risk that skilled technicians or knowledgeable persons could improperly obtain access to, modify, or destroy identifiable personnel data;

(3) Prevent casual entry by unskilled persons who have no official reason for access to such data;

(4) Minimize the risk of an unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(5) Control the flow of data into, through, and from agency computer operations;

(6) Adequately protect identifiable data from environmental hazards and unnecessary exposure; and

(7) Assure adequate internal audit procedures to comply with these procedures.

(b) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media such as magnetic tapes and disks must be erased prior to release of the media for reuse.

§ 293.108 Rules of conduct.

(a) Scope. These rules of conduct apply to all Office and agency employees responsible for creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records. The Office and agencies shall require that such employees are familiar with these and appropriate supplemental agency internal regulations.

(b) Standards of Conduct. Office and agency employees whose official duties involve personnel records shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 U.S.C. 552).

(c) Improper uses of personnel information. Any Office or agency employee who makes a disclosure of personnel records knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to disciplinary action and may also be subject to criminal penalties where the records are subject to the Privacy Act (5 U.S.C. 552a). Employees are prohibited from using personnel information not available to the public, gained through official duties, for commercial solicitation or sale, or for personal gain.

Subpart B—Personnel Records Subject to the Privacy Act

§ 293.201 Purpose.

The purpose of this subpart is to set forth the criteria to be used to determine when personnel records on individuals are subject both to the regulations contained in this part and to Office or agency regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. When personnel records are maintained within a system of records, the records are deemed to be within the scope of both the regulations in this part and Office or agency regulations implementing the Privacy Act.

§ 293.202 Records subject to Office or agency Privacy Act regulations.

When the Office of Personnel Management publishes in the Federal Register a notice of system of records for personnel records which are maintained by the agencies or by the Office, that system of records will be subject to the regulations in this part and also to the regulations in part 297 of this chapter. When agencies publish a notice of system of records for personnel records required by the Office that are not included in the Office's notices, those agency systems of records will be subject both to the regulations contained in this part and to agency promulgated regulations that implement the Privacy Act.

§ 293.203 Review of Office or agency practices.

Reviews of agency personnel management policies and practices will be conducted to insure compliance with Office regulations. The Office may direct agencies to take whatever corrective action is necessary. Office or agency officials who have knowledge of violations of these regulations shall take whatever corrective action is necessary. Agencies shall list officials of the Office of Personnel Management as a routine user for personnel records to assist the Office in its oversight responsibilities.

Subpart C—Official Personnel Folder

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart "agency" means, except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and the agency, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government and the District of Columbia Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder for each employee occupying a position subject to this part, except as provided in section 293.306. Generally, there will be only one Official Personnel Folder maintained for each employee.

§ 293.303 Ownership of folder.

The Official Personnel Folder of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management.

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The folder shall also contain permanent records affecting the employee's status and service as required by the Office's instructions and as designated in FPM Supplement 293-31.

§ 293.305 Type of folder to be used.

Each agency shall use only Official Personnel Folders from Federal Supply Service contracts or stock for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the Official Personnel Folder pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new Official Personnel Folder.

(a) When a person for whom an Official Personnel Folder has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the folder to the new employing agency.

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder; and

(2) Insure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293–31.

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from employment must be retained by the losing agency for thirty days after separation, and may be retained for an additional sixty days. Thereafter, the folder should be transferred to the General Services Administration, National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian) shall, upon request, transfer the folder to the new employing agency.

§ 293.308 Removal of temporary records from folders.

The employing agency having possession of an Official Personnel Folder shall remove temporary records from the folder before it is transferred to another agency in accordance with General Schedule 1 promulgated by the General Services Administration.

PART 297—PROTECTION OF PRIVACY AND PERSONNEL RECORDS

Subpart A—General Provisions

Sec.
297.101 Purpose and scope.
297.102 Definitions.
297.103 Designations of authority by system manager.

Subpart B—Individual Rights Regarding Access, Amendment, and Disclosure

297.201 Identification requirements for specific inquiries and requests for access.
297.202 Inquiries.
297.203 Request for access to personnel records.
297.204 Methods of access.
297.205 Denials of access requests.
297.206 Request for administrative review of denial of access.
297.207 Judicial review.
297.208 Request for amendment of records.
297.209 Response to request for amendment of records.
297.210 Request for administrative review of denial of an amendment.
297.211 Judicial review.
297.212 Fees.
297.213 Disclosures generally prohibited.
297.214 Request for accounting of disclosures.

Subpart C—Agency Responsibilities for Processing Privacy Act Requests

297.301 Responsibilities.
297.302 Verification of identity of requester.
297.303 Response to access requests.
297.304 Exempt records.
297.305 Response to request for administrative review of denial of access.
297.306 Request for correction/amendment.
297.307 Basis for denials of request for amendments.
297.308 Response to request for administrative review of denial of request for amendment.

Subpart D—Requirements for Recordkeeping Under the Privacy Act

Sec.
297.401 Responsibility for systems of records.
297.402 Responsibility for litigation concerning the regulations.
297.403 Publication of annual notices.
297.404 Reports on changes to systems of records.
297.405 Penalties.
297.406 Changing or adding routine uses.
297.407 Providing Privacy Act Statements.
297.408 Annual reports.
297.409 Annual notice to employees.

Subpart E—Disclosures From Systems of Records

297.501 Restrictions on disclosure of a deceased data subject's record.
297.502 General written consent requirement.
297.503 Disclosures permitted without prior written consent of the data subject.
297.504 Disclosure pursuant to compulsory legal process.
297.505 Disclosure pursuant to a subpoena.
297.506 Accounting of disclosure.
297.507 Penalties.

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart A—General Provisions

§ 297.101 Purpose and scope.

(a) These regulations implement the provisions of Pub. L. 93–579, the Privacy Act of 1974 (5 U.S.C. 552a). The regulations govern the types of systems of personnel records listed below and which are more thoroughly identified in the annual publication of the Office's notices of systems of records.

(1) Internal systems of personnel records established and maintained by the Office of Personnel Management (OPM) solely on its own employees and which are under its physical control.

(2) Centralized systems of personnel records physically established and maintained by the Office of Personnel Management on most current and former Federal employees and some applicants for Federal employment.

(3) Government-wide systems of personnel records that are maintained by agencies on their employees or on applicants for employment for the Office of Personnel Management and which are in the physical custody of agencies. Though such records are in the physical custody of agencies, the Office of Personnel Management has retained authority under the Privacy Act to make reviews of initial agency determinations regarding access to and amendment of records in these systems.

(b) For the purposes of this part, the term "agency" applies to any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation or Government controlled corporation, except those specifically excluded from Office of Personnel Management recordkeeping requirements by statute, Office of Personnel Management regulation, or formal agreement between the Office of Personnel Management and that agency.

§ 297.102 Definitions.

For the purpose of this part, the terms used herein have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

"Access" means providing a copy of a record to, or allowing review of the original record by the data subject or the data subject's authorized representative, parent, or legal guardian;

"Act" means the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a;

"Amendment" includes correction, addition, deletion, or destruction of the record or specific portions thereof;1"Annual Report" means that report required to be submitted by each Federal agency to the Office of Management and Budget by April 30th of each year identifying its activities under the Privacy Act for the preceding calendar year;

"Data subject" means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

"Disclosure" means providing pesonal review of a record, or a copy thereof to someone other than the data subject, the data subject's authorized representative, parent, or legal guardian;

"Notice of system of records" means the notice, published in the Federal Register, of the existence and character of every system of record, hereinafter referred to as system notice;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

"System Manager" means the agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each

system of records maintained by agency.

§ 297.103 Delegations of authority by system manager.

The responsible Office or agency system manager having jurisdiction over a system of records may designate in writing an agency employee either at the agency's headquarters or field office to evaluate and issue the agency decision on Privacy Act matters relating to the system of records. The designee should have ready access to the record involved, and be knowledgeable in all matters concerning what comprises the system of records and the basis for deciding Privacy Act issues.

Subpart B—Individual Rights Regarding Access, Amendment, and Disclosure

§ 297.201 Identification requirements for specific inquiries and requests for access.

(a) Unless the information sought is required to be released under the Freedom of Information Act or other statute, the Office or agency shall require proof of identity from a requester, and reserves the right to determine the adequacy of any such proof of identity before responding to a specific inquiry or request for access to a record in a system of records. The general identifying information items to be supplied before a specific inquiry or request for access can be answered, are:

(1) Full name, signature, and home address;

(2) Date and place of birth;

(3) The current or last place and dates of Federal employment, if appropriate; and

(4) Social Security Number (for systems of records retrieved by this identifier).

(b) A request/inquiry from someone other than the data subject shall contain copies of any documents that establish the relationship or authorize access as follows:

(1) Where the requester is the parent or legal guardian of a data subject who is a minor (generally, a data subject under eighteen years of age, but local law would control), the requester shall identify the relationship with the data subject and furnish a certified or authenticated (e.g. notarized) copy of any document establishing parentage or appointment as legal guardian;

(2) Where the requester is the legal guardian of a data subject who has been declared incompetent by the courts, the requester shall identify the relationship with the data subject and furnish a certified or authenticated copy of the court's appointment of guardianship;

(3) Where the requester is a representative of the data subject, the requester shall identify the relationship with the data subject or the data subject's parent or legal guardian, and furnish documentation designating the representative as having the authority to act on behalf of the data subject.

(c) The methods by which a requester, who makes a request in person, proves his or her identity are:

(1) When a request is from the data subject, the means of proof, in order of preference, are:

(i) A document bearing the individual's photograph and signature (for example, driver's license, passport, or military or civilian identification card); or

(ii) Two documents bearing the individual's signature (for example, medicare card, unemployment insurance book, employer identification card, national credit card, professional, craft, or union membership card);

(2)When a request is made by the parent, legal guardian, or authorized representative of the data subject, the means of identifying the requester and his or her authority for acting on behalf of the data subject, shall be as prescribed in paragraphs (b) and (c) of this section. In addition, the requester shall establish the identity of the data subject in the manner prescribed in paragraph (a) of this section.

(d) When a written inquiry or request is received from the data subject, or from the data subject's parent, legal guardian, or authorized representative, it should be signed and:

(1) For an inquiry, contain sufficient identifying information about the data subject to permit searching of the record system(s) and to permit response; and

(2) For a request:

(i) from the data subject, contain sufficient information to locate the record and establish that the requester and the data subject are the same (e.g. matching signatures); or

(ii) from the data subject's parent, legal guardian, or authorized representative, contain sufficient information to locate the record, match identity with the data subject, and such documentation of association or authorization as is prescribed in paragraph (b) of this section.

(e) The signed request from the data subject, or from the data subject's parent, legal guardian, or authorized representative specified in (d) above shall be sufficient proof of identity of the requester, unless for good cause the system manager or designee determines that there is a need to require some notarized or certified evidence of the identity of the requester.

(f) The system manager or designee may modify the type of proof of identity required and the method by which it is provided, on a case-by-case basis and within the limits prescribed in (a), (b), and (c) of this section.

(g) In compliance with 5 U.S.C. 552a(e)(3), each requester that is asked to supply the information, orally or in writing, in accordance with this section shall be furnished the following information:

(1) 5 U.S.C. 552a authorizes solicitation of the information, disclosure is voluntary, and no penalty is attached for failure to provide the information;

(2) This information will be used to process the inquiry or request under the Act and for any other actions that may arise under the Act regarding the specific inquiry or request; and

(3) The effects of not providing all or any part of the information may be to render impossible or to delay the Office's or the agency's processing of and action on the inquiry/request.

(h) When provisions of this section are alleged to have the effect of impeding an individual in exercising rights of access, the Office or the agency will consider from the individual making the request, alternative suggestions regarding proof of identity and authority for access to records.

§ 297.202 Inquiries.

(a) General. Inquiries about the Act or this part may be made in person or by mail at any OPM or agency office. A list of OPM offices is included in the appendix to the notice of OPM systems of records published annually in the Federal Register. A general inquiry would be a request for assistance in identifying which systems of records may contain a record about the individual. A requester is not required to submit identifying information in support of this type of inquiry.

(b) Specific. An inquiry that request OPM or any agency to determine if it has, in a given system of records, a record about the inquirer, should be addressed to the official identified in the Notification procedures paragraph of the Federal Register notice for the system. Inquirers should specify the name of the system of records, if known, as published in the Federal Register and inquiries submitted by mail should contain the words "Privacy Act Inquiry" on the face of the envelope and the letter. Such inquiries should contain the identifying data prescribed in § 297.201 of this subpart before a search can be

made of that particular system of records.

§ 297.203 Requests for access to personnel records.

(a) A data subject shall be granted access to the data subject's own records upon request, except where denial is authorized under § 297.205(b) of this subpart. To request access, the individual should contact the appropriate system managers (or designees) indicated in the OPM's notices of system of records published in the Federal Register. Requests may be made in person or by mail. Requests should specify the name of the system of records, if known, as published in the Federal Register. Requests submitted by mail should contain the words "Privacy Act Request" on the face of the envelope and the letter. All individuals requesting access to records must meet the identification requirements set forth in section 297.201 of this subpart. Agencies may provide forms to facilitate the servicing of requests under the Act.

(b) When an individual cites the Freedom of Information Act (5 U.S.C. 552) to request records about himself or herself which are contained in a Privacy Act system of records, the request will be processed under the Privacy Act. However, no Privacy Act exemption will be cited to deny access to a record which would otherwise be available under the Freedom of Information Act.

§ 297.204 Methods of access.

(a) The following are the methods for allowing access to records when such access has been granted by a system manager or designee:

(1) Inspection in person may be made in the office designated in the system notice during the hours specified by the OPM or the agency; or

(2) Records may be transferred, at the determination of the agency or OPM, to an agency or OPM office or other Federal facility more convenient to the data subject for review; or

(3) Generaly, agency and OPM offices will not furnish certified copies of records. Where copies of records are to be funished, they may be mailed at the request of the data subject or, as determined by the agency or OPM, only after payment of any fee levied in accordance with § 297.212 of this subpart is received.

(b) The Office or agency reserves the right to limit access to original records by furnishing copies. In no event shall original records be made available to an individual except in the presence of the system manager or designee. Title 18 U.S.C., section 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or attempt to do any of the foregoing.

(c) Special procedures may be applied when processing requests for:

(1) Medical records where the records contain information about medical conditions of such a nature that a prudent physician would hesitate to inform a person suffering from those conditions of their exact nature or probable outcome. If the procedures are to be applied, it shall be required that the information sought be released only to a licensed physician designated in writing for that purpose by the data subject or the data subject's authorized representative, parent, or legal guardian;

(2) Examination and related material shall be disclosed only under circumstances that maintain the integrity of the Office's competitive testing program. The test papers of a competitor may be released to the competitor only during the examination, except that upon request, the competitor's answer sheet may be reviewed by the competitor in the office where the examination was given, in the presence of an OPM employee. A copy of the answer sheet will not be made available to a competitor.

(d) During access, the OPM or agency official shall supply necessary information and assistance to the data subject. The OPM or agency official shall furnish copies of any releasable information for which the data subject requests copies (in accordance with § 297.212) and shall supply information and assistance to make the record(s) intelligible.

(e) The data subject, or the data subject's parent, legal guardian, or authorized representative may be accompanied by someone of his or her choice during personal access and shall authorize the presence of the accompanying individual in a signed and dated statement containing the name of the accompanying individual and a specific description of the record to which access is sought. Neither the data subject nor his or her representative shall be required to justify the decision to be accompanied during access to a record. Access in this instance includes discussion of the record in the presence of the accompanying individual.

§ 297.205 Denials of access requests.

(a) If an access request is denied, the system manager or designee shall give the requester the following information:

(1) The system manager's or designee's name, position title, and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate sections of the Act and this part; and

(4) The individual's opportunities for further administrative consideration, including the name, position title, and address of the OPM official responsible for the review as stated in § 297.206.

(b) Denial of a request for access to records will be made only by the system manager or designee and only upon a determination that:

(1) The record is subject to an exemption under § 297.304 of subpart C of this part when the system manager has elected to invoke the exemption;

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

(3) The data subject refuses to abide by special procedures for access to records enumerated in § 297.204(c).

§ 297.206 Request for administrative review of denial of access.

(a) For denials of access made under § 297.205(b) of this subpart, the following procedures apply:

(1) For denials made by the agency, when the record is maintained in one of the Office's Government-wide systems of records where the notice for that system has delegated to the agencies the authority to make initial decisions to grant or deny access, a request for administrative review of a denial shall be made only to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415; and

(2) For denials made by an OPM official, a request for administrative review of the denial shall be made only to the General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

(b) The OPM official shall acknowledge receipt of a request for administrative review of a denial of access within ten working days. A decision on the request should accompany this acknowledgement, whenever possible. If it is not possible to reach a decision within ten working days, the requester shall be informed of the approximate date (within thirty working days) when such a decision may be expected.

(c) To assure a fair and equitable decision, the OPM official will review the criteria, prescribed in § 297.205 of this part, which were cited as the basis for denying access, and may seek

additional information as deemed as necessary.

(d) When a decision is reached, the requester will be informed of the decision; the basis for the decision; the name, position title and business mailing address of the official responsible for the decision; what further action, if any, may be necessary on the part of the agency; and the requester's right to seek judicial review of the decision.

§ 297.207 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to two years from the date on which the cause for action arises or is discovered. Judicial review may be sought in the district court of the United States in the district in which the requester either resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.208 Request for amendment of record.

(a) Data subjects may request the amendment of their records in writing or in person by contacting the system manager or designee indicated in the notice of systems of records published by the Office in the Federal Register. Requests by mail will be expedited if the words "PRIVACY ACT AMENDMENT REQUEST" appear in capital letters on the face of the envelope and enclosed letter. Misaddressed or misdirected requests will be forwarded promptly to the proper office. Time limits prescribed in § 297.306 of subpart C of this part will be measured from receipt at the proper office. In each instance when a forwarded request is received, the receiving office shall notify the data subject that the request was improperly addressed or marked, and the date when the request was received in the proper office.

(b) A request for amendment should include the following:

(1) The precise identification of the records sought to be amended (for example, description, title, date, paragraph, sentence, line, and words);

(2) The specific material to be deleted, if any;

(3) The specific material to be added, if any, and the exact place at which it is to be added; and

(4) A statement of the reasons for the request, with all available documents and material that substantiate the request.

(c) If necessary, the official authorized to rule on a request for amendment may seek additional information pertinent to the request to assure that a fair, equitable, and accurate decision is reached.

§ 297.209 Response to request for amendment of records.

(a) The system manager or designee must respond in writing to the request for amendment of a record within ten working days of receipt. This response shall inform the requester of the decision, whenever possible.

(b) If the decision cannot be reached within ten working days, the requester shall be informed of the reason for delay and the date (within thirty working days) it is expected that the decision will be made.

§ 297.210 Request for administrative review of denial of an amendment.

(a)(1) A request for administrative review of agencies' denials to amend a record in an OPM system of records shall be addressed to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(2) A request for administrative review of a denial to amend a record by an OPM official shall be addressed to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) All requests for review of denials must be made in writing and signed by the data subject. Processing will be expedited if the words "PRIVACY ACT AMENDMENT APPEAL" appear in capital letters on both the envelope and at the top of the appeal papers. Misaddressed or misdirected requests will be forwarded immediately to the proper office. The time limit for response shown in section 297.308 will be measured from the time of receipt in the proper office.

(c) When a request for administrative review of an amendment denial is submitted, the individual must provide a copy of the original request for amendment, a copy of the initial denial, and a statement of the specific reasons why the initial denial is believed to be in error.

(d) When a decision is reached, the requester will be informed of the decision; the bais for the decision; the name, position title and business mailing address of the official responsible for the decision; what further action, if any, may be necessary on the part of the agency; and the requester's right to seek judicial review of the decision.

§ 297.211 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to two years from the date on which the cause for action arises or is discovered. Judicial review may be sought in the district court of the United States in the District in which either the requester resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.212 Fees.

(a) Generally, the policy of the Office is to provide the first copy of any record or portion thereof, furnished as a result of a Privacy Act request for access, at no cost to the data subject or authorized representative. However, in cases where the Office or agency deems it appropriate (e.g., where the record is voluminous) the system manager or designee at his or her discretion may charge a fee when the cost would be in excess of ten dollars ($10.00).

(b) The schedule of fees for duplication appears in Part 294 of this Chapter.

(c) Except as noted in paragraph (a) of this section, no fees shall be charged or collected from a data subject for the following: search for or retrieval of the data subject's records; review of the records; making a copy of a record when it is a necessary part of the process of making the record available for review; copying at the initiative of the Office or an agency without a request from the individual; transportation of the record; and making a copy of an amended record to provide the individual with evidence of the amendment.

(d) When a fee is requested, the check or money order shall be made payable to the Office of Personnel Management and sent to the appropriate system manager or designee.

§ 297.213 Disclosures generally prohibited.

Generally, the Office or any agency may not disclose any record in an OPM system of records to any person or another agency, other than the data subject, unless the disclosure is:

(a) Pursuant to the specific written statement of the data subject authorizing a representative to gain access to the data subject's record, as prescribed in § 297.201 of this subpart;

(b) To anyone or any other agency that requests the data, provided the prior specific written consent of the data subject is obtained;

(c) To a parent of a minor data subject or the legal guardian of a data subject in

accordance with 5 U.S.C. 552a(h) and § 297.201 of this subpart;

(d) Among the disclosures without prior consent of the data subject permitted by 5 U.S.C. 552a(b) (1) through (11), and as listed in § 297.503 of subpart E of this part; or

(e) Required by the Privacy Act and not covered explicitly by the disclosure provisions of 5 U.S.C. 552a(b). The situations referred to in this paragraph include the following:

(1) Pursuant to 5 U.S.C. 552a(c)(4), which in certain circumstances requires dissemination by the OPM or the agencies of an amended record or notation of disagreement statement; or

(2) Pursuant to 5 U.S.C. 552a(g), which authorizes an individual to institute a civil action and requires disclosure by the OPM or an agency to the court.

§ 297.214 Request for accounting of disclosures.

(a) Except for disclosures to agency officials who have a need for access to the record, to Office employees requiring access to the records, or required by the Freedom of Information Act, all disclosures from an OPM Government-wide system of records shall be accounted for by the keeping of a written record of the disclosure as outlined in § 297.506 of this part. An individual may request access to the accounting of disclosures of the individual's record by submitting a Privacy Act request for any such accounting to the appropriate system manager or designee for the appropriate system of records.

(b) The system manage or designee shall respond to such a request within ten working days and shall inform the requester, for each disclosure made: the description of the record disclosed; the date, method, and purpose of each disclosure; the name and address of the person to whom the disclosure was made; and the name and position title of the person making the disclosure.

(c) The only basis for denying access to any accounting of disclosure is where the disclosure was made under 5 U.S.C. 552a(b)(7). When the system manager or designee denies a request for any accounting of disclosure, the requester shall be informed of:

(1) Why the accounting of disclosure, although required to be maintained, does not have to be furnished;

(2) The name and position title of the system manager or designee making the denial; and

(3) The right of the requester to seek administrative review of that decision by contacting:

(i) The Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street NW, Washington, D.C., 20415, if an agency official denied access to the accounting of disclosure; or

(ii) The General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, if an OPM official denied access to the accounting of disclosure.

Subpart C—Agency Responsibilities for Processing Privacy Act Requests

§ 297.301 Responsibilities.

(a) All agencies are responsible for protection of individual privacy in their personnel management processes. Each agency is responsible for:

(1) Its internal systems of personnel records for which agencies have sole responsibility; and

(2) Government-wide systems of personnel records which the Office manages and for which agencies and OPM share responsibilities.

(b) The Office is responsible for describing the division of required Privacy Act functions between OPM and the agencies for the Government-wide systems of personnel records OPM manages. This division of functions is described in this part, and in Chapters 293 and 297 of the Federal Personnel Manual.

(c) The Office or agency must respond to all reasonable inquiries concerning the Privacy Act or the regulations contained within part 297.

§ 297.302 Verification of identity of requester.

The Office or agency shall verify the identity of an idividual either requesting access or amendment to the individual's own records or submitting a specific inquiry as defined and in accordance with requirements prescribed in § 297.201 of this part. Alternatively, the system manager or designee may accept other proof of identity commensurate with any unusual circumstances surrounding the request.

§ 297.303 Response to access requests.

(a) *Time limits.* The Office or agency must respond within ten working days after receipt by the system manager or designee to each specific inquiry or request for access. If the requested data or an answer to a specific inquiry cannot be furnished within the ten day period, the response will be sent within that time giving the status of the matter, the expected date the material or answer will be furnished, or requesting any additional information needed to process the specific inquiry or request for access. Action will be completed as soon as possible thereafter, but not later than thirty working days after receipt of the original specific inquiry, request for access, or receipt of the additional information that was requested.

In unusual circumstances and for good cause, an OPM or agency official may decide that action cannot be completed within 30 days. In such a case, the OPM or the agency official will advise the individual of the reason for the delay and the date by which action can be expected to be completed. Unusual circumstances would exist, for example, when the record must be retrieved from archival storage or requested from another agency, when a voluminous amount of material must be reviewed, or where information on other individuals must be separated or deleted from a particular record.

(b) *Granting of access.* The system manager or designee shall make the entire contents of the requested record available to a properly identified data subject or the data subject's authorized representative, except for data that:

(1) Is subject to a properly promulgated exemption and for which the exemption has been applied (§ 297.304)

(2) Requires special procedures for access (§ 297.204); or

(3) Is withheld in reasonable anticipation of a civil proceeding (§ 297.205(b)(2)).

Generally, the Office's policy is that there shall be no charge for the first copy of the information being requested. Thereafter, copies of the same records will be furnished on request in accordance with the fee schedule listed in Part 294 of this Chapter. The system manager or designee, at his or her discretion, can elect to furnish a copy of the material to the requester in person or by mail.

(c) *Denial of access.* Where it is necessary for the system manager or designee to deny access to all or any part of the requested record, the decision must be based on one of the reasons for denial set forth in § 297.205 of subpart B of this part. In addition to providing the requested information about the denial which is prescribed by paragraph 297.205(a) of this part, the Office or agency official claiming an exemption from the access provisions of the Privacy Act will:

(1) Inform the requester when any portion of the record is exempt and, where appropriate, clearly describe any material in the record that is exempt in its entirety, in such a manner that will enable the requester to know of the existence of such material and to be

able to sufficiently describe it in any request for review of the decision exempting it; and

(2) Inform the requester of the basis for any denial and his or her right to appeal the decision to exempt any part or all of the requested record, to the Assistant Director for Agency Compliance and Evaluation, in the case of an agency denial, and in the case of an OPM denial, to the General Counsel, Office of Personnel Management, 1900 E. Street, N.W., Washington, D.C. 20415.

§ 297.304 Exempt records.

(a) Several OPM Internal, Central, and Government-wide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6) may be claimed, the systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the Act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) Specific exemptions.

(1) Applicants for Employment Records (OPM/INTERNAL–9).

All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(2) Pre-employment Inquiry Records (OPM/INTERNAL–10). All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records.

These exemptions are claimed because this system contains investigatory material compiled solely for determining qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request the accounting of disclosures of the record or access to or amendment of the record.

(3) Personnel Research Test Validation Records (OPM/CENTRAL–3). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(4) Administrative Law Judge Applicant Records (OPM/CENTRAL–8).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purposes of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(5) Litigation and Claims Records (OPM/CENTRAL–9).

(i) When litigation or claims cases occur, information from other existing systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file the apporpriate exemption (5 U.S.C. 552a(k) (1), (2), (3), (5), or (6)) shall also apply to the material as it appears in this system. The exemptions shall be only from those provisions of the Act which were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6). Such material is exempt from the requirement of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to an amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(A) Such investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d);

(B) Such investigations may obtain from another Federal agency investigatory material compiled for law enforcement purposes other than material within the scope 5 U.S.C. 552a(j)(2), e.g., administration of the merit system. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of those records;

(C) Such investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. All

information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the requirements of 5 U.S.C. 552a (d), (e)(4)(H), and (f). Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records;

(D) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purposes of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source; or

(E) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examination process.

(6) Privacy Act/Freedom of Information Act Case Records (OPM/CENTRAL–10). In paragraphs (1) through (5) and (7) through (9) of this section, the Office has claimed exemptions for other of its systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6). During the course of a Privacy Act/Freedom of Information Act case (which may include access requests, amendment requests, and request for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records as they have in the original primary system of which they are a part.

(7) Personnel Investigations Records (OPM/CENTRAL–11). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3) (5), and (6) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act related to making accountings of disclosures available to the data subject and access to and amendment of records.

The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records, under 552a(c)(3) and (d).

(iii) Personnel investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, and access to and amendment of records.

These exemptions are claimed because this system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(v) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(8) Presidential Management Intern Program Records (OPM/CENTRAL–13). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(9) Recruiting, Examining, and Placement Records (OPM/GOVT–5).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for the purpose of determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To

the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record or access to or amendment of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualification for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

§ 297.305 Response to request for administrative review of denial of access.

(a) The Office will make every effort to reach a decision within ten working days on each request for administrative review of a denial of access. If a decision cannot be made within the ten day period, an acknowledgement will be sent within that time stating the status of the request, an expected date for the decision (within thirty days), or, if necessary, a request for any additional information required to complete processing of the request. A decision shall be reached within thirty working days after receipt of the original request or receipt of the additional information. In unusual circumstances and for good cause, the Office may decide that a decision cannot be reached within thirty days. In such a case, the Office will advise the requester of the reason for the delay and furnish a date by which the decision can be expected. Unusual circumstances would exist, for example when the record must be retrieved from archival storage or from various locations or when there is a voluminous amount of material to be reviewed.

(b) The requester shall be notified in writing of the Office's decision. If the decision upholds the denial for access, the reason for the decision must be given, along with the name and position title of the official responsible for the decision, and the procedures whereby the requester may seek judicial review of the decision. If the decision is to grant access to the material previously denied, the Office shall inform the requester of the action it has taken to provide the record previously withheld. The Office shall direct the system manager or designee to make available to the requester all or part of the data that was withheld. Where only part of the data originally withheld is to be granted on administrative review, then the Office shall inform the requester of the reasons for sustaining part of the denial, the name and position title of the official responsible for the decision, and the procedures whereby the requester may seek judicial review of the decision.

(c) The system manager or designee who issued the initial denial decision is responsible for providing the record which was the subject of the access request, and must otherwise cooperate with the reviewing official.

§ 297.306 Request for correction/amendment.

(a) Upon receipt of a request to correct or amend a record, when the Office or agency finds that the request is not in accordance with the requirements prescribed in § 297.206 of subpart B of this part, the Office or agency shall in writing, communicate this determination to the requester and solicit clarification. From the standpoint of meeting time limits, the request shall not be considered received until such clarifying information is received.

(b) The Office or agency must respond in writing to a request to amend a record within ten (10) working days. Where appropriate, a response indicating the decision of the Office or agency regarding the request to amend should be furnished at that time. Where a decision cannot be furnished within ten working days, the response shall acknowledge receipt of the request and shall inform the requester of the reasons for the delay, and the approximate date (within thirty working days) on which a decision will be issued.

(c) When the request for amendment is granted, the system manager or designee shall make the requested amendment, informing the individual in writing of this action, and provide either a copy of the amended record, or in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in computer media), a statement of how the amendment was effected. Further, the system manager must notify prior recipients of the record (recipients to whom information was disclosed for which an accounting of disclosure was made) of the amendment. Such notification shall inform the prior recipient of the amendment(s) made and that they are to apprise any other agency or person, to which they have disclosed the record, of the amendment(s) to the record. Also, the system manager or designee should, where practical, and where records are used in determinations concerning individuals, advise all other known holders of the record of the amendment. The requester shall be informed that prior recipients of the record have been requested to amend their copies of the record.

(d) When the request for amendment is denied, the system manager or designee shall inform the individual in writing that the request is denied and provide the following information:

(1) The system manager's or designee's name and position title;

(2) The reason for denial, including citation of the appropriate sections of the Act and § 297.307(c) of this subpart; and

(3) The procedures for requesting a review of the denial, including the name and address of the Assistant Director for Agency Compliance and Evaluation, or in the case of an OPM denial, the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, as appropriate (see § 297.210).

(e) In those circumstances where the request is partially granted and partially denied, inform the requester how the amendment has been partially effected (paragraph (c) above) and the basis for the denial of part of the request (paragraph (d) above).

§ 297.307 Basis for denials of request for amendments.

(a) The following criteria will be considered by the system manager or designee in reviewing initial requests for amendment of records:

(1) The sufficiency of the evidence submitted by the data subject;

(2) The factual accauracy of the information submitted and the information in the record;

(3) The relevancy, necessity, timeliness, and completeness of the information in light of the purpose for which it was collected;

(4) The degree of possibility that denial of the request could result in unfair determinations adverse to the data subject;

(5) The character of record sought to be amended;

(6) The propriety and feasibility of complying with specific means of amendment requested by the data subject; and

(7) The possible involvement of the record in a judicial or quasi-judicial process.

(b) An individual requesting an amendment of a record has the burden of supplying information in support of the propriety and necessity of the amendment request. The request would then be appropriate for resolution upon determination of the preponderance of the evidence. The Office or agency official is not required to gather supporting evidence for the individual and reserves the right to verify the evidence which the individual submits.

(c) Amendment of a record will be denied upon a determination by the system manager or designee that:

(1) The record is subject to an exeption from the provisions of the Privacy Act allowing amendment of records, and such exemption is claimed under § 297.304 of this part;

(2) The information submitted by the data subject is not accurate, relevant, or of sufficient probative value;

(3) The amendment would violate an enacted statute or regulation;

(4) The individual refuses to provide information which is necessary to process the request to amend the record; or

(5) The record for which amendment is requested is a record presented in a judicial or quasi-judicial proceeding, or maintained in anticipation of being used in a judicial or quasi-judicial proceeding, when such record is or will become available to the individual under that proceeding and may be contested during the course of that proceeding.

§ 297.308 Response to request for administrative review of denial of request for amendment.

(a) The Office shall respond in writing within ten working days to each request for administrative review of a denial of amendment. If a decision cannot be made within the ten day period, an acknowledgement letter will be sent within that time explaining the delay and furnishing an expected date for the decision. A decision on the request must be made within thirty working days after receipt of the request. Only for good cause shown, and at the discretion of the responsible OPM official, can this time limit be extended. Any extension requires written notification to the requester explaining the reason for the extension and furnishing a new expected date for the decision. Generally, such extension shall be for no more than an additional thirty working days.

(b) The requester shall be notified in writing of the Office's decision, and the responsible official shall:

(1) Grant the requested amendment in its entirety and notify the requester of all action taken to effect the amendment and to notify prior recipients of the record, (see § 297.306(c) for actions required); or

(2) Uphold the decision not to amend the record as requested and inform the requester of:

(i) the basis for the decision;

(ii) the name and position title of the official responsible for the decision;

(iii) the requester's right to file a concise statement of disagreement with the decision and the record contents as well;

(iv) the Office's or the agency's right, where appropriate, to attach the decision notice to the concise statement of disagreement; and

(v) the procedures whereby the requester may seek judicial review of the decision; or(3) Grant the requested amendment in part, and for that part granted, inform the requester as prescribed in paragraph (b)(1) of this section. For that part denied, inform the requester as prescribed in paragraph (b)(2) of this section.

(c) The system manager or designee who issued the initial denial decision is responsible for providing the record which was the subject of the amendment request, and must otherwise cooperate with the reviewing official.

Subpart D—Requirements for Recordkeeping Under the Privacy Act

§ 297.401 Responsibility for systems of records.

(a) The Office is responsible for the types of systems of records as shown in § 297.101 of this part.

(b) The Office shall be responsible for publishing the annual Federal Register notice of systems of records that will prescribe procedures for processing Privacy Act requests, and for issuing regulations for these systems. The Office also shall be responsible for all recordkeeping requirements prescribed in this subpart except for initial requests for access and amendment and for preparation and submission of the annual report for the Government-wide systems of records that agencies maintain.

(c) Agencies shall be responsible for processing initial requests for access and amendment for those Government-wide system of records identified as OPM/GOVT in the annual publication of system notices. When an agency denies access to or amendment of records in one of these Government-wide systems of records, the Office is solely responsible for any administrative review of that decision.

(d) Agencies shall include in their annual reports, in addition to that information required by the Office of Management and Budget dealing with their own systems of records, the information descriptive of its activities under the Privacy Act on the portions of the Government-wide systems of personnel records they maintain.

§ 297.402 Responsibility for litigation concerning the regulations.

In any litigation action arising out of the Privacy Act, where it is alleged that an agency is in violation of the Act because of its adherence to the regulations prescribed in this part, the Office and not the agency shall respond for the Government.

§ 297.403 Publication of annual notices.

(a) The Office will publish annually in the Federal Register, in the format prescribed by the General Services Administration, a notice describing the systems of records for which it is responsible. These include both the Government-wide systems and the OPM INTERNAL or CENTRAL systems listed in FPM Chapter 297. The notice will contain:

(1) The name and location(s) of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and purposes of such uses;

(5) The policies and practices regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The position title and business address of the OPM official(s) responsible for the system of records;

(7) The procedures an individual must follow to be notified if a system of personnel records contains a record about the individual;

(8) The procedures an individual must follow to gain access to a record about the individual in a system of records, and the procedures for amending its content;

(9) The categories of sources of records in the system; and

(10) Any exemptions from Privacy Act requirements which are claimed for the system.

(b) In publishing annual notices in the Federal Register for systems of personnel records for which they are responsible, agencies shall not publish system notices for any records which

are included in the Office's Government-wide systems of personnel records. Agencies may publish notices referencing the OPM Government-wide notices, which indicate the geographical locations for these records and the agency official(s) designated to handle requests for access or amendment.

§ 297.404 Reports on changes to systems of records.

(a) The Office shall provide to Congress and the Office of Management and Budget, advance notice of any proposal to establish or alter any OPM system of personnel records. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

(b) Agencies shall propose any changes to the Office's Government-wide systems or systems notices to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

§ 297.405 Penalties.

(a) The Privacy Act provides that, if an officer or employee of the Office or any agency willfully maintains a system of personnel records without meeting the notice requirements of this part, that individual may be guilty of a misdemeanor and fined not more than $5,000.

(b) Whenever an agency or an OPM official fails to adhere to the requirements of this part, and that failure adversely affects an individual, the individual may bring a civil action against the agency or the Office in the district court of the United States either in which the complainant resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.406 Changing or adding routine uses.

(a) Whenever a new routine use, or substantive change in an existing routine use, is proposed for one of the systems of personnel records for which the Office has published the system notice, OPM will publish in the Federal Register, in accordance with 5 U.S.C. 552a(e)(11), a notice of intention to establish a new or revised routine use. The notice will invite public comment thereon and shall contain the following information:

(1) The name of the system of personnel records for which the new or revised routine use is to be established;

(2) The authority for maintaining the system of personnel records;

(3) The categories of records maintained in the system;

(4) The proposed new or revised routine use or uses;

(5) The purpose of the new or revised routine use or uses; and

(6) The categories of recipients for each use.

This notice may be published at any time, but not less than 30 days prior to the next annual publication of notices.

(b) Agency requests for additional routine uses for one of the Government-wide systems of personnel records must be sent to:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(c) In publishing new or revised routine uses in the Federal Register, for systems of personnel records for which they are responsible, agencies may not unilaterally establish any routine uses for records in OPM's Government-wide systems of personnel records in addition to those published in the OPM notices for these systems. The Civil Service Reform Act, Pub. L. 95-454, requires OPM to review agencies' personnel policies and practices to ensure a civil service free from prohibited personnel practices and operating on legally mandated merit system principles. To facilitate these reviews of agency practices, agencies shall list OPM officials as routine users for appropriate agency internal personnel record systems.

§ 297.407 Providing Privacy Act Statements.

Agencies shall ensure that individuals from whom information is collected about themselves, when the information is to be maintained in an OPM Government-wide system of records, are informed of the authority and reasons for requesting the information, how it may be used, and what the consequences are, if any, of not providing the information. As a minimum, the individual should be given the following information in language which is explicit and easily understood and not so lengthy as to deter an individual from reading it:

(a) Cite the specific statute or Executive Order, including a brief title or subject, which authorizes the agency to collect the personal information it is requesting. Inform the individual whether or not a response is mandatory or voluntary and any possible consequences of failing to respond;

(b) Cite the principal purpose(s) for which the information will be used by the agency which maintains it; and

(c) Cite the probable routine uses for which the information may be employed. This may be a summary of the information published in the system notices.

§ 297.408 Annual Reports.

(a) By April 30th of each year, the Office will submit to the Office of Management of Budget, a report concerning activities under the Privacy Act of 1974 as they relate to OPM systems of personnel records for the preceding year.

(b) To the extent that agencies have physical custody of records in the Office's Government-wide systems of personnel records, and have the authority in some instances to grant access to and amend these records, agencies will include in their annual report to OMB, their Privacy Act activities involving these records as outlined in § 297.401(d) of this subpart.

§ 297.409 Annual notice to employees.

Agencies must provide, at the individual's request, and opportunity for an individual to review automated and manual personnel records that are maintained concerning the individual and that have the potential of being used in making a determination about the individual or being disclosed under routine uses outside the agency. Agencies, at least annually, must announce this opportunity by a notice to all employees.

Subpart E—Disclosures From Systems of Records

§ 297.501 Restrictions on disclosure of a deceased data subject's record.

Whenever a specific request is made for access to the record of a deceased data subject, the information requested will be disclosed unless it pertains to someone other than the data subject and disclosure would be considered to be a clearly unwarranted invasion of the living person's privacy or can otherwise be legally withheld.

§ 297.502 General written consent requirement.

The Office or agency is prohibited from disclosing a record, from a system of records without obtaining the prior written consent of the data subject, except as provided below.

§ 297.503 Disclosures permitted without prior written consent of the data subject.

Section 297.213 of this part described conditions under which disclosures of records could be made to parties other than the data subject. Among those conditions, § 297.213(e) refers to the

(b)(1) through (b)(11) provisions of the Privacy Act (5 U.S.C. 552a). These provisions are shown below and allow disclosure of records without the prior written consent of the data subject. The Office and agencies are permitted to disclose information from a system of records withot the prior consent of the date subject, whenever such disclosure is:

(a) To those officers and employees of the agency which maintain the record and who have a need for the record in the performance of their duties (includes disclosure of records to OPM officials from any Government-wide system maintained by agencies for the Office, e.g., disclosure of Official Personnel Folders);

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) Permitted by a routine use that has been published in the Federal Register;

(d) To the Bureau of the Census for purposes of planning or carrying out a Census or survey or related activity pursuant to the provisions of title 13;

(e) To a recipient who has provided the Office or an agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable. Assurance includes:

(1) a statement of the purpose for requesting the records; and

(2) certification that the records will be used only for statistical purposes;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health and safety of an individual (not necessarily the data subject). Upon such disclosure, the data subject must be notified in writing of the disclosure. This requirement is met when notification is transmitted to the last known address of the data subject;

(i) To either House of Congress, or to a committee or subcommittee (joint or of either House) to the extent that the subject matter falls within the jursidiction of the committee or subcommittee;

(j) To the Comptroller General, or any authorized representative of that office in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction, as defined in § 297.504 of this part.

§ 297.504 Disclosure pursuant to compulsory legal process.

(a) The Office or agency may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order issued by a court of competent jurisdiction, an administrative body of competent jurisdiction, Grand Jury, or quasi-judicial agency. For purposes of this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order shall be provided as soon as practicable after service of the order and shall be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart will consult legal counsel to ensure that the response is appropriate.

§ 297.505 Disclosure pursuant to a subpoena.

(a) The Office or agency may disclose, without prior consent of the individual, specified information from a system of records whenever such disclosure is pursuant to subponea issued in connection with a judicial or administrative proceeding.

(b) Before responding to a subpoena, an official with authority to disclose records under this part, will consult, as appropriate, with legal counsel to ensure that:

(1) The requested materials are not privileged and are relevant to the subject matter of the related judicial or adminstrative proceeding;

(2) Motion is made to quash or modify a subpoena that is unreasonable or oppressive;

(3) Motion is made for a protective order where necessary to restrict the use or disclosure of any information furnished for purposes other than those of the judicial or administrative proceeding; or

(4) Request for an extension, if needed, of the time allowed for response is made.

(c) If a subpoena for production of documents requests appearance of an agency employee, the reponse shall be to furnish certified copies of the appropriate records to the requesting party. In no event will original documents be released from the physical control of a responsible office or agency employee.

(d) If oral testimony is sought by the subpoena, an explanation by the party seeking the testimony which sets forth the testimony desired, must be furnished. The employee or former employee of the office who has been subpoenaed to provide material or information shall consult with legal counsel to determine the matters about which the employee may properly testify.

(e) In all situations concerning a subpoena or other demand for an employee of the Office or agency to produce any material or testimony relating to information contained in the files of the office or agency acquired as part of the employee's performance of his or her official duties, the employee shall not disclose the information without prior approval of the appropriate Office or agency official.

(f) If it is decided that the information or material should not be provided, the employee or former employee subpoenaed shall respectfully decline to comply with the demand on the basis of instructions from the appropriate office or agency official.

(g) When subpoenaed records concerning a non-party are subject to the Privacy Act, the disclosing official of the Office or agency shall be responsible for notifying the individual of the subpoena's issuance. Notice shall be mailed to the last known address of the individual and state the date the subpoena is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice shall be provided as soon as practicable after service of the subpoena.

§ 297.506 Accounting of disclosure.

(a) Whenever an accounting of disclosure is required, as stated in § 297.214 of this part, the accounting shall include:

(1) The description of the record disclosed;

(2) The name, position title, and address of the person to whom the disclosure was made;

(3) The method and purpose of disclosure;

(4) The name and position title of the person making the disclosure; and

(5) The date of the disclosure of the record.

(b) The Office or agency must record the accounting of disclosures and must retain this accounting for at least five years or the life of the record, whichever is longer. This accounting of disclosures may be maintained either in the record itself or elsewhere, and must be in a manner that permits an accurate and complete response to any proper request for an accounting of all disclosures made.

(c) Except for disclosures made under 5 U.S.C. 552a(b)(7) for law enforcement purposes, or disclosures from Office systems of personnel records for which an exemption from 5 U.S.C. 552a(c)(3) has been claimed, the accounting of disclosures is available to the data subject on request.

(d) For purposes of this subpart, the system of accounting of disclosures is not a system of records as defined in this part and no accounting need be maintained for disclosures of the accounting of disclosures.

§ 297.507 Penalties.

(a) Whenever the Office or agency fails to comply with any provision of this subpart in such a way as to have an adverse effect on a data subject, that data subject may bring civil action against the Office or agency.

(b) Whenever an Office or agency employee knowingly and willfully makes a disclosure to any person or agency not entitled to receive it, that individual may be guilty of a misdemeanor and fined not more than $5,000.

(c) Whenever a requester, or an Office or agency employee knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses, that individual may be guilty of a misdemeaner and fined not more than $5,000.

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Part III

Office of Personnel Management

Privacy Act of 1974; Proposed Revised Systems

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Proposed Revised Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed revision of existing systems of records.

SUMMARY: The Civil Service Commission published (43 FR 40106 et seq.) five Government-wide Notices of Systems of Records, identified as CSC/GOVT–1 through CSC/GOVT–5 and nine notices of internal systems. CSC–1 through CSC–9. These Government-wide and internal systems of records covered those records that were maintained both by the Commission and by agencies for the Commission. The purpose of this proposal is to identify administrative changes to these systems necessitated by the President's Reorganization Plans No. 1 and No. 2 of 1978, to clarify the language of several routine uses for these systems, and to add new routine uses to the systems that are compatible with the purposes for collecting and maintaining these records in order to facilitate implementation of the Civil Service Reform Act.

COMMENT DATE: Any interested party may submit written comments regarding these proposals. To be considered, comments must be received on or before June 28, 1979.

ADDRESS: Address comments to Deputy Assistant Director for Workforce Information (Room 6410), Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Agency Compliance and Evaluation (202) 254–9778.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978, Civil Service Commission oversight responsibilities for Federal Equal Employment Opportunity programs was transferred to the Equal Employment Opportunity Commission (EEOC). Equal Employment Opportunity discrimination complaint records relating to these functions, previously maintained both by the Civil Service Commission and by agencies for the Civil Service Commission, and Privacy Act responsibilities for such records were also transferred to the Equal Employment Opportunity Commission. Reorganization Plan No. 2 of 1978, which established the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM), resulted in transfer of Privacy Act control to MSPB for most records (both maintained at the Civil Service Commission and at agencies) related to appeals. The records covered were those that were formerly filed in the agencies prior to September 1974 or with the Commission's Federal Employee Appeals Authority and Appeals Review Board after that date.

Therefore, it is necessary to make certain administrative changes to the Government-wide system notices covering both of these types of records to identify these changes in the area of responsibilities. The revisions are specifically designed so as to continue coverage of records, under the concept of a Government-wide system of records, maintained by agencies, but subject to OPM, MSPB, or EEOC control, and for which agencies may not have published their own internal system notices. No agency will have to publish any new or revised agency systems notices as a result of these revisions to the Government-wide systems that will remain subject to OPM control. Both the Merit Systems Protection Board and the Equal Employment Opportunity Commission will be publishing notices for appeal files and discrimination complaint records respectively. During the interim period, these records will be covered by the former Civil Service Commission's CSC/GOVT–1 system notice.

Additionally, clarifying changes for the other former CSC Government-wide systems of records are proposed that are necessary both because of reorganization, and based on experience gained since the original Government-wide notices were published. These proposed changes: (1) identify those administrative changes, e.g., changes in the addresses and names of system managers, resulting from reorganization; (2) identify adverse action and grievance records as two separate record systems; and (3) remove two systems of records from the Government-wide category of record systems and place them in a new category of record systems that is identified as OPM/Central. Lastly, this notice contains proposed Internal and Central systems of records maintained by the Office of Personnel Management (OPM) that, pertain only to current and former OPM employees and applicants (Internal) and to any current and former Federal employees and applicants where only OPM maintains the records (Central). These systems are derived from and represent those records formerly covered under the CSC–1 through CSC–9 systems. Because some of the former CSC–1 through CSC–9 record systems continue to cover records on current and former employees or applicants no longer with OPM due to reorganization, these systems will remain in effect even after OPM adopts the proposed OPM specific systems, until other affected parties (MSPB & FLRA) are able to adopt internal notices of their own.

When the Civil Service Commission originally published its notices identifying systems of records as Government-wide in nature, the intention was to have a single system notice to cover those personnel records that the Commission required agencies to maintain, e.g., Official Personnel Folders, and for which the Commission, not the agencies, would have Privacy Act responsibility. Included in the Government-wide notices were CSC/GOVT-2 Confidential Employment and Financial Interest Statements and CSC/GOVT-4 Personnel Investigations Records. Because these systems contained records on both Commission and other agency employees, they were not identified as solely Commission records (CSC–1 through CSC–9). Since the only other type of system identified in the Commission's notices was the Government-wide systems, they were included in this grouping, even though these record systems did not strictly meet the definition of a Government-wide system, i.e., no agency kept these records under direction of the Commission. The records in these two systems were physically maintained only at the Commission.

It is proposed herein, therefore, to remove these systems from their present inappropriate grouping among Government-wide systems and to place them where they correctly belong, i.e., among the group of records identified as OPM/Central records. Within the OPM/Central systems, records on both OPM and other agencies employees are maintained, e.g., retirement records, position classification appeal records, and Presidential Management Intern Program records. Generally, agencies have published notices of their own internal systems containing: (1) records they keep pursuant to Executive Order 11222, covering those records that were filed directly with the agencies and were not required to be filed with the Commission (OPM); and (2) internal security records they maintain, in which the informational copy of the

Commission's (OPM) report of investigation (provided to agencies on a temporary basis), is retained along with agency-created security data. Therefore, these administrative changes should not require agencies to publish any new or substantially revised system notices.

The proposed OPM Internal and Central system notices represent those records that the Office of Personnel Management maintains on its own employees (OPM/Internal), and on OPM and other agencies employees (OPM/Central). These notices supersede only those portions (in some cases, the entire system, e.g., CSC-9) of CSC-1 through CSC-9 systems relating to OPM employees or applicants or where only OPM maintains physical control of the records in the system. These OPM Internal, Central, and Government records represent those administrative changes necessitated by reorganization and other clarifying changes considered essential to the public's understanding of the reasons for and uses of the records OPM maintains. These latter changes came about as a result of thorough examination of the records actually maintained by the Commission, and now maintained by OPM, and are designed to enhance public understanding through identification of separate types of records rather than lumping them together. While these changes are essentially administrative in nature, and involve additions of only a few new categories of records (e.g., records pertaining to action effected or proposed based on unacceptable performance), we believe that they do represent substantial changes to the prior CSC's systems of records within the meaning of OMB's guidelines for submission of a report on new systems. Therefore, a Report of New Systems that identifies all changes herein proposed has been filed, concurrent with this publication, with Congress and the Office of Management and Budget. The Office of Personnel Management has not requested a waiver of OMB's 60 day advance notice requirement and will announce adoption of these notices only after consideration of comments received and completion of the 60 day advance notice period. Until OPM announces adoption of these systems, the former CSC system notices continue to cover records maintained by OPM.

All system notices contain proposed changes in the language of the routine uses listed for the former CSC systems: these changes are designed to enhance understanding and, along with several proposed new routine uses, are compatible with the purposes for collecting and maintaining the records. The new routine uses will also permit appropriate disclosures of records that, pursuant to the Civil Service Reform Act, are necessary to ensure compliance with the mandates of that Act.

There appeared in the Federal Register of December 29, 1978 (43 FR 60983), a proposed new system of records to be known as OPM/GOVT-4, Ethics in Government Financial Disclosure Records. Pending public comment, this system, when adopted, will need no administrative changes of the type herein discussed. Therefore, that system notice does not appear with these notices. A notice appears elsewhere in this issue of the Federal Register regarding Office of Personnel Management proposed regulations implementing the Privacy Act and these notices. Adoption of these notices and those regulations will be announced by OPM only after the completion of the public comment period. Comments received which necessitate any changes will be accommodated, with resulting changes published in the Federal Register. Except for the OPM/GOVT-4 system notice mentioned above, the complete text of all other OPM system notices appears below.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

OPM/Internal—1 Defense Mobilization Emergency Cadre Records
OPM/Internal—2 Confidential Statements of Employment and Financial Interests
OPM/Internal—3 Negotiated Grievance Procedure Records
OPM/Internal—4 Security Office Control Cards
OPM/Internal—5 Employee Occupational Health Program Records
OPM/Internal—6 Pay, Leave, and Travel Records
OPM/Internal—7 Appeal and Administrative Review Records
OPM/Internal—8 Complaints and Inquiries Records
OPM/Internal—9 Applicants for Employment Records
OPM/Internal—10 Pre-employment Inquiry Records
OPM/Internal—11 Intergovernmental Personnel Act Assignment Records
OPM/Internal—12 Employee Incentive Award and Recognition Files
OPM/Internal—13 Employee Assistance Program Records
OPM/Internal—14 Federal Executive Development Program Records
OPM/Internal—15 Employee Locator Card Files
OPM/Internal—16 Employee Production Records
OPM/Internal—17 Investigator Performance Records
OPM/Internal—18 Speaker Resume and Clearance Records
OPM/Internal—19 Motor Vehicle Operator and Accident Report Records
OPM/Internal—20 Training Records
OPM/Internal—21 Performance Evaluation/Rating Records
OPM/Internal—22 Intern Program and Upward Mobility Program Records
OPM/Central—1 Confidential Statements of Employment and Financial Interests
OPM/Central—2 Complaints and Position Classification or Retained Rate of Pay Appeals Records
OPM/Central—3 Personnel Research Test Validation Records
OPM/Central—4 Civil Service Retirement and Insurance Records
OPM/Central—5 Federal Executive Development Program Records
OPM/Central—6 Executive Assignment and Inventory Records
OPM/Central—7 Intergovernmental Personnel Act Assignment Records
OPM/Central—8 Administrative Law Judge Application Records
OPM/Central—9 Litigation and Claims Records
OPM/Central—10 Privacy Act/Freedom of Information Act (PA/FOIA) Case Records
OPM/Central—11 Personnel Investigations Records
OPM/Central—12 Directory of Federal Executive Institute Alumni
OPM/Central—13 Presidential Management Intern Program Records
OPM/Central—14 Federal Automated Career System (FACS) Records
OPM/GOVT—1 General Personnel Records
OPM/GOVT—2 Grievance Records
OPM/GOVT—3 Records of Adverse Actions and Actions Based on Unacceptable Performance
OPM/GOVT—4 Ethics in Government, Financial Disclosure Records
OPM/GOVT—5 Recruiting, Examining, and Placement Records

Appendix

OPM/Internal—1

SYSTEM NAME:

Defense Mobilization Emergency Cadre Records.

SYSTEM LOCATION:

Office of Management, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional administrative offices. (See list

of OPM Regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Office of Personnel Management employees who are members of the Defense Mobilization Cadre.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the name, address, telephone number, date of birth, physical description, and private automobile information on each member of the Defense Mobilization Cadre.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Civil Defense Act of 1950 and Executive Order 11490.

PURPOSE:

These records serve to identify and register members of the various emergency cadres, both basic and supplemental. The originals and one copy of the records are maintained in the OPM's Mobilization Office files (alphabetically and by cadre) for administrative purposes. The third copy is sent to the OPM Relocation Site for use in granting access to the Site in the event cadre members must relocate under emergency conditions. Under emergency conditions, the records are a source of personal data for preparation of Emergency Assignee Identification Cards, carried by basic cadre Members to facilitate necessary travel under emergency conditions and formation of carpools as might be practical in the event of an emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are retrieved by individual name and emergency cadre.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an emergency cadre member. Expired records are burned.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system of records contains information about them should contact the Systems Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to records about them should contact System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201)

CONTESTING RECORD PROCEDURES:

Since all record information is provided by the individual employee who is the subject of the record, most record corrections can be handled through established administrative procedures for updating the records. However, Office employees wishing to contest records about them under provisions of the Privacy Act should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information is provided by the individual Office employee who is the subject of the record.

OPM/Internal—2

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests.

SYSTEM LOCATION:

Office of the General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Regular and special current and former employees of the Office of Personnel Management who have been required by the Director, OPM, under authority of Executive Order 11222, to file such statements.

Note—This system does not contain records on other current and former Federal employees who were specifically required by Executive Order 11222 or the Government in Ethics Act of 1978, Pub. L. 95-521, to file such reports only with the General Counsel of the former Civil Service Commission or with the Director, Office of Government Ethics, Office of Personnel Management. Such records are included in the OPM/Central-1 and OPM/GOVT-4 systems of records, respectively.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements of personal and family holdings and other interests in business enterprises and real property; listing of creditors and outside employment; opinions of counsel; and other information related to conflict of interest determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE:

These records are maintained to meet requirements of Executive Order 11222 regarding the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of

conduct for Government employees enumerated in the Executive Order and title 18 of the U.S. Code, and to determine if a conflict of interest exists between the employment of individuals by the Office of Personnel Management and their personal employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source where necessary to obtain information relevant to a conflict of interest investigation or determination.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are retained while the individual is employed and subject to the order and for 2 years after the individual separates. Records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals wishing to contest records about them under the provisions of the Privacy Act should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the subject individual or by a designated person such as a trustee, attorney, accountant, or relative; or

b. By Federal officials who review the statements to make conflict of interest determinations.

OPM/Internal—3

SYSTEM NAME:

Negotiated Grievance Procedure Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, and OPM regional administrative offices. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former OPM employees who file grievances under a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an employee's grievance filed under procedures established by labor-management negotiations. The records may include information such as: employee's name, social security number, grade, job title, employment history, arbitrator's decision or report, record of appeal to Federal Labor Relations Authority, and a variety of employment and personnel records associated with the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Civil Service Reform Act, Pub. L. 95-454.

PURPOSE:

These records are used to process an employee's grievance filed under a negotiated grievance procedure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Department of Labor in carrying out its functions regarding labor management relations in the Federal service.

b. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested in the course of resolving a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records on grievances processed under the negotiated grievance procedure are disposed of as negotiated by the parties to the contract.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals involved in a negotiated grievance are aware of that fact and have been provided access to the record. They may, however, contact the System Manager indicated above, or the OPM regional office where the grievance was processed, regarding the existence of such records about them. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Approximate date of closing of the grievance.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Individuals who file a grievance under a negotiated grievance procedure are aware of that fact and have been provided access to the record. However, after the grievance has been closed, an individual may request access to the official copy of the grievance record by writing the appropriate System Manager or OPM regional office, as indicated in the notification procedure. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Approximate date of closing of the grievance.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the appropriate System Manager or OPM regional office indicated in the notification procedure. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Date of birth.

c. Approximate date of closing of the grievance.

d. Organization component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained;

b. Testimony of witnesses;

c. Union officials;

d. Office of Personnel Management officials; or

e. Department of Labor, Federal Labor Relations Authority, or arbitration officials involved in the grievance.

OPM/Internal—4

SYSTEM NAME:

Security Office Control Cards.

SYSTEM LOCATION:

Office of Management, Office of Personnel Management, 1900 E Street, NW., Washington, D. C. 20415 and OPM Regional Offices (see addresses listed in Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Central office employees of the Office of Personnel Management for whom there is an investigative file. The system also contains cards on employees stationed in OPM Regional offices for whom the appointing authority is retained in the Central Office, and for whom there is an investigative file.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of cards, filed alphabetically, containing date and place of birth as well as position sensitivity, types and dates of investigations, and dates and levels of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and Executive Order 11652.

PURPOSE:

These records are used exclusively by OPM Security Officers and the employees of Security Offices for administrative reference in connection with controlling position sensitivity and personnel clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There are no uses of this information outside the security office, except to provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are stored on cards.

RETRIEVABILITY:

Records are retrieved by the name and date of birth of the individuals on whom they are maintained.

SAFEGUARDS:

The cards are stored in a fire-resistant safe contained within a secured area. These cards do not leave the security office.

RETENTION AND DISPOSAL:

Records are retained for one year after the individual leaves the Office and then are disposed of by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above.

Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. The Office's investigative files maintained by the Personnel Investigations Division.

c. Employment information maintained by the Office's Director of Personnel.

d. Officials of the Office of Personnel Management.

OPM/INTERNAL—5

SYSTEM NAME:

Employee Occupational Health Program Records.

SYSTEM LOCATION:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, and OPM St. Louis Regional Office. (See address of St. Louis OPM Regional Office in the Appendix.) Other OPM regional and area office health unit services are provided by other agencies, such as the Public Health Service or the General Services Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are those of the following who have received health services under the Federal Employee Occupational Health Program.

OPM central office:

a. Office of Personnel Management Central Office employees (whether actually employed at 1900 E Street, NW. or elsewhere in the Washington, D.C. area), who have received health services at the OPM Health Unit.

b. Employees of other organizations located in the OPM Building at 1900 E Street, NW., who have received health services at the Office of Personnel Management Health Unit. These organizations include the Presidential Committee on White House Fellowships, and the Presidential Committee on Personnel Interchange.

OPM St. Louis Regional Office:

a. OPM St. Louis regional office employees who have received health services at the St. Louis Federal Employee Health Clinic.

b. Employees of other St. Louis area Federal installations that participate in the St. Louis Federal Employee Health Clinic located at 1520 Market Street, St. Louis, Missouri, who have received health services.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of employee utilization of services provided under the Office's Occupational Health program. These records contain the following information:

a. Medical history and other biographical data on those individuals requesting employee health maintenance physical examinations.

b. Tests reports and medical diagnosis based on employee health maintenance physical examinations or health screening program tests (tests for single medical conditions or diseases).

c. History of complaint, diagnosis, and treatment of injuries and illnesses cared for at Health Unit.

d. Vaccination Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, as further defined in OMB Circular No. a–72.

Purpose: These records document employee utilization of health services provided under the Office's Occupational Health Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency, concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To disclose information to the Office of Workers Compensation Programs in connection with a claim for benefits filed by an employee.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on cards and in folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained, and, in the St. Louis Federal Employee Health Clinic, by employing agency and the individual's name.

SAFEGUARDS:

These records are maintained in a secured room, with access limited to Health Unit personnel whose duties require access.

RETENTION AND DISPOSAL:

Records of the OPM Central Office Health Unit are maintained up to 6 years from the date of the last entry. Employees are given records at request upon separation; otherwise records are burned approximately three months after separation.

Records maintained by the St. Louis Federal Employee Health Clinic are retained until the employee terminates employment with a participating agency and 5 years have elapsed since the date of last entry. Expired records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records maintained at the Office's Health Unit in Washington, D.C.: Chief Medical Division, Associate Director for Compensation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

b. For records maintained at the St. Louis Federal Employee Health Clinic: Regional Director, Office of Personnel Management, St. Louis OPM Regional Office. (See regional office address in the Appendix.)

NOTIFICATION PROCEDURE:

Individual wishing to inquiry whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

d. Name of employing agency and dates of employment (for records held by the St. Louis Federal Employee Health Clinic.)

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

d. Name of employing agency and dates of employment (for records held by the St. Louis Federal Employee Health Clinic.)

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

d. Name of employing agency and dates of employment (for records held by the St. Louis Federal Employee Health Clinic.)

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information pertains.

b. Laboratory reports and test results.

c. OPM Health Unit physicians, nurses and other medical technicians who have examined, tested, or treated the individual.

d. The indiviudal's co-workers or supervisors.

e. The individual's personal physician.

f. Other Federal employee health units.

OPM/INTERNAL—6

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and the OPM office where the individual is currently employed, for use by timekeeper, budget and finance, or travel personnel. (See list of OPM Regional Office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Personnel Management.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave, and travel. This includes information such as: name, date of birth, social security number, home address, grade, employing organization, timekeeper number, salary, pay plan, number of hours worked, leave accrual rate, usage, and balance; Civil Service Retirement contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employee's Group

Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bond allotments; union and management association dues withholdings allotments; and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a; 5 U.S.C. 5501 et seq., 5525 et seq., 5701 et seq., and 6301 et seq.; Executive Order 9397.

PURPOSE:

These records are used to administer the pay, leave and travel requirements of the Office of Personnel Management. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Department of the Treasury to issue checks and U.S. Saving Bonds.

b. By the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

c. By state offices of unemployment compensation in connection with claims filed by former Office employees for unemployment compensation.

d. By Federal Employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

e. To disclose information to the Internal Revenue Service and state and local tax authorities.

f. To provide officials of labor organizations recognized under the Civil Service Reform Act with information as to the identity of Office employees contributing union dues each pay period and the amount of dues withheld from each contributor.

g. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose information to any source from which additional information is requested relevant to an Office determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

j. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

k. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

l. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

m. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

n. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

o. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

p. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

q. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and loose leaf binders and on cards and magnetic tapes.

RETRIEVABILITY:

These records are retrieved by the names, Social Security Numbers, or Office of Personnel Management employee identification numbers of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, in accordance with GSA General Records Schedule 2. Disposal of manual records is by shredding or burning; magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information on them should contact the System Manager indicated above, or the OPM regional office where the individual is or was employed. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Office of Personnel Management employment identification number.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above, or the OPM regional office where the individual is or was employed. Individuals must provide the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Office of Personnel Management employment identification number.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identify (5 CFR 297.203 or 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager indicated above, or the OPM regional office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Office of Personnel Management employment identification number.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment to records and verification of identify (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. The individual to whom the record pertains.

b. Office of Personnel Management officials responsible for pay, leave, and travel requirements.

c. Other official personnel documents of the Office.

OPM/Internal—7

SYSTEM NAME:

Appeal and Administrative Review Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, or OPM regional offices: (See OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Personnel Management.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to various appeal or administrative review procedures available to OPM employees. These appeals or administrative review procedures include adverse action appeals initiated prior to September 9, 1974 which were processed under the Office's internal appeals system; reconsiderations of acceptable level of competence determinations for within-grade increases; impartial reviews of performance ratings; and internal appeals of position classification decisions. The system also contains records and documentation of the action upon which the appeal or review procedure was based (e.g., 90-day notices of warning of unsatisfactory performance rating).

Note.—This system does *not* include:

a. Appeal or complaint records covered by the Merit Systems Protection Board's system of Appeals Records; or

b. Records for grievances processed under the grievance system negotiated by the Office and a recognized labor organization, which are covered under the OPM/INTERNAL–3 Negotiated Grievance Procedure Records system:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 4305, 5115, 5335, 7501, 7512, and Executive Order 10577.

PURPOSE:

These records are used to process the various appeals or administrative reviews available to the Office employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under the Civil Service Reform Act, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practicies, and matters affecting working conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Adverse action appeals initiated prior to September 9, 1974 which were processed under the Office's internal appeals systems are retained for 7 years after the closing of the case. Other

records in the system are maintained for a maximum of 4 years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. They may, however, contact the System Manager indicated above, or the OPM regional office where the action was processed, regarding the existence of such records about them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an appeal or administrative review procedure record by contacting the System Manager or appropriate OPM regional office as listed in the Appendix. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 or 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager or appropriate OPM regional office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organization component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. The individual to whom the records pertain.

b. OPM officials involved in the appeal or administrative procedure.

c. Other official personnel records of the Office.

OPM/INTERNAL—8

SYSTEM NAME:

Complaints and Inquiries Records

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415 and OPM regional personnel offices. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OPM employees about whom complaints or inquiries have been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information or correspondence concerning an individual's employment status or conduct while employed by the Office. Examples of these records include: correspondence from Federal employees, members of Congress, or members of the public alleging misconduct of an OPM employee; miscellaneous debt correspondence received from creditors; and miscellaneous complaints not covered by the Office's formal or informal grievance procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE:

These records are used to take action on or respond to a complaint or inquiry concerning an OPM employee or to counsel the employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an OPM decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on cards and in file folders which are separate from the employee's Official Personnel Folder.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

These records are disposed of upon the transfer or separation of the employee or after 1 year, whichever is earlier. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system contains information about them should contact the System Manager or the appropriate OPM regional personnel office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to their records should contact the System Manager or the appropriate OPM regional personnel office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Office employees wishing to request amendment of their records should contact the System Manager or the appropriate OPM regional personnel office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal employees, Members of Congress, creditors, or members of the public who submitted the complaint or inquiry.

c. Office officials.

d. Other sources from whom information was requested regarding the complaint or inquiry.

OPM/INTERNAL—9

SYSTEM NAME:

Applicants for Employment Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington D.C. 20415, and OPM regional personnel offices. (See list of OPM regional office addresses in the appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment in the Office Personnel Management.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to an individual who has applied for a position or employment in the Office of Personnel Management. The records include information such as: the individual's education and training; employment history and earnings; Social Security Number; home address; legal residence; birth date; birthplace; honors, awards, or fellowships; military service; veterans preference; convictions of offenses against the law; names of relatives employed in the Federal service; test records; date of application; qualification determinations; employment consideration; priority grouping; and other information or correspondency relating to the consideration of the individual for employment. This system includes any OPM applicant supply files established for making appointments outside a register; appointments to the excepted service; or reassignments, promotions, reinstatements, or transfers of Federal employees into position at the Office.

Note.—This system does not include recruiting and examining records on applicants for general Federal employment. Such records are covered by the OPM/GOVT–5 system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302; and Executive Order 10577.

PURPOSE:

These records are used to consider individuals who have applied for a position or employment with the Office of Personnel Management. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classfying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. In contracting persons named as references, and present or former supervisors, for purposes of commenting upon, rating, or verifying information about past performance submitted as part of job applications.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on cards.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in secured rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Applications from individuals who are selected for positions at the Office are placed on the permanent side of the employee's Official Personnel Folder. Applicant supply records maintained in accordance with Federal Personnel Manual chapter 333 are disposed of after two years or after inspection of the Office's personnel program, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of the notice titled *Systems exempted from certain provisions of the Act*, which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their nonexempt records should contact the System Manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of the notice titled *Systems exempted from certain provisions of the Act*, which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact an OPM office where his or her application or other record in this system is filed at any time to update qualifications, experience, or education. Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of their non-exempt records under provisions of the Privacy Act should contact the System Manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom the information pertains, by OPM officials, or by other sources contacted to provide additional information about the individual under appropriate routine uses listed above in the notice.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

OPM/INTERNAL—10

SYSTEM NAME:

Pre-employment Inquiry Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional personnel offices of the OPM. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment with the Office, about whom the Office's operating personnel offices have gathered information for the purpose of making a selection for employment with the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an individual's qualifications for employment in terms of character, reputation, and fitness; including letters of reference, responses to pre-employment inquiries, qualifications and character information, and other information which may relate to the specific selection factors associated with the position sought.

Note.—This system does not include the investigative records of the Office's Division of Personnel Investigations, which are covered by the OPM/CENTRAL–11 system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302, and 7301; and Executive Orders 10577, 11222, and 9397.

PURPOSE:

These records are used by Office appointing and selecting officals to examine individuals seeking employment by consideration of factors present in such records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the hiring or retention of an employee. the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work forces studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on cards or in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in locked metal file cabinets or in secured rooms with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records for individuals who are selected for positions at the Office may be disposed of after the individual is appointed, or they may be retained for one year or until the employee separates, whichever is earlier. Records for other applicants are retained while the individual is under consideration for employment and are disposed of when the individual's application for employment is disposed of (see OPM/INTERNAL–9 system on Applicants for Employment Records). Disposal of records is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager or the appropriate OPM regional personnel office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

RECORD ACCESS PROCEDURES:

Certain materials in this system have been exempted from Privacy Act requirements regarding access to records at 5 U.S.C. 552a (c)(3) and (d). The section of this notice titled *Systems exempted from certain provisions of the Act*, which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to gain access to other, non-exempt information in the system should contact the System Manager or the appropriate OPM regional personnel office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

Individuals requesting access must comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Certain materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act*, which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request

amendment of other, non-exempt information in the system, should contact the System Manager or the appropriate OPM regional personnel office as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

Individuals requesting amendment must comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual to whom the information pertains.

b. By OPM officials.

c. By sources from whom information was requested, such as former employers, references, or schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigatory material compiled during the pre-employment inquiry stage of the selection process and designed solely for the purpose of determining eligibility or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

a. reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. reveal the identity of the source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

For material in this system meeting these criteria, the Office has claimed the (k)(5) exemption from the following provisions of the Act:

a. 5 U.S.C. 552a(c)(3)—This provision concerns providing an accounting of disclosures to the individual whom the records are about; and

b. 5 U.S.C. 552a(d)—This provision regards access to and amendment of records.

OPM/INTERNAL—11

SYSTEM NAME:

Intergovernmental Personnel Act Assignment Records

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional offices. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Current and former Office of Personnel Management employees who have completed or are presently on an assignment with a state or local government, educational institution, or an Indian tribal government under the provisions of the Intergovernmental Personnel Act (IPA); and

(b) Current or former State or local government or educational institution employees, or members of Indian tribal governments, who have completed or are presently on an assignment in the Office of Personnel Management under the provisions of the Intergovernmental Personnel Act (IPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records are comprised of a copy of the indiviudal's IPA assignment agreement between the Office of Personnel Management and a State or local government, educational institution, or Indian tribal government; biographical and background information about the assignees; and records of interviews with assignee(s) which may be conducted after the IPA assignment has been completed. The records also include correspondence between the participating agencies or institutions regarding the individual's assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intergovernmental Personnel Act of 1970 (84 Stat. 1909), 5 U.S.C. 3371–3376, and E.O. 11589.

PURPOSE:

These records are maintained to formally document the mobility assignment of an individual between the Office of Personnel Management and a state or local government, an educational institution, or an Indian tribal government under the IPA. The assignment agreement also establishes the legal basis for personnel and financial transactions (e.g., life insurance and health benefits coverage, pay and leave arrangements) which facilitate the individual's temporary assignments (including extensions, modification, or terminations thereof), and to assure that the provisions of the IPA Grant Program are properly administered. Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual,

inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an Office decision regarding possible termination of an assignment or a grant under the IPA program.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards and in file folders.

RETRIEVABILITY:

Records are indexed by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are filed alphabetically by year. They are retained for 5 years, and are disposed of by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above or appropriate OPM regional office to or from which the assignment was made. (See list of OPM regional office addresses in the Appendix.) Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above or appropriate OPM regional office to or from which the assignment was made. (See list of OPM regional office addresses in the Appendix.) Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual must also follow the Office's Privacy Act regulations regarding access to records and proof of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above or appropriate OPM regional office to or from which the assignment was made. (See list of OPM regional office addresses in the Appendix.) Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in these records is provided by the individual subject of the records, by officials in the agencies, educational institutions, or Indian tribal governments where the individual is employed and where the individual is serving on the IPA assignment; or is obtained from agency personnel files and records.

OPM/INTERNAL—12

SYSTEM NAME:

Employee Incentive Award and Recognition Files.

SYSTEM LOCATION:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM administrative and regional offices. (See list of OPM regional offices addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees who have filed suggestions or who were nominated for cash awards for performance, honorary awards under the Incentive Awards Program, and quality step increases.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include:

a. Copies of the employee's suggestion, and information relating to the Office's disposition of the suggestion, including amounts of awards for adopted suggestions, evaluations, and amounts of benefits to the Government.

b. Information related to the nomination of an employee for a cash award for performance, an award under the Incentive Awards Program, or for a quality step increase, including justifications submitted with the nominations and the Office's disposition of the nominations.

c. Identifying information regarding the employee, including name, grade, occupation, and employing unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501 et seq. and 5 U.S.C. 5336.

PURPOSE:

These records are collected and maintained to provide a basis for granting recognition to Office employees in accordance with the provisions of the Office's Incentive Awards plan or for quality step increases; to document employees' contributions to the Suggestion Program; and to determine and verify employees' eligibility for subsequent awards. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public (Federal, State, or local) or private organizations, including news media, which grant or publicize employee awards or honors.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the adoption

of a suggestion or the approval of the employee's nomination for an incentive award or quality step increase.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on cards, forms, or in file folders.

RETRIEVABILITY:

Records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to those whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for 4 fiscal years. Expired records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above, or the appropriate OPM regional office where the employee filed a suggestion or was nominated for an award or quality step increase. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. The Office of Personnel Management office with which employed at time of suggestion, award, or quality step increase.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System manager indicated above, or the appropriate OPM regional office where the employee filed a suggestion or was nominated for an award or quality step increase. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. The Office of Personnel Management office with which employed at time of suggestion, award, or quality step increase.

An individual must also follow the Office's Privacy Act regulations regarding access to records and proof of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to records about them should contact the System Manager indicated above, or the appropriate OPM regional Office where the employee filed a suggestion or was nominated for an award or quality step increase. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. The Office of Personnel Management office with which employed at time of suggestion, award, or quality step increase.

An individual must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. Employee who filed the suggestion.

b. Individuals who nominated the employee for an incentive award, or quality step increase.

c. The Office of Personnel Management officials who review suggestions, awards, or quality step increase nominations.

d. Other sources which the Office believes have information relevant to an agency decision on an award or adoption of a suggestion, or granting a quality step increase.

e. Personnel documents of the Office.

OPM/INTERNAL—13

SYSTEM NAME:

Employee Assistance Program Records

SYSTEM LOCATION:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional and area personnel offices. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Office employees who have been counselled for abuse of alcohol or drugs, or personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

These are records of employees' visits to the Employee Assistance Program Counsellors to receive counselling on drug abuse, alcoholism, or behavioral or emotional problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1108, 42 U.S.C. 4561, 44 U.S.C. 3101, and Public Laws 91–616 and 92–255.

PURPOSE:

These records are used to document the nature of the individual's problem and progress and, when necessary, to refer individuals to appropriate community or private resources for treatment or rehabilitation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Department of Justice or other appropriate Federal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Office in connection with such individual.

Such disclosures will be restrictively made; in particular, disclosures of information pertaining to an individual with a history of alcohol or drug abuse will be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records regulations, 45 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets with access limited to the Employee Assistance Program coordinator.

RETENTION AND DISPOSAL:

Records are maintained for 1 year after the employee's last contact with the counsellor, or until the employee's separation or transfer, whichever comes first. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system of records contains information about them should contact the Employee Assistance Program Coordinator at the office where the counselling took place (see list of OPM regional office addresses in the Appendix). Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to records about them should contact the Employee Assistance Program Coordinator at the office where the counselling took place (see list of OPM regional office addresses in the Appendix). Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

An individual must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORDS PROCEDURES:

Office employees wishing to request amendment to records about them should contact the Employee Assistance Program Coordinator at the office where the counselling took place (see list of OPM regional office addresses in the Appendix). Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

An individual must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies and the Employee Assistance Counsellor who records the counselling session.

OPM/INTERNAL—F14

SYSTEM NAME:

Federal Executive Development Program Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office of Personnel Management employees at the GS–15 or equivalent level, who applied for the Federal Executive Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards, and career interests of applicants, their agency recommendations for the program, and supervisory evaluations.

Note.—This system does not include records of the evaluation process used by the selection panel in choosing the finalists, and data on assignments and progress under the program. Such records are maintained in the OPM/CENTRAL–5 system of Federal Executive Development Program Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 11315, 12027, and 9397.

PURPOSE:

These records are maintained and used by the Office to nominate employees for the Federal Executive Development Program. When an employee is accepted for the Program, the records may be used to arrange work assignments, and to monitor progress on assignments under the program. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to agencies in which the selected employee is or will be performing work assignments under the Program.

c. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a

way as to make the data individually identifiable by inference.

d. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2096.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are kept in locked cabinets and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are filed alphabetically by year. They are retained for five years, and are disposed of by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should address their inquiries to the System Manager. Individuals must furnish the following information for their recordsto be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

RECORD ACCESS PROCEDURES:

Individual wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, his or her supervisors and other management officials, or is obtained from agency records.

OPM/INTERNAL—15

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Personnel and administrative offices of the Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415, and OPM regional and area offices. (See list on OPM regional office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Personnel Management.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual Office employees. The system also contains the home address and telephone number of the employee, and the name, address, and telephone. number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE:

Information is collected for this system for use in preparing telephone directories of the extensions of Office employees. The record also serves to identify an individual for Office officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are retrieved by the name of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in secured areas and are available only to

authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of the Office of Personnel Management. Expired records are destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Office employees wishing to inquire whether this system contains information about them should contact the appropriate OPM administrative officer where employed. Individuals must supply the following information for their records to be located and identified:

a. Full name.

RECORD ACCESS PROCEDURES:

Office employees wishing to request access to records about them should contact the appropriate OPM administrative officer where employed. Individuals must supply the following information for their records to be located and identified:

a. Full name.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Office employees may amend information in these records at any time by resubmitting the cards. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the appropriate OPM administrative officer where employed. Individuals must furnish the following information for their recores to be located and identified:

a. Full name.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information is provided by the individual who is the subject of the record.

OPM/Internal—16

SYSTEM NAME:

Employee Production Records.

SYSTEM LOCATION:

Central operating offices of the Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415; OPM regional Transcription Centers at the OPM regional office addresses listed in the Appendix; and OPM regional operating offices at the addresses listed in the Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All OPM employees whose position duties require a daily average production rate, e.g., dictating machine transcribers and employees involved in processing retirement claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of records of daily average production rates for each affected employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

These records are maintained for purposes of determining eligibility for promotions to grade levels which require certain minimum average production rates. They may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to another Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

b. By the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

d. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are maintained in looseleaf notebooks and file folders.

RETRIEVABILITY:

Retirement employee records are retrieved by GS grade and by the name of the individual on whom they are maintained; other records (on transcriber, clerical and other personnel) are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in lockable drawers with access limited to the employee's supervisor or other management officials whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 3 years and are destroyed by burning, shredding, or pulp maceration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW. Washington, D.C. 20415 for production records on employees of that office; Chief, OPM Regional Investigation Division (see OPM regional office addresses listed in the Appendix) for Transcription Center records; Director of the OPM Regional Office at the addresses listed in the Appendix, for other production records maintained in the regions; and appropriate Associate or Assistant OPM directors, for records maintaned in the Central offices.

NOTIFICATION PROCEDURE:

OPM employees wishing to inquire whether this system contains records on them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. GS grade.

RECORDS ACCESS PROCEDURES:

Individual wishing to request access to records about them should contact the appropriate System Manager indicated above. Individuals must provide the following information for their records to be located and identified:

a. Full name.

b. GS grade.

Individuals requesting access must also follow the Office's Privacy Act

regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. GS grade.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Records are derived from production counts maintained by the employee and from the employee's supervisor.

OPM/Internal—17

SYSTEM NAME:

Investigator Performance Records.

SYSTEM LOCATION(S):

These records are located at Office of Personnel Management regional investigations division offices, the Washington Division of Investigations, and at the duty stations of supervisory investigators. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office of Personnel Management investigators (includes investigative records officers and supervisory investigators) and investigative technicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: work performance records; their analysis and evaluation; records of training completed and projected training needs; records of counseling; special assignment and travel records; availability and qualifications for special assignments; motor vehicle accident records; authorization for travel, for use of government-owned vehicles, and other special authorizations; commendations, awards, and deficiencies; personal and locator data for locator purposes; salary; records of miscellaneous expenses and mileage; and work progress and production records.

At supervisory locations remote from the Official Personnel Folder, these files may also include the following kinds of records: statements of experience and qualifications; past and present grades; and copies of personnel actions including appointments, reassignments, demotions, details, promotions, transfers, and separations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 1302, 4118, 4303, 4506.

PURPOSES OF THE SYSTEM:

Records are maintained in this system to accomplish the following purposes:

a. The effective management of the Office's investigations program;

b. The proper assignment, transfer, promotion, detail, training, and reassignment of investigators;

c. The completion of required performance ratings and appraisals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By an agency, office, or other establishment in the executive, legislative, or judicial branch of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

b. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

c. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

g. To the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders; locator information may be on file cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are located either in cabinets equipped with drop bar and combination locks; in three-position lock reinforced metal cabinets; or in key lock file cabinets. Access is restricted to the supervisory and management investigative staff or to those employees assigned to act in support of this staff.

RETENTION AND DISPOSAL:

Generally, the record is maintained during the period of the individual's service with the Office's investigations program and is destroyed by burning or

shredding one year after separation from the program. Items in an individual's record having continuing uses such as statements of special qualifications, training, or awards, are maintained for the life of the file. Items reflecting the individual's status, such as salary or special authorizations, are maintained while timely. Items that report appraisals and evaluations, information supporting those appraisals and similar items are retained for two years plus the current year and are then destroyed. Records or routine travel, expenses, and work progress are destroyed after six months.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Investigations Division, Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains a record on them should contact the appropriate office as follows:

a. Current OPM non-supervisory investigators should contact the supervisory investigator to whom assigned.

b. Former OPM investigators and current OPM supervisory investigators should contact the Chief of the Investigations Division to whom last or currently assigned at the OPM regional offices (see OPM regional office addresses in the Appendix.)

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of last investigations assignment.

c. Duty location of last or present investigations duty station.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate office and individual set forth under "Notification procedure." Individuals must supply the following information for their records to be located and identified:

a. Full name.

b. Date of last investigations assignment.

c. Duty location of last or present investigations duty station.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of last investigations assignment.

c. Duty location of last or present investigations duty station.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Supervisory and other observations of work performance.

c. Official notices of personnel actions.

d. Correspondence from persons with whom the individual has had work contact.

OPM/Internal—18

SYSTEM NAME:

Speaker resume and Clearance Records.

SYSTEM LOCATION:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415, and OPM Regional Training Centers. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Faculty members, subject matter experts, consultants, and teachers who have been cleared by the Office's Personnel Investigations Division (PID) and with whom the Office may contract to deliver training courses or portions thereof.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include resumes, faculty data sheets, and verification of the individual's investigative clearance which has been prepared by PID. The records may include name and address(es) of the individual, date and place of birth, date of security clearance, courses taught, with date, location, and amount paid in chronological order. Records maintained centrally by the Office contain only name, date and place of birth, home address, occupation, date of clearance, and the training center or region which requested clearance.

Note.—Any detailed investigative records are maintained by PID. See the notice for the OPM/Central—11 system, Personnel Investigations Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4107.

PURPOSE:

These records are used to identify and contact potential speakers and instructors of Office of Personnel Management training programs. Prior to issuance of a speaker contract, the speaker clearance file is checked to determine if the individual has been cleared to speak at regional or central office training courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination

and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on index cards, or in file folders and binders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are located in lockable metal filing cabinets or in secured rooms with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained as long as the individual is actively utilized in the training program. Clearances are valid for 3 years, and records are reviewed at that time for reclearance. Records on speakers not used during the three years are retained for a maximum of 2 more years, then are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records maintained centrally: Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

b. For records maintained by Regional Training Centers: Manager, Regional Training Center at which individual is being considered for speakership or contract. (See list of OPM regional office addresses in the Appendix.)

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Place of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Place of birth.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Place of birth.

Individuals requesting amendment of their records must also comply with the Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. The OPM investigative files maintained by the Personnel Investigations Division.

OPM/Internal—19

SYSTEM NAME:

Motor Vehicle Operator and Accident Report Records.

SYSTEM LOCATION:

Office of Management, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional administrative offices. (See list of OPM regional office addresses in the appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Personnel Management.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents related to the authorization and issuance to an individual of a Government motor vehicle operator's permit; also included are reports, correspondence, and fiscal documents concerning automobile accidents occurring in a Government owned or leased automobile or in a privately owned vehicle while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 171 of Title 28, United States Code.

PURPOSE:

These records serve to document issuance of a Government motor vehicle operator's permit; accident reports and related documents may be used in claims settlement litigation regarding an accident involving a Government motor vehicle or privately owned vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs,

the letting of a contract, or the issuance of a grant or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose accident report record information to officals of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of jobs, or the award of a contract, license, grant, or other benefit.

i. To disclose information to the General Services Administration about accidents involving Government-owned or leased automobiles.

j. To disclose information to insurance carriers about accidents involving privately owned vehicles.

k. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders and on indexed application cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Motor vehicle operator records are maintained for three years after the separation of the employee (operator) and are destroyed by shredding. Accident reports are maintained for six years after the date of the report and are destroyed by shredding, except in cases involving litigation. In cases involving litigation, these records are to be maintained for seven years.

SYSTEM MANAGER(S) AND ADDRESS:

a. For motor vehicle operator records: Director, Office of Management, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

b. For accident report records: Office of the General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager for these records indicated above;

b. Motor vehicle operator records for current or former OPM Central Office employees: Contact the System Manager indicated above;

c. Motor vehicle operator records for current and former OPM Regional employees: Contact the OPM Regional Director of the region in which employed (see list of regional office addresses in the Appendix).

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager for these records indicated above;

b. Motor vehicle operator records for current or former OPM Central Office employees: Contact the System Manager indicated above;

c. Motor vehicle operator records for current and former OPM Regional employees: Contact the OPM Regional Director of the region in which employed (see list of regional office addresses in the Appendix).

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individual wishing to request amendment of their records should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager for these records indicated above;

b. Motor vehicle operator records for current or former OPM Central Office employees, Office of Personnel Management: Contact the System Manager indicated above;

c. Motor vehicle operator records for current and former OPM Regional employees: contact the OPM Regional Director of the region in which employed (see list of regional office addresses in the Appendix).

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. The individual to whom the record pertains.

b. OPM employees and other parties involved in the accident.

c. Witnesses to the accident.

d. Police reports and reports of investigations conducted by OPM investigators.

e. Officials of the Office of Personnel Management and the General Services Administration.

OPM/Internal—20

SYSTEM NAME:

Training Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415 and OPM regional offices. (See list of OPM

regional offices addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Office of Personnel Management for the previous three years, who have completed Government-sponsored training.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copy 8 and copy 3 of Optional Form 170: "Request, Authorization, Agreement and Certification."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 41 of title 5, U.S.C. and Executive Order 11348.

PURPOSE:

These records are used to nominate and/or approve OPM employees for training courses sponsored by the agency or nongovernment sources and for recording completion of scheduled training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

c. By the National Archives and Records Service (General Services Adminstration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or adminstrative proceeding.

f. To provide information to officials of labor organizations recognized under the Civil Service Reform Act, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

g. To disclosure information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

The records are maintained in three-ring binders.

RETRIEVABILITY:

By name of trainee.

SAFEGUARDS:

Locked metal cabinets.

RETENTION AND DISPOSAL:

Retained for three fiscal years and disposed of by shredding or burning.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager(s) or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the system manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom the information pertains or by OPM officials.

OPM/Internal—21

SYSTEM NAME:

Performance Evaluation/Rating Records.

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415 and regional OPM offices. (See list of OPM regional offices addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to supervisory assessments of the work performance of each OPM employee. The various elements of the system relate to: probationers, trainees, employees, supervisors, executive performance, and performance rating.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 43 of title 5, U.S.C.

PURPOSE:

The primary purpose of this system, in compliance with the law, is to provide a means for evaluating the performance of employees in order to: 1) strengthen supervisor-employee understanding and relationships; 2) recongize the merits of employees who have contributed to efficiency and economy in Government operations; 3) determine methods to increase the effectiveness with which employees do their work; and 4) identify unsatisfactory employees who should be reassigned or separated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

a. To provide information to a member of Congress from the record of an individual in response to an inquiry from that member made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the National Archives and Records Service, GSA, in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

See Storage, Retrievability, Safeguards, Retention, and Disposal below.

STORAGE:

The records are filed in file folders.

RETRIEVABILITY:

The records are retrievable by name of the employee.

SAFEGUARDS:

Records are stored in lockable metal file cabinets or in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Performance ratings may be disposed of after two years and performance evaluations related to merit promotion after five years. Records to be destroyed are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing information in this system should contact the system manager, if employed in the central office or the appropriate administrative office if employed in the regions. It is necessary to furnish the following information in order to locate and identify records:

a. Name.

b. Current or former Office organization.

c. If former employee, date of separation.

RECORD ACCESS PROCEDURES:

Individuals wishing access to records about them should contact the Director, Office of Personnel, if employed in the central office or the appropriate administrative office if employed in the regions. The following information must be supplied in order to locate and identify records:

a. Full name.

b. Current or former Office organization.

c. If former employee, date of separation.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals may request amendment of their records to correct factual errors by contacting the systems manager in the central office or the appropriate administrative office if employed in a region. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, date of separation.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom the information pertains, by supervisors, and by higher level OPM officials in the individual's organization.

OPM/INTERNAL—22

SYSTEM NAME:

Intern Program and Upward Mobility Program Records

SYSTEM LOCATION:

Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415 and OPM regional offices. (See list of OPM regional offices addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Office employees who participated in:

a. Administrative Intern Programs.

b. Personnel Intern Programs.

c. Classification Intern Programs.

d. Claims Examiner Intern Programs.

e. Career Enhancement Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. SF 171 or OPM Form 1178 which contains data on employment history.

b. OPM Forms 125 and 125A which contain narrative information on the employee's progress and evaluation.

c. Individual development plan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 41 of title 5, U.S.C.

PURPOSE:

The purpose of the file is to document internships and upward mobility assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in pending judicial or administrative proceeding.

g. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Retained for five years and disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORDS ACCESS PROCEDURE(S):

Individuals wishing to request access to their records should contact the system manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager or the appropriate OPM regional personnel office where application was made, as listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual to whom the information pertains or by OPM officials.

OPM/CENTRAL—1

SYSTEM NAME:

Confidential Statements of Employment and Financial Interests

SYSTEM LOCATION:

Office of Government Ethics, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain Presidential appointees in the Executive Office of the President; and Presidentially appointed full-time members of committees, boards, or commissions who are specifically required by Executive Order 11222 to file such statements. The system includes both former and current employees in these categories.

Note.—Other than individuals indicated above, this system does not include the employment and financial interests statements of any other regular and special agency employees who are specifically required by their agencies, pursuant to authorities provided by Executive Order 11222, to file with their agencies such statements or statements filed pursuant to the Ethics in Government Act of 1978, Public Law 95-521. Such records are included in agency internal record systems and OPM/GOVT-4 system of records, respectively.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements of personal and family holdings and other interests in business enterprises and real property; listings of creditors and outside employment; opinions of counsel; confirmation material; and other information related to conflict of interest determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE:

These records are maintained to meet requirements of Executive Order 11222 regarding the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees enumerated in the Executive Order and

title 18 of the U.S. Code, and to determine if a conflict of interest exists between the employment of individuals by the Federal Government and their personal employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statue, rule, regulation, or order, where the disclosing agency (the Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an indivdiual, the classifying of a job, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. By the Office of Personnel Management in the production of summary descriptive statisitics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statisitics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records ae located in lockable metal file cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 5 years after the date they are filed by the individual. Disposal is by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Government Ethics, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verfication of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the System Manager indicated above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative;

b. Federal officials who review the statements to make conflict of interest determinations.

OPM/CENTRAL—2

SYSTEM NAME:

Complaints and Position Classification or Retained Rate of Pay Appeals Records.

SYSTEM LOCATION:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional offices. (See list of regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, who have filed: complaints about conditions of the agency or agency personnel actions affecting the individuals, e.g., allegations of improper promotion actions, reduction-in-force procedures, or Fair Labor Standards Act (FLSA) procedures; position classification appeals; and retained rate of pay appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a complaint or position classification or retained rate of pay appeals made to the Office under its regulations. The records may include information and documents regarding the actual personnel action of the agency in question, the decision or determination rendered by an agency regarding the classification of a position

or whether an employee shall remain in a retained rate of pay category.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C., Sections 1302, 3502, 5115; Executive Orders 9830, 10577, and 11491; and Public Laws 93–259 and 95–454.

PURPOSE:

The principal purposes for which these records are established are to document the processing and adjudication of a complaint, position classification or retained rate of pay appeals. Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency (the Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating an appeal or complaint, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retention, or assignment of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards, magnetic tape, and microfiche.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured room, with access limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

1. Records related to most complaints about conditions at an agency or an agency's personnel actions affecting an individual, are maintained for three years after closing action on the complaint.

2. Records related to Fair Labor Standards Act complaints are maintained indefinitely.

3. Records related to position classification or retained rate of pay appeals are maintained for seven years after closing action on the appeal. All records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager, indicated above, with the following exception: Individuals who have properly filed complaints or position classification or retained rate of pay appeals with an OPM regional office should contact that regional office at the address listed in the Appendix. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when complaint or appeal was filed and approximate dates of the closing of the case.

d. Kind of action taken by the agency.

RECORD ACCESS PROCEDURES:

Individuals who have filed a position classification or retained rate of pay appeal, or complaint about an agency personnel action or about conditions existing in an agency must be provided access to the record. However, after the appeal or complaint to the Office has been closed, an individual may request access to the official copy of an appeal or complaint record by writing the System Manager or OPM regional office indicated in the Notification procedures. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when complaint or appeal was filed and approximate date of the closing of the case.

d. Kind of action taken by agency.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to

determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals requesting amendment of their records must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or Office of Personnel Management.

c. Affidavits or statements from employees.

d. Testimony of witnesses.

e. Official documents relating to the appeal or complaint.

f. Related correspondence from organizations or persons.

OPM/CENTRAL—3

SYSTEM NAME:

Personnel Research Test Validation Records

SYSTEM LOCATION:

Assistant Director for Policy Analysis, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, and OPM regional offices. (See list of regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment; current and former State and local government employees; applicants for State and local government employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, ethnicity, background) is collected from applicants for certain examinations for purposes of evaluating the total selection process of these examinations as required by the Uniform Guidelines on Employee Selection Procedures. Use of this information is limited to research projects conducted by the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S.C. Sections 1303 and 3301.

PURPOSE:

These records are collected, maintained, and used by the Office for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organization measurement and selection methods. Such research includes studies extending over a period of time (longitudinal studies). The records also may be used by the Office to locate individuals for personnel research.

Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel decisions are made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To exchange personnel records and information between the Office and specific Federal agencies for personnel research purposes, longitudinal studies, related work forces studies, and to locate individuals for personnel research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards and magnetic tape.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room, with access limited to authorized research staff.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Policy Analysis, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Title, time, and/or place of test validation research study in which individual participated.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. An individual can obtain information on the procedures for requesting access to other, non-exempt information in the system by contacting the System Manager indicated above.

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions regarding amendment of records at 5 U.S.C. 552a(d). The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual can obtain information on the procedures for requesting amendment of other, non-exempt information in the system by contacting the System Manager indicated above.

RECORD SOURCE CATEGORIES:

Individual Federal, State, or local employees or applicants supervisors, assessment center assessors, agency or Office personnel files and records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6),

permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records. The specific materials exempted include the following:

a. Answer keys.

b. Ratings given for the purpose of validating examinations.

c. Rating schedules, including crediting plans.

d. Rating sheets.

e. Test booklets.

f. Test item files.

g. Transmutation tables.

OPM/CENTRAL—4

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415. For category of records "f," the following OPM regional offices: Seattle, San Francisco, Atlanta, Chicago, and Philadelphia. (See list of OPM regional office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former Federal employees and Members of Congress who performed service subject to the Civil Service Retirement (CSR) System.

b. Current Federal employees who have:

(1) performed Federal service subject to the CSR System other than that with their present agency; or

(2) filed a designation of beneficiary for benefits payable under the CSR system; or

(3) requested the Office to review claims for health benefits made under the Federal Employees Benefits Program; or

(4) filed a service credit application in connection with former Federal service; or

(5) filed an application for disability retirement with the Office and are awaiting final decision, or whose disability retirement application has been disapproved by the Office.

c. Former Federal employees who died subject to or who retired under the CSR System, or their surviving spouses and/or children, who have received or are receiving CSR benefits, Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.

d. Former Federal employees who died subject to or who retried under a Federal Government Retirement system other than the CSR System, or their surviving spouses and/or children, who have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.

e. Applicants for Federal employment found unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of those retirement service history records of employees' service in the Federal government other than that for the agency in which they may presently be employed. It also contains information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees which the Office of Personnel Management administers. Also included are medical records and supporting evidence on those individuals found medically unsuitable for Federal employment. These records contain the following information:

a. Documentation of Federal service subject to the CSR system.

b. Documentation of service credit and refund claims made under the CSR system.

c. Documentation of voluntary contributions made by eligible individuals.

d. Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims (after receipt by the Office of Personnel Management) and designations of beneficiary.

e. Claim review files pertaining to requests that claims made under the Federal Employees Health Benefits Program be reviewed by the Office.

f. Suitability determination files on applicants for Federal employment found unsuitable for employment on medical grounds.

g. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Government retirement system other than the CSR system, or for compensationers and their survivors under the Office of Workers' Compensation Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 3301, and chapters 83,87, and 89 of title 5, United States Code; Public Laws 83-598, 84-356, and 86-724; and Executive Order 9397.

PURPOSE:

These records provide information and verification on which to base entitlement and computation of Civil Service Retirement and survivors benefits, Federal Employees Health Benefits and enrollments, and Federal Employees Group Life Insurance benefits. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES AND USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under the Office's or the recipient's benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers' Compensation Program; Veterans Administration Pension Benefits Program; DHEW's Social Security Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the Civil Service Retirement System); or other national, state, county, municipal, or other publicly recognized charitable or social security administrative agency.

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify the enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to

assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or not on the retirement rolls and, if so, the type of annuity (employee or survivor, but not retirement or disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump sum benefits, information in the individual's record which might properly be disclosed to the individual, and the name and relationship of any other person whose claim to benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954 as amended.

g. To disclose to the Department of the Treasury information necessary to issue benefit checks.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains and who is found by a court or an Office of Personnel Management Medical Officer to be incompetent or under other legal disability information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health, Education, and Welfare, upon its request, the present address of an annuitant, survivor annuitant, or former employee, for the purpose of enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under:

(1) fitness for duty examination procedures; or

(2) agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence *other* than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency (Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested relevant to an Office determination concerning an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and to identify the type of information requested.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

n. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

p. To disclose to a Federal agency, in response to its request, information in connection with the (1) hiring, retention, separation, or retirement of an employee, (2) the issuance of a security clearance, (3) the reporting of an investigation of an employee, (4) the letting of a contract, (5) the classification of a job, or (6) the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the Office determines that the information is relevant and necessary to the requesting agency's decision on the matter.

q. By the National Archives and Records Service (General Service Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

r. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the function for which the records were collected and maintained.

s. By the Office of Personnel Management, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

u. To disclose to another agency, or to an instrumentality of any governmental jurisdiction within or under the control of the United States, for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality, has made a written request to the Office of Personnel Management specifying the particular portion(s) of the record desired (including an address) and the law enforcement activity for which the record is sought.

v. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information in order to provide reconsideration in connection with the collection of a debt due the United States.

w. To disclose in valid emergency situations where consent cannot readily be obtained and instant action is required, to persons who have a need to know, if the particulars of the disclosure then are transmitted to the data subject's last known address.

x. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, discs, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, Social Security Number, date of birth and/or claim number of the individual on whom they are maintained.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records relating to a claim for retirement, life insurance, and health benefits are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Compensation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contrat the System Manager indicated above, or if the inquiry concerns medical suitability records, the medical officer of the appropriate OPM regional office as follows (See list of OPM regional office addresses in Appendix):

a. for cases adjudicated in the Denver, St. Louis, or Seattle Region, the Seattle Regional Office;

b. for cases adjudicated in the Dallas, New York, or Boston Region, the System Manager; or

c. for cases adjudicated in the San Francisco, Atlanta, Chicago, or Philidelphia Region, the Regional Office which handled the case.

Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the Federal service.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records in this system should contact the System Manager indicated above, or if the inquiry concerns medical suitability records, the medical officer of the appropriate OPM regional office, as indicated in the Notification procedures. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the Federal service.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verfication of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records in this system should contact the System Manager indicated above, or if the inquiry concerns medical suitability records, the medical officer of the appropriate OPM regional office, as indicated in the Notification procedures. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the Federal service.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow the Offices's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains.

b. Agency pay, leave, and allowance records.

c. GSA National Personnel Records Center.

d. Federal civilian retirement systems other than the Civil Service Retirement System.

e. Military retired pay system records.

f. Office of Workers' Compensation Benefits Programs.

g. Veterans Administration Pension Benefits Program.

h. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

i. Health insurance carriers and plans participating in the Federal Employee Health Benefits Program.

j. The Office of Federal Employees Group Life Insurance.

k. Office of Personnel Management Government-wide system (OPM/GOVT-1) covering Official Personnel Folders.

l. The individual's co-workers and supervisors.

m. Physicians who have examined or treated the individual.

OPM/CENTRAL—5

SYSTEM NAME:

Federal Executive Development Program Records

SYSTEM LOCATION:

Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees at the GS–15 or equivalent level, who applied and were nominated by their agency for the Federal Executive Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards, and career interests of nominees, their agency recommendations for the Program, and supervisory evaluations. Also included are records of the evaluation process used by the selection panel in choosing the finalists and data on assignments and progress under the Program.

Note.—This system does not include records containing applications and related information on employees who were not nominated by their employing agencies to the Office for the Federal Executive Development Program. These records which never come to the Office, are agency records, and may be published as an agency system of records subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 11315, 12027, and 9397.

PURPOSE:

These records are maintained and used by the Office to select final candidates for the Federal Executive Development Program, to arrange the work assignments of those selected, and to track their progress on assignments under the Program. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to individuals responsible for making the final selection of candidates for the Program.

b. To disclose information to agencies in which the selected employee is or will

be performing work assignments under the Program.

c. To disclose information to the individual's employing agency regarding his or her nomination, work assignments, progress under the Program, and for necessary personnel administrative purposes (pay matters, personnel actions, etc.).

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2096.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are kept in locked cabinets. Records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 10 years. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Management Development, Executive Personnel and Management Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.
d. Program year (Year nominated or selected for program).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.
d. Program year (Year nominated or selected for program).

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.
d. Program year (Year nominated or selected for program).

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, his or her supervisors and other management officials, the selection panel, or is obtained from agency records.

OPM/CENTRAL—6

SYSTEM NAME:

Executive Assignment and Inventory Records.

SYSTEM LOCATION:

Associate Director for Executive Personnel and Management Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former incumbents of positions at grades GS–16 through GS–18 under the Executive Assignment System, or current and former incumbents of positions at equivalent levels over which the OPM exercise at least partial approval authority.

b. Current and former incumbents of career or schedule C positions compensated under the Executive Schedule.

c. Current and former incumbents of positions at grades GS–16 through GS–18, or equivalent levels, when the individual noncompetitively acquires status under Civil Service Rule III.

d. In addition to the individuals indicated in "a" above, other current and former employees in the executive branch currently or formerly in grades 15 through 18 under the General Schedule, or at equivalent pay levels under other salary systems who are not specifically excepted from inventory coverage.

Note.—The principal groups of employees who are excepted from inventory coverage, and thus are not covered by this system, include:

(1) employees in commissioned services systems;

(2) Administrative Law Judges at grade GS–15;

(3) employees of the Panama Canal Company, the Canal Zone Government, and the Soldiers' Home;

(4) employees involved in intelligence matters where the release of personnel information would be detrimental to national security;

(5) foreign nationals employed outside the United States;

(6) employees hired on a consultant, part-time, or intermittent basis;

(7) employees of the United States Postal Service; and,

(8) employees in the Department of Medicine and Surgery, Veterans Administration, appointed under title 38 of the United States Code as physicians, dentists, nurses, podiatrists, and optometrists.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include:

a. Demographic information and background data on experience, education, publications, awards, and career interests of employees in the inventory.

b. A record of referral indicating individuals referred and the position and agencies to which the individuals were referred.

c. Information about the qualifications of appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302 3309, 3313, 3318, 3324, 3325, 3326, 5114, 5333, 5532, 5723; 10 U.S.C. 1581; P.L. 81-691, P.L. 85-726; and E.O. 11315 and 9397.

PURPOSE:

These records are used to assist the Office in carrying out its responsibilities under title 5, United States Code, and the Office Rules and Regulations promulgated thereunder, with regard to the establishment and filling of positions at grades 16 through 18 under the General Schedule, or equivalent levels under other salary systems; and to provide data used in policy formulation, program planning, research studies, and statistical reports. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To identify and refer qualified current or former Federal employees to Federal agencies for vacancies at grades GS-15 through GS-18, or equivalent levels.

b. To refer qualified current or former Federal employees or retirees to State and local governments and international organizations for employment considerations.

c. To provide an employing agency with extracts from the records of that agency's employees in the inventory.

d. To provide information required in the annual report to Congress mandated by 5 U.S.C. 5114, regarding positions at GS-16, GS-17, and GS-18 levels, and the incumbents of these positions.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

h. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, and on magnetic tapes, punched cards, and microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual to whom they pertain.

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets or in a secured room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Executive Personnel and Management Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information is provided by the individual named in the record and his or her employing agency, and is also obtained from official documents of the Office.

OPM/CENTRAL—7

SYSTEM NAME:

Intergovernmental Personnel Act Assignment Records

SYSTEM LOCATION:

Assistant Director for Intergovernmental Personnel Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415. Courtesy copies of mobility assignment agreements may be sent to regional offices of the Office of Personnel Management for information purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have completed or are presently on an assignment in a State or local government agency, an educational institution, or an Indian tribal government under the provisions of the Intergovernmental Personnel Act (IPA); or,

b. Current or former State or local government or educational institution employees, or members of Indian tribal governments, who have completed or are presently on an assignment in a Federal agency under the provisions of the Intergovernmental Personnel Act (IPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records are comprised of a copy of the individual's IPA assignment agreement between a Federal agency and a State or local government, educational institution, or Indian tribal government; biographical and background information about the assignees; and records of interviews with assignee(s) which may be conducted after the IPA assignment has been completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intergovernmental Personnel Act of 1970 (84 Stat. 1909), 5 U.S.C. 3371–3376, and E.O. 11589.

PURPOSE:

These records are maintained to document and track mobility assignments (including extensions, modifications, and terminations thereof) made under the Intergovernmental Personnel Act (IPA), and to assure that the provisions of the IPA Grant Program are properly administered. Internally, the Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency (Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an Office decision regarding possible termination of an assignment or a grant under the IPA program.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards and in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are retained for 5 years from the signing of the agreement. Records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Intergovernmental Personnel Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and proof of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment of their record must also follow the

Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in these records is provided by the individual subject of the records, by officials in the agencies, educational institutions, or Indian tribal governments where the individual is employed and where the individual is serving on the IPA assignments, or is obtained from agency personnel files and records.

OMP/CENTRAL—8

SYSTEM NAME:

Administrative Law Judge Application Records.

SYSTEM LOCATION:

Associate Director for Executive Personnel and Management Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for Administrative Law Judge positions in the Federal service, or who are employees or former employees in Administrative Law Judge positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the education and training; employment history and earnings; appraisals of past performance; convictions for offenses against the law; results of written tests; appraisals of potential; honors, awards or fellowships; and other background and biographical data on persons who have applied for Administrative Law Judge positions in the Federal service, or who are or were employees in Administrative Law Judge positions in the Federal service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1305, 3105, and 3344.

PURPOSE:

These records serve as a basis for rating and ranking applicants for Administrative Law Judge positions in the Federal service, for documenting the rating and ranking assigned, and for referring the ranked candidates to Federal agencies for employment consideration. The Office may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants to Federal agencies for employment consideration for Administrative Law Judge positions.

b. To refer current and former Administrative Law Judges to Federal agencies for consideration for transfer, reassignment, or reinstatement, as applicable.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing, a statute, rule, regulation, or order, where the disclosing agency (Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

g. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

h. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

See Storage, Retrievability, Safeguards, Retention, and Disposal below.

STORAGE:

Records are maintained on cards, lists, forms and in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual to whom they pertain.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for 7 years. Expired records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Executive Personnel and Management Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act requirements at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to other, non-exempt records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Date of birth.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and proof of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act requirements regarding amendment of records at 5 U.S.C. 552a(d). The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of other, non-exempt records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information he or she supplied, except for information on vouchers which are:

(1) supplied by references listed by the applicant; or

(2) supplied by other sources whom the Office believes have information relevant to a decision regarding the qualifications, ratings, or ranking of the applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempt to the extent that release of the material to the individual whom the information is about would:

a. reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

b. reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

For material in this system meeting these criteria, the Office has claimed the (k)(5) exemption from the following provisions of the Act:

a. 5 U.S.C. 552a(c)(3)—This provision concerns providing an accounting of disclosures to the individual whom the records are about;

b. 5 U.S.C. 552a(d)—This provision regards access to and amendment of records.

This system contains testing and examination materials used solely to determine individual qualifications for appointment in the Federal Service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

OPM/CENTRAL—9

SYSTEM NAME:

Litigation and Claims Records

SECURITY CLASSIFICATION:

No security classification is assigned to the system as a whole; however, items of record within the system may bear a national defense/foreign policy classification of Confidential or Secret.

SYSTEM LOCATION:

Office of the General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who file civil actions against the Office, its officials, and employees;

b. Individuals who are parties to actions in which the Government is involved, but in which the Office's role is advisory to another agency;

c. Individuals who file claims with the Office under the Federal Tort Claims Act; and

d. Individuals who make claims under the Military Personnel and Civilian Employees Claims Act of 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the following kinds of records: administrative appeals; investigative reports; retirement records; official pesonnel records; documentation of litigation including complaints, answers, motions, briefs, orders, and decisions; claims and supporting documentation submitted under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act, together with correspondence and records of settlement; and final administrative determinations.

AUTHORITY FOR MAINTENANCE OF THE RECORDS:

5 U.S.C. 1301–1308; 28 U.S.C. 2672; 31 U.S.C. 241; and EO 10577.

PURPOSES OF THE SYSTEM:

These records are maintained to defend the Office against lawsuits and to settle administrative claims brought against the Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information:

a. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Office of Personnel Management becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To any source where necessary to obtain information relevant to an Office decision or action involved in one of the purposes for maintenance of the system.

c. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To a Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 USC 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To the insurance carrier of an employee of, or a claimant against, the Office under the Federal Tort Claims Act or the Military Persomnel and Civilian Employees Claims Act in order to determine the proper assignment of any liability.

i. In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and, for litigation records, by civil action number.

SAFEGUARDS:

Records are available only to authorized personnel of the General Counsel's office.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Office of Personel Management 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains a record about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Description of type of record.

d. Court action number if applicable.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access.

Individuals who wish to obtain access to their records must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Description of type of record.

d. Court action number if applicable.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to, records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORDS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment.

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Description of type of record.

d. Court action number if applicable.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verfication of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Agency officials and records.

c. Records of administrative and court proceedings including statements of witnesses and documents.

d. Law enforcement agencies.

e. Witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

When litigation occurs, information from other systems of records may be incorporated into the case file. In certain instances, the incorporated information may be material which the Privacy Act, at 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6), permits an agency to exempt from certain provisions of the Act. To the extent that such exempt material is incorporated into a litigation file, the appropriate exemption ((k) (1), (2), (3), (5), and (6)) has also been claimed for the material as it appears in this system. The Office of the General Counsel, pursuant to 5 U.S.C. 552a(d)(5), reserves the right to refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

Collection of information from other Office files may be necessary during litigation. Therefore, it is possible that this system may contain the following types of information.

a. Properly classified information, obtained from another Federal agency during the course of an investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit system. The Privacy Act, at 5 U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to

the individual whom the information is about, would:

(1) Impair the effectiveness of the investigative process;

(2) Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

(3) Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. The Privacy Act at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civil employment. The Privacy Act, at U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about, would:

(1) Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

(2) Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under the implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials compiled during the course of an investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits and agency to exempt all such testing or examination material and information from certain provisions of the Act when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

OPM/CENTRAL—10

SYSTEM NAME:

Privacy Act/Freedom of Information Act (PA/FOIA) Case Records

SYSTEM LOCATION:

a. Offices of the Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415;

b. Regional offices of the Office of Personnel Manangement. (See list of OPM regional office addresses in the Appendix.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with the Office:

a. requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests; and

b. requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves, including:

(1) requests for notification of the existence of records about them;

(2) requests for access to these records;

(3) requests for amendment of these records; and

(4) requests for review of initial denials of such requests for notification, access, and amendment.

Note.— Since these PA/FOIA case records contain inquiries and requests regarding any of the Office's other systems of records subject to the Privacy Act, information about individuals from any of these other systems may become part of this PA/FOIA Case Records system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests, made by individuals to the Office for:

a. Information under the provisions of the FOI Act (5 U.S.C. 552), including requests for review of initial denials of such requests; and

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under of the Office's Privacy Act regulations including requests for:

(1) Notification of the existence of records about them;

(2) Access to records about them;

(3) Amendment of records about them;

(4) Review of intial denials of such requests for notification, access, or amendment; and

(5) Requests for an accounting of disclosure of records about them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Privacy Act of 1974 (5 U.S.C. 552a), the Freedom of Information Act, as amended (5 U.S.C. 552), and 5 U.S.C. 301.

PURPOSE:

These records are maintained to process individuals' requests made under the provisions of the Freedom of Information and Privacy Acts. The records are also used by the Office to prepare its annual reports to OMB and Congress required by the Privacy and Freedom of Information Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.

d. By the National Archives and Records Service (General Services Administration) in records management inspection conducted under authority of 44 U.S.C. 2904 and 2906.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose information to an agency, subject to law, rule, or regulation enforced by the Office, having been found in violation of such law, rule, or regulation, in order to achieve compliance with Office instructions.

g. To disclose information to Federal agencies (e.g., Department of Justice) in order to obtain advice and recommendations concerning matters on which the agency has specialized experience or particular competence, for use by the Office in making required determinations under the Freedom of Information Act or the Privacy of 1974.

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual,

inform the source of the purpose for the request, and to identify the type of information requested), where necessary to obtain information relevant to an Office decision concerning a Privacy or Freedom of Information Act request.

i. To disclose to the Federal agency involved, an Office decision on an appeal from an initial denial of a request involving Office-controlled records.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency (Office of Personnel Management) became aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

See Storage, Retrievability, Safeguards, Retention, and Disposal below.

STORAGE:

These records are maintained as a paper copy of correspondence in file folders, binders, and on index cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and year of the request.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured room, with access limited to personnel whose duties require access.

RETENTION AND DISPOSAL:

These records will be disposed of 5 years after the date of final Office action on the case. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The appropriate Associate or Assistant Director, or Regional Director, Office of Personnel Management, is system manager for Privacy Act/Freedom of Information Case Records maintained in that office. Associate and Assistant Director's offices are located at: Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415. For regional offices, see the list of OPM regional office addresses in the Appendix.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act requests were sent, or from where they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate dates of Privacy Act/FOI Act correspondence between OPM and the individual.

RECORD ACCESS PROCEDURE:

Material from other Office systems of records which are exempt from certain Privacy Act requirements may be included in this system as part of a PA/FOIA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, explains the exemptions for this system. Individuals wishing to request access to their records should contact the System Manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act request was sent, or from which they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate dates of Privacy Act/FOI Act correspondence between OPM and the individual.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 or 297.201).

CONTESTING RECORD PROCEDURES:

Material from other Office systems of records which are exempt from certain Privacy Act requirements may be included in this system as part of a PA/FOIA case record. Such material retains its exemption if it is included in this system of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, explains the exemptions for this system. Individuals wishing to request amendment to their records should contact the System Manager at the appropriate office or region where their original Privacy Act or Freedom of Information Act requests were sent, or from which they received responses to such requests. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate dates of Privacy Act/FOI Act correspondence between OPM and the individual.

Individuals requesting amendment must also comply with Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 or 297.201).

Note.—The amendment provisions for this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request which created the record in this system. That is, after an individual has requested amendment of a specific record in an Office system under provisions of the Privacy Act, that specific record may itself become part of this system of Privacy Act/FOI Act Case Records. An individual may not subsequently request amendment of that specific record again, simply because a copy of the record has become part of this second system of Privacy Act/FOI Act Case Records.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from:

a. The individual who is the subject of the records.

b. Office officials who respond to Privacy Act/FOI Act requests.

c. Official personnel documents of the Office, including records from any other Office system of records included in this notice.

d. Other sources whom the Office believes have information pertinent to an Office decision on a Privacy Act or Freedom of Information Act request.

e. Other agencies referring the request to the Office.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Office of Personnel Management has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6). During the course of a PA/FOIA action, exempt materials from those other systems may become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into these PA/FOIA Case Records, the Office has

claimed the same exemptions for the records as they have in the original primary systems of records of which they are a part.

OPM/CENTRAL—11

SYSTEM NAME:

Personnel Investigations Records

SECURITY CLASSIFICATION:

None for the system. However, items or records within the system may have national defense/foreign policy classifications up through secret.

SYSTEM LOCATION:

a. Primary system: Associate Director for Staffing Services, Office of Personnel Management, Washington, D.C. 20415, and the Federal Records Center, Suitland, Maryland.

b. Decentralized segments: copies of these records may exist temporarily in agencies on current employees, former employees, or on contractor employees. These copies may be located in the personnel security office or other designated offices responsible for suitability, security clearance, access, or hiring determinations on the individual. ("Agency" as used throughout this system is deemed to include legislative and judicial branch establishments as well as those in the Executive Branch).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees or applicants for employment in the Federal service, including agency offices or establishments in the executive, legislative, and judicial branches, and in the Government of the District of Columbia.

b. American citizens who are current or former employees or applicants for employment with International Organizations.

c. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

d. Individuals considered for assignment as representatives of the Federal Government in volunteer programs.

e. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative assignment or under a similar agreement.

f. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in matters related to the administration of the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position and correspondence files and index cards relating to adjudication matters; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; Notices of Security Investigation; and other information developed from the above.

Note.—This system does not include those agency records of a personnel investigative nature that do not come to the Office of Personnel Management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintenance of the system are indicated below:

a. Section 2, Civil Service Act of 1883—original authority, now codified in Title 5, CFR Section 5.2, Civil Service Rule V.

b. Sections 1303, 1304, and 3301, Title 5, U.S.C.

c. Sections 7, 8(b), 8(c), 9(a), 9(c), and 14 of Executive Order 10450.

d. Section 7701, Title 5, U.S.C. (formerly Section 14 of the Veterans Preference Act of 1944, as amended).

e. Public Law 92–261 and 5 CFR 713.216 and 713.220.

f. Section 2165 of Title 42, U.S. Code (formerly the Atomic Energy Act of 1954, as amended).

g. Section 2585 of Title 22, U.S. Code (formerly Pub. L. 87–297).

h. Executive Order 10422, as amended.

i. Executive Order 9397.

j. Section 1434 of Title 22, U.S. Code (formerly Pub. L. 80–402).

k. In addition to the provisions cited above, there are various acts of Congress that contain implied authority for the Office to investigate, such as laws prohibiting the purchase and sale of office, including of two offices, conspiracy and other prohibitory statutes.

PURPOSE:

The purposes of this system are:

a. To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for indiviudal personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualifications, loyalty to the U.S., and evaluations of qualifications and suitability for performance of contractual services for the U.S. Government;

b. To document such determinations;

c. To provide information necessary for the scheduling and conduct of the required investigations; and

d. To otherwise comply with mandates and executive orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

These records and information in these records may be used in disclosing information:

a. To designated officers and employers of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, the District of Columbia Government, having an interest in the individual for employment purposes, including a security clearance or access determination, and the need to evaluate qualifications, suitability, and loyalty to the United States Government.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for the purpose of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classifed information or restricted areas.

c. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, having the responsibility to grant clearances, make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government, in connection with performance of a service to the Federal Government under a contract or other agreement.

d. To the intelligence agencies of the Department of Defense, the National Security Agency, the Central Intelligence Agency, and the Federal

Bureau of Investigation for use in intelligence activities.

e. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

f. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforceing, or implementing a statute, rule, regulation, or order where the disclosing agency (Office of Personnel Management) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security of suitability investigation of an individual, the classfying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

j. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

k. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

l. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

m. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on index cards.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Folders are maintained in a room with a manipulation-proof combination lock and an intrusion alarm system; or in metal file cabinets secured by three position combination locks. The index to the system and those records which are maintained on index cards are contained in covered and locked rotary Wheeldex machines. All employees are required to have an appropriate security clearance before they are allowed access to the records.

RETENTION AND DISPOSAL:

a. Index cards which show the existence of the file folder record, and the files in folders, are retained for 20 years plus the current year from the date of the most recent investigative activity. Other index cards which show no investigative record other than the completion of a clear National Agency Check or a clear National Agency Check and Inquiry, and where no investigative file folder exists, are retained for five years plus the current year.

b. Reports of action after OPM or FBI section 8(d) Full Field investigation are retained for the life of the investigative file.

c. Notices of Security Investigations are retained for 20 years. Records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above, in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(c)(3) and (d), regarding access to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the System Manager indicated above, in writing. Requests should be directed only to the System Manager, whether the record sought is in the primary system or in a decentralized segment. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment to their non-exempt records should contact the System Manager indicated above, in writing. Requests should be directed only to the System Manager, whether the record sought is in the primary system or in a decentralized segment. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information contained in the system was obtained from the following categories of sources:

a. Applications and other personnel and security forms furnished by the individual.

b. Investigative and other record material furnished by Federal agencies.

c. Notices of personnel actions furnished by Federal agencies.

d. By personnel investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled for law enforcement purposes in connection with the administration of the merit system. The Privacy Act, at U.S.C. 552a(k)(2), permits an agency to exempt such material from certain provisions of the Act. Application of exemption (k)(2) may be necessary to preclude the data subject's access to and amendment of the record.

c. Investigatory material maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18 of the U.S. Code. The Privacy Act at 5 U.S.C. 552a(k)(3), permits an agency to exempt such material from certain provisions of the Act.

d. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

1. reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

2. reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

e. Testing and examination materials, compiled during the course of a personnel investigation, that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

The Office of Personnel Management has claimed these exemptions from the requirements of 5 U.S.C. 552a(c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual whom the records are about and access to and amendment of records.

OPM/CENTRAL—12

SYSTEM NAME:

Directory of Federal Executive Institute Alumni.

SYSTEM LOCATION:

Federal Executive Institute, Office of Personnel Management, Route 29 North, Charlottesville, Va. 22903.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal, State, and local government employees (both current and retired), international executives, former faculty and staff, and Fellowship students who have attended programs at the Federal Executive Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the name, position title, office address and phone number, agency, FEI program attended and, with the approval of the individual, home address and telephone number, of alumni of FEI programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Sections 301 and 4117.

PURPOSE:

The Directory is used by FEI Alumni and the FEI Alumni Association to maintain contact with alumni and to provide them with information to continue their educational experiences. Copies of the Directory are made available to FEI alumni to allow them to maintain relationships developed at the Institute in order to continue educational experiences and to promote intergovernmental cooperation. These records may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Federal agencies to assist them in planning for executive development programs.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In addition to its appearance in the Directory, information will be maintained on FEI mailing lists, on forms used to collect the data, and on automated media.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Records kept by FEI officials are maintained in a secured area with access limited to those authorized personnel at FEI whose duties require access. Because home addresses and phone numbers are included in the Directory, distribution of the Directory is limited to FEI Alumni, and the listed routine users. Those users are notified by a notice placed in the Directory not to make it available for commercial purposes. In addition:

a. At the request of the individual, his or her home address and phone number will not be included in the Directory;

b. At the request of the employing agency, information relating to the individual's status (i.e., position title) will be excluded from the Directory.

RETENTION AND DISPOSAL:

Obsolete information will be deleted from automated records.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Federal Executive Institute, Office of Personnel Management, Route 29 North, Charlottesville, Va. 22903.

NOTIFICATION PROCEDURE:

All individuals included in the system receive a copy of the Directory. Individuals requiring additional information about their inclusion in the system should contact the System Manager named above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Agency.

c. FEI program(s) attended and date(s).

RECORD ACCESS PROCEDURES:

All record information in the system is included in the Directory. Individuals wishing to request access to other forms in the system which contain the same information should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Agency.

c. FEI program(s) attended and date(s).

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Agency.

c. FEI program(s) attended and date(s).

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendments of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

All information in the system comes from the individuals to whom the records pertain.

OPM/CENTRAL—13

SYSTEM NAME:

Presidential Management Intern Program Records.

SYSTEM LOCATION:

Assistant Director for Intergovernmental Personnel Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students pursuing graduate degrees in public management who have been nominated by their universities for consideration under the Presidential Management Intern Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, social security number, date of birth, academic background, home address, home telephone number, employment history, veteran's preference, and other personal history information needed during the evaluation and selection process. This system will also contain evaluation statements from the nominating universities and confidential information developed during the regional screening process and final panel evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12008 and 9397.

PURPOSES OF THE SYSTEM OF RECORDS:

These records are used by Program personnel for the following reasons:

a. To determine basic program eligibility and to evaluate the nominees in a regional screening process conducted by OPM regional officials with the participation of agency managers, and State and local government representatives;

b. To group the nominees into various categories (finalist, alternates, and non-selectees) and then make a final determination as to those candidates who will be referred to the agencies for employment consideration; and

c. For program evalution functions to determine the effectiveness of the program and to improve program operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer candidates to Federal agencies for employment consideration.

b. To refer candidates to State and local Governments, congressional offices, international organizations, and other public offices with permission of the candidate, for the purpose of employment consideration.

c. To refer interns for consideration for reassignment and promotion within the employing agencies.

d. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

e. To refer pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

f. To request information from a Federal, State, or local agency maintaining civil, criminal, or other information relevant to an agency decision concerning the hiring or retention of a candidate.

g. To provide an educational institution with information on an appointment of a recent graduate to a Federal position at a certain grade level.

h. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

j. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on forms, lists, punched cards, and magnetic tape.

RETRIEVABILITY:

Records are indexed by name of nominee, school, State of legal residence, social security number, and any combination of the above.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets and in a computerized system accessible to only those program managers whose official duties necessitate such access. Confidential passwords are required for access to these automated records.

RETENTION AND DISPOSAL:

Automated records are retained for up to ten years. Manual records are retained for three years. Tapes are erased and manual records are burned or shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Intergovernmental Personnel Programs, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Inquiries, including name, address, and nominating university should be addressed to the system manager named above.

RECORD ACCESS PROCEDURES:

Current or former Presidential Management Intern nominees who wish to gain access to their records should direct such a request in writing, including their name, address, academic year of nomination, and nominating university, to the system manager named above.

CONTESTING RECORD PROCEDURES:

Specific material in this system has been exempted from Privacy Act provisions at 552a(d), regarding access to and amendment of records. The section of the notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. Current or former Presidential Management Interns or applicants, wishing to request amendment of their non-exempt records should contact the System Manager named above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Address.
c. Academic year of nomination.
d. Nominating University.

Individuals must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records originates from the individual to whom it applies, nominating university deans, and Federal, State, and local officials involved in the screening and selection process.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

OPM/CENTRAL—14

SYSTEM NAME:

Federal Automated Career System (FACS) Records.

SYSTEM LOCATION:

Federal Personnel Administration Career Board, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees who occupy or have occupied positions in the 200 or related series, Personnel Management and Industrial Relations Group, below the grade of GS–15.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains demographical and biographical data about the individual and his/her academic and work experience. The system also contains a self appraisal document completed by covered individuals, records of referrals, and longitudinal records used for studies made in connection with program operation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1302, 3301, and 3304 of title 5 of the United States Code.

PURPOSE:

These records are used to support agency career programs for personnel professionals, to identify such professionals to agencies seeking to employ them, to promote movement across agency lines with relative ease, to facilitate communication throughout the Federal personnel administration network, and to foster the development of personnel professionals with a uniformly high degree of proficiency. These records may also be used to identify and locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to any Federal agency, instrumentality of the Legislative or Judicial Branches, State or local government office, educational institution, or international organization that requests referral of potential candidates for consideration in the filing of a specific or general vacancy in the personnel and labor relations area or for other employment considerations.

b. To a Federal agency or to a court when the Government is party to a judicial proceeding before the court.

c. To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

g. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

h. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating,

prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose information to an agency in the Executive, Legislative, or Judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

k. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and magnetic tapes.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the individual on whom they are maintained.

SAFEGUARDS:

Records are available only to authorized personnel and are maintained in metal file cabinets in a secured room and in a computerized system accessible by confidential passwords.

RETENTION AND DISPOSAL:

Records are maintained so long as the employee remains employed in the 200 or related series and for up to two years after leaving such a position. Distruction is by shredding or burning of manual records and tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Federal Personnel Administration Career Board, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager above. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

An individual requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

An individual requesting amendment must also follow the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains or is obtained from agency records.

OPM/GOVT—1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Personnel Office or designated office of the local installation of the Department or Agency which currently employs the individual. Records on former Federal employees are located at the National Personnel Records Center, General Services Administration, 111 Winnebago Street, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about an individual such as the birth date; Social Security Number; veterans preference; tenure; handicap; past and present salaries, grades, and position titles; letters of commendation, reprimands, charges, and decisions on charges; notices of reductions in force, appointments, reassignments, demotions, details, promotions, transfers, and separations; training files; minority group designator files; records relating to life insurance, health benefits, and designation of beneficiary; performance ratings; awards; medical records (includes agency initiated disability records but *not* agency dispensary records); performance appraisals; appraisals of potential; mobility assignment files under the Intergovernmental Personnel Act; items identified above and placed in the automated Central Personnel Data File (CPDF); and the original copy of the authorized permanent and temporary contents of the Official Personnel Folder (OPF) of most current and former Federal employees (separate agency duplicate copies of the contents of the OPF, when maintained in manual or automated mode outside the OPF, are not included).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 4303, 8347, and Executive Orders 9397, and 12107.

PURPOSE:

The Official Personnel Folder and other general personnel record files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, filed as permanent transactions and establish employee rights and benefits under the pertinent laws and regulations governing Federal employment.

These files are maintained by agencies for the Office. The Official Personnel Folder is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, alternatively, to the next employing agency. Other records are either retained at the agency for various lengths of time in accordance with General Services Administration records schedules or destroyed. They provide the basic source of factual data about a person's Federal employment

while in the service and after his or her separation. Records in the folder are used primarily by agency personnel offices in screening qualifications of employees; determining status, eligibility, and employees rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and for other information needed in providing personnel services. These records may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may lead (or have led) to a formal action, but do not constitute a record of it, nor make a substantial permanent contribution to the employee's record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, for training purposes, and to provide college and university officials with information about their students working under the Cooperative Education or Volunteer Service Programs.

b. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

c. To disclose information to the Department of Labor; Veterans Administration; Social Security Administration; Department of Defense; Federal agencies that have special civilian employee retirement programs; or a national, state, county, municipal, or other publicly recognized charitable or social security administration agency (e.g., state unemployment compensation agencies); where necessary to adjudicate a claim under the retirement, insurance or health benefit program(s) of the Office of Personnel Management or an agency cited above, or to conduct an analytical study of benefits being paid under such programs.

d. To disclose to the Office of Federal Employee's Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

e. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination of benefit provisions of such contracts.

f. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

g. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

h. To consider employees for recongition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

j. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

k. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

l. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

m. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

n. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

o. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

p. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

q. By the agency maintaining the records or the Office of Personnel Management in the production of summary description statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

r. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

s. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

t. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with a psychiatric examination ordered by the agency under:

(1) Fitness-for-duty examination procedures; or

(2) Agency/filed disability retirement procedures.

u. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant

to the subject matter involved in a pending judicial or administrative proceeding.

v. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

w. To disclose to the Defense Nuclear Agency the home address of and medical information concerning those individuals who participated in atmospheric nuclear testing between the years 1945 and 1962, in response to a mandate issued by the Secretary of Defense.

x. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve, to assure continuous mobilization readiness of Ready units and members.

y. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, United States Public Health Service, and the United States Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of Section 5532 of title 5, United States Code.

z. To disclose to prospective non-Federal employers, the following information about a current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action, Standard Form 50.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, and in computer processible storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

a. *Permanent Records.* The Official Personnel Folder (OPF) is retained by the employing agency as long as the individual is employed with the agency. Medical records are kept separate from the OPF while the individual is employed by an agency. When the individual transfers to another Federal agency or to another appointing office, the OPF, with medical records inserted therein in a separate envelope, is sent to that agency or office. Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for permanent storage. In the case of a retired employee or one who dies in service, the OPF is sent to the Records Center within 120 days.

a. *Other Records.* These records are retained for varying periods of time. Generally these records are maintained for a minimum of one year, or until the employee transfers or separates. Letters of caution, warning, admonishment, or similar disciplinary action are maintained for a maximum of three years, but they will be disposed of at any time in the three year period if it is decided that the action was unwarranted or at the discretion of the issuing authority. Obsolete performance ratings and appraisals are disposed of when a new rating or appraisal is completed, usually on a yearly basis. Otherwise, records are retained during the employee's period of service as an agency's employee and for 2 years after the employee leaves. All records are disposed of by shredding or burning.

c. Records contained on computer processible media within the Central Personnel Data File are retained indefinitely as a basis for longitudinal work history statistical studies.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate OPM or agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), Department or Agency with which employed, Local Agency Installation, regarding records in this system.

b. Former Federal employees should contact the System Manager indicated above, one of the Office's regional or area offices (see list of regional and area office addresses in the Appendix), or the National Personnel Records Center (Civilian), 111 Winnebago St., St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate dates of the employment (for former Federal employees).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the *Notification procedures* above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate date of the employment (for former Federal employees).

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

Note.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) only for a transcript of his or her own employment history. The transcript includes the individual's name; date of birth; Social Security Number; past and present grades, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request for access to copies of records in this system to the NPRC. Though NPRC stores and services some of the records on former Federal employees in this system, those records remain the property of the Office of Personnel Management, and for the access provisions of the Privacy Act, will be handled and processed by the Office.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records should contact the appropriate agency (for current employees) or to the System

Manager indicated above (for former Federal employees). Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

d. Last employing agency (including duty station) and approximate dates of the employment (for former Federal employees).

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

Note.—Under no circumstances shall an individual direct a request for amendment to records in this system to the NPRC. Though NPRC stores and services some of the records on former Federal employees in this system, those records remain the property of the Office of Personnel Management, and for the amendment provisions of the Privacy Act, will be handled and processed by the system manager at the Office.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Physicians examining the individual.

c. Educational institutions.

d. Agency officials.

e. Other sources of information for permanent records maintained in an employee's OPF, in accordance with Federal Personnel Manual Chapter 293.

SYSTEM NAME:

Grievance Records

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the grievances were filed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with their agencies in accordance with part 771 of the Office's regulations (5 CFR 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under part 771 of the Office's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system includes files and records of internal grievance systems that agencies may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p218, E.O. 10987, 3 CFR 1959–1963 Comp., p519, agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the agency maintaining the records or the Office in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

i. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the

following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORDS ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the agency personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kid of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 or 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officals.

d. From related correspondence from organizations or persons.

OPM/GOVT—3

SYSTEM NAME:

Records of Adverse Actions and Actions Based on Unacceptable Performance.

SYSTEM LOCATION:

These records are located in personnel or designated offices in federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees against whom such an action has been proposed or taken in accordance with Parts 432, 752, and 754 of the Office's regulations (5 CFR 432, 5 CFR 752, and 5 CFR 754).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents related to the processing of an adverse action or an action based on unacceptable performance. The records include copies of the notice of proposed action; materials relied on by the agency to support the reasons in the notice; replies by the employee; statements of witnesses; hearing notices; reports; and decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to Merit Systems Protection Board or become part of a discrimination complaint record. Such appeal and discrimination compliant file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, and 4303; E.O. 10577 and E.O. 11491; 3 CFR, 1954–1958 Comp. p218 and 3 CFR 1966–1970 Comp, p861.

PURPOSE:

These records are used to propose, process, and document adverse actions or actions based on unacceptable performance taken by the Office or agencies against agency employees in accordance with Parts 432, 752, and 754 of the regulations (5 CFR 432, 5 CFR 752, and 5 CFR 754).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing an adverse action, appeal, or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the agency maintaining the records or the Office in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

k. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting a proposed action based on unacceptable performance, where the action is not effected and where the employee performs in an acceptable manner for one year, must be destroyed at the end of the one year period. Other records are disposed of 4 years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER:

Associate Director for Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse action or action based on unacceptable performance, must be provided access to all documents supporting the notice. At any time thereafter, individuals involved in the action will be provided access to the completed record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Individuals involved in such actions must be provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an adverse action or action based on unacceptable performance file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations regarding amendment to records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

OPM/GOVT-4

Note.—The OPM/GOVT-4 Notice of System of Records, Ethics in Government Financial Disclosure Records, has been the subject of a separate Federal Register Notice (44 FR 24965 et. seq.) and does not appear with this publication of the OPM/GOVT-1 through OPM/GOVT-5 systems.

OPM/GOVT-5

SYSTEM NAME:

Recruiting, Examining, and Placement Records

SYSTEM LOCATION:

Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, OPM regional and area offices (see list of OPM office addresses in the Appendix), Office of Personnel Management Job Information Centers, and personnel offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Office of Personnel Management or agencies for Federal Employment and current and former Federal employees submitting applications for other positions in the Federal service.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the education and training; medical qualifications; employment history and earnings; appraisals of past performance; convictions for offenses against the law; results of written tests; appraisals of potential; requests for approval of an objection to an eligible's qualifications for employment in the Federal service; honors, awards, or fellowships; military service; veteran

preference; birthplace; birth date; Social Security Number; names of relatives who are employed in the Federal service; legal residence; and home addresses of persons who have applied to the Office of Personnel Management or agencies for Federal employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Sections 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 5532, 5533, and 5723; Executive Order 9397.

PURPOSE:

The records are used to consider individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment considerations, including appointment, transfer, reinstatement, reassignment, or promotion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer applicants to Federal agencies for employment consideration.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To refer current and former Federal employees to Federal agencies for consideration for transfer, reassignment, reinstatement, or promotion.

d. To disclose information to an educational institution on the appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under the Cooperative Education Program.

e. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigation, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of positions, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

j. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

k. By the National Archives and Records Service (General Service Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

l. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instance the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose information to officials of: the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

n. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, discs, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, or Social Security Number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of per the requirements of GSA Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Staffing Services, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office which provides examining and rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

d. Identification number (if known).

e. Approximate date of record.

f. Title of examination or announcement with which concerned.

g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d), regarding access to records. The section of the notice titled *Systems exempted from certain provisions of the Act*, which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or OPM office where

application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office providing examining and rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

d. Identification number (if known).

e. Approximate date of record.

f. Title of examination or announcement with which concerned.

g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding access to records and verification of identity (5 CFR 297.203 and 297.201).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled *Systems exempted from certain provisions of the Act,* which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact an OPM Area Office where his or her application is filed at any time to update qualifications, education, experience, or other data maintained in the system. Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the agency or OPM office where application was made, or where an examination was taken. Resource specialists should contact the OPM Area Office providing examining or rating assistance. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Social Security Number.

d. Identification number (if known).

e. Approximate date of record.

f. Title of examination or announcement with which concerned.

g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding amendment of records and verification of identity (5 CFR 297.208 and 297.201).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, except reports from medical personnel on physical qualifications; results of examination which are made known to applicants; and vouchers supplied by references the applicant lists.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would:

1. reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

2. reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, where disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office of Personnel Management has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

Appendix

An individual can obtain information regarding the location of systems or records that may contain personal information on him or her by contacting in person or in writing one of the offices indicated below that is nearest to where he or she resides.

Office of Personnel Management, Regional and Area Offices—Atlanta Region

1340 Spring St., NW., Atlanta, Georgia 30309.

Area Offices

Southerland Building, 806 Governors Dr., SW., Huntsville, Alabama 35801.

Federal Building, 80 N. Hughey Avenue, Orlando, Florida 32801.

Federal Office Building, 275 Peachtree St., NE., Atlanta, Georgia 30303.

600 Federal Place, Louisville, Kentucky 40202.

802 N. State St., Jackson, Mississippi 39201.

310 New Bern Ave., Raleigh, North Carolina 27601.

Federal Office Building, 334 Meeting St., Charleston, South Carolina 29403.

100 N. Main St., Memphis, Tennessee 38103.

Boston Region

John W. McCormack Post Office and Courthouse Bldg., Boston, Massachusetts 02109.

Area Offices

Federal Building, 450 Main St., Hartford, Connecticut 06103.

Federal Building, Augusta, Maine 04330.

3 Center Plaza, Boston, Massachusetts 02108.

Federal Building, Portsmouth, New Hampshire 03801.

Federal Post Office Building, Kennedy Plaza, Providence, Rhode Island 02903.

Federal Building, Burlington, Vermont 05401.

Chicago Region

Federal Office Building, 29th Floor, 230 S. Dearborn St., Chicago, Illinois 60604.

Area Offices

219 S. Dearborn St., Chicago, Illinois 60604.

U.S. Courthouse and Federal Building, 46 E. Ohio St., Indianapolis, Indiana 46204.

477 Michigan Ave., Room 565, Detroit, Michigan 48226.

Federal Building, Room 196, Fort Snelling, Twin Cities, Minnesota 55111.

U.S. Courthouse and Federal Building, Room 507, 200 W. 2nd Street, Dayton, Ohio 45402.

161 W. Wisconsin Ave., Milwaukee, Wisconsin 53203.

Dallas Region

1100 Commerce St., Dallas, Texas 75242.

Area Offices

Federal Office Building, Room 3305, 700 W. Capitol Ave., Little Rock, Arkansas 72201.

Federal Building, 610 South St., New Orleans, Louisiana 70130.

421 Gold Ave., S.W. Albuquerque, New Mexico 87102.

210 NW. 6th St., Oklahoma City, Oklahoma 73102.

1100 Commerce St., Room 6B4, Dallas, Texas 75242.

Property Trust Building, Suite N302, 2211 E. Missouri Ave., El Paso, Texas 79903.

702 Caroline St., Houston, Texas 77002.

643 E. Durango Blvd., San Antonio, Texas 78206.

Denver Region

Building 20, Denver Federal Center, Denver, Colorado 80225.

Area Offices

U.S. Post Office Building, 1845 Sherman Avenue, Denver, Colorado 80203.

130 Neill Ave., Helena, Montana 59601.

657 2nd Ave. North, Fargo, North Dakota 58102.

Federal Building-U.S. Courthouse, Room 201, 515 9th St., Rapid City, South Dakota 57701.
350 S. Main St., Room 484, Salt Lake City, Utah 84101.
1805 Capitol Avenue, P.O. Box 967, Cheyenne, Wyoming 82001.

New York Region

New Federal Building, 26 Federal Plaza, New York, New York 10007.

Area Offices

970 Broad St., Newark, New Jersey 07102.
26 Federal Plaza, New York, New York 10007.
U.S. Courthouse and Federal Bldg., 100 S. Clinton St., Syracuse, New York 13202.
U.S. Courthouse and Federal Office Building, Carlos A. Chardon St., Hato Rey, Puerto Rico 00918.

Philadelphia Region

William J. Green, Jr., Federal Building, 600 Arch St., Philadelphia, Pennsylvania 19106.

Area Offices

Federal Office Building, 844 King St., Wilmington, Delaware 19801.
Federal Building, Lombard St. and Hopkins Place, Baltimore, Maryland 21201.
William J. Green, Jr., Federal Building, 600 Arch St., Philadelphia, Pennsylvania 19106.
Federal Building, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.
Atlantic National Bank Building, 415 St. Paul Blvd., Norfolk, Virginia 23510.
Federal Building, 500 Quarrier St., Charleston, West Virginia 25301.

St. Louis Region

1256 Federal Building, 1520 Market St., St. Louis, Missouri 63103.

Area Offices

New Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
120 S. Market St., Wichita, Kansas 67202.
601 E. 12th St., Kansas City, Missouri 64106.
1520 Market St., St. Louis, Missouri 63103.
215 N. 17th St., Omaha, Nebraska 68102.

San Francisco Region

525 Market Street, San Francisco, California 94105.

Area Offices

522 North Central Ave., Phoenix, Arizona 85004.
845 S. Fiqueroa Street, 3rd Floor, Los Angeles, California 90017.
650 Capitol Mall, Sacramento, California 95814.
880 Front Street, San Diego, California 92188.
525 Market Street, San Francisco, California 94105.
1000 Bishop Street, Suite 1500, Honolulu, Hawaii 96813.
50 S. Virginia St., Box 3296, Reno, Nevada 89505.

Seattle Region

Federal Building, 26th Floor, 915 Second Avenue, Seattle, Washington 98174.

Area Offices

617 G. St., Anchorage, Alaska 99501.
Federal Building, 550 W. Fort St., Boise, Idaho 83702.
Federal Building, Room 376, 1220 S.W. 3rd St., Portland, Oregon 97204.
Federal Building, 26th Floor, 915 Second Avenue, Seattle, Washington 98174.

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BILLING CODE 6325-01-M

Federal Register

Tuesday
May 29, 1979

Part IV

Department of Defense

Corps of Engineers

Water Resources Policies and Authorities; Use of Nonstructural Measures in Planning For Flood Damage Reduction [ER 1165-2-122]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR Part 280]

Water Resources Policies and Authorities; Use of Nonstructural Measures in Planning for Flood Damage Reduction [ER 1165-2-122]

AGENCY: U.S. Army Corps of Engineers.

ACTION: Proposed Rule.

SUMMARY: This proposed regulation provides policies to guide the formulation of flood damage reduction plans which incorporate nonstructural measures, or which consist entirely of nonstructural measures. The proposed policies will apply to the Civil Works planning program of the U.S. Army Corps of Engineers. This regulation is consistent with the substantive planning requirements of the U.S. Water Resources Council (WRC) Principles and Standards.

DATE: Comments on the proposed policies are due on or before July 30, 1979.

ADDRESS: Send comments to Department of the Army, Office of the Chief of Engineers, Attn: DAEN-CWR-W, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Murdock, Office of Policy, Directorate of Civil Works (DAEN-CWR-W) WASH DC 20314, (202) 693-6357.

SUPPLEMENTARY INFORMATION: Section 73 of the Water Resources Development Act of 1974 (Pub. L. 93-251, March 7, 1974), established a policy that full consideration be given to nonstructural alternatives for flood plain management. Section 73(a) requires that:

> (a) In the survey, planning, or design by any Federal agency of any project involving flood protection, consideration shall be given to nonstructural alternatives to prevent or reduce flood damages including, but not limited to, floodproofing of structures; flood plain regulation; acquisition of flood plain lands for recreational, fish and wildlife, and other public purposes; and relocation with a view toward formulating the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages.

As part of his message to Congress of June 6, 1978 on water policy initiatives, the President emphasized the explicit formulation and consideration of nonstructural alternatives whenever structural alternatives are considered. The proposed regulation requires that feasibility studies conducted by the Corps of Engineers for flood plain areas evaluate all practical measures—regardless of the level of government responsible for implementation—which may make contributions to National Economic Development (NED) and Environmental Quality (EQ), the two national objectives specified under the WRC Principles and Standards.

An integrated solution may involve other agency programs, even if Corps partipation recommendations are limited to measures consistent with the flood control purpose. The Corps shall take the lead in encouraging participation by State and other Federal agencies in feasibility studies of problems related to flood plain use.

Section 73(b) of Pub. L. 93-251 specifies the cost-sharing requirements for nonstructural measures:

> (b) Where a nonstructural alternative is recommended, non-Federal participation shall be comparable to . . . structural protection measures, but in no event shall exceed 20 per centum of the project costs.

The President also proposed cost-sharing reforms in his June 6, 1978 water policy message to Congress that apply to flood damage reduction measures. The cost-sharing provision in this regulation are consistent with those of Section 73 and those of the President. It should be noted, however, that, under the President's proposal, an additional 5% cash contribution would be required of the State or States in which the project is located. This additional contribution is addressed in separate guidance from this office requiring that the President's proposed cost-sharing policies be incorporated in the reporting officer's recommendations for Federal participation.

The President's cost-sharing proposal would also eliminate the necessity in the regulation (paragraph 4) for distinguishing between structural and nonstructural measures for the purpose of cost-sharing. All such flood damage reduction measures eligible for Federal (Corps of Engineers) participation would then be subject to the same cost-sharing requirements.

Note.—The Corps of Engineers has determined that this regulation does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11811 and OMB circular A-107.

Dated: May 22, 1979.

For the Chief of Engineers:

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

It is proposed to add a Part 280 to title 33 to read as follows:

PART 280-USE OF NONSTRUCTURAL MEASURES IN PLANNING FOR FLOOD DAMAGE REDUCTION [ER 1165-2-122]

Sec.

280.1 Purpose.
280.2 Applicability.
280.3 References.
280.4 Definitions.
280.5 General Policy.
280.6 Plan Formulation Including Nonstructural Measures.
280.7 Federal Participation in Implementation of Nonstructural Measures.
280.8 Cost Sharing.
280.9 Real Estate Interests for Nonstructural Measures.
280.10 Local Cooperation for Nonstructural Measures.
280.11 Effective Date.

Authority: Sec. 73, Water Resources Development Act of 1974 (Pub. L. 93-251).

§ 280.1 Purpose.

This regulation provides policies on thr formulation of flood damage reduction plans which incorporate nonstructural measures or which consist entirely of nonstructural measures.

280.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

280.3 References.

(a) Section 73, Pub. L. 93-251, Water Resources Development Act of 1974, (88 Stat. 12), March 7, 1974.

(b) Section 103, Pub. L. 93-234, Flood Disaster Protection Act of 1973, (87 Stat. 975), December 31, 1973.

(c) Pub. L. 90-448, National Flood Insurance Act of 1968 (32 Stat. 572), August 1, 1968, as amended.

(d) Pub. L. 91-646, Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970.

(e) Executive Order 11988, Floodplain Management, May 24, 1977.

(f) United States Water Resources Council, "A Unified National Program for Flood Plain Management," July 1976. Available from: U.S. Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037.

(g) United States Water Resources Council, "Principles and Standards for Planning Water and Related Land Resources," September 1973. Available from: U.S. Water Resources Council,

2120 L Street, N.W., Washington, D.C. 20037.

(h) EP 405–1–2
(i) ER 1105–2–200
(j) ER 1105–2–351
(k) ER 1120–2–117
(l) ER 1165–2–18
(m) ER 1165–2–117

§ 280.4 Definitions.

(a) "Structural measures" are physical measures which act directly on riverine or tidal waters to change their direction, area of inundation, volume, stage or timing to reduce flood damages or to enhance the value of the flood plain.

(b) "Nonstructural measures" are all other actions, including flood proofing, designed to reduce or avoid flood damages, or to enhance the value of the flood plain. They also include bridge modifications, relocations, or removals that do not fall within the definition of "structural measures" as defined in a above. The term "nonstructural alternatives" as used in reference 3a is interpreted to have the same meaning as "nonstructural measures."

§ 280.5. General Policy.

(a) Section 73 of the 1974 Act [Reference § 280.3(a)] requires that "consideration shall be given to nonstructural alternatives to prevent or reduce flood damages." This policy has been incorporated into Corps regulations which require consideration of a full range of structural and nonstructural measures in formulating alternative plans to achieve planning objectives which will contribute to National Economic Development (NED) and Environmental Quality (EQ), the two national objectives under the Water Resources Council (WRC) Principles and Standards. The significance of Section 73 is that it authorizes Federal participation in nonstructural measures to an extent comparable to structural local protection measures.

(b) Nonstructural measures should be considered in the context of the planning framework of the Principles and Standards (P&S) based upon two national objectives, and should be evaluated for their potential contributions to flood damage reduction, recreation, fish and wildlife and other concerns specific to an individual study area. Executive Order 11988 [Reference § 280.3(e)] emphasizes the need to consider nonstructural measures and compatible uses of flood plains.

§ 280.6 Plan Formulation Including Nonstructural Measures.

(1) *General.* The planning process described in ER 1105–2–200 shall be employed for formulating and evaluating plans. In his Water Policy Message to Congress on June 6, 1978 the President directed the WRC to improve implementation of the P&S by "requiring the explicit formulation and consideration of a primarily nonstructural plan as one alternative whenever structural water projects or programs are planned." Early and continuing efforts will concentrate on evaluating nonstructural measures, and wherever viable, carrying them through all stages of the planning process.

(1) Alternative plans need not provide the same amount or mix of benefits (or level of needs satisfaction). The differences among alternatives must be thoroughly evaluated in arriving at a strategy to best address the planning objectives for a particular study. Decisionmakers and the public should be made aware of the differences throughout the evaluation process.

(2) Nonstructural measures which involve public acquisition of rights in land offer opportunities for contributions toward concerns other than flood damage reduction. For example, flood plain evacuation to reduce flood damages requires fee acquisition of lands. This creates an opportunity to meet recreation demands with the addition of specific recreation facilities, to enhance fish and wildlife, or to provide for other benefits and uses of flood plain lands.

(3) Established policies for incremental justification, as reflected in the WRC Principles and Standards and Corps regulations, are applicable to formulation of plans incorporating nonstructural measures. Single-family dwellings and small business establishments may be combined into groups of similarly affected buildings or facilities to simplify the incremental analysis rather than on a structure-by-structure basis. For example, all residences in the x-year flood plain may be grouped for analysis.

(b) *Level of Protection.* Alternative structural and nonstructural plans need not afford the same level of protection. Reporting officers shall determine the adequacy of the degree of protection afforded by a plan involving nonstructural measures, and shall fully evaluate the consequences of floods exceeding that level.

(1) This regulation does not establish a minimum level of protection for a plan involving nonstructural measures.

(2) The reporting officer must evaluate alternative levels of protection and select the one which is best for the community, or portion of the community, from an economic, environmental, engineering, and social well-being standpoint.

(3) While reporting officers are given maximum flexibility to adopt an appropriate level of protection, this does not permit a voluntary selection of level of protection by individual occupants of the floodplain. Measures necessary to achieve the selected level of protection must be carried out in the entire community, or portion of the community, for which that level of protection has been designated.

(c) *Effects of Nonstructural Measures.* General guidance on the evaluation of the effects of nonstructural measures is provided below. (Detailed guidance on assessing impacts and evaluating beneficial and adverse impacts on the NED objective will be provided separately.)

(1) Flood warning, temporary flood evacuation and other emergency planning activities normally serve to reduce the hazards to life and damage to portable personal property. They may do so at a continuing cost to the community at large to maintain an emergency assistance capability.

(2) Flood proofing, by raising building elevations or by such methods as small ring levees or walls, can reduce flood damages. However, flood proofed buildings left inaccessible by rising flood waters could result in an intensified rather than reduced long term public commitment to emergency evacuation.

(3) Permanent flood plain evacuation changes damages. It also involves a change in the use of the flood plain lands which must be evaluated.

(4) Flood plain regulations, zoning ordinances, building codes and similar restrictions imposed by local governmental entities can be an important factor in preventing future incompatible and uneconomic uses of flood plains. Such measures have little impact on existing flood problems.

(5) Flood insurance alone merely indemnifies property owners for losses incurred from flooding, but does not reduce physical damages from flooding.

(d) Plans consisting entirely of nonstructural measures and plans combining structural and nonstructural measures will follow general guidance contained in reference § 280.3(i). Application of general guidance will be as follows:

(1) If at all practicable, an essentially nonstructural plan should be carried through Stage 3 of the planning process so this alternative can be compared with other final alternatives.

(2) Alternative plans incorporating a mix of structural and nonstructural

measures should be thoroughly explored.

(3) The period of analysis to be used for economic evaluation of nonstructural measures shall be no longer than 100 years.

(4) As specified by Section 73(a) of Pub. L. 93-251, benefits associated with recreation, fish and wildlife, and other public purposes will be considered in the evaluation and justification of nonstructural measures.

§ 280.7 Federal participation in implementation of nonstructural measures.

In conducting feasibility studies for flood plain areas, the Corps must evaluate all practical measures which may make contributions to the two national objectives of national economic development and environmental quality, regardless of the level of government responsible for implementation. After detailed alternative plans are developed, reporting officers may recommend Corps participation consistent with Section 73(b), Pub. L. 93-251.

(a) The Corps of Engineers may participate in evacuation and flood proofing of a single building or facility, or to a small number of buildings or facilities, only when such protection is a part of a broader flood damage reduction plan being implemented by the Corps. Further, the Corps will avoid recommending flood proofing measures that would leave occupied buildings inaccessible during a flood, thereby extending the public commitment for continuing emergency assistance.

(b) The Corps should take the lead in encouraging participation by State and other Federal agencies in solving problems related to flood plain use. Reducing flood damages, providing public park and recreational lands, and protecting the natural values of waterways are compatible goals well suited to joint study and an integrated solution involving other agency programs affecting flood plains.

§ 280.8 Cost sharing.

Section 73(b), reference § 280.3(a), provides that non-Federal participation in the cost of recommended nonstructural measures shall be comparable to the value of lands, easements, and rights-of-way which would have been required of non-Federal interests for structural local protection measures, but in no event shall exceed 20 percent of the project costs. Because of the difficulty in determining the appropriate structural alternative and the fact that there may be no feasible structural alternative, it is impractical to specify on a case-by-case basis what the "comparable" cost sharing would be for nonstructural measures. Accordingly, consistent with average cost sharing on traditional local flood protection projects, the non-Federal share of costs for recommended nonstructural measures will in all cases be 20 percent of the first cost of such measures, thereby assuring comparability to the average value of lands, easements and rights-of-way required for Corps structural protection projects. As in structural projects, operation and maintenance costs will be the sole responsibility of non-Federal interests.

(a) Nonstructural costs subject to the above cost sharing will include the cost of acquiring land or interest in land, the cost of flood proofing existing structures and the cost of relocation or removal of existing structures. Nonstructural costs will also include the cost of re-establishing public facilities, but will not include purchase of public properties or facilities in the flood plain, or reimbursement or credit for remaining indebtedness.

(b) The cost of floods plain and other local regulation, local flood warning, and temporary evacuation will continue to be a non-Federal responsibility.

(c) Lands acquired in the flood plain as a part of a recommended nonstructural measure to prevent or reduce damages, even though subsequently used for recreation or fish and wildlife, will be cost-shared 80 percent Federal. Lands already in public ownership acquired for a nonstructural measure, and subsequently returned for non-Federal management and maintenance, will not be eligible for Federal cost sharing or credited as part of the non-Federal share of overall project costs.

(d) Costs for specific facilities or measures required for fish and wildlife enhancement or for recreation will be shared in accordance with existing policies for such purposes.

(e) Federal participation in recreation lands outside lands acquired under paragraph (c) of this section will be limited to those required for access, parking, potable water, sanitation and related developments for health, safety and public access. Cost-sharing for such lands will be 50 percent Federal.

§ 280.9 Real Estate Interests for Nonstructural Measures.

(a) *Acquisition.* The Corps of Engineers will acquire all necessary interests in real estate for nonstructural measures recommended as part of a Federal project. This will apply even in those cases where the local cooperating agency is performing all other work in connection with the project. When permanent evacuation or relocation of flood plain occupants and structures is recommended, the Corps of Engineers will acquire fee simple title to land and buildings, and upon removal of incompatible structures and restoration, will convey title to a State or local agency upon the condition that if the land ceases to be used for project purposes, title shall revert to the United States. In no event shall the operation and maintenance be other than a local responsibility.

(b) *Construction.* Before work may begin on any nonstructural measures, the legally enforceable contracts required by Section 221 of Pub. L. 91-611 must be executed between the Corps and the local cooperating agency. Also, the appropriate contracts must be executed between the Corps and the owners of properties flood proofed using Federal funds since title to such properties remains with the individual owners.

(c) *Future Use of Property.* A tract of land acquired as a nonstructural measure, or a property flood proofed using Federal funds, may be used for any purpose which is not incompatible with the project purposes. Any contracts or agreements shall note that authority to determine whether a use is compatible shall lie with the Secretary of the Army acting through the Chief of Engineers.

§ 280.10 Local Cooperation for Nonstructural Measures.

The reporting officer must determine and specify those actions required of non-Federal interests which are essential for the long-term viability of recommended measures and achievement of the expected benefits.

(a) Adoption and enforcement of land use and related regulations for management of a nonstructural plan are entirely a local responsibility and will be specified in the requirements of local cooperation.

(b) Benefits from achieving the social objectives of safe and decent housing due to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646) will be assumed equal to the increased acquisition costs. These costs will be included in financial costs to be shared by non-Federal interests, but not included in economic costs.

(c) Additional items which should be included in the recommendations of the reporting officer are as follows:

(1) Provide contributions for nonstructural measures equal to 20 percent of the total first cost allocated to these measures. This contribution is currently estimated at $————.

(2) That the deed of conveyance from the United States of the acquired land for nonstructural measures provide that the land shall remain in public ownership and shall revert to the United States in the event that the land ceases to be used for public purposes compatible with the project management plan.

(3) That benefiting communities seek and/or maintain eligibility under the National Flood Insurance Program.

(d) Appropriate requirements for recreation, fish and wildlife.

§ 280.11 Effective Date.

This regulation is effective————————, as published in the Federal Register and codified as 33 CFR————————, for on-going preauthorization and Phase I advance engineering and design studies.

[FR Doc. 79-16534 Filed 5-25-79; 8:45 am]
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Federal Register

Tuesday
May 29, 1979

Part V

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Report and Order

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[15 CFR Part 2301]

[Docket No. 78-1]

Public Telecommunications Facilities Program; Report and Order

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Final rule (Report and Order).

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, is publishing a Report and Order adopting final rules and establishing funding priorities for grants under the Public Telecommunications Financing Act of 1978 (Pub. L. 95-567, 92 Stat. 2405). The Act authorizes the issuance of planning and construction grants for public telecommunications facilities. This action is required because the Act broadened the scope of the former Educational Broadcasting Facilities Program and transferred the program from the Department of Health, Education, and Welfare to the Department of Commerce.

EFFECTIVE DATE: The rules shall be effective May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth Salomon, Assistant Chief Counsel, National Telecommunications and Information Administration, Room 703, 1800 G Street, NW., Washington, D.C. 20504, 202-395-5616.

In the matter of public telecommunications facilities program.

Approved: May 22, 1979.

By the Administrator:

1. The National Telecommunications and Information Administration, U.S. Department of Commerce (NTIA), has before it for consideration an issues paper and the *Advance Notice* and *Notice of Proposed Rulemaking* [1] in this proceeding and responsive comments.

2. The *Notice* set forth our tentative conclusions on the various issues posed by the recent enactment of the Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, 92 Stat. 2405 (Act). The issues addressed included eligibility of applicants; priorities among applicants; processing and evaluation standards; and administration of the program. Also printed with the *Notice* were draft regulations. Approximately 40 parties filed comments [2] in response to the *Notice* and these proved most valuable in our analysis of the issues and the design of the final regulations, which are printed below. On April 26, 1979, NTIA announced June 4, 1979, as the closing date for filing applications for the current fiscal year. 44 FR 24616. Application forms were mailed to the approximately 2500-3000 names on the PTFP mailing list during the week of April 30, 1979. Obviously, we would have preferred to have adopted and published the final regulations long before the applications were mailed, but that was not possible in this first year of the program. To insure that applicants have access to the regulations, however, we will mail copies of this *Report and Order* to all who received an application form.

The following is a discussion of the four major categories of issues listed above and in paragraph 4 of the *Notice*.

A. Eligibility of Applicants

3. Under Section 392(a) [3] of the Act, five categories of entities may apply for PTFP grants. Entities in two of these categories, public broadcasting stations and State and local governmental entities, are readily identifiable. Determining whether an applicant is a noncommercial telecommunications entity, a system of public telecommunications entities [4] or a nonprofit association organized primarily for educational or cultural purposes,[5] however, involves some inquiry into the nature and purpose of the applicant. In paragraph 9 of the *Notice* we proposed that "[a]s an initial measure of eligibility, we would require that non-governmental applicants hold a current Section 501(c)(3) exemption from the Internal Revenue Service," and that we would also require such applicants to submit their organic charters in order to "establish that they are organized primarily for educational or cultural purposes and will produce and distribute only" noncommercial educational and cultural radio and television programming and related noncommercial materials. We also proposed "possession of the means of electronic distribution of public telecommunications services" as a threshold requirement for applicants in all five categories, thereby eliminating all entities engaged exclusively in program production. *Notice*, 44 FR at 13263.

4. *Section 501(c)(3) Exemptions.* Use of the Section 501(c)(3) exemption as a test of eligibility was supported in many comments. The Ana G. Mendez Educational Foundation (Mendez Foundation) pointed out that the Internal Revenue Code does not apply in Puerto Rico and asked that a tax exemption granted by the Commonwealth of Puerto Rico be considered equivalent to an IRS exemption. Latinos in Communications stated that "fundamental organizational changes would be needed in order for some Latino educational and cultural groups to qualify for funding," though they did not indicate why this would be so. They urged that such groups be considered eligible if they are nonprofit and tax exempt under the laws of the State of New York. The parties [6] represented by Dow, Lohnes and Albertson (DLA) urged incorporation into the definition of "nonprofit" (§ 2301.3(a)(7) of the draft Rules) all of the provisions of Section 501(c)(3) and particularly the requirement that the organization be devoted "exclusively" to educational, cultural, or similar purposes.

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[1] 44 FR 897, published in January 3, 1979; and 44 FR 13262, published March 9, 1979, respectively.

[2] Parties filing comments are listed in Appendix A.

[3] "Each applicant shall also provide assurances satisfactory to the Secretary that—

(1) the applicant is (A) a public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State; * * * Pub. L. 95-567, 92 Stat. 2405 § 103 (1978).

[4] Relevant definitions are contained in § 397 of the Act: "The term 'noncommercial telecommunications entity' means any enterprise which—

(A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation, or association; and

(B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means of other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere."

"The term 'system of public telecommunications entities' means any combination of public telecommunications entities acting cooperatively to produce, acquire, or distribute programs, or to undertake related activities."

"The term 'public telecommunications entity' means any enterprise which—

(A) is a public broadcast station or a noncommercial telecommunications entity; and

(B) disseminates public telecommunications services to the public." Pub. L. 95-567, 92 Stat. 2404 § 401 (1978).

[5] *Supra*, note 3.

[6] University of Houston (KUHT); West Central Illinois Educational Telecommunications Corporation; The University of Wisconsin System; Chicago Metropolitan Higher Education Council (WCME-TV); Sunflower ETV Corporation (KPTS); Northeastern Ohio ETV Corporation (WNEO); Milwaukee Area Board of Vocational, Technical and Adult Education (WMVT); St. Louis Regional Educational & Public Television Commission (KETC); University Regional Broadcasting, Inc. (WPTD/WTPO); University of Michigan; South Central Educational Broadcasting Council (WITF); and Spring Hill College (WHIL).

5. We intended the Section 501(c)(3) requirement as an administrative tool for use in reviewing applications for acceptance for filing, not as an addition to the eligibility criteria contained in the Act. Reexamination of Section 501(c)(3)[7] and its attendant regulations, 26 CFR 1.501(c)(3)–(1) has shown us that the tax exemption fails to coincide with the eligibility criteria of the Act at three points: first, Section 501(c)(3) applies only to entities organized and operated "exclusively" for certain purposes,[8] while the Act refers to entities organized for certain "primary" purposes,[9] implicitly allowing incidental or secondary purposes which might not be allowed under Section 501(c)(3). Second, the Act refers to educational and "cultural" purposes, whereas the term "cultural" does not appear in Section 501(c)(3). Third, Section 501(c)(3) is a list of the types of nonprofit organizations which Congress had determined should be tax-exempt. The Act requires applicants to be nonprofit in nature but, although it defines "nonprofit" in language modeled after Section 501(c)(3), it does not state that applicants must be exempt from Federal income taxation. While we still believe that most eligible applicants will also be eligible for the Section 501(c)(3) exemption and that the determinations made by the IRS in granting the exemption will be useful to us, we must concede the possibility that summary rejection of applicants solely because they lack a Section 501(c)(3) exemption could result in unwarranted disqualification of otherwise eligible entities.[10]

6. Accordingly, we have decided to change the policy contained in paragraph 9 of the *Notice* as follows: Applicants who are eligible for a Section 501(c)(3) exemption from the IRS or for an equivalent exemption from the Commonwealth of Puerto Rico must submit that exemption. Applicants who are ineligible for a Section 501(c)(3) exemption but who can demonstrate nonprofit status by showing an applicable State tax exemption will be considered on a case-by-case basis. They must submit: (a) evidence of their State tax-exempt status; (b) citation to, and a copy of, the State statutory provisions governing that exemption; and (c) a brief statement explaining why they lack a Section 501(c)(3) exemption. As we gain experience with this program, we hope to be able to compile and publish a list of State exemptions which we will have found acceptable as assurances of nonprofit status. Any applicant who has no tax exemption based on nonprofit status but which believes itself eligible for this program may seek to show its eligibility in any way it deems sufficient. Applicants who are ineligible for a Section 501(c)(3) exemption are urged to obtain preliminary eligibility determinations through the opinion letter process described in paragraph 39, below. *See* § 2301.4(c) of the Rules.

7. *Possession of Means of Electronic Distribution.* Our statement in paragraph 13 of the *Notice* that "possession of the means of electronic distribution of public telecommunications services" is a "central requirement of eligibility" elicited a range of comments. Public Service Satellite Consortium (PSSC) suggested that the rules "use clearer language" to identify ineligible production facilities. The corporation for Public Broadcasting (CPB) concurred in the exclusion of production centers but felt that it should not be necessary for an applicant to own or control means of electronic distribution as long as that applicant has a contractual or other arrangement to use a means of electronic distribution on a regular basis. Cable access centers and radio reading services operating on leased or donated subcarrier frequencies were repeatedly mentioned as entities which should be eligible, and the Mendez Foundation asked that we make clear that a production center that regularly buys commercial time for its programs may be funded.

8. Several other parties who took the position that the requirement should be access to means of electronic distribution defined "access" in ways which would exend eligibility well beyond the limits suggested by CPB. For example, both National Federation of Community Broadcasters (NFCB) and National Public Radio (NPR) argued that systems of public telecommunications entities which produce programs for distribution to their members should be eligible for grants for their production facilities. NFCB also thought that independent producers having production contracts from public telecommunications entities or "established records in disseminating their programs via public telecommunications entities" should be eligible, and argued that we had created a false distinction between those independent producers which are able to deliver programs to public telecommunications entities by electronic means and those which must distribute their tapes or films by nonelectronic means.

9. Latinos in communications strongly opposed exclusion of production centers. They contended that, at least in New York City, which has two noncommercial television stations, the telecommunications needs of the Hispanic communities would be best served by funding remote or mobile production units to be used by Latinos to produce programs which would then be aired over existing public broadcast outlets.

10. Both opponents and critics of our proposal pointed out that Section 397(7) of the Act defines a "noncommercial telecommunications entity" as an enterprise organized to disseminate programs to the public by means "including * * * cassettes, [and] discs * * *" and asked how we could reconcile that definition with our electronic distribution requirement.

11. In proposing to deny eligibility to facilities devoted exclusively to program production, we were attempting to solve two different problems. First, it seemed we would forestall applications from eligible entities seeking funds for ineligible projects. The arguments put forth by Latinos in Communications demonstrate that this rationale alone will not support categorical disqualification of production centers, since production centers devoted to producing programs for a target group within an area may be a means of expanding services to unserved audiences. (*See* Priority II, Appendix B, below).

12. Our second aim was to avoid funding entities which would not be able to give credible assurances that the grants would ever result in provision of public telecommunications services to the public. We continue to see this as a necessary and prudent consideration in

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[7] 26 U.S.C. 501(c)(3) lists certain organizations which are exempt from taxation as provided in § 501(a):

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Other tax exempt groups are named in § 501(c)(1)(2), (4–17), (d) and (e).

[8] *Id.*

[9] Section 392(a)(1)(D), *supra*, note 3.

[10] For this reason, our definition of "nonprofit" (taken directly from Section 397(7) of the Act) does not mention or incorporate IRC Section 501(c)(3). In deciding to consider applicants who do not possess Section 501(c)(3) exemptions, we are also rejecting D.L.A.'s suggestion that we use a more stringent definition of "nonprofit" than that provided by Section 397(7).

light of the legislative history of the Act documenting the difficulties experienced by independent producers in obtaining noncommercial distribution of their programs.[11] However, we do agree with the parties who found the requirement of possession of electronic means of distribution too restrictive and inconsistent with the intent of Section 397(7) of the Act. Therefore, we have decided to adopt CPB's suggestion that applicants be required to have a contractual or other reliable arrangement for use on a regular basis of an effective means of distributing programs to the public. Because we are required by Section 392(g) to maintain a 10-year interest in PTFP-funded equipment, we will normally expect this arrangement to be in the form of a 10-year lease, a contract that cannot be unilaterally cancelled, or a similar legal commitment. We will consider on a case-by-case basis other arrangements in which there appears to be a reasonable expectation that the grantee will be able to use its PTFP-funded equipment for provision of public telecommunications services to the public during the period of Federal interest. Applicants contemplating such arrangements are urged to employ the opinion letter process described in paragraph 39, below.

13. Cable access centers, SCA services, and entities with long-term contracts to acquire blocks of time for their programming on distribution facilities should be able to qualify under this rule. Production centers which merely give or sell programming to other entities would not be eligible, because such production centers cannot control the decision on whether programs are disseminated to the public.[12]

14. By requiring access to an "effective" means of distribution to the public we are giving applicants the opportunity to demonstrate that a non-electronic means of distribution by, for example, cassette or disc, can be cost-effective and serve the purpose of this program. We consider the following to be relevant indicia of cost-effectiveness: the number of persons who would be reached by the proposed service; the cost per person as compared to alternate technologies; the reliability of the system over the useful life of the PTFP-funded equipment; and the relative technical quality of the service provided. *See also* note 12, *supra.*

15. We are not entirely satisfied with our somewhat complex resolution of this issue. We have had to create new areas for the exercise of discretion in the processing of applications, and we are not altogether certain that there is a base of experience available to apply that discretion in a consistent and orderly way. We are hopeful, however, that this policy will open the program to some new, creative and economically attractive approaches to serving minorities and women. In any event, we are convinced that what we have outlined is required and intended by the Act.

16. We must also state in this context our belief that it is not the goal of the program nor the intent of the Act that the facilities program fund independent producers who do not fulfill a PTFP program priority. Such independent producers must seek production funds elsewhere. We encourage producers who wish to propose projects fundable under Priority II to seek creatively to develop with public telecommunications entities arrangements such as we have described in paragraph 12 above. This would allow us to make grants to them with some assurance that the programs they produce will reach the public.

17. *Special Interest Groups; Religious Organizations.* Early in this proceeding we questioned whether churches and other religious groups, labor unions, fraternal groups, and special interest groups could qualify for funding. (*Advance Notice,* paragraph 14.) In the *Notice* we proposed to accept applications from subsidiaries of such groups if they are organized primarily for educational or cultural purposes and can give the assurances required of all applicants that PTFP funds and any monies generated through the use of PTFP-funded equipment will be exclusively used for public telecommunications purposes as outlined in the application. We also proposed a definition of "educational and cultural programming" intended to preclude use of PTFP-funded facilities to advance the views of an applicant or its parent organization. We said that we would also require applicants which are subsidiaries of churches or other religious groups to be nonsectarian in nature, and we proposed a rule forbidding such applicants to use PTFP-funded equipment for religious purposes.[13]

18. All parties who commented on this issue shared our conviction that PTFP-funded equipment should not be available for use in promoting the private views of special interest groups. Some, however, felt that the safeguards we proposed were inadequate to screen out applicants likely to make such use of a grant. NPR, for example, thought that "explanatory documents" in addition to an organization's organic charter would be necessary to provide us with sufficient insight into an applicant's purposes to make an eligibility determination. The State University of New York urged that we require applicants to include in their charters specific prohibitions against use of their facilities by their parent organizations. The Public Broadcasting Service (PBS), expressing strong reservations about allowing subsidiaries of religious or special interest groups to be considered for grants, stated ". . . it is unlikely that they will not seek to advance the special viewpoints of the parent organization . . . it is unclear that any safeguards could be fashioned to prevent abuse while keeping NTIA out of specific program review of an applicant's proposed service." PBS suggested that "a less dangerous (if less effective) alternative" would be to require an applicant to show that (a) its policies are self-determined; (b) it receives financial support from multiple, diverse sources; and (c) it will provide a broad range of public telecommunications services. CPB was also concerned that, in any dispute regarding the continued eligibility of applicants, NTIA would have to evaluate the content of the programming disseminated over PTFP-

[11] *See, e.g.,* Sen. Rep. No. 95-858, 95th Cong., 2d Sess. 18 (1978) (*Senate Report*); H.R. Rep. No. 95-1178, 95th Congress, 2d Sess. 33 (1978) (*House Report*).

[12] A different result would apply where a group of PTFP-eligible entities applied for a joint production facility since each of the constituent members would possess a means of electronic distribution. Such applications would appear to present us with an efficient utilization of limited PTFP funds.

[13] Section 2301.27(d) of the proposed Rules, adopted as § 2301.27(c). Section 2301.27 implements Section 392(g) of the Act which creates a 10-year period of Federal interest during which NTIA may require repayment of the fair market value of PTFP-funded equipment if the grantee ceases to be eligible for a grant or uses the equipment for other than public telecommunications purposes. In the *Notice,* paragraph 12, we concluded that the ruling in *Tilton* v. *Richardson,* 403 U.S. 672, *reh. denied* 404 U.S. 874 (1971) requires that with respect to sectarian use the period of Federal interest extend over the entire useful life of the equipment.

Tilton involved an Establishment Clause challenge to the Higher Education Facilities Act of 1963, which authorized Federal grants and loans to colleges and universities for construction of "academic facilities." Excluded from the definition of that term was "any facility used or to be used for sectarian instruction, or as a place of religious worship or . . . used primarily in connection with any part of the program of a school or department of divinity. . . ." Use for a prohibited purpose during a 20-year period of Federal interest was to result in Federal recovery of grant funds. The Supreme Court upheld the Act but struck down the 20-year limitation on the grounds that, since a substantial structure would not be deemed to lack all value after only 20 years, sectarian use after 20 years would violate the Establishment Clause. In response to *Tilton,* Congress amended the Act to provide that Federally-funded buildings could never be used for sectarian purposes. 20 U.S.C. 1132(e)(c).

funded facilities. CPB did not think that our proposed definition of "noncommercial educational and cultural television and radio programs" would alleviate this problem and urged that NTIA would be "on a more solid constitutional footing if it established more objective criteria for determining the permissible programming uses of PTFP-funded facilities."

19. Our basic conclusion that funding subsidiaries of religious groups would not violate the Establishment Clause of the First Amendment as long as the facilities were not used for sectarian purposes was not disputed. Minnesota Public Radio, among others, asked for clarification of the scope of the rule banning use of facilities for "any religious purpose", questioning whether broadcast of Bach's *Mass in B Minor* or of a religious ceremony celebrating a holiday would fall within that proscription.

20. The Chicago Metropolitan Higher Education Council sought assurance that the restriction would not prevent use by church-related educational institutions of instructional programs produced and distributed by PTFP grantees. NPR thought that proposed § 2301.27(d) might unduly restrict religiously-affiliated entities from presenting programming similar to programs currently being provided by public broadcasters, and suggested changing the rule to read "... facilities purchased in whole or in part with program funds may not be used for the benefit of any religious organization nor for any sectarian purpose."

21. It is obvious that we are faced here with striking a difficult and delicate balance between competing considerations. We have a responsibility to see that this program is not turned to narrow, private purposes in contravention of the letter and intention of the Act, a responsibility which assumes Constitutional dimensions where use of facilities for sectarian purposes would violate the Establishment Clause of the First Amendment.[14] However, we, as a government body, must also, to the extent possible, avoid becoming "super-programmer" by inquiring into the content of particular programs. One approach would be to simply refuse to accept applications from types of associations which would be especially likely to misuse federally-funded facilities. We rejected that approach in the *Notice*, and we continue to reject it. Not only do we not wish to deny consideration to applicants who might develop valuable public telecommunications services,[15] but we also believe that rejecting an applicant which is willing and able to give the assurances required by the Rules solely because it is connected with a religious organization could create as many due process, equal protection,[16] and First Amendment [17] problems as it would solve.

22. We will, as proposed in the *Notice*, accept for filing applications from otherwise-qualified entities which are related to religious groups, churches, or other special interest groups. However, such applicants, must make in their applications clear showings that they will never use PTFP-funded facilities to serve the special interests or sectarian purposes of their parent organizations or of any sectarian group. The law requires this of us, and we cannot and would not shirk this responsibility. Stated differently, the applicant must make a convincing showing that the risk that we will need to seek recovery of a grant due to improper use of facilities is not greater than the risk involved with any applicant. In this way, we expect not to be drawn into controversies about the content of grantees' programming.

23. The groups under discussion are diverse, and we cannot describe in absolute or universally-applicable terms what each will need to show. We offer the following as guidance only. The three criteria proposed by PBS—self-determination of policies, diverse sources of financial support, and provision of a broad range of public telecommunications services—will constitute a minimum but not necessarily sufficient showing. We will be more likely to fund applicants which have community advisory boards, governing boards representative of the community, or some other means of insuring broad-based participation in the applicant's decisionmaking processes. We will be more dubious of an entity which, though nominally autonomous, is guided by a governing body appointed or drawn exclusively from the parent organization.

24. Applicants with religious affiliations will be expected to show that both the applicant organization and its proposed services will be nonsectarian in nature. By "nonsectarian" we mean that they do not have the function or purpose of advancing or propagating a religious belief. *See Lemon* v. *Kurtzman* 403 U.S. 602 (1971); and *Tilton* v. *Richardson, supra*, opinion of Justice Brennan in both cases, 403 U.S. 602, 659. The presence of policy-making persons from outside the parent organization will be particularly important for these entities.

25. Although we concentrated our attention in the *Notice* on the potential eligibility problems of entities in the categories of "noncommercial telecommunication entity" and "nonprofit . . . association organized primarily for educational or cultural purposes," we note that the problem of sectarian use of funded facilities could also arise with respect to public broadcasting stations. The FCC, under rules and regulations in effect on the effective date of the Act, has assigned noncommercial licenses to stations which would probably be ineligible for Federal funding due to the overall thrust of their programming with emphasis on presentation of sectarian material. *See, e.g., Moody Bible Institute*, 66 FCC 2d 162, *recon. denied*, 66 FCC 2d 629 (1977). Mere possession of a noncommercial educational broadcasting license, therefore, will not guarantee PTFP eligibility to religiously-affiliated licensees. Applicants such as the licensee in the cited case are cautioned that provision of time to representatives of other religions will not mitigate their sectarian use of the facilities. The difference between the FCC action and ours stems not from varying policy judgments but from the law's command in the differing situations, the licensing required for all radio operations as against use of Federal funds.

26. In response to the concerns of those who feared we were banning all programs with religious themes, we stress that we are not doing so, and have changed the Rule to read: "In addition, facilities purchased in whole

[14] "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof, ..." U. S. Constitution, Amendment I. *Cf., King's Garden Inc.* v. *FCC*, 498 F. 2d 5160 (D.C. Cir) *cert. denied* 419 U.S. 996 (1974): "[R]eligious sects may [not] merge their [FCC] licensed franchises completely into their ecclesiastical structures."

[15] It is not inconceivable that a church-related group could create a radio reading service for the print-handicapped, or that a religious or "special interest" group involved in minority community projects might be in a position to organize and raise start-up funds for a subsidiary devoted to serving the telecommunications needs of that community. We also do not wish to bar from the program all facilities run by church-related universities. Some such institutions received EBFP grants after the Educational Broadcasting Facilities and Telecommunications Demonstrations Act of 1976 expanded eligibility for that program to private universities. Pub. L. 94-309, 90 Stat. 603 (1976).

[16] *King's Garden, Inc, supra* at 57; *Cf. McDaniel* v. *Paty*, 435 U.S. 618, 643 (1978), overturning a provision of the Tennessee state constitution barring clergy from election to the state legislature. The Tennessee Supreme Court had ruled that the discriminatory provision was necessary to maintenance of the separation between Church and State.

[17] Regarding the difficulty of determining what is or is not a religious organization, see Note, *Toward a Constitutional Definition of Religion*, 91 Harv. L. Rev. 1056 (1978), and sources cited therein.

or in part with program funds may never be used for purposes, the essential thrust of which are sectarian." By this change, we mean to signal that the rule will not affect presentation in an educational or cultural context of music or art with a religious theme, nor of programs about religion. It will not preclude distribution of instructional programming of a secular nature to church-related educational institutions. It thus does not address or interfere with oft-encountered licensee efforts generally to serve the ascertained needs and interests of their areas. We have also applied the rule to all applicants, since Federal assistance to sectarian efforts violates the Establishment Clause regardless of who is involved.

27. An additional safeguard inherent in our application procedure is the provision that there shall be opportunity for public comment on those applications accepted for filing. We would hope that through this process we would be made aware of situations where a clear possibility of abuse has escaped our detection.

28. We believe that the measures we have outlined above strike a Constitutionally-acceptable balance between the right of the public to expect that public funds will be applied only to proper public purposes and the right of public telecommunications entities to be free of government intrusion into sensitive First Amendment areas. We also believe that the screening procedures we are adopting will be effective in preventing misapplication of grant funds. At the same time we cannot ignore the possibility pointed out by CPB that we might have to respond to complaints about misuse of funded facilities for promotion of special interests or religious beliefs. We do not intend to become a forum for complaints about electronic media programs, and our general practice will be to refer such complaints to the telecommunications entity involved. Only in cases where we receive complaints giving substantial indication of flagrant and/or continuing abuse will we request the grantee to submit data concerning the programming in question. In such cases, should it appear that the complaints have been justified, we will consider the grantee to be in default of representations in the grant application and subject to administrative actions ranging from withholding further payments under the grant to taking the default into account when considering subsequent applications of the recipient, to termination of the grant under Section 392(g).

29. *Eligibility for Planning Grants.* In the *Notice,* we did not address separately the eligibility requirements for planning grant applicants; the proposed rules on eligibility and required assurances (§§ 2301.15 and 2301.16) applied equally to all applicants for assistance. This approach followed Section 392(c) of the Act, which stated that planning applicants " . . . shall provide assurances satisfactory to the Secretary that the applicant meets the eligibility requirements of subsection (a) to receive construction assistance." Several comments, noting that "systems of public telecommunications entities" are eligible to apply for grants, raised the question whether a system of entities must itself intend to construct and control operation of facilities [18] in order to qualify for a planning grant. The same issue was also raised with respect to a State planning agency which might be organizationally separate from the State agency which would carry out any facilities plans which were developed under a planning grant.

30. It is clear that an applicant may meet the definition of a "system of public telecommunications entities; [19] yet not be authorized or intended by its constituent entities to construct and operate facilities. The question is whether Section 392(c), in combination with Section 392(a)(2) [20] must be read to limit planning grant eligibility to those systems which do intend to become owners and operators of public telecommunications facilities, and to exclude systems whose members prefer to establish individual control, of some or all of the facilities involved. Such a reading, we believe, would not serve the intent of the Act. It could discourage coordinated planning efforts, though Section 392(a)(5) of the Act requires comprehensive area-wide planning as a prerequisite to being considered for a construction grant. Or, equally undesirably, it could encourage systems to choose centralized ownership of facilities whether or not such a scheme would be cost-effective or responsive to community needs. Accordingly, we will consider Section 392(c) to be satisfied by an otherwise eligible system of public telecommunications entities if assurances are given that either the system or its members are eligible to receive construction assistance. We will allow otherwise eligible governmental planning agencies to give assurances that agencies exist which are empowered to carry out any plans that may be developed and eligible for construction assistance, and that the eligible agencies will be involved in the proposed planning effort. See § 2301.6(a) of the Rules.

31. This interpretation of the Act does not mean that otherwise *ineligible* organizations may apply for funds to engage in planning for the benefit of eligible entities. For example, a consulting firm retained to create a plan for a group of radio stations may not act as agent for the stations and apply for a grant. One of the stations must assume the responsibility of obtaining the grant and contracting with the planner.

32. *Other Eligibility Issues.* Several parties read proposed § 2301.4(b) of the Rules, requiring applicants to be eligible for all necessary FCC authorizations, to exclude applicants proposing to employ closed circuit television or carrier current radio, which are nonlicensed electronic means of distribution. This perception is incorrect; the question of whether a distribution technology is licensed by the FCC is irrelevant to eligibility for this program. What is necessary is that applicants who do intend to use regulated technologies be able to obtain the necessary authorizations. Closed circuit type systems will be judged according to the same funding criteria applicable to other applications. While it does not seem likely that a college radio station operating only on carrier current would score well under those criteria, there may be some applications of these technologies which we would fund.

33. DLA found an ambiguity in paragraph 9 of the *Notice* which it believed created an implication that nonprofit educational or cultural organizations must be devoted solely to the production and distribution of noncommercial programming in order to qualify for funding. While we are not certain where DLA finds this implication, we make the following clarification: A *grantee* need not be devoted solely to public telecommunications in order to be eligible for this program. PTFP-funded *facilities,* however, must be used only for public telecommunications purposes, as discussed in paragraphs 99–104, below.

34. DLA suggested that we tie our definition of a "public broadcast station" or a "noncommercial educational broadcast station" to the rules in effect at the FCC at the time of the application rather than, as proposed, to the rules in effect on the date of enactment of the Act. We share DLA's concern over the possibility, even

[18] Section 392(a)(2) requires applicants to give the assurance that the operation of the facilities will be under the control of the applicant.

[19] *Supra,* note 4.

[20] *Supra,* note 18.

probability, that the FCC will in the near future change its criteria for eligibility for a noncommercial license. *See Notice of Inquiry in the Matter of Amendment of the Commission's Rule governing Noncommercial Educational FM and TV Broadcast Station Licenses,* (BC Docket No. 78-164, FCC 78-382 (1978). However, our definition was taken directly from Section 397(6) of the Act and to change it as suggested would alter the Congressional eligibility requirements, an amendment which is beyond our jurisdiction. We will have to revisit this issue after the FCC completes its work in Docket No. 78-164 to determine how to deal with any problems the Commission's decision might create.

35. The State of North Carolina requested clarification of whether a state agency which operates a public telecommunications system using technology other than primary broadcast stations will be considered to be a "noncommercial telecommunications entity" or a State agency for eligibility purposes. This confusion is understandable in light of the overlap among the five categories of eligible applicants listed in Section 392(a) of the Act. The first three categories [21] are based on the kind of services applicants will provide while the last two [22] are based on the nature of the applicant organization.

This overlap has no effect on those applicants which fit into more than one category, since neither acceptance for filing nor award of a grant depends in any way upon the category to which an applicant is assigned.[23]

36. Rocky Mountain Corporation for Public Broadcasting (Rocky Mountain) asked that "in view of the history of problems encountered by Indian groups under the EBFP," we make specific provision for the eligibility of Indian tribal entities. We see no need to create special eligibility rules for Indians. HEW records indicate that Indian groups which were found ineligible for the EBFP were disqualified for the same reasons that non-Indian groups were disqualified and not for special reasons related to their status as Indians.[24] Indian tribes will be considered eligible as because they also train students. *See also,* paragraph 104, below. Exclusion of instructional programming services, local governments, while stations, noncommercial telecommunications entities, systems, and nonprofit organizations formed by Indians will be treated the same as other applicants in these categories.

37. NPR urged us to specifically exclude from eligibility such "narrow services as student training, instructional programming, and fundraising for other than the support of the applicant's programming operations." While a facility devoted solely to student training would not meet the funding criteria for this program, applicants which deliver public telecommunications services to the public will not be excluded however, would clearly be contrary to the legislative intent of the program.[25]

38. Extensive use of PTFP-funded facilities to raise funds for other entities seems to us to be inconsistent with the statutory requirement that facilities be used only for provision of public telecommunications services. Under current FCC rules, noncommercial broadcast licensees are prohibited from conducting fundraising auctions for the benefit of nonlicensee entities. 47 CFR §§ 73.503, 73.621; *See Ohio State University, Columbus, Ohio,* 62 FCC 2d 449 (1976) (denying waiver on grounds that auctions for the benefit of other entities are "akin to regular advertising" and thus inappropriate for a noncommercial operation, 62 FCC 2d at 450). In *First Report and Notice of Proposed Rulemaking in the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations,* FCC Docket No. 21136, 69 FCC 2d 200 (1978), the Commission proposed to retain that prohibition with respect to auctions but to allow its licensees, to exercise discretion in deciding whether nonauction fundraising for other entities is in the public interest. Time devoted to fundraising for others would, however, be charged against a proposed yearly limit on total on-air nonauction fundraising. 69 FCC 2d at 229. This is an area in which we would like to avoid burdening our licensee grantees with conflicting requirements; therefore, we will defer adopting a definite policy on fundraising for other entities until after the FCC completes its work in Docket No. 21136.

39. *Predetermination of Eligibility.* As the foregoing discussion indicates, it is likely, especially in the first years of this program, that many questions will arise about the eligibility of applicants; a number of questions have in fact already arisen. Those with doubts about their eligibility may not wish to incur the expense of applying for funding without some assurance that they will be allowed to compete for a grant. This year, all eligibility questions must be handled within the preliminary screening process, but in the future, applicants who are uncertain whether they qualify for the program will be encouraged to write to NTIA and request an opinion letter on eligibility. See § 2301.4(c) of the rules. The request should describe the applicant and its proposal, and should include the applicant's organic charter and Section 501(c)(3) exemption or other documentation of nonprofit status. NTIA will review such requests, and may ask the applicant to submit additional information. An opinion letter on the issue of eligibility will be issued if necessary, by the Office of Chief Counsel, ordinarily within 30 days of receipt of all necessary data. Opinion letter requests may be submitted at any time except between the closing date for submission of applications and the date of publication in the Federal Register of the list of applications accepted for filing. However, we advise potential fiscal year 1980 applicants to file their requests as soon as possible after the announcement of grants for fiscal year 1979.

[21] "Public broadcast stations", "noncommercial telecommunications entities", and "system of public telecommunication entities", *see* note 3, *supra.*

[22] "Nonprofit * * * association organized primarily for educational or cultural purposes" and state or local governments or political and special purpose subdivisions of states. *See* note 3, *supra.*

[23] We note without offering any advice on the subject that the question whether a governmental entity meets the statutory definition of a "noncommercial telecommunications entity" is not a frivolous one, since that definition also applies to Section 396 of the Act and therefore will be relevant to those who will seek funding through CPB. CPB is charged with funding "public telecommunications entities", a term which the Act defines to include only public broadcast stations and noncommercial telecommunications entities, *see* note 4, *supra.*

[24] Several multi-purpose Indian nonprofit organizations seem to have failed to qualify for EBFP because they were found not to be organized primarily for educational broadcasting purposes, as was then required. Such groups could still be ineligible if they are not organized primarily for educational or cultural purposes. The best solution for this problem is for the interested persons or groups to create new, eligible organizations to apply for grants.

[25] The Committee expects the Department of Commerce, which will assume responsibility for the facilities program with the broadened power to compare the advantages of alternate technologies on the basis of cost and benefits, and the extension of eligibility for facility grants to public telecommunications entities, in coordination with HEW and (such as Instructional Television Fixed Service or point-to-point transmission, cable, translator, video cassettes and video discs) in the delivery of educational and cultural programs to the classroom. *Senate Report* at 9.

One area where nonbroadcast technologies might be used effectively is in the provision of instructional or "classroom" services. Many States and localities rely on public broadcasting stations to provide instructional television; indeed, this was the initial impetus for developing "educational broadcasting". But to the extent that these uses conflict with more general programming aims articulated by the Carnegie Commission, it is worth considering whether "classroom" uses should be shifted to other technologies (video cassettes, video discs, and so forth). In addition, the development and application of ITFS to meet these needs should be given more attention. *House Report* at 38.

40. It must be stressed, however, that just as acceptance of an application for filing under Section 2301.13 does not bar a subsequent return or disapproval of an application, a favorable opinion under Section 2301.4(c) does not preclude a denial or acceptance of an application or its later return or disapproval because, for example, it is formally determined that the applicant is ineligible because of some fact not presented by the applicant in the letter ruling process.

B. Priorities

41. Numerous comments requested clarification of the four proposed priorities listed in the *Notice*.[26] 44 FR 13263–264. Before discussing the specifics of the requests, several initial matters must first be disposed of. NFCB and NPR criticized our intention not to include the detailed list of priorities in the rules themselves. They were concerned that the public have an opportunity to comment on NTIA amendments to the priorities before the changes take effect. We appreciate this legitimate concern for an open administration of the program of NTIA and continued public involvement in that administration. However, we continue to believe that the efficient running of the program requires that NTIA retain flexibility to amend the priorities in light of rapid public telecommunication developments. On the other hand, we, too, want to keep the public informed and involved. To that end, NTIA will amend the list of priorities only after a public notice of the anticipated changes has been published in the Federal Register and the public has been given an opportunity to comment. Nevertheless, the priorities list remains a statement of NTIA policy rather than a rule and we will retain discretion over whether full Administrative Procedure Act-type procedures will be employed in changing it in any particular case. Commencing with fiscal year 1980, the current statement of the priorities will be published each year in the notice of closing date. Section 2301.9 of the rules.

42. DLA urged NTIA to adopt a policy of continuing priority for projects funded over several years. It is urged that the priority assigned for the first year of a project continue for subsequent applications which are part of the applicant's initial overall proposal. We will not adopt this recommendation for several reasons. First, its implementation could, within a few years, result in a large bulk of the PTFP funds being committed, unofficially, in advance of appropriations. Second, in the case of major establishment or extension projects which the staff or the applicant has decided to complete through a series of grant applications over a period of years, the initial grant always will be minimally sufficient, along with matching funds, to activate the facility. While the facility may not be capable of local origination, it will be capable of providing a first service to the public. The automatic continuing assignment to an applicant of a first service priority after the priority has been met would seriously interfere with our ability to meet the objectives that Congress has set for this program. Therefore, priorities for multi-year projects will be assigned yearly on the basis of the then-current project proposed.

43. Another initial issue is which of the four priorities[27] come within the 75 percent set-aside of section 393(c). NPR and NFCB suggested that all projects within Priorities I and II and certain projects within Priorities III and IV are within the scope of Section 393(c). In drafting the priorities we intended that only projects falling within the first two priorities would be entitled to set-aside funding. Our intent is to include in these first two priorities all pure extension-of-service applications, whether they provide a first public service to a geographical area or a significantly different service for new audiences, and whether the service provided consists solely of a distant signal or includes programs of local origination.

44. Several parties commented on our interpretation of the mandate of Section 393(c). We stated that the words "shall be available" did not establish a rigid allocation of funds but, rather, a funding priority among eligible applicants. *Notice*, 44 FR 13262 n. 3. CPB urged that before any surplus in the 75 percent set-aside is utilized to fund non-extension applications, all eligible extension-related planning applications should be funded. NFCB, while endorsing the concept that Section 393(c) is not a rigid allocation, nevertheless urged a "closer adherence" to the 75 percent guideline so that eligible extension projects will receive funding. To this end, NFCB suggested NTIA adopt an internal standard reserving a minimum percentage of the set-aside for extension projects with the goal of funding all eligible extension construction and planning projects. Any surplus left in the minimum percentage would then be carried forward to the succeeding fiscal year. NFCB's position was supported by Front Range Educational Media Corporation (Front Range). NPR suggested that Section 393(c) be considered a "serious target" for extension projects but that any monies that cannot be expended for expansions should be available for funding other projects.

45. NTIA endorses the views of the commentators to the extent that all eligible extension of service construction *and* planning applications must be funded before any unused balance in the 75 percent set-aside can be utilized for other projects. We decline, however, to adopt NFCB's recommendation of an internal minimum guideline as a safeguard to assure compliance with the intent of Congress. NTIA is fully aware of the Congressional mandate and will comply with both the spirit and letter of that directive. Our performance, of course, is subject to the Congressional oversight process. *See also* paragraph 43 relating to which priorities are within the scope of Section 393(c).

46. Minnesota Public Radio, supported by the University of Washington, criticized what it perceived to be an over emphasis on expansion of coverage through new stations, to the detriment of existing public radio stations. While it is true that we have placed a great emphasis on extension of service, that thrust is mandated by the Act and its surrounding legislative history. *See* Section 390(1) and 393(c); *see also Notice*, 44 FR 13263 n. 7 and the authorities cited therein.

47. *Comments on Priority I.*[28] Several parties asked for clarification of the

[23] For the sake of convenience, we are publishing in Appendix B, the revised text of the priorities. The text of the Priorities, I, II, and III, as proposed in the *Notice*, are set out in footnotes 28, 29 and 30.

[27] As proposed, Priority I related to geographical extension of service and Priority II related to the activation or extension of a significantly different and needed service. Priorities III and IV dealt with improvement and augmentation, respectively, of existing broadcast stations. See *Notice*, 44 FR 13263–264.

[28] The text of Priority I as proposed in the *Notice* is set out below:

Priority I—Provision of Telecommunications Facilities for First Service to a Geographic Area. Within this first priority, we propose to establish three subcategories:

A. *Projects to establish telecommunications facilities which include local origination capacity.* This category includes the activation of new facilities which can provide a full range of radio and/or television programs, including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, origination facilities to feed existing cable channels, etc.

B. *Projects to extend existing telecommunications delivery systems.* This category includes projects such as increase in tower height and/or power of existing stations; and construction of translators, cable networks and repeater transmitters. No local origination capacity is required.

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definition of "first service." Front Range suggested that, in some instances, "significantly different additional service" would meet the objective of reaching unserved audiences more effectively than first service in a more sparsely populated area. PBS suggested that "first service" should encompass the provision of a first local origination capacity by an existing broadcast station; NPR expressed similar views. In part, their concept was endorsed by DLA which proposed clarifying language to Priorities IB and IC to add local origination capacity. Finally, the Mendez Foundation urged that the concept of unserved areas be interpreted ethnically or culturally as well as geographically.

48. We agree with the comments that "first service" should be defined broadly enough to include the provision of first public radio or public television service to an area. We base this conclusion on the fact that one of Congress's stated purposes in enacting this legislation was to "extend delivery of public telecommunications *services*" to as many people as possible. Section 390(1). (Emphasis added.) Therefore, we adhere to the view that the *paramount* priority of the legislation is the provision of at least one of these program services to as many totally unserved *geographical* areas of the country as possible. *Notice*, 44 FR 13263. The measure for this priority therefore, is the extension of public telecommunications service to unserved audiences and not the extension to a particular audience with a specialized second service, nor may the priority be met in terms of the type or sophistication of the facility.

49. It follows, therefore, that we must reject the suggestion that first origination capacity be mandatorily included in Priority I as a first service. The addition of local origination capacity to an existing public telecommunications facility is not the extension of a first program service to an unserved area. On the other hand, we recognize that local programming is an important component of public telecommunications service; hence, the highest priority will be accorded projects which include local origination in the provision of first service.

50. *Comments on Priority II.*[29] NPR and NFCB suggested that we create subcategories within Priority II similar to those listed in Priority I. The University of South Florida asserted that grants for mobile production equipment should be included under Priority II because such facilities are used to produce "significantly different additional services." NPR urged that local origination applications be assigned either Priority I or II.

51. As indicated earlier, we believe that the Congressional mandate of Section 393(c) has two distinct measures: geography and audience, although geography is the paramount measure. The subcategories listed in Priority I are geographical in nature, while Priority II relates to specific underserved and unserved audiences. The subcategories within Priority I cover several levels of *basic* service, whereas Priority II assumes the existence of a basic service reaching most of the audience in an area. Therefore, we believe that there is no need to create subcategories for Priority II: any level of service only complements what is there already. The University of South Florida's interpretation of "significantly different additional service" does not take into consideration that the goal of Priority II is to extend meaningful service to specific audiences, whether they be composed of minority group members (as defined in the *Senate Report* at 11) or the media-handicapped. We agree, therefore, with CPB that Priority II correctly should provide service to a specialized audience rather than an improved service to the general audience of a public telecommunications facility.

52. On more technical matters, DLA urged that we employ broader language in giving examples of the types of services to be funded under Priority II. They proposed substitution of the Phrase "instructional services at all levels, particularly those directed towards previously unserved clienteles" for the reference to "ITFS." We believe that this suggestion is correct in that Congress referred to ITFS in the definition of public telecommunications facilities only by way of example. The language of the priority will be modified accordingly.

53. Wayne State University noted that while Priority II is, in part, designed to extend "services to the blind or deaf . . .", SCA equipment to provide that service is not referred to except in Priority III, so that it is not clear which priority controls service to these groups. Projects proposing a first specialized service utilizing SCA equipment should be included in the second priority since a first service to the media-handicapped would constitute the extension of a first service. On the other hand, applications of existing stations to improve SCA service to an area would properly fall within Priority III. This construction is endorsed by NPR. We will clarify Priorities II and III to more accurately reflect this position.

54. As a related matter, the Chicago Metropolitan Higher Education Council claimed that Priority II must include reference to local origination capacity since such capacity is "needed in order to provide significantly different additional services." Local origination is only one means of providing service to special audiences. NPR, for example, stated in its comments that it has distributed locally-produced programs for national SCA use, and will soon initiate a national service for SCA stations. Hence, we do not believe that it is necessary to add local origination language to the priority.

55. Finally, the Mendez Foundation urged us to conclude that projects to produce and disseminate programming leading towards academic degrees should be considered within Priority II. As an example, the Foundation submits that a televised Spanish-language curriculum leading to an Associate in Arts degree would provide "additional complementary program services . . ." Since the Foundation currently leases time on a commercial television station in Puerto Rico and offers such a curriculum, it would be inappropriate to state unequivocally that such a project is eligible for funding under Priority II. In general, the priority of a project must be based on the need for the service and the current availability of services in the community.

56. *Comments on Priority III.*[30] CPB questioned whether is imprecise: the

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C. *Projects to establish telecommunications delivery systems without local origination capacity*. This category includes the activation of new facilities without local origination capacity, but which can provide services originating elsewhere.

[29] The text of Priority II as proposed in the *Notice* is set out below:

Priority II—*Activation or Expansion of Telecommunications Facilities for Significantly Different Additional Services*. This priority includes the planning and construction of facilities to provide additional complementary program services for which a clear and substantial community need can be demonstrated. Eligible projects include services to identifiable ethnic or linguistic minority audiences; services to the blind or deaf; ITFS; electronic text; or significantly different alternative service to a general audience.

[30] The text of Priority III as proposed in the *Notice*, is set out below:

Priority III—Improvement for Existing Broadcast Station Facilities. Two subcategories are listed under this priority:

A. *Projects to provide first local origination capacity for existing broadcast stations*. This category includes projects to bring basic local program service to repeater transmitters and other licensed broadcast facilities now bringing in distant signals. Origination equipment may be fixed or mobile, but must be locally based.

B. *Projects to upgrade existing origination or delivery capacity to current industry performance standards*. This category includes conversions to

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project contemplated in Priority I–A is the activation of a *new* cable channel to distribute public telecommunications services, including local programming, to an unserved area. While the cable system might have there is a legitimate distinction for giving Priority I–A consideration for establishment of local origination capacity for an existing cable system, while addition of that capacity to an existing broadcast station is accorded Priority III–A consideration. The wording in the proposed priorities been in operation for some time, this would be the first provision of public programming to the subscribers, and therefore not comparable to the upgrade of an existing broadcast station. The latter was assigned a lower priority by Congress. Section 393(b)(4). *See also Notice, 44* FR 13263 n.7 and accompanying text. It should be noted that the provision of local origination capacity to an existing station is the highest priority below those projects to extend service.

C. Processing and Evaluation of Applications

57. *Planning Grants.* Many parties found our proposed rules for planning grant applicants to be contradictory or ambiguous. Some read the exemption of planning applicants from § 2301.29 (1), (2) (b), and (c) as indicating applicability to planning applicants of all rules from which they are not specifically exempt. Several comments stated that the proposed funding criteria for planning grants (§ 2301.18) seemed to require the applicants to have already completed substantial planning. DLA asked us to clarify whether planning grants may be used to do the planning required for a construction application, while CPB urged us to employ planning grants as a "policy tool" and not to treat them merely as the first step to a construction grant. Rocky Mountain suggested adding to § 2301.18 a criterion based on evidence of local support for the applicant.

58. Establishment of a separate grant cycle for planning grants was endorsed in several comments; Rocky Mountain added that construction grants should be made early in the year so as to avoid construction delays caused by bad weather. PSSC suggested setting a six to 12 month deadline on completion of planning projects, while NPR recommended a limit of two years.

59. We agree that the proposed rules for planning grant applicants were somewhat confusing. Fortunately for those seeking planning grants this year, this confusion was not reflected in the application form, and persons who follow the directions in the form should not have trouble understanding what information is required. We have attempted to clarify the planning grant requirements in the final regulations.

60. We have reviewed the proposed funding criteria for planning grants and have concluded that all but one are appropriate. Section 2301.18(d), which appeared to call for evaluation of a grant application on the basis of a "completed plan", has been deleted. Rocky Mountain's suggestion that we consider evidence of local support already is, we believe, incorporated into § 2301.17(c)(3). In addition, we have rephrased §§ 2301.5(c) and 2301.6(e) to remove any implication that we expect planning applicants to have already engaged in the extensive planning we expect of construction applicants. At the same time, it should be obvious that some structural forethought and planning will be necessary in order for an applicant to present a well-thought out proposal for a planning grant.

61. We indicated in paragraph 26 of the *Notice* that in future years we might establish separate cycles for planning and construction grants. We believe we should reserve a final conclusion on this question until we have had a chance to evaluate our experience with planning grants in the first year of the program. The announcement in the Federal Register of closing dates for fiscal year 1980 grants will state schedules for both types of applications. In making our decision on this issue, we will weigh both the suggestions made earlier in this proceeding that planning grants be made early enough to allow construction applications in the same year and Rocky Mountain's suggestion that construction grants be made early to avoid weather problems.

62. We are likewise not inclined at this time to fix a limit on the time within which a planning project must be completed. If experience shows us that such limits are necessary or desirable, we can pursue the matter in a new proceeding. We must point out, though, that a project which requires more than one year to complete and which requires additional funds must compete for funding in succeeding years with all other applicants and that, as set out in paragraph 42, above, multi-year funding can never be guaranteed.

63. The relationship between planning and construction grants is, as reflected in the comments, somewhat complicated. On the one hand, the Act authorizes planning grants only for the purposes for which construction grants may be made, and we certainly anticipate that planning will be intended to result in construction applications. On the other hand, we do not intend to establish a pattern in which applicants routinely seek planning grants to finance preparation of their construction grant applications. We hope to be able to award planning grants that will further the policies of the Act, with particular emphasis on comprehensive regional planning and planning to serve the needs of minorities and of rural areas. We are also mindful that one reason Congress provided for planning grants without a matching requirements was to encourage entry into public telecommunications by groups previously excluded because of difficulty of access to necessary start-up funds.

64. *Five-year Plans.* It was repeatedly pointed out in the comments that we had mentioned five-year plans in § 2301.7 (deferred applications) and in § 2301.17 (funding criteria) but that we had not clearly stated in the rules the statutory requirement that each construction grant applicant submit a five-year facilities plan. We have amended § 2301.5(c) to correct this omission.

65. *Combined Applications.* Rocky Mountain questioned our proposed requirement that radio, television, and nonbroadcast applications be submitted separately (proposed Section 2301.5(c)), suggesting that proposals to integrate broadcast and nonbroadcast means of distribution should not artificially be divided up into separate applications. We agree and have omitted the provision.

66. *FCC Authorizations.* Several parties objected to our proposed requirement that FCC applications necessary to be construction project be accepted for filing by the FCC as a prerequisite to our acceptance for filing of a PTFP application. It was suggested that we accept applications based on the applicants certification that the necessary filings have been sent to the FCC. While we sympathize with those who may experience delays at the FCC, we believe that efficient administration of our program requires that we not waste time screening applications for filing if those applications will not be able to be considered for a grant because a needed license or permit cannot be obtained. We note that we are not requiring that FCC approval be obtained, but merely that the Commission accept the application for filing. This is the least requirement we

Footnotes continued from last page
color, stereo, SCA, etc.; improvements in signal quality; and significant improvements in equipment flexibility or reliability.

believe prudent and represents only a small inconvenience to the applicant. Therefore, we decline to change the proposed rule. Persons contemplating filing PTFP applications in 1980 are advised to inquire at the FCC about the amount of time currently required for acceptance and processing of the type of applications they will be filing and to plan accordingly.

D. Administration and Recovery of Grant Funds

67. *Use of CPB Funds.* In paragraph 31 of the *Notice*, we proposed to depart from the HEW policy allowing use of CPB grants to meet the matching requirement under the predecessor to the PTFP. In 1977 HEW reversed its longstanding policy disqualifying CPB grants as allowable funds to meet the matching requirement under the EBFP (42 FR 57286 (1977)). This policy reversal was premised in part on a determination that CPB grants ought to be regarded as private, not Federal funds (42 FR at 57287). In the rules accompanying the *Notice*, we proposed a return to the earlier HEW policy. Thus, § 2301.22(c) provided that no part of the grantee's matching share of eligible project costs could be met with funds supplied by Federal departments and agencies or by CPB. The parties commenting on this proposal were almost unanimous in their opposition to exclusion of CPB funds for meeting the matching requirement. We have therefore carefully reviewed proposed § 2301.22(c) of the Rules in light of standards under the Act and general principles of Federal grant law. As dicussed below, the final rules modify the proposed rule in one respect.

68. The proposed exclusion of funds supplied by Federal departments and agencies is consistent with well-established principles of Federal grant law. Circular No. A–110 of the Office of Management and Budget (OMB Circular A–110) establishes uniform administrative requirements among Federal agencies in administration of grants to public and private institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations. OMB Circular A–102 establishes uniform administrative requirements among Federal agencies in administration of grants to State and local governments. Since virtually all qualified PTFP applicants will be either nonprofit organizations or agencies of state or local governments, we must consider these OMB circulars. Both circulars expressly provide that matching requirements under one Federal grant program may not be met by funds "paid by the Federal government" under another Federal assistance agreement unless the assistance agreement is authorized by Federal law to be used for matching purposes. OMB Circular A–110, Attachment E, Section 3(b)(5); OMB Circular A–102, Attachment F, Section 3(b)(5). These restrictions cover PTFP grant applications. Thus it would appear conclusive that applicants for PTFP grants may not meet their matching requirement with funds "paid by the Federal government" under another Federal assistance agreement unless that other agreement expressly authorizes use of these funds for matching purposes.

69. Although the exclusion of funds supplied by Federal departments and agencies from allowable contributions for matching purposes is consistent and clearly required by established principles of Federal grant law, exclusion of CPB funds to meet matching requirements under the PTFP presents unique issues which lessen the certainty of the exclusion. The above circulars do not prohibit CPB funds for matching purposes if grants with these funds are not determined to be "paid by the Federal government." The crucial inquiry then becomes whether CPB funds are to be classified as Federal funds.

70. Recourse to another source of Federal grant law—decisions of the Comptroller General—shows that Federal funds lose their Federal identity once they have been granted to and accepted by a non-Federal entity:

> . . . it consistently has been held with respect to Federal funds granted to a State that, when such funds are receipted for by the State, they become State funds and, in the absence of a condition of the grant specifically prescribing to the contrary, are totally divested of their identify as Federal funds and become funds of the State and the expenditure thereof is subject to the laws and regulations applicable to the expenditure of State funds rather than Federal laws applicable to the expenditure of appropriated moneys by the departments and establishments of the Government. 28 Comp. Gen. 54 (1948).

Thus, state employees engaged in employment funded by Federal grants are not required to complete anti-strike affidavits required of Federal employees. *Id.* Similarly, Federal grant funds once accepted by the grantee could be used for contributions to state health insurance programs even though Federal monies could not be used for such purposes. 36 Comp. Gen. 221 (1956). *See also*, 55 Comp. Gen. 750 (1976); 43 Comp. Gen. 697 (1964).

71. Thus, funds originally paid by the Federal government may nevertheless lose their Federal character and be employed for matching purposes. In this regard, the Comptroller General has also held that Federal grants to the Alaska Territory for carrying out material and child health services may be matched by funds provided to the Territory by the Alaska Rural Rehabilitation Corporation, a corporation organized under Territorial laws, from Federal funds granted to the Corporation. 17 Comp. Gen. 695 (1938).

72. CPB funds appear to be governed by these decisions. Section 396(b) of the Communications Act of 1934, as amended, 47 U.S.C. 396(b) (1977), provides:

> There is authorized to be established a non-profit corporation, to be known as the "Corporation for Public Broadcasting," *which will not be an agency or establishment of the United States Government.* [emphasis added]

73. The legislative history of the Public Broadcasting Act of 1967 demonstrates beyond doubt that the purpose of Section 396 was to insulate public broadcasting, an instrumentality of First Amendment speech, from government control—and even fiscal pressure—by reason of the Federal appropriation process and the political responsibility of government appointees. Thus, although members of the CPB Board of Directors are appointed by the President with the advice and consent of the Senate, they are not deemed to be Federal employees. 47 U.S.C. 396(d)(2)(1977). It is therefore apparent that when CPB has accepted funds from the Federal government, they must be deemed to have lost their identity as Federal funds. 17 Comp. Gen. 695 (1938). Grants made from these funds, as a result, should not be deemed paid by the Federal government and may be used for matching purposes.

74. Having determined that CPB funds are not paid by the Federal government, we must reverse our proposed absolute prohibition as a matter of law against use of these funds for matching purposes. Grants from CPB funds are of a different character than grants from "funds supplied by Federal departments and agencies" under proposed § 2301.22(c) of the Rules, and constraints imposed by OMB circulars on use of the latter funds do not apply to grants from CPB funds. Nevertheless, we believe that the policies and purposes underlying the Act could be significantly frustrated if we were to routinely allow CPB funds to be used by applicants to meet the matching requirement. Section 392(a)(3) of the Act requires an

applicant to give an assurance that it has or will have sufficient funds available to construct, operate and maintain its facility. As we stated in the *Notice,* we believe that Congress intended by that language to enhance the viability of public telecommunications entities by requiring substantial state, local, community and/or organizational financial commitments to support the operation of the facility. Even though CPB grants are not Federal funds and even though they also require a matching share, they derive largely from a Federal source. As a matter of NTIA policy we find the CPB funds do not provide us with the indication of local support that the matching requirement is designed to assure. It is therefore our judgment that CPB funds should not routinely be accepted as matching funds. Of course, we recognize that this general observation may not be warranted in all cases and that there may be sound reasons for allowing an entity which can show substantial local support to use CPB funds for matching purposes.

75. Accordingly, we will modify § 2301.22(c)(1) of our Rules to delete reference to CPB funds. We are also adopting a policy of allowing use of such funds for the non-Federal match only upon a showing of compelling circumstances. *See* § 2301.22(c)(2) of the rules. Although we cannot predict all of the circumstances which will be classified as compelling, one such circumstance might be where the project falls within Priority I and the applicant can meet a significant portion but not the entire matching requirement with non-Federal and non-CPB funds. We feel less strongly that circumstances would justify use of CPB funds if the applicant falls within a non-extension priority. However, further delineation of compelling circumstances will be made on a case-by-case basis.

76. Although this policy represents a departure from earlier HEW policies under the predecessor of the Act, we do not feel constrained by these earlier policies. We note that the last HEW policy stated in its 1977 rulemaking, *supra,* Federal reversed a longstanding policy excluding CPB grants for matching purposes. While we agree with that reversal eliminating the absolute prohibition on use of CPB grants for matching pruposes, we do not feel bound by HEW's 1977 decision to routinely allow CPB grants to meet the matching requirement. There is no indication that Congress was aware of HEW's administrative construction of the matching requirement when the Act was passed. Indeed, HEW *never* applied the new policy to any particular applicant for grants under the EBFP. While considerable weight might attach to HEW's construction of the predecessor to the Act if Congress had been aware of such construction, (*Power Reactor Development Co.* v. *International Union of Electrical, Radio and Machine Workers, AFL-CIO,* 367 U.S. 396 (1961)), this was not so here.

77. *Eligible and Ineligible Expenses.* In light of rapid technological change and the broadened scope of the program, paragraphs 32–34 of the *Notice* proposed to abandon the EBFP policy of listing costs and equipment eligible for federal funding. *See also,* § 2301.35 of the proposed rules. The major comments received in response to this proposal involved salary expenses, leasing of facilities and specific items of equipment.

78. Section 2301.35(b)(2) of the Proposed Rules, based on Section 397(10) of the Act, would have precluded use of PTFP funds for salaries of "any personnel employed by an operating public telecommunications entity." Rocky Mountain urged clarification of the exclusion since it appears to preclude funding of certain previously eligible planning costs.[30] The Noncommercial Radio Consortium of Oregon (NRCO) urged that NTIA continue the EBFP policy of funding the salaries of exisitng personnel where these expenses are associated with the installation of apparatus. Minnesota Public Radio argued that the portion of existing staff salaries attributable to the design and construction of facilities should be considered an eligible expense. Finally, DLA suggested that salary expenses related to planning grants should be fundable.

79. The several comments have convinced us that the proposed salary exclusion in § 2301.35(b)(2) does not accurately state our intent, and therefore is misleading. The definitions in the Act of "construction" (Section 397(1)) and "preoperational expenses" (Section 397(10)) both have bearing on which salary expenses are eligible for Federal funding. We interpret the Act to permit funding of the following salary items:

(a) Salaries assignable to planning projects, or to planning and preparatory steps incidental to construction projects;

(b) Salaries for installation of project apparatus; and

(c) Nonconstruction preoperational salary expenses for new public telecommunications entities.

Section 2301.35(b)(2) will be amended accordingly.

80. CPB, citing page 15 of the *House Report,* asked NTIA to encourage the leasing of equipment and other facilities (presumably including cable channels) as an alternative to construction, and to allow the costs of leases as eligible construction expenses. Additionally, it was urged that we require applicants to explore leasing as part of the cost-efficiency analysis required by Sections 390(1) and 392(a)(6) of the Act. We agree that leasing may be an efficient, economical and cost-effective means by which to establish or extend public telecommunications services. The critical question is whether the rental costs associated with leases of equipment or channels are operating costs or construction costs and, if construction costs, whether they should be funded under the Act. Section 397(1), in pertinent part, defines "construction" to include "acquisition (including acquisition by lease)" of facilities. Since leasing is by statutory definition, a construction cost,[31] the rent payable during the term of a lease would be an expense eligible for PTFP funding or for application towards an applicant's non-Federal match.

81. That being the case, we agree with CPB that applicants, as part of their cost-efficiency analysis, should explore the overall benefits, both short-term and long-term, of leasing facilities as opposed to their purchase and construction. (*See House Report* at 21, *Senate Report* at 28). That is not to say that leases must automatically be selected if, in the short-term, they are most economical. Another consideration would be the applicant's ability to serve its community after expiration of the lease term. In short, applicants must balance various alternatives in terms of cost-efficiency.

82. Under Section 392(g) of the Act, a 10-year Federal interest in facilities funded by this program must be protected. Hence, except for lease-purchase of equipment, we will require a ten-year term of lease, with prior agreement as to cost over the ten-year period. An appropriate portion of the

[30] Rocky Mountain is apparently referring to former Section 397(2) which, in part, defined "construction" as follows:

"In the case of apparatus, the acquisition and installation of which is so included [within the definition of construction], such term also includes planning therefor." *See* Section 153.3(b) and Appendix A, Sections (B) and (C) of the EBFP Rules. 42 Fed. Reg. 57286, 57289, and 57294–295, published November 1, 1977.

[31] If an applicant proposes utilizing leased equipment and apparatus (as opposed to "space" on a tower or use of a cable channel), we will favor applications proposing lease-purchase contracts since at the end of the lease term, the applicant will own equipment with which it can continue to serve the public telecommunications needs of its community.

total grant will be disbursed annually. Since leases involve no tangible facilities to secure the Federal interest under Section 392(g), annual disbursement will provide some measure of protection.

83. CPB also requested that proposed §§ 2301.24(a)(4), 2301.27(a) and 2301.36, of the proposed Rules, involving insurance coverage, bonds and control of facilities, respectively, may be inappropriate in leasing arrangements. We agree with CPB's observation on insurance (the bonding requirement has been deleted, paragraphs 93 and 94 below). However, we will insist that a lease must give the grantee absolute control and use of the facility or equipment during its term (other than for non-payment of rent or other breach of the terms of the lease). Shared use of rented facilities and equipment would be just as detrimental to the provision of public telecommunications services to the public as the shared use of applicant-owned facilities and equipment. *See* paragraph 99, *below*. Such arrangements will not be funded.

84. Several parties either objected to the exclusion of specific items of equipment in proposed § 2301.35 or requested clarification. For example, Minnesota Public Radio and D.L.A. asked for clarification of the exclusion of power supply equipment. The language in proposed § 2301.35(a)(11) is imprecise. Our intention is to exclude all equipment ahead of the facility's breaker panel, including transformers, regulators, generators, service entrance cable, and related equipment. Section 2301.35(a)(11) will be amended accordingly. Several parties objected to the exclusion of certain specific items of equipment on the basis that they were "needed". In view of the fact that requests have traditionally exceeded funding available by four to one, we have determined to restrict eligibility to those items of equipment necessary to originate and disseminate aural and video signals. At times, a line must be drawn, as with air conditioning equipment: apparatus required by good engineering practice for the ventilation of equipment is eligible, whereas apparatus for climate control of work spaces for personnel is ineligible.

85. The New Jersey Office of Cable Television asked that expenditures for ineligible equipment be allowable for matching. We reject this proposal. Refusal to allow ineligible costs to be used for the match is a means of insuring greater levels of local support. In our opinion, the greater this support, the greater the likelihood of long-term survival by the applicant.

86. *Satellite Communications Equipment.* Section 397(13) partially defines "public telecommunications facilities" as "apparatus necessary for production, interconnection * * * or other distribution of programming, including * * * satellite communications equipment * * *" and "small equipment shelters which are part of satellite earth stations. * * *" NPR argued that NTIA should fund satellite earth terminals for new facilities (as part of "the full facilities package") under Priorities I or II. For example, applications for funding by CPB-qualified stations who were activated too late to receive a CPB-funded earth station, or stations below the qualification standards which seek interconnection in order to provide significantly more nationally-distributed programming might, in NPR's view, be considered as providing either a first local public radio or significantly different additional service to a community.

87. We, of course, agree that satellite facilities are eligible for funding under the Act. However, the restriction of Section 392(a)(4) and the fact of excess receive capacity on earth stations indicate that private funding might be preferable for such facilities. Barring FCC restrictions, excess capacity on facilities purchased without PTFP funds might properly be leased to commercial users and grantees would thereby be able to generate needed program revenues. Therefore, the limited PTFP dollars might be more efficiently employed if other types of facilities were funded before satellite equipment. Of course, an application proposing shared use of satellite equipment by a group of eligible applicants could represent a more efficient allocation of PTFP funds.

88. *Equal Employment Opportunity.* Paragraph 41 of the Notice would have required applicants proposing five or more full-time employees to prepare and file an EEO plan. Section 2301.28 (e)–(k) of the draft Rules set forth applicants' and NTIA EEO obligations. Essentially, the draft would have established an NTIA investigation and enforcement mechanism.

89. Minnesota Public Radio urged NTIA not to become yet another EEO enforcement agency since aggrieved parties can file complaints with appropriate State and Federal authorities, including the Equal Employment Opportunities Commission, the FCC and HEW. Instead, it urged us to establish a procedure by which we can respond to decisions of these other agencies. DLA expressed the view that the draft EEO Rules were redundant as well as unclear, and it, too, suggested NTIA coordination with other agencies. We agree with these comments. The better course would be to avoid imposing yet another level of regulation and enforcement on grantees. Accordingly, we have contacted HEW, the FCC and the EEOC in order to coordinate their enforcement programs with NTIA. No final agreement has been reached as of this date. After an agreement has been concluded, we will give public notice and, if necessary, amend the Rules. In the meantime, we are amending the draft Rules to require applicants to report with their applications any prior or pending discrimination complaints. We will also require applicants to submit updating information on this topic and grantees to report any complaints filed during the period of Federal interest. See §§ 2301.(5)(e) and 2301.28 of the Rules.

90. DLA also requested clarification of Section 2301.6(j) of the Rules, relating to Section 504 of the Rehabilitation Act of 1973, since the Rule merely tracks the "rather ambiguous statutory language." It was suggested that the effort required by HEW regulations for implementing the Rehabilitation Act be set as the standard for conduct under this program. This observation is well taken. However, we decline to amend § 2301.6(j) at this time, since the Department of Commerce is in the process of developing departmentwide rules to implement Section 504. See Notice of Proposed Rulemaking, 43 FR 53765, published November 17, 1978. These draft regulations and the final regulations slated to be adopted in June, will follow HEW standards and will be incorporated by reference into Section 2301.6(j).

91. *Consolidated Procurement.* In order to stretch limited Federal dollars to their maximum, the Senate Committee on Commerce, Science, and Transportation urged the Department to explore the feasibility of consolidated or bulk purchases of eligible equipment. *Senate Report* at 9. The *Notice* endorsed this suggestion and drafted rules to implement it. 44 FR at 13266 and § 2301.26 of the proposed rules.

92. The majority of those who commented on the suggestion generally supported it. NPR, for example, felt that SCA receivers and converters would "lend themselves well to bulk purchases." Many urged NTIA to identify organizations willing to engage in consolidated purchase arrangements. While we have not compiled such a list, we note that PSSC, Rocky Mountain and NFCB each indicated that they presently

engage in group purchases for their members, and the New York State Education Department reported that "pool purchasing" is encouraged in that state with most public television stations in New York participating. On the other hand, Minnesota Public Radio observed that group purchasing should not be imposed on applicants because that would have the effect of setting equipment standards for public radio. Without reaching the question of the desirability of industrywide standards, we wish to stress that Section 2301.26 as adopted does not impose or require consolidated procurement. It is merely a means to stretch the buying power of the grant dollars and it is only one indicator of the potential efficiency of a grant. Finally, Latinos in Communications urged that any consolidated procurements must adhere to "currently accepted affirmative action and minority subcontractor regulations. . . ." We are satisfied that this concern is answered by the assurances required by § 2301.6 of the rules and the procurement standards required by § 2301.25 of the Rules. *See also* item (c)(3), paragraph 98, below.

93. *Securing the Federal Interest.* In § 2301.20 of the draft regulations we proposed to require grantees to execute a bond or priority lien in the government's favor on PTFP-funded facilities in order to assure that the facilities will remain in the public sector if the grantee ceases to be an eligible entity. *See* paragraph 29 of the *Notice.* Comments on this proposal ranged from Minnesota Public Radio and the Public Service Satellite Consortium's belief that bonds and liens were unnecessary, to NPR's support for a lien only, to the State of Alaska and the New Jersey Office of Cable Television which submitted that such protection was unnecessary where the grantee is part of a government. Further, Latinos in Communications brought to our attention that Hispanic, and, we presume, other minority-owned business enterprises have tranditionally had difficulty in obtaining bonds.[32]

94. The comments have convinced us to drop the bond because of its expense and the difficulty some grantees might have in obtaining a bond. Moreover, we believe that the Federal Government is satisfactorily secured by the value of the equipment purchased with PTFP grant proceeds. Therefore, we will adopt the lien requirement as the most cost-effective means for securing the Federal interest.

95. Rocky Mountain raises the question of what procedure should be followed in the case of equipment which becomes obsolete or wears out before the 10-year period of Federal interest expires. We will continue the EBFP practice in this area of permitting the trade-in or sale of the equipment and applying the remaining portion of the 10-year period to the new equipment. *See generally,* Section 9–108 and 9–204 of the Uniform Commercial Code pertaining to after-acquired property.

96. *Procurement Standards.* Section 2301.25 of the proposed Rules requires grantees to adopt the procurement standards established in OMB Circulars A–102 and A–110, *supra.* Minnesota Public Radio objected to the imposition of this requirement, arguing that formal bidding procedures will increase both the workload of the grantee and the cost of the equipment. Rocky Mountain requested that where state and OMB standards differ, the state standards should govern the procurement.

97. The OMB standards are similar to the standards required by HEW during its administration of the former Educational Broadcasting Facilities Program and, therefore, § 2301.25 does not reflect a change in either policy or workload. *See* paragraphs 27 and 28 of the *Notice.* We must reject Minnesota Public Radio's complaint. In our view, the complaint loses sight of the fact that Congress has enacted a program to serve defined purposes and NTIA is responsible for seeing that the Federal funds made available to grantees, which constitute the majority of the funds necessary to plan and construct the project, are in fact, used for those purposes efficiently, in an open environment, and in a manner designed to serve other national goals.

98. Turning to the question of conflict in procurement standards, we believe that Rocky Mountain's concern is answered by the OMB Circulars themselves. Attachment O to both A–102 and A–110 permit grantees to use their own procurement policies and procedures, provided that they do not conflict with basic Federal standards set forth in the Circulars. These basic standards may be summarized as follows:

(a) Maintenance of a "code or standards of conduct" governing performance in contracting with Federal funds setting forth disciplinary actions to be applied for violations;

(b) Conducting procurement transactions in a manner "so as to provide maximum open and free competition;"

(c) Establishing nine minimum procedural requirements, including—

(1) review by grantee officials for the purpose of avoiding the purchase of unnecessary or duplicative items;

(2) bids which contain "clear and accurate" descriptions and which omit in competitive procurements, "features which unduly restrict competition;"

(3) positive efforts to utilize small business and minority-owned business sources of supplies and services;

(4) providing instruments appropriate for the particular procurement and for promoting the best interest of the grant program involved, specifically prohibiting the "cost-plus-a-percentage-of-cost" method of contracting;

(5) formal advertising for certain procurements with the award to go to the "responsive bidder" whose bid is "most advantageous to the grantee, price and other factors considered;"

(6) negotiated procurements permitted where formal advertising is generally impracticable or not feasible;

(7) contracts to be made "only with responsible bidders who possess the potential ability to perform successfully;"

(8) procurement records of purchases over $2,500 containing "justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated;" and

(9) a system of contract administration to assure contractor conformance with contracted terms and to assure adequate and timely follow up of all purchases.

These standards, we think, simply represent common good sense and should be considered in any procurement with government funds. They are not onerous, and we reaffirm our belief that they should apply.

99. *Use of Equipment.* We pointed out in paragraphs 35–37 of the *Notice* that Sections 392 (a)(4) and (g)(2) of the Act continue the requirement that equipment constructed with PTFP funds must "only" be utilized for providing public telecommunications services during the 10-year period of Federal interest. We also noted that a recurring question in this area is the extent, if any, that PTFP-funded facilities can be used for other than strict program purposes.[33] We

[32] Latinos in Communications also argue, in part, that Hispanic grantees and their parent organizations should not be held personally liable in the event the grantee ceases to be eligible under Section 392(g) of the Act. On this point, the Act is clear (unless for good cause, the grantee is released) in requiring a grantee to repay to the government the pro rata value of its PTFP-funded facilities. Releases of liability are determined on the facts of individual cases. It would be both inappropriate and contrary to Section 392(g)(2) to commit ourselves to a blanket release for all minority groups.

[33] HEW's position on this question was set forth in a July 5, 1973 memorandum to educational television licensees. HEW concluded that under no

Footnotes continued on next page

suggested that facilities can only be used to produce and distribute noncommercial educational and cultural radio and television programs and related material. Therefore, programming must be produced and distributed "primarily" for noncommercial purposes. We went on to say, however, that these facilities could be used to prepare eligible programming for other nonprofit entities and governmental groups as long as the grantee retains absolute control of the facilities. *See also* § 2301.36 of the rules. A related matter involved secondary commercial use of programs produced or disseminated with PTFP-funded facilities. The *Notice* proposed a system under which wider distribution of programming would be encouraged after the primary purpose of the program had been achieved by requiring grantees to initially offer a program to other noncommercial groups. Only after that effort could residual use of a program by a commercial organization be permitted. *See Notice,* 44 FR at 13267 for a more detailed discussion of this matter.

100. Minnesota Public Radio suggested that secondary use of distribution facilities such as broadcast towers, should also be permitted. Specifically, it stated that grantees should be permitted to lease excess space on their towers or enter into agreements with commercial broadcasters to share the cost of building towers. CPB endorsed this concept as long as any monies earned by a grantee are used for noncommercial telecommunications purposes. These comments raise two issues. First, the use of apparatus to actively produce and disseminate programming; and second the use of a passive or supporting element of the system (*i.e.,* a broadcast tower) which merely holds an antenna (an active portion of the system). HEW adopted the active/passive distinction and we will follow that policy.

101. As just indicated, we view towers as ancillary-passive apparatus of a completely different nature than production or transmission equipment. If the rental of space on a PTFP-funded tower does not compete or interfere with the grantee's use of the tower for holding its transmission apparatus, the arrangement would be consistent with the intent of Section 392(a)(4). In other words, the grantee must retain a sufficient property interest in the tower to assure that no other property interest interferes with the grantee's use of the tower for public telecommunications purposes. Of course, any revenues generated through the lease of tower space must only be employed by the grantee for legitimate facility-related purposes. Section 2301.6(d)(3) of the Rules; *Notice,* 44 FR at 13267.

102. This policy would also control those situations where applicants wish to join with commercial groups to share the cost of a tower. In such cases, we would look to see that the percentage of the applicant's ownership is sufficient to secure the Federal interest and that the applicant will have satisfactory use of the tower for its transmission apparatus. We believe that such a policy furthers FCC, environmental, and air safety considerations.

103. A different result, however, is required for shared use of active components of a grantee's production or transmission apparatus. In our view, Section 392(a)(4) does not permit shared use of active components for several reasons. A sufficient property interest in the grantee is necessary to assure that no other property interest interferes with the use of the apparatus for public telecommunications purposes. If others have a right to use the apparatus, the grantee's unfettered use cannot be assured. Moreover, even if the period of shared use could be limited so as not to interfere with the grantee's use, such an arrangement would still not be permissible. The additional or shared use would, to some extent, increase wear and tear on the equipment, accelerating the need for replacement. The additional use might result in a breakdown in the equipment preventing its use for public telecommunications purposes. Finally, shared use of PTFP-funded active facilities might give the commercial partner of the grantee an unfair advantage over its competitors because it has access to Federally-subsidized equipment. Presumably, the economic benefit of that access would enable the commercial partner to offer its services at a lower cost or to realize a greater than normal profit. For all of these reasons, we must reject CPB and Minnesota Public Radio's comments to the extent that they are inconsistent with this policy.

104. Dutchess Community College argued that Section 2301.6(c) should not be construed to prohibit use of PTFP-funded facilities as "learning laboratories with a media arts (or similar) academic program during times when the facility" is not being used for public telecommunications purposes. We see no conflict between such uses and Sections 392(a)(4) of the Act and § 2301.6(c) of the rules.

105. *Program Distribution.* In an effort to encourage wider distribution of noncommercial educational and cultural radio and television programs produced with PTFP-funded equipment, we proposed a departure from EBFP policy at paragraphs 38 and 39 of the *Notice.* That policy absolutely prohibited secondary commercial use of programs. We stated our belief that the critical factor to be considered is whether the program "was produced and will be used primarily by the grantee or other noncommercial entity." *Notice,* 44 FR at 13267. If this test is satisfied, wider distribution would be permissible in two stages: first, the program must be made available to other noncommercial entities and cultural and educational groups; second, after a substantial effort in the first stage has been completed, a grantee may make the program available to commercial organizations. Any money generated by this distribution process may only be used for legitimate facility-related purposes, and none of these funds may accrue to the benefit of the parent organization of the grantee, if any. *Id.* Commercial competitors would be permitted to file a complaint with NTIA if they believed that the primary purpose of the production was commercial.

106. PBS and the NRCO claimed that the proposed restrictions on secondary use were too rigid or narrow and not required by the Act. NRCO cited situations where first-run release over commercial outlets serving areas without noncommercial facilities may be necessary to accomplish a complete state-wide distribution of a program. DLA questioned whether a distribution process such as that described by NRCO should be permitted and, if so, whether the program must be carried by the commercial facility on an unsponsored basis or accompanied by either a commercial or the usual underwriting credit. NRCO suggested that commercial release should be permitted where the commercial outlet generates no income from the showing; the entire distribution plan is "dominantly" noncommercial; and the noncommercial producer can demonstrate that it made a "reasonable good faith effort" to meet the primary distribution test. Latinos in Communications, posing a variation of the NRCO example, argued that Spanish-language commercial stations may want to carry noncommercial Spanish-language programming because of the limited number of foreign-language public television and radio stations. PBS suggested that the test of permissible distribution should be whether the PTFP facilities were used

Footnotes continued from last page
circumstances could Federally-funded facilities be made available for commercial purposes.

for the "basic purpose of providing public telecommunications services." CPB expressed concerned that the proposal will involve NTIA in the preclearance of distribution arrangements, and suggested that the "better approach" would be to require application of program distribution income to noncommercial purposes for the time being and take action later if abuses develop.

107. We believe that the distribution process outlined in the *Notice* represents a significant and liberalizing departure from EBFP policy. Our process is a reasonable approach which will result in wider distribution of public telecommunications services within the parameters of Section 392(a)(4). Therefore, we reject those comments which argue that our proposal is too narrow or restrictive. We will adopt our proposal but will clarify it in light of the comments.

108. In response to the NRCO and PBS examples, we have concluded that first-run release on a commercial facility would only be permissible if there was no noncommercial facility, including nonbroadcast media, able to distribute the program to a substantial number of potential listeners or viewers in the community. However, the commercial facility must carry the program on an unsponsored basis only, and any monies accruing to the grantee for use of its program must be employed for legitimate facility-related purposes. The same policy would govern the situation posed by Latinos in Communications. With respect to pooled news coverage and use of news clips, we believe that the key is whether the program produced by a grantee is indiscriminately available to all possible users or only to a select group of organizations. The former arrangement would be permissible. The latter case would constitute an unfair commercial advantage and would be inconsistent with the Act.

109. DLA raised two related issues. First, it asked whether a grantee can use its PTFP-funded facilities to produce public service announcements and programs for noncommercial groups for distribution over commercial outlets. DLA believed that we intended to permit such a use in the *Notice* but that there is an inconsistency between the *Notice* and the proposed rules. It was our intent that paragraph 37 of the *Notice* must be read in conjunction with Section 2301.6(c). Therefore, the commentator is correct that such a utilization would be permissible. However, the following conditions must apply: (1) the grantee maintains absolute control of the facilities; (2) the organization for whom the announcement or program is made is a nonprofit (other than religious) or governmental entity; (3) the announcement or program is made primarily for a noncommercial purpose; (4) the commercial outlet carries the annoucement or program on an unsponsored basis; (5) the restriction on the use of funds set out in § 2301.6(d)(3) of the rules would apply, and (6) the grantee's facilities are available on the same terms to other noncommercial or governmental entities. A charge for providing the services outlined here and in paragraph 37 of the *Notice* may be levied. We are reluctant to prescribe the specific charges which may be imposed but, in general, the grantee may recover its actual costs plus a reasonable amount for overhead. We have been asked whether a grantee can produce non-public programs for closed-circuit uses in hospitals. In our view, the answer to this depends on whether the hospital is nonprofit. If so, the answer would be that the PTFP-funded facilities could be used for such an ancillary purpose as long as the conditions of this paragraph and paragraph 37 of the *Notice* are complied with.

110. DLA also urged us to adopt the proposed guidelines for the use of Federally-funded equipment for other than noncommercial educational broadcast purposes prepared for the U.S. Office of Education, HEW, by the National Association of Educational Broadcasters (NAEB). We decline to adopt the NAEB proposed guidelines for several reasons. Initially, we note that HEW never adopted the NAEB recommendations. More fundamentally, the NAEB proposal violates the letter and spirit of the mandate of Section 392(a)(4) that facilities be used "*only* for the provision of public telecommunications services. . . ." (Emphasis added). It must be borne in mind that this is a program designed by the Congress to make public telecommunications services available to as many citizens as possible. Commercial use of PTFP-funded facilities would interfere with the availability of the facilities for such purposes, increase the wear and tear on equipment and the rate of breakdown, and be generally inconsistent with the unambiguous intent of Congress. In paragraph 37 of the *Notice* and this section of the *Report and Order*, we have attempted, within the bounds of the Act, to craft a reasonable and flexible system to achieve wider distribution of programs and services produced with PTFP-funded equipment and, thereby, a more efficient use of the equipment. We believe that we have succeeded within the limits permitted by the Act. For all of these reasons, DLA's request must be denied.

Conclusion.

111. As required by the Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 *et seq.*, the Administrator, NTIA, has determined that the appropriate instrument characterizing the nature of the relationship to be established between grantees and NTIA under the Act is a grant.

112. As we stated at the outset, we would have preferred to have been able to adopt these final regulations well in advance of this date. This did not prove to be possible in the first year of our administration of the program. In spite of our best efforts, the design and printing of our application form and the development and promulgation of rules for a greatly revised program was more time-consuming than we anticipated. However, the Rules adopted today do not substantially differ from the Rules proposed in the *Notice*, and do not, we believe, materially affect the eligibility of potential applicants. We recognize the burdens that the pace of this proceeding has placed on applicants and that some may feel that they could have prepared a sounder application if the Rules had been available sooner. Indeed, some who have not prepared and application because they believed that they were ineligible under the terms of the *Notice* may, in light of this document, feel that they now are eligible. Regarding the first situation, we wish to stress that applicants are given 45 days from June 4, 1979, within which to amend their applications. Section 2301.5(b) of the rules. Those falling into the second category are advised that upon a sufficiently compelling showing, the Administration may waive the closing date in individual cases. Section 2301.37 of the Rules.

113. Accordingly, It is ordered, pursuant to Section 392(e) of the Act, that the following Rules are adopted effective May 29, 1979.

Helen Geller,

Administrator,

National Telecommunication and Information Administration, U.S. Department of Commerce.

Title 15 of the Code of Federal Regulations is amended by establishing Subtitle D—Regulations Relating to Telecommunications and Information, Chapter XXIII—National Telecommunications and Information Administration, Department of

Commerce, Part 2301—Public Telecommunications Facilities Program.

Part 2301—Public Telecommunications Facilities Program

Subpart A—General

Sec.
2301.1 Purpose and scope.
2301.2 Other pertinent rules and regulations.
2301.3 Definitions.

Subpart B—Eligibility and Application Procedures

2301.4 Eligible applicants.
2301.5 Application for financial assistance.
2301.6 Assurances.
2301.7 Deferred applications.
2301.8 Federal Communications Commission authorization.
2301.9 Closing date.
2301.10 Where to file; number of copies.
2301.11 Publication.
2301.12 Service of applications.
2301.13 Acceptance of applications.
2301.14 Comments on applications.
2301.15 Distribution of funds.
2301.16 Coordination with interested agencies and organizations.
2301.17 Funding criteria for construction applications.
2301.18 Funding criteria for planning applications.
2301.19 Action on applications.

Subpart C—Priorities Among Applications and the Role of Minorities and Women

2301.20 Program priorities.
2301.21 Special consideration.

Subpart D—Federal Financial Participation and Conditions of Federal Grant

2301.22 Amount of Federal grant.
2301.23 Payment of Federal grant.
2301.24 Conditions of Federal grant.
2301.25 Procurement standards.
2301.26 Consolidated procurement.
2301.27 Securing the Federal interest.
2301.28 Nondiscrimination.

Subpart E—Accountability for Federal Funds

2301.29 Retention of records.
2301.30 Final certification.
2301.31 Annual status reports.
2301.32 Termination and change in eligibility status.
2301.33 Petition for reconsideration.

Subpart F—Control and Use of Facilities

2301.34 Equipment.
2301.35 Items and costs ineligible for Federal funding.
2301.36 Control and use of facilities.
2301.37 Waiver.

(Pub. L. 95-567, 92 Stat. 2405 (47 U.S.C. 390-394).)

Subpart A—General

§ 2301.1 Purpose and scope.

These regulations prescribe policies and procedures to insure the fair, equitable and uniform treatment of applications for planning and construction grants for public telecommunications facilities. They implement the provisions of Part IV of Title III of the Communications Act of 1934, as amended by the Public Telecommunications Financing Act of 1978 (47 USC 390-94.) (Act).

§ 2301.2 Other pertinent rules and regulations.

Other rules and regulations pertinent to applications for the operation of noncommercial educational broadcast stations and public broadcast stations are contained in the rules and regulations of the Federal Communications Commission, 47 CFR Part 1 (Practice and Procedure); Part 2 (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations); Part 17 (Construction, Marking, and Lighting of Antenna Structures); Part 3, Subpart E (Television Broadcasting Stations); Part 73 (Radio Broadcast Services); and Part 74 (Experimental Auxiliary and Special Broadcast and Other Program Distribution and Services).

§ 2301.3 Definitions.

The following terms shall have the following meanings when used in this part:

"Act" means Part IV of Title III of the Communications Act of 1934, as amended (47 U.S.C. Sections 390-94, 397-99).

The term "Administrator" means the Administrator of the National Telecommunications and Information Administration, U.S. Department of Commerce.

The term "construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and modernization of public telecommunications facilities and planning and preparatory steps incidental to any such acquisition, installation, or modernization.

The term "noncommerical educational and cultural radio and television programs" means educational, community service, public service, public affairs and cultural programs of benefit to the area or community to be served by a public telecommunications entity;

The terms "noncommercial educational broadcast station" and "public broadcast station" means a television or raido broadcast station which—

(a) under the rules and regulations of the Federal Communications Commission in effect on the effective date of enactment of the Public Telecommunications Financing Act, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(b) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.

The term "noncommercial telecommunications entity" means any enterprise which—

(a) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation or association; and

(b) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave or laser transmission through the atmosphere.

The term "nonprofit" (as applied to any foundation, corporation, or association) means a foundation, corporation, or association, no part of the net earning of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

The term "preoperational expenses" means all nonconstruction costs incurred by new telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

The term "public broadcasting entity" means the Corporation for Public Broadcasting, any licensee or permittee of a public broadcasting station, or any nonprofit institution engaged primarily in the production, acquisition, distribution or dissemination of educational and cultural television or radio programs.

The term "public telecommunications entity" means any enterprise which—

(a) is a public broadcast station or a noncommercial telecommunications entity; and

(b) disseminates public telecommunications services to the public.

The term "public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast or other distribution of programming, including but not limited to, studio equipment, cameras, microphones, audio and video storage or reproduction equipment, or both, signal processors and switches, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment (ITFS), subsidiary communications authorization (SCA) transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber communications equipment and other means of transmitting, emitting, storing and receiving images and sounds or intelligence, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities and similar facilities).

The term "public telecommunications services" means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

The term "Secretary" means the Secretary of Commerce.

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

The term "system of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Eligible Applicants.

(a) Applications for funding under the Act may only be filed by:

(1) A public or noncommercial educational broadcast station.

(2) A noncommercial telecommunications entity.

(3) A system of public telecommunications entities.

(4) A nonprofit foundation, corporation, institution or association organized primarily for educational or cultural purposes.

(5) A State or local government or agency or a political or special purpose subdivision of a State.

(b) Applicants whose proposals require Federal Communications Commission authorizations must be eligible to receive such authorization.

(c)(1) NTIA may, upon request by a prospective applicant, issue an opinion letter regarding the applicant's eligibility for a grant.

(2) Opinion letters may be requested at any time except during the period between the closing date for applications and the publication of the list of applications accepted for filing.

(3) A favorable opinion letter will bind NTIA only with respect to the subject of the letter and only on the basis of the facts contained in the applicant's request for an opinion as to eligibility. A favorable letter, therefore, will not guarantee acceptance for filing or award of a grant.

§ 2301.5 Application for financial assistance.

(a) All applications for funding under the Act shall be made on an approved National Telecommunications and Information Administration (NTIA) form and each application shall be signed by an officer of the applicant. Approved forms may be obtained from the Public Telecommunications Facilities Division, NTIA/DOC, Room 296A, 1325 G Street, N.W., Washington, D.C. 20005.

(b) An applicant may amend its application or submit additional information at any time up to 45 calendar days after the closing date published pursuant to § 2301.9 of the Rules.

(c) A construction grant application shall include a five-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities as required by Section 392(a) of the Act.

(d) If an environmental impact or narrative statement is required to be filed in connection with the proposed project by any Federal, State or local law or regulation, a copy must be submitted with the application.

(e)(1), An applicant shall submit with its application or as an amendment, and keep current during the period that its application is on file, information concerning any discrimination complaints filed against it before any governmental agency.

(2) A grantee shall, during the period of Federal interest, promptly advise the Public Telecommunications Facilities Division, NTIA, of the filing of any discrimination complaints against it before any governmental agency and the final resolution of any such complaint.

§ 2301.6 Assurances.

No project will be approved unless the applicant has provided in the application information to establish to the Administrator's satisfaction that:

(a) The applicant is an eligible entity under Section 392(a)(1) of the Act and that it has authority to plan, construct and operate the public telecommunications facility for which funds are requested: *Provided, however,* that in the case of a planning grant application: (1) a system of public telecommunications entities may give an assurance that either the system or its constituent members is eligible under Section 392(a)(1) of the Act or (2) a governmental planning entity may give an assurance that either it or another governmental entity is eligible under Section 392(a)(1) of the Act and that the eligible entity will participate in the planning process.

(b) The public telecommunications facility will be controlled by the applicant;

(c) The public telecommunications facility will be used only for the provision of public telecommunications services;

(d)(1) Necessary funds to construct, operate and maintain the public telecommunications facility will be available when needed;

(2) All non-Federal financial sources available for the project have been taken into account, and the non-Federal share stated by the applicant as being available for use in the project is the maximum contribution available from such sources;

(3) PTFP funds and any monies generated through the use of PTFP-funded facilities shall be used solely for noncommercial public telecommunications purposes, as proposed in the application;

(e) The applicant has participated in, or in the case of a planning grant applicant, will participate in, comprehensive planning for its proposed facility in the area to be served, including an evaluation of alternative technologies and coordination with State educational television, radio and telecommunications agencies, if any;

(f) The applicant will make the most economical and efficient use of the grant;

(g) The applicant holds or will hold appropriate title or lease to the site or sites on which apparatus proposed in the project will be operated, including the right to construct, maintain, operate

and remove such apparatus, sufficent to assure continuity of operation of the facility for a period of 10 years following completion of the project;

(h) No person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination under any program or activity for which the applicant receives funding under this Act. (Title VI of the Civil Rights Act of 1964 as implemented by DOC regulations, 15 CFR 8.1–.15.);

(i) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any educational program or activity for which the applicant receives funding under the Act. (Title IX of the Education Amendments of 1972, as amended.); and

(j) No otherwise qualified individual shall, solely by reason of handicap, be excluded from the participation in, be denied of benefits of or be subjected to discrimination under any program or activity for which the applicant receives funding under this Act (Section 504 of the Rehabilitation Act of 1973, as amended.)

§ 2301.7 Deferred applications.

(a) An application which has been accepted for filing may be deferred for funding until a succeeding fiscal year. In the event that the Administrator defers an application, prompt written notification of that action, together with an explanation for the deferral, will be given to the applicant.

(b) An applicant may reactivate a deferred application if the stated purpose of the application has not substantially changed.

(c) To reactivate a deferred application, the applicant must notify the Administrator, in writing, that it wishes the application to be reconsidered. Notice must be given before the closing date specified by the Administrator pursuant to Section 2301.9 of the Rules for the filing of current fiscal year applications. An original and one copy of the notice must be filed.

(d) Any notice given under paragraph (c) of this section must be accompanied by the following information contained in the form of a signed amendment to the deferred application:

(1) Pages 4 and 5 and the brief narrative description of the proposal submitted on the current application form;

(2) An update of availability of operating funds and the necessary non-Federal share of the project;

(3) A revised listing of current eligible project costs, if necessary;

(4) A current inventory of all public telecommunications facilities owned by the applicant. Applicants having previously submitted an inventory need only submit updating information;

(5) A five-year plan outlining the applicant's projected facilities requirements, and the projected costs of such facilities. Applicants having previously submitted a five-year plan may submit any approved amendments including updating the dates to include the current year;

(6) Current information relating to the applicant's evaluation of alternate technologies currently available in the service area and the extent to which there is no duplication of services;

(7) If special consideration is requested under Section 392(f) of the Act, current information detailing the basis for the request; and

(8) Such other information as the Administrator considers necessary.

§ 2301.8 Federal Communications Commission authorization.

(a) Each applicant whose project requires Federal Communications Commission authorization must file an application for that authorization on or before the closing date for filing the funding application.

(b) Any Federal Communications Commission authorization required for the project must be in the name of the applicant.

(c) If the project is to be associated with an existing station, Federal Communications Commission operating authority for that station must be current and valid.

(d) For any project requiring a new authorization or authorizations from the Federal Communications Commission, the applicant must file with the Administrator a copy of each Federal Communications Commission application and any amendments thereto.

(e) If the applicant fails to file a required Federal Communications Commission application or applications by any closing date established pursuant to § 2301.9 of these Rules, or if the Federal Communications Commission returns, dismisses or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Administrator may return the application for Federal financial assistance to the applicant.

(f) No grant will be awarded until confirmation has been received from the Federal Communications Commission that any necessary authorization will be issued.

§ 2301.9 Closing date.

The Administrator shall select and publish in the Federal Register a date by which applications for funding in a current fiscal year are to be filed.

§ 2301.10 Where to file; Number of copies.

All applications for grants shall be filed with the Public Telecommunications Facilities Division, NTIA, Room 296A, 1325 G Street, N.W., Washington, D.C. 20005. An original and one copy of the application and supporting documents shall be filed; and any subsequent amendments shall be filed in duplicate.

§ 2301.11 Publication.

(a) Applicants shall cause to be published in a newspaper of general circulation in the community to be served, a notice that it has tendered an application for a Federal grant under the Act, that it has tendered substantial amendment to a pending application or that it has requested renewed consideration of a deferred application.

(b) The notice shall be published once a week for two consecutive weeks within the three week period following the Federal Register publication of the acceptance of the application by NTIA. Proof of publication shall be submitted to NTIA in duplicate.

(c) The notice shall contain substantially the same information as the Federal Register notice of acceptance for filing including the invitation to file comments with the Administrator, and where within the community to be served a complete and current copy of the application, and any amendments may be inspected by the public during normal business hours.

§ 2301.12 Service of applications.

(a) Any State or local agencies having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the State and the community to be served by the proposed facility, shall be served with one copy of the application and all subsequent amendments. This requirement applies to both planning and construction grant applications and service shall be made within two weeks of the tendering of an application to NTIA.

(b) In the case of a construction grant for which Federal Communications Commission authorization is required, a copy of the application and all subsequent amendments shall, within two weeks of tendering the application to NTIA, be filed with:

(1) The Secretary, Federal Communications Commission, Washington, D.C. 20554; and

(2) The State educational television, radio or telecommunications agency, if any, in the State in which the channel associated with the project is assigned by the Federal Communications Commission, or, if the channel in question is assigned jointly to communities in different States, upon the State agency, if any, in each of such States.

(3) Each applicant must also give written notice of the filing of the application to the State educational television, radio or telecommunications agency, if any, in any State, any part of which is within the service area of the proposed facility.

§ 2301.13 Acceptance of applications.

(a) Applications tendered for filing with the Administrator will be given a preliminary examination. Those found to be complete and in accordance with the provisions of this part will be accepted for filing. Applications which are not complete or which are determined to be not in accordance with the provisions of this part will not be accepted for filing and will be returned to the applicant; *Provided,* That within 30 days of such return, the applicant may file with the Administrator a petition pursuant to § 2301.33.

(b) Applications proposing projects which require authorization from the Federal Communications Commission will not be accepted for filing by the Administrator until the Federal Communications Commission has accepted the necessary application for filing.

(c) The acceptance of applications for filing, as provided in paragraph (a) of this section, is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications, as described in Section 2301.14. Acceptance of an application for filing does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provisions of this part or if the applicant fails to file any additional information requested by the Administrator. Acceptance for filing does not assure that application of being funded; it merely qualifies that application to compete for funding with other applications accepted for filing.

§ 2301.14 Comments on applications.

(a) The Administrator will publish notice in the Federal Register of the acceptance for filing of each application and of the receipt of each amendment which substantially changes the proposed project.

(b) Within 30 calendar days from the date on which notice is published in the Federal Register of the acceptance for filing of an application or a substantial amendment to an application, any interested party may file comments with the Administrator supporting or opposing the application or amendment, setting forth the grounds for support or opposition, accompanied by a certification that a copy of the comments has been mailed to the applicant.

(c) Within 30 calendar days from the last day for filing such comments, the applicant may file a reply to any comments opposing its application or an amendment.

(d) The time periods referred to in paragraphs (b) and (c) of this section may be extended by the Administrator if good cause is shown.

§ 2301.15 Distribution of funds.

With respect to applications accepted for filing pursuant to § 2301.13, the Administrator may at any time establish limitations on the maximum amount of Federal grants which may be approved for projects situated in each of the several States in order to assure an equitable distribution of funds among the States for any fiscal year.

§ 2301.16 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Administrator shall consult with:

(a) The Federal Communications Commission with respect to functions which are of interest to or affect functions of the Federal Communications Commission;

(b) The Corporation for Public Broadcasting with respect to functions which are of interest to or affect the functions of the Corporation; and

(c) Other agencies, organizations and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act.

§ 2301.17 Funding criteria for construction applications.

In order to achieve the objectives of Section 393 of the Act, the Administrator, in determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, will consider, in addition to how well the applicant has satisfied the assurances of Section 392(a) of the Act, the following factors (the order of listing implies no priority):

(a) The priorities set forth in the Act and § 2301.20 of the rules;

(b) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area; and the availability of necesary funds for capital expenditures;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) evaluated alternate technologies, the bases upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(2) assessed plans to meet the specific educational, informational and cultural needs of the total community to be served by the proposed telecommunications service;

(3) designed the proposed service to help meet the assessed needs;

(4) provided for the total community served to participate in the planning for and implementation of the proposed service;

(5) provided opportunities for the intended audiences to use the proposed service; and

(6) provided meaningful documentation of community support for the service to be provided (such as letters from agencies for whom the applicant produces or will produce programs or other materials and from key elected/appointed policy-making officials).

(e) The extent to which the evidence supplied in the project reasonably assures an increase in minority and women's control of, operation of and participation in public telecommunications entities;

(f) The extent to which the various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds in serving the proposed total community;

(g) The extent to which the eligible equipment requested meets current telecommunications industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff, and will provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the

proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, Statewide or regional public telecommunications systems plans, if any;

(k) The extent to which the applicant's proposed five-year facilities plan required by Section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations; and

(l) The approval by the Federal Communications Commission of any necessary authorization.

§ 2301.18 Funding criteria for planning applications.

In order to achieve the objectives of Section 393 of the Act, the Administrator, in determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, will consider, in addition to how well the applicant has satisfied the assurances of Section 392(a) of the Act, the following factors (the order of listing implies no priority):

(a) The extent to which the applicant's interests and proposes are relevant to the proposed planning;

(b) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(c) The extent to which the planning project's procedural design will assure adequate:

(1) knowledge of the needs of the area to be served;

(2) financial, human and support resources necessary to conduct the plan;

(3) public awareness of and participation in the proposed planning;

(4) coordination with other telecommunications entities at the local, state, regional and national levels;

(5) evaluation of alternate technologies and duplication of services; and

(6) participation by minorities and women.

(d) The extent to which the proposed procedure and timetable are feasible and can achieve the expected results.

§ 2301.19 Action on applications.

(a) After consideration of an application that has been accepted for filing, any comments and replies filed by interested parties and any other relevant information, the Administrator will take one of the following actions: select the application for funding, in whole or in part; defer the application for subsequent consideration pursuant to § 2301.7 of the Rules; or return the application to the applicant; *Provided,* That when the Administrator returns an application, the Administrator will notify the applicant of the grounds and reasons therefor.

(b) Upon the administrator's approval or deferral, in whole or in part, of an application, the Administrator will inform:

(1) The applicant;

(2) Each State educational television, radio or telecommunications agency, if any, in any State, any part of which lies within the service area of the applicant's facility;

(3) The Federal Communications Commission; and

(4) The Corporation for Public Broadcasting.

(c) If the Administrator awards a grant, the grant award document shall include grant terms and conditions set forth in Subpart D of the Rules and whatever other provisions are required by Federal law or regulations, or may be deemed necessary or desirable for the achievement of the purposes of the program.

Subpart C—Priorities Among Applications and the Role of Minorities and Women

§ 2301.20 Program priorities.

(a) The following objectives, listed in order of priority, shall govern the Administrator's determination to fund an application and the amount of the grant awarded:

(1) Whether the application will provide new public telecommunications facilities to extend service to areas not currently receiving such services.

(2) Whether the application will result in the expansion of service areas of existing public telecommunications entities.

(3) Whether the application will result in the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services.

(b) Notwithstanding the priorities among applications listed in paragraph (a) of this section, the Administrator may utilize any remaining appropriated funds to award grants to applicants who are otherwise eligible for funding but do not fall within any of the statutory priorities. Grants made pursuant to this subsection, must fulfill the overall objectives of the Act.

§ 2301.21 Special consideration.

In assessing applications, the Administrator will give special consideration to applications which foster control of, operation of any participation in public telecommunications entities by minorities and women.

Subpart D—Federal Financial Participation and Conditions of Federal Grant

§ 2301.22 Amount of Federal grant.

(a) *Planning grants.* A Federal grant award for the planning of a public telecommunications facility shall be in an amount determined by the Administrator and set forth in the grant award document.

(1) The Administrator may provide up to 100 percent of the funds necessary for the planning of a public telecommunications facility which is eligible for construction grant funding.

(2) Two copies of any study conducted in whole or in part with funds provided under this program shall promptly be provided to the Administrator. Copies of studies shall be served on the Public Telecommunications Facilities Division, NTIA, Room 293A, 1325 G Street, N.W., Washington, D.C. 20005.

(b) *Construction Grants.* A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Administrator and set forth in the grant award document, except that such amount shall not exceed 75 percent of the amount determined by the Administrator to be the reasonable and necessary cost of such project.

(c)(1) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal Government except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(2) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear and compelling showing of need.

(d) If the actual costs incurred in completing the project are less than the estimated costs which constituted the basis for the Administrator's determination of the Federal grant award, the amount of the final grant shall be that amount of the actual total project cost remaining after deducting the amount of local matching funds used as a basis for the grant award at the time of project approval (including the fair market value of gifts, if any); *Provided,* That is no case shall the final Federal grant exceed the Federal grant award.

§ 2301.23 Payment of Federal grant.

(a) No payments under any award will be made unless and until the recipient complies with all relevant requirements imposed by this part. Additionally, with regard to public telecommunications entities requiring a Federal Communications Commission authorization, no payments will be made until confirmation has been received from the Federal Communications Commission that any necessary authorization has been granted.

(b) After the conditions indicated in Subsection (a) have been satisfied, payment will be made to the grantee in such installments consistent with progress of the project, as the Administrator may determine. The Administrator may require as a precondition to any such payments, site visits by representatives of NTIA to determine project progress.

§ 2301.24 Conditions of Federal grant.

(a) Each Federal grant under this part shall be subject to the conditions that the grantee shall:

(1) Continue to meet the requirements set forth in § 2301.4 and § 2301.5;

(2) Use the Federal grant funds for the purposes for which the grant was made and for the items of apparatus and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project as approved in advance by the Administrator;

(3) Promptly complete the project and place the public telecommunications facility into operation;

(4) Maintain, during construction of the project and for 10 years after completion of the project, protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project;

(5)(i) Permit the Administrator and the Comptroller General of the United States or their duly authorized representatives access for the purpose of audit and examination to any books, documents, papers and records of any grantee that are pertinent to assistance received under this program.

(ii) Permit inspections by the Administrator, or the Administrator's duly authorized representatives, of the public telecommunications facilities acquired with Federal financial assistance at the time of completion of the project and at any other reasonable time within 10 years after completion of the project.

(iii) In carrying out the authority conferred in this Section, the Administrator and the Administrator's duly authorized representatives shall request admission for inspection, audits and examinations only during normal working hours of the grantee.

§ 2301.25 Procurement standards.

(a) Grantees that are States, political or special purpose subdivisions of States or public agencies shall adopt the current edition of Office of Management and Budget Circular No. A-102.

(b) Grantees that are nonprofit private foundations, corporations or associations shall adopt the current edition of Office of Management and Budget Circular No. A-110.

§ 2301.26 Consolidated procurement.

(a) In order to obtain quantity discounts, applicants are encouraged to explore with other applicants the consolidated procurement of public telecommunications facilities with program funds. Responsibility for the proper disbursement of program funds and title to and control of facilities purchased pursuant to this Section must remain with the individual grantees. This Section does not supersede or modify the procurement standards contained in § 2301.25.

(b) Applicants may enter into consolidated purchase agreements at any time. Copies of agreements must be submitted with the application or as an amendment and may be used to establish that the applicants will make the most efficient and economical use of program funds.

(c) If a group of applicants agree to a consolidated procurement, a written copy of the agreement must be submitted to the Administrator before any order for facilities may be placed. The Administrator shall promptly notify the applicants of the approval or disapproval of the agreement.

§ 2301.27 Securing the Federal interest.

In order to assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the 10-year period of Federal interest in the event of a grantee's change of eligibility status, bankruptcy, failure, etc., grantees shall:

(a) Execute and record a document establishing that the Federal Government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located.

(b) A certified copy of the recorded lien shall be filed with the Administrator.

(c) The continuing period of Federal interest shall be no less than 10 years from the date of completion of the project. In addition, facilities purchased in whole or in part with program funds may never be utilized for purposes, the essential thrust of which are sectarian.

§ 2301.28 Nondiscrimination.

(a) It is the purpose of this Section to reflect to the fullest extent possible NTIA's commitment to the nondiscrimination policies of the Federal Government as expressed in the several statutes, Executive Orders and messages of the President dealing with civil rights and equality of opportunity. Discrimination based on race, color, national origin, sex or physical handicap shall be prohibited by all grantees.

(b) NTIA shall enforce Title VI of the Civil Rights Act of 1964, as implemented by Department of Commerce regulations, 15 CFR Subtitle A, Part 8, which is hereby incorporated in this part by reference.

(c) NTIA shall enforce Title IX of the Education Amendments of 1972, as amended. Department of Commerce implementing regulations have not yet been adopted but will be incorporated by reference in this part upon their adoption.

(d) NTIA shall enforce Section 504 of the Rehabilitation Act of 1973, as amended. Department of Commerce implementing regulations have been proposed, 43 FR 53765, published November 17, 1978. Final regulations will be incorporated by reference in this part.

Subpart E—Accountability for Federal Funds

§ 2301.29 Retention of records.

(a) Each recipient of assistance under this program shall keep intact and accessible records to enable the Administrator to carry out the functions of the Administrator under the Act. Such records shall consist of:

(1) A complete and itemized inventory of all public telecommunications facilities under the control of the grantee, whether or not financed, in whole or in part, with Federal funds.

(2) Complete, current and accessible financial records which fully disclose the total amount of the project; the amount of the grant; the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds associated with the project;

(b) The grantee shall mark project apparatus in a permanent manner in order to assure easy and accurate identification and reference to inventory records.

(c) The grantee, in advertising for bids for the purchase of apparatus, shall state that the Federal government has a continuing 10-year interest in facilities purchased with Federal funds under this program.

§ 2301.30 Final certification.

Upon completion of the project, the grantee shall;

(a) Certify that the acquisition and installation of the project equipment has been completed in accordance with the project as approved by the Administrator; and

(b) Certify that it has any necessary Federal Communications Commission authorizations to operate following acquisition and installation of project equipment.

§ 2301.31 Annual status reports.

(a) The grantee must file with the Administrator during the 10-year period commencing with the date of completion of a project, an annual status report on or before each April 1 following completion of the project, certifying that:

(1) The grantee continues to be an eligible agency, institution, foundation corporation, association or municipality as described in § 2301.4;

(2) There has been no change in ownership or use of the project apparatus during the reporting period, or describing any change during such period;

(3) Project apparatus owned by the grantee as of that date is being used only for the delivery of public telecommunications services; and

(4) The requirements of § 2301.24 continue to be met.

§ 2301.32 Termination and change in eligibility status.

(a) The following circumstances shall constitute grounds for termination of a grant and for recovery from the applicant or other owner of the facilities of the amount bearing the same ratio to the value of the facilities as the Federal grant bore to the project if they occur within 10 years after completion of the project:

(1) The applicant, grantee or other owner of the facilites ceases to be an agency, institution, foundation, corporation, association or other entity as described in Section 392(a)(1) of the Act;

(2) The facilities, either permanently or for an indefinite period of time cease to be used only for the provision of public telecommunications services (unless the Administrator determines, based on a petition for such relief with opportunity for filing oppositions by interested members of the public, that good cause exists to release the applicant, grantee or other owner from this obligation);

(3) Final action by the Federal Communications Commission revoking a construction permit required for a project, denying an application for extension or a required modification of a construction permit, denying an application for construction permit, denying an application for a license to cover construction permit or revoking a license; or

(4) Forfeiture of a construction permit required for a project for which a grant has been approved.

(b) In the event that one or more of the circumstances listed in paragraph (a) of this section occur, then the grantee shall, except as provided in paragraph (c) of this section, either relinquish title and control of the facilities purchased with Federal funds to the Administrator or shall pay to the United States the amount bearing the same ratio to the then fair market value of such apparatus, as the amount of the Federal participation bore to the cost of acquisition or installation of such apparatus.

(c) Where a grantee proposes to cease using any of the eligible apparatus included in the project for public telecommunications services that grantee may file a petition with the Administrator requesting release from the obligation to make repayment to the United States, and setting forth with particularity the grounds and reasons for the request. These petitions will be granted by the Administrator only for good cause, and only if the proposed cessation of use for public telecommunications services has not already taken place, unless the petitioner demonstrates to the satisfaction of the Administrator, that the cessation was due to causes not under the control of the petitioner. If the Administrator denies the petition, the grantee may, within 30 calendar days from the date of receipt of notice of the denial, file a petition for reconsideration pursuant to § 2301.33.

(d) In any case where the Administrator has reason to believe that any change in eligibility or use of public telecommunications facilities (as described in paragraph (a) of this section), has already taken place, the grantee will be notified promptly of the grounds and reasons and requested to relinquish control or to make repayment to the United States pursuant to paragraph (b) of this section. The Administrator will seek to reach agreement as to the amount and method of settlement. If agreement cannot be reached, the Administrator will cause an action to be brought in the United States District Court for the district in which the public telecommunications facilities are situated to determine the amount of the repayment, and will take the necessary action to secure repayment.

§ 2301.33 Petition for reconsideration.

(a) A petition for reconsideration as provided in §§ 2301.13 and 2301.32 must be filed with the Administrator within 30 calendar days after the date of receipt of the notice of the adverse decision; must state specifically in what respect the Administrator's action is claimed to be unjust, unwarranted or erroneous; must specifically indicate the relief sought; and must be accompanied by a written statement on the question presented.

(b) The Administrator shall delegate authority to review the petition for reconsideration to a five member Grant Appeals Board, comprised of the Deputy Administrator, the Chief Counsel, the Deputy Associate Administrator of the Office of Policy Analysis and Development, the Director of the Office of International Affairs; the Director of the Office of Planning and Policy Coordination or such other senior level NTIA employees as the Administrator may select: *Provided*, That no member of the Board shall be employed in the Office of Telecommunications Applications. The Board shall sit in panels of three members.

(c) The Board will notify each state telecommunications agency, if any, in any State, any part of which lies within the area served by petitioner's programming, of the petition. Each such agency shall be given an opportunity to submit written comments on the petition.

(d) Interested persons other than a State educational television, radio or telecommunications agency referred to in paragraph (c) of this section may submit written comments on any petition for reconsideration filed under this section.

(e) The Board shall review the petition and any comments received pursuant to paragraphs (c) and (d) of this section and make a written report, detailing the basis of its decision. A copy of the report shall be mailed to the petitioner and any agency or party that filed comments. If the Board grants the petition, it shall concurrently direct the staff to take appropriate action on the application. The decision of the Board shall constitute final NTIA action.

Subpart F—Control and Use of Facilities

§ 2301.34 Equipment.

(a) All equipment proposed to be funded under this program shall be of professional quality. An applicant proposing to utilize non-broadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

(b) Buildings to house eligible equipment are not themselves eligible for funding under this program: *Provided,* That small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities and similar facilities are eligible for funding.

§ 2301.35 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under the Act:

(a) Equipment and Supplies:

(1) Vehicles, including those in which mobile equipment is mounted or carried;

(2) Receiving Equipment (except as required for monitoring or transmission; vertical interval or subcarrier receivers and decoders; or satellite receivers);

(3) Modifying or strengthening the applicant's tower to accommodate antennas of commercial entities;

(4) Equipment for motion picture or still photography or processing;

(5) Manual film or tape editing equipment, film, recording tape, reels, film or tape cleaning equipment;

(6) Scenery and props; art supplies and equipment;

(7) Sound insulation devices, cycloramas, draperies, studio clocks, blackboards, intercoms, telephones, furniture, and the like;

(8) Production devices such as prompting systems, background projection systems, sound effects, and the like;

(9) Office equipment, printing and duplication supplies; except for planning projects under section 392(c) of the Act;

(10) Maintenance equipment such as hand and power tools, storage cabinets and maintenance services;

(11) Air conditioning for control or equipment rooms, studios, transmitter buildings, mobile units and other operational rooms and offices (except that the cost to provide ventilation of project apparatus as is required by good engineering practice is an eligible installation cost);

(12) Equipment providing power to the facility, including transformers, regulators, generators, and related equipment;

(13) Expendable items, including spare recording heads, spare lenses, spare circuit components and other kits normally considered spares except for transmitters; and

(14) Such other equipment and supplies as the Administrator may select.

(b) Other Expenses:

(1) Land and land improvements;

(2) Salaries of personnel employed by an operating public telecommunications entity, except for planning projects under Section 392(c) of the Act, and for construction-related activities as defined in Section 397(1) of the Act and § 2301.3(a)(3) of the rules as defined in Section 397(1) of the Act and § 2301.3(a)(3) of the Rules.

(3) Moving costs required by relocation; and

(4) Such other expenses as the Administrator may select.

§ 2301.36 Control and use of facilities.

Any public telecommunications facilities, funded in whole or in part under the Act, shall remain under the control of the grantee and shall be used only for the provision of public telecommunications services.

§ 2301.37 Waiver.

For good cause shown, the Administrator may waive the regulations adopted pursuant to Section 392(e) of the Act.

Appendix A*

American Women in Radio and Television.
Ana G. Mendez Educational Foundation.
Charles Crutchfield.
Chicago Metropolitan Higher Education Council.
City of Valparaiso.
Communications Institute of Boulder.
Corporation for Public Broadcasting.
Dutchess Community College.
Front Range Educational Media Corp.
In Touch, Inc.
Joint Comments Filed By Dow, Lohnes, & Albertson.
Joint Council on Educational Telecommunications.
KUOW (University of Washington).
Latinos in Communications Group of New York.
M. Robert Scott.
Mayor's Media Committee for the Handicapped (Baltimore).
Minnesota Public Radio, Inc.
National Association for State Universities and Land Grant Colleges.
National Federation of Community Broadcasters.
National Public Radio.
New Jersey Office of Cable Television.
New York State Commission on Cable Television.
Noncommercial Radio Consortium of Oregon, Inc.
Pennsylvania Department of Education.
Public Broadcasting Service.
Public Service Satellite Consortium.
Rocky Mountain Corporation for Public Broadcasting.
State of Alaska, Department of Education.
State of North Carolina.
State University College, Fredonia, New York.
State University of New York.
University of Connecticut.
University of South Florida.
Wayne State University.
Wilkinson, Cragun & Barker.
WSBE-TV, Providence, Rhode Island.
Wyoming Public Schools.

Appendix B

The following is a statement of the priorities that will govern NTIA's analysis of funding requests under the Public Telecommunications Financing Act of 1978, (Pub. L. 95-567, 92 Stat. 2405).

Statutory Priorities

•*Priority I—Provision of Telecommunications Facilities for First Service to a Geographic Area.* Within this first priority, we establish three subcategories:

A. *Projects to establish telecommunication facilities which include local origination capacity.* This category includes the activation of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects to extend existing telecommunications delivery systems.* This category includes projects such as increase in tower height and/or power of existing stations; and construction of translators, cable networks and repeater transmitters. No local origination capacity is required.

C. *Projects to establish telecommunications delivery systems without local origination capacity.* This category includes the activation of new facilities without local origination capacity, but which can provide services originating elsewhere.

* Note.—Appendices A and B will not appear in the Code of Federal Regulations.

•*Priority II—Activation or Expansion of Telecommunications Facilities for Significantly Different Additional Service.* This priority includes the planning and construction of facilities to provide additional complementary program services for which a clear and substantial community need can be demonstrated. Eligible projects include service to identifiable ethnic or linguistic minority audiences; service to the blind or deaf; instructional service; electronic text; or significantly different alternative service to a general audience.

•*Priority III—Improvement for Existing Broadcast Station Facilities.* Two subcategories are listed under this priority:

A. *Projects to provide first local origination capacity for existing broadcast stations.* This category includes projects to bring basic local program service to repeater transmitters and other licensed broadcast facilities now bringing in distant signals. Origination equipment may be fixed or mobile, but must be locally based.

B. *Projects to upgrade existing origination or delivery capacity to current industry performance standards.* This category includes conversions to color, stereo, etc.; improvements in signal quality; and significant improvements in equipment flexibility or reliability.

• *Priority IV—Augmentation of Existing Broadcast Station Facilities.* Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases

If in any one fiscal year, all approvable applications have been funded and appropriated funds remain, NTIA possesses the discretionary authority to award grants to eligible applicants where proposals do not clearly fall within any of the listed priorities but whose applications, nevertheless, would further the overall objectives of the Act.

[FR Doc. 79-16602 5-25-79; 8:45 am]
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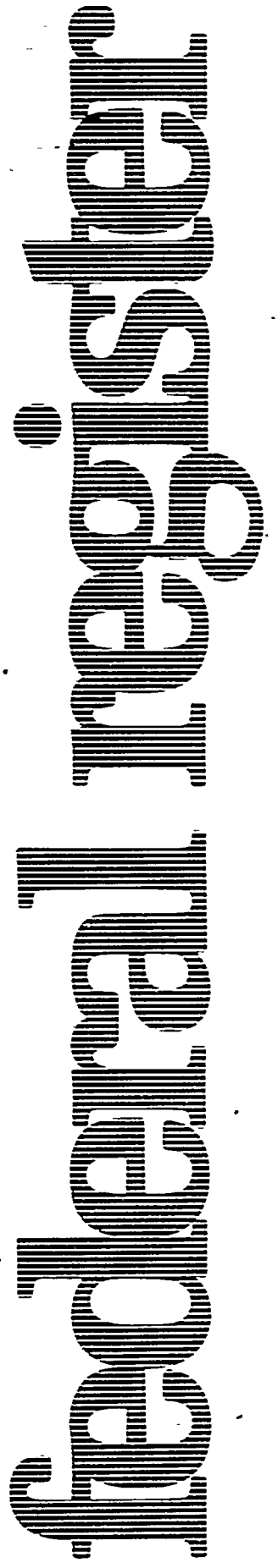

Tuesday
May 29, 1979

Part VI

Securities and Exchange Commission

Filings by Self-Regulatory Organizations of Proposed Rule Changes and Other Materials with the Commission

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release No. 34-15838; File No. S7-590]

Filings by Self-Regulatory Organizations of Proposed Rule Changes and Other Materials With the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend the requirements applicable to the filing by self-regulatory orgainizations of proposed rule changes and other materials with the Commission. The amendments are designed to simplify and clarify the requirements and to facilitate the review process. The principal proposals would (i) define the term "rule," (ii) expand the categories of proposed rule changes that self-regulatory organizations may designate for summary effectiveness, (iii) specify in greater detail the information that a self-regulatory organization must include in a proposed rule change filing, and (iv) require a registered clearing agency to file with the Commission any materials that it makes generally available to its participants or to pledgees or to transfer agents.

DATE: Comments must be received on or before July 31, 1979.

ADDRESSES: Interested persons should submit six copies of their views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. S7-590. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Susan Davis, Esq., Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 755-7610.

SUPPLEMENTARY INFORMATION:

Introduction

A. Statutory Requirements

As amended by the Securities Act Amendments of 1975 (the "1975 Amendments"),[1] Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[2] requires a self-regulatory organization[3] to file with the Commission each of its proposed rule changes,[4] accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed, the Commission is required to publish notice of it and to provide an opportunity for public comment. The proposed rule change may not take effect unless it is approved by the Commission, or is otherwise permitted to become effective, under Section 19(b).[5]

Section 19(b)(2)[6] sets forth the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceding to determine whether a proposed rule change should be disapproved. The Commission must approve a proposed rule change if it finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization proposing the rule change. If the Commission does not make that finding, it must disapprove the proposed rule change.

Section 19(b)(3)[7] provides that, in certain circumstances, a proposed rule change may become effective upon filing, without prior notice and opportunity for public comment. Paragraph (A) of Section 19(b)(3) permits certain types of proposed rule changes to take effect upon filing with the Commission after appropriate designation by the self-regulatory organization. Paragraph (B) permits the Commission to put a proposed rule change into effect summarily in circumstances where the Commission determines that the action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Paragraph (C) provides that any proposed rule change that has become effective under Paragraph (A) or (B) may be enforced by the self-regulatory organization only to the extent it is not inconsistent with the Act, the rules and regulations thereunder, and applicable Federal and State law. It also provides that, within sixty days of filing, the Commission may summarily abrogate a proposed rule change that becomes effective pursuant to Paragraph (A) or (B).

Section 19(b)(4)[8] relates to the proposed rule changes of certain clearing agencies. It establishes further procedures and standards for review of a proposed rule change of a registered clearing agency for which the Commission is not the appropriate regulatory agency.[9]

B. Administration of Section 19(b)

Shortly after the above statutory provisions became effective in June of 1975, the Commission adopted Rule 19b-4 and related Forms 19b-4A and 19b-4B,[10] to establish procedures for self-regulatory organizations to file proposed rule changes and stated policies, practices, or interpretations not deemed to be rules.[11] The Commission adopted Rule 19b-4 and the related forms without prior notice and opportunity for comment in view of the need to provide, as promptly as possible, an orderly procedure for consideration of proposed rule changes. At that time, however, the Commission requested interested persons to submit comments on rule 19b-4 and on the related forms.[12] The Commission also stated that it intended to review the operation of the rule and forms with a view to improving and simplifying their requirements.

During the more than three and one-half years that have passed since the adoption of Rule 19b-4, the Commission has received a number of comments on Rule 19b-4[13] and has gained

[1] Pub. L. No. 94-29 (June 4, 1975).

[2] 15 U.S.C. 78s(b)(1).

[3] Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26), defines the term "self-regulatory organization" to mean any national securities exchange, registered securities association, registered clearing agency or, for limited purposes, the Municipal Securities Rulemaking Board ("MSRB").

[4] Section 19(b)(1) of the Act defines the term "proposed rule change" to mean "any proposed rule or any proposed change in, addition to, or deletion from the rules of * * * [a] self-regulatory organization." In turn, Sections 3(a)(27) and 3(a)(28) of the Act provide, essentially, that the term "rules of a self-regulatory organization" means (i) the rules of the MSRB and the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of any other self-regulatory organization and (ii) such stated policies, practices, and interpretations of a self-regulatory organization (other than the MSRB) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules.

[5] A self-regulatory organization rule change that has not become effective under Section 19(b) cannot be enforced by the self-regulatory organization and would not provide any statutory basis for a good faith defense on the part of persons who rely on that change. *See* Section 23(a)(1) of the Act, 15 U.S.C. 78w(a)(1).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(3).

[8] 15 U.S.C. 78s(b)(4).

[9] *See* Section 3(a)(34)(B) of the Act, 15 U.S.C. 78c(a)(34)(B).

[10] 17 CFR 240.19b-4, 249.819a, and 249.819b.

[11] Securities Exchange Act Release No. 11604 (Aug. 19, 1975), 40 FR 40509 (Sept. 3, 1975).

[12] *Id.*

[13] The Commission received comments from the American, Cincinnati, New York, and Pacific Stock Exchanges, from Schiff Hardin & Waite (representing at that time the Midwest Stock Exchange, Inc., Midwest Securities Trust Company, Midwest Clearing Corporation, Chicago Board Options Exchange, Inc., and the Options Clearing Corporation), and from Milbank, Tweed, Hadley &

Footnotes continued on next page

considerable experience with that rule and related Forms 19b–4A and 19b–4B.[14] Both the Commission and the self-regulatory organizations have encountered problems with the current procedures for review of proposed rule changes. The self-regulatory organizations have objected to a number of matters, including (i) delays in the review of proposed rule changes, (ii) the definition of "stated policies, practices and interpretations deemed to be rules," (iii) the requirement that stated policies, practices and interpretations not deemed to be rules be filed on Forms 19b–4B, and (iv) the Commission's use of the Federal Register for publication of notice of filing of a proposed rule change.

Some difficulty was to be expected in administering the rule review process under the new standards of the Act, as amended by the 1975 Amendments. It appears that a number of self-regulatory organizations were uncertain as to the limits imposed by the Congress on their ability to adopt rules and sought to define those limits through the rule review process. The Commission and its staff were faced with the task of interpreting the substantive standards of the 1975 Amendments in the context of a large number of rule filings, many of which required several amendments to come into compliance with the Act. For those reasons, the process of reviewing and approving rule changes during much of the past three and one-half years has involved extensive discussion and consultation between the Commission's staff and the staffs of the self-regulatory organizations. That process has unavoidably delayed approval of many rule changes.

The principal problem that the Commission has encountered in administering Rule 19b–4, however, is that many of the proposed rule change filings that the Commission has received each year have been incomplete or, for other reasons, have not provided an adequate basis for Commission review. A substantial number of those filings have not responded appropriately to one or more items set forth in Form 19b–4A, particularly to the requirements for statements of the basis and purpose of the proposed rule change. The Commission has had to devote a considerable amount of its time and staff resources to obtaining necessary background information in order to determine whether a particular proposed rule change is consistent with the Act. In some cases, the Commission's staff has found it necessary to return filings that did not provide an adequate basis for Commission review.

C. Proposed Program to Facilitate Review

In light of the problems that both the Commission and the self-regulatory organizations have experienced with the administration of Section 19(b), the Commission is proposing a program to facilitate filing and review of proposed rule changes. The Commission believes that many of the problems can be eliminated by increased cooperation and communication between the Commission and the self-regulatory organizations and other persons interested in the review process. It is soliciting the views of self-regulatory organizations and other interested persons as to how it may be more responsive to the problems they have encountered. In addition, the Commission believes that the requirements applicable to the filing of proposed rule changes may need to be revised to facilitate the review process. Accordingly, the Commission is proposing certain changes in the existing requirements. It invites comments on those proposals and suggestions as to any other changes that should be made to facilitate the filing and review process.

The proposals are intended to clarify existing requirements and to eliminate any requirements that impose unnecessary burdens on self-regulatory organizations. The proposals include a definition of the term "rule," which the Commission believes will clarify which action are proposed rule changes. In addition, the proposals expand the categories of proposed rule changes that self-regulatory organizations may designate for summary effectiveness and would encourage use of techniques permitting such effectiveness in order to reduce delays in the efforts of self-regulatory organizations to introduce new regulatory programs.

The proposals would also amend Form 19b–4A to clarify what information must be included in a rule change filing. These amendments are central to the Commission's program to facilitate the process of reviewing proposed rule changes since, if the Commission is to review proposed rule change filings expeditiously, the filings must provide an adequate basis for that review. To permit the Commission to focus on filings that do provide an adequate basis for its review, the Commission is directing its staff to continue to return incomplete or defective documents sought to be filed under Section 19(b) of the Act.

The program outlined above is discussed in detail in the remainder of this release,[15] which consists of the following sections:

I. Clarification and Revision of Filing Requirements

II. Content of Proposed Rule Change Filings

III. Discussion of Other Comments on Commission Review of Proposed Rule Changes

IV. Statutory Basis

I. Clarification and Revision of Filing Requirements

A. *Proposed Definition of the Term "Rule"*

Both the Commission and the commentators have identified certain problems with the existing standards for determining whether a particular self-regulatory action is a "proposed rule change." The Commission is proposing a definition of the term "rule" that it believes will, in large part, eliminate those problems. As background for discussing that proposal, this section first reviews the existing standards for determining which self-regulatory organization actions are proposed rule changes.

As noted above, Section 19(b)(1) of the Act defines the term "proposed rule change" to mean "any proposed rule or any proposed change in, addition to, or deletion from the rules of * * * [a] self-regulatory organization." In turn, Sections 3(a)(27) and 3(a)(28) of the Act provide, essentially, that the term "rules of a self-regulatory organization" means (i) the rules of the MSRB and the constitution, articles of incorporation, bylaws, and rules, or instruments

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McCloy (representing The Depository Trust Company), Securities and Exchange Commission File No. S7–590 ("File No. S7–590"). *See also* letters from Schiff Hardin & Waite to Andrew M. Klein (May 15, 1978), and from The Depository Trust Company to Commissioner Karmel (July 26, 1978), File No. S7–590.

In addition, on June 19, 1978, representatives of a number of self-regulatory organizations met with various members of the Commission and of the staff to discuss general problems related to the submission of proposed rule changes. The New York Stock Exchange, Inc. ("NYSE") subsequently submitted proposals to revise the procedures under Rule 19b–4. Letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978), File No. S7–590.

[14] Each year since 1975 the Commission has received approximately three hundred filings of proposed rule changes and stated policies, practices, and interpretations deemed not to be rules.

[15] In a separate release, issued today, the Commission also announced the adoption of a rule delegating to the Division of Market Regulation authority to extend the period for Commission action on proposed rule changes filed by the self-regulatory organizations. Securities Exchange Act Release No. 15839 (May 18, 1979).

corresponding to the foregoing, of any other self-regulatory organization and (ii) such stated policies, practices and interpretations of a self-regulatory organization (other than the MSRB) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules. The Act does not define the terms "constitution," "articles of incorporation," "bylaws," "rules," "instruments corresponding to the foregoing," or "stated policies, practices, or interpretations."

In adopting Rule 19b–4, the Commission provided guidance as to the meaning of the term "stated policies, practices, and interpretations" and the various circumstances in which the Commission would deem stated policies, practices and interpretations to be rules. Paragraph (b) of Rule 19b–4 provides that the term "stated policies, practices and interpretations" includes:

any material aspect of the operation of the facilities of the self-regulatory organization or any statement made generally available to the membership of, or all participants in, or persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, a self-regulatory organization, or to a group or category of such persons, establishing or changing any standards or guidelines with respect to (1) the rights or obligations of such persons or, in the case of national securities exchanges or registered securities associations, persons associated with such persons or (2) the application or interpretation of an existing rule.

Paragraph (a) of Rule 19b–4 provides that a stated policy, practice or interpretation shall be deemed to be a rule if:

(1) action thereon by the members or by the board of directors, or similar governing body, of such self-regulatory organization is required under its constitution, articles of incorporation, by-laws, rules, or instruments corresponding thereto, (2) a self-regulatory organization elects or is required, pursuant to its constitution, articles of incorporation, by-laws, rules, or instruments corresponding thereto, to treat it as a rule change hereunder, (3) it represents a change in, addition to, or deletion from a stated policy, practice or interpretation which the self-regulatory organization previously treated as a proposed rule change or (4) it requires a determination, or affects a prior determination, pursuant to Rules 8c–1(g) or 15c2–1(g).[16]

[16] Those circumstances are, of course, not exclusive. For example, even if an action that was characterized by an exchange, association, or clearing agency as a stated policy, practice, or interpretation was not within paragraph (a) of Rule 19b–4, it might nevertheless constitute an "instrument corresponding to the foregoing" within the meaning of Section 3(a)(27).

Comments on the existing standards for determining whether a particular action constitutes a proposed rule change have focused on the definition of state policies, practices and interpretations. One commentator asserted that the description in paragraph (b) of Rule 19b–4 of stated policies, practices and interpretations is too broad.[17] A second commentator contended that the circumstances in which stated policies, practices and interpretations are deemed to be rules should be revised to place more emphasis on the impact of the action on the persons the Act was intended to protect.[18] Another commentator stated that the reach of paragraph (a) is too broad as it applies to clearing agencies,[19] in that it provides that all stated policies, practices and interpretations are to be deemed rules if they affect determinations under Rules 8c–1(g) [20] or 15c2–1(g) [21] under the Act.

The Commission believes that the existing standards may not provide sufficient guidance as to which self-regulatory actions are proposed rule changes. On several occasions the Commission has determined that self-regulatory actions that had been formally designated as actions other than rules, and accordingly had not been filed under Section 19(b), were in fact rules and could not take effect without compliance with that section.[22]

In light of these problems, the Commission is proposing changes in the existing standards for determining which actions are rule changes. First, the Commission is proposing to delete the description of stated policies, practices and interpretations deemed to be rules that is contained in paragraphs (a) and (b) of Rule 19b–4. Second, the Commission is proposing to define the term "rule" as used in Sections 3(a)(27) and 3(a)(28). That term would be defined in a new rule, proposed Rule 3b–7, to include:

the whole or part of any statement or of any stated policy, practice, or interpretation (including any form, report, or questionnaire)

(a) that is of general or particular applicability and future effect,

(b) that is designed to implement, interpret, describe, or prescribe a requirement, procedure, definition, standard, guideline, policy, or any part of a corporate or financial structure or organization, and

(c) that directly or indirectly affects the rights or obligations of any person or the conduct of business by any person;

Provided, however, That the term "rule" shall not include any stated policy, practice, or interpretation with respect to an existing rule that is reasonably and fairly implied by that rule and that is not required under the rules of the self-regulatory organization to be approved by the governing body of the self-regulatory organization.

Proposed Rule 3b–7 focuses on the substance and effect of a particular self-regulatory action, rather than on its formal designation.[23] It is designed to simplify determinations as to which self-regulatory actions constitute proposed rule changes. It generally would not reduce the scope of that term.[24] It would reach, among other things, any guidelines or standards that a self-regulatory organization employs in a determination to grant or to deny access to its facilities or services. It would also reach any advisory opinion or interpretation of a self-regulatory organization, including the MSRB, if the opinion or interpretation is not reasonably and fairly implied by an existing rule.[25] In addition, it makes

[17] Letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978), File No. S7–590.

[18] *See* Response of Schiff Hardin & Waite (Nov. 14, 1975), File No. S7–590, suggesting that the Commission deem a stated policy, practice, or interpretation to be a rule if:

[I]t represents action taken or proposed to be taken by the self-regulatory organization of general applicability and future effect which materially affects the rights or obligations of members, participants, or persons having or requesting access to services offered by the self-regulatory organization or a member thereof.

[19] Response of Milbank Tweed, Hadley & McCloy (Feb. 25, 1976), File No. S7–590.

[20] 17 CFR 240.8c–1(g).

[21] 17 CFR 240.15c2–1(g).

[22] *See, e.g.*, letter from the Commission to James E. Buck of the NYSE (Oct. 20, 1976), File No. SR–NUYSE–76–43; letters from Andrew M. Klein to Scott L. Lager of the Chicago Board Options Exchange, Inc. ("CBOE") (June 2, 1976) and from Lloyd H. Feller to Scott L. Lager (Sept. 6, 1977), File No. SR–CBOE–77–21; and letter from the Commission to Gordon S. Macklin of the National Association of Securities Dealers ("NASD") (Feb. 17, 1977), File No. SR–NASD–78–3.

[23] In recognition of the congressional view that rulemaking by self-regulatory organizations and agency rulemaking under the Administrative Procedure Act are closely related, proposed Rule 3b–7 is based, in large part, on the definition of "rule" in the Administrative Procedure Act. Section 2(c) of the Administrative Procedure Act defines the term "rule" to mean "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing." 5 U.S.C. 551(4).

[24] For example, although proposed Rule 3b–7 does not make specific reference to determinations pursuant to Rules 8c–1(g) and 15c2–1(g), these determinations would continue to be treated as proposed rule changes under Section 19(b).

[25] On several occasions, the Commission and its staff have considered the status under the Act of advisory opinions and interpretations of the MSRB and, in one instance, suggested to the MSRB that it file certain interpretations as proposed rule changes

Footnotes continued on next page

clear that the term "rule" may include, as is currently the case, a form, report, or questionnaire.[26]

The proviso in the proposed definition of "rule" is intended to provide guidance as to which proposed stated policies, practices, and interpretations are rules. It excludes from the definition of rule any stated policy, practice, or interpretation with respect to an existing rule if that stated policy, practice, or interpretation meets two tests. First, it must be reasonably and fairly implied by that rule.[27] Second, the stated policy, practice, or interpretation must be one that is not required under the rules of a self-regulatory organization to be approved by the governing body of the self-regulatory organization. That limitation is designed, in part, to respond to the practice of the governing bodies of some self-regulatory organizations of adopting specific implementing rules and policies under a general rule approved by the membership.[28] The Commission solicits comments on the appropriateness of the limitations, particularly with respect to self-regulatory organizations, such as the MSRB,[29] whose governing bodies regularly review all interpretations.

If the proposed definition of rule is adopted, stated policies, practices, and interpretations that currently qualify for summary effectiveness under Paragraph (A) of Section 19(b)(3) and subparagraph (d)(1), proposed to be redesignated as subparagraph (b)(1), of Rule 19b–4 would continue to do so. In addition, MSRB interpretations that would be deemed to be rules under proposed Rule 3b–7 may qualify for summary effectiveness under Section 19(b)(3)(A) and proposed subparagraph (b)(1) of Rule 19b–4.

B. *Summary Effectivenesss Under Section 19(b)(3)(A)*

1. *Expansion of Categories that May Be Designated for Summary Effectiveness.* Currently, pursuant to paragraph (d) of Rule 19b–4, a self-regulatory organization may designate for summary effectiveness only proposed rule changes:

(1) constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(2) establishing or changing a due, fee, or other charge, or

(3) concerned solely with the administration of the self-regulatory organization.

Several commentators suggested that the Commission consider exercising its rulemaking authority under Paragraph (A) of Section 19(b)(3) of the Act to expand the categories of proposed rule changes that a self-regulatory organization may designate for summary effectiveness.[30] The Commission believes that it may be appropriate to do so as long as any expansion is consistent with the congressional intent in giving the Commission rulemaking power under Pargraph (A) of Section 19(b)(3).

Section 19(b)(3)(A) provides that the Commission, by rule, may expand the scope of the summary effectiveness procedure if it determines that the expansion is consistent with the public interest and the purposes of Section 19(b). That section does not define further the Commission's power, but it appears to the Commission that the Congress intended to establish in Section 19(b) an initial procedural pattern and then to allow the Commission to vary that pattern, by rule, if the Commission believed it appropriated in light of the public interest and the overall purposes of Section 19(b).[31]

The Commission is proposing to adopt as an amendment to Rule 19b–4 a new subparagraph (b)(4) that would permit summary effectiveness for any proposed rule change that the self-regulatory organization properly designates as meeting the following two criteria:

(i) by its terms, the proposed rule change does not become operative for 60 days after filing with the Commission under Section 19(b)(3)(A) of the Act, and

(ii) the proposed rule change is concerned solely with matters that were the subject of an exposure draft circulated, not less than 30 days before the date of the filing of the proposed rule change, to the Commission, to the appropriate regulatory agency in the case of a registered clearing agency for which the Commission is not the appropriate regulatory agency, and to all members of, or participants in, the self-regulatory organization and, in the case of the Municipal Securities Rulemaking Board, all municipal securities brokers and municipal securities dealers, and, during that 30-day period, made available on written request to other persons.

The proposed category would permit the self-regulatory organization to put such proposed rule changes into effect more rapidly than frequently has been possible in the past. At the same time, there would be extensive public notice. In addition to the self-regulatory organization's 30-day pre-filing circulation, the Commission would publish notice of the proposed rule change both in the SEC Docket and in the Federal Register after the filing had

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under Section 19(b). *See* Hearings before the Subcomm. on Oversight and Investigations and the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce on the Functioning and Administration of the Securities Acts Amendments of 1975, National Market System and National Clearance and Settlement System, 95th Cong., 1st Sess. 1027 (1977); and letter from Catherine McGuire of the Commission's staff to Brent White of the MSRB (Apr. 7, 1977), File No. SR–MSRB–77–6.

[26] A requirement that persons complete a form, report, or questionnaire constitutes a rule since the requirement imposes an obligation on those persons; failure to file a required form, report, or questionnaire could lead to disciplinary action in the case of a member or participant or to restrictions on access in the case of other persons. Moreover, required forms, reports, or questionnaires may impose unnecessary or inappropriate costs or burdens.

[27] That test would not be met by interpretations such as those filed by the CBOE and other exchanges concerning "front running" that define conduct considered to violate the rules of the CBOE and other exchanges and, in so doing, prescribe extensive and specific limitations on particular types of transactions and other conduct that are not reasonably and faily implied by the text of the rules. *See, e.g.*, File No. SR–CBOE–78–28. Furthermore, the proviso would not exclude from the definition of "rule" a stated policy, practice, or interpretation of a self-regulatory organization that implements a system if the policy affects the way in which members or others do business, or changes the manner in which such a system functions, in a way that is not reasonably foreseeable on the basis of the rule to which the stated policy, practice, or interpretation applies. *See, e.g.*, SR–NYSE–78–9, –10, and –11 and SR–Phlx–76–23 and 78–15, which relate, respectively, to the NYSE Designated Order Turnaround and the Philadelphia Stock Exchange Automated Communications Execution systems for order routing and execution.

[28] *See, e.g.*, the NASD's interpretation and policy statements relating to "free-riding," advertising, and underwriting arrangements. NASD Manual (CCH) ¶ 2151. *See also* Article VII of the NASD's By-Laws, NASD Manual (CCH) ¶¶ 1501 *et seq.*

[29] *See* paragraph (b) of MSRB rule A–8, MSRB Manual (CCH) ¶ 3036. *See also* note 45 *infra.*

[30] *See, e.g.*, letter from William Dentzer of The Depository Trust Company to Commissioner Karmel (July 26, 1976); letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978); and response of Milbank, Tweed, Hadley & McCloy (Feb. 25, 1976), File No. S7–590.

[31] The legislative development of Section 19(b) indicates that the Congress intended the Commission to have rulemaking power that would be sufficiently flexible to permit it to carry out the overall purposes of its rule review. While the Senate initially did not expressly provide for summary effectiveness otherwise than on a rule-by-rule basis, the Commission and several exchanges argued for greater flexibility. *See* National Securities Market System Act of 1973, Hearings Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs on S. 2519, 93d Cong., 1st Sess. 90, 565, 614 (1973). The Senate thereafter provided for limited rulemaking authority. *See* S. 249, 94th Cong., 1st Sess. (1975), as introduced on Jan. 17, 1975, 121 Cong. Rec. 703 (1975). Ultimately, before the Senate passed S. 249, the rulemaking authority was expanded to the current provision. *See* Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249 (the "Senate Report") S. Rep. No. 94–75, 94th Cong., 1st Sess. 233 (1975). The House had continuously favored not requring Commission approval before a self-regulatory organization rule change could become effective, but acceded to the Senate's ultimate formulation. *See* Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 99–100 (1975).

been accepted. The Commission believes that the 30-day circulation period, the SEC Docket and Federal Register publications of notice and the 60-day period before the rule becomes operative [32] would provide a meaningful opportunity for public comment and Commission review of the proposed rule change during the period before it would actually take effect.[33] If a proposed rule change were materially altered after the proposed rule change had been filed, the 60-day pre-operative period would begin to run again.

Particularly in view of the more explicit requirements proposed to be added to Form 19b–4A, discussed subsequently in this release,[34] the self-regulatory organization's statements justifying the proposed rule change should afford a more ample basis for public comment and Commission review than has frequently been provided in the past. The proposed revisions to that form would require self-regulatory organizations to provide a detailed and specific explanation of any novel, unique, or complex legal or policy issues raised by the proposed rule change and of any significant impact it might have on persons affected.[35] That explanation, together with the self-regulatory organization's justification for the proposed rule change, would be included in the notice of the proposed rule change.[36]

The Commission anticipates that, together with its staff, it would review carefully proposed rule changes filed under the proposed new category. If the proposed procedure is adopted, the Commission would direct its staff to review rule changes filed pursuant to the new category with the same degree of scrutiny as the staff currently applies to review proposed rule changes filed for review under Section 19(b)(2). In addition, the Commission would direct its staff to reject inadequate filings and, in the case of ducuments accepted for filing, draw specifically to the Commission's attention any major policy issues that may necessitate the more elaborate procedure of Section 19(b)(2). As a result, the Commission believes it would be able to ensure that the new procedure would adequately accomplish the purposes intended by the Congress.[37]

At the same time, the Commission believes it may be in the public interest to limit the proposed category by explicitly excluding from its coverage rule filings that are, by their nature, likely to raise particular kinds of problems. While the proposed procedure could not be used for rule changes to which Section 6(e) of the Act[38] would apply, the Commission requests comments as to whether other types of rules should also be excluded. For example, rules establishing disciplinary procedures or sanctions, or rules that limit or condition the ability of non-members or non-participants to obtain access to services offered by the self-regulatory organization, may be sufficiently likely to involve major policy issues and a need for explicit Commission findings to make summary effectiveness inadvisable. Commentators are requested to advise the Commission whether any such limitations (or other restrictions) on the proposed procedure would be appropriate.

In addition, the Commission has received a suggestion that it add a category under Section 19(b)(3)(A) to permit any proposed rule change of a registered clearing agency to take effect on filing if the clearing agency agrees to permit the Commission to abrogate the rule change at any time, whether within or without the 60-day abrogation period provided in Section 19(b)(3)(C).[39] In explaining why it believes such an expansion would be appropriate, the commentator stated that the proposed rule changes of a registered clearing agency are basically operational or mechanical in nature and are not concerned with policy. The Commission invites comments on the appropriateness of such an expansion.

2. Summary Effectiveness of Proposed Rule Changes Concerning Dues, Fees, or Other Charges. As mentioned previously, subparagraph (d)(2) of rule 19b–4, which was adopted under Section 19(b)(3)(A), permits proposed rule changes that establish or change a due, fee, or other charge to become effective upon filing. It does not distinguish between charges levied on members and non-members of, or participants and non-participants in, a self-regulatory organization.[40] Notwithstanding that fact, the Commission is announcing that, as a matter of general policy, it believes that a proposed rule change of a self-regulatory organization, other than the MSRB,[41] that establishes or changes a

[32] *See* proposed Item 7 of Form 19b–4A, discussed in text accompanying note 60 *infra*.

[33] The Commission would, of course, retain the power under Section 19(b)(3)(C) to abrogate any such proposed rule change at any time within 60 days of the date the rule change is filed with the Commission. The Commission would be able to use that authority with respect to a proposed rule change filed under the new category if it concluded that the rule change raised issues that it could not resolve or fully analyze before the expiration of the 60-day period.

Certain rules adopted by the MSRB have the force of federal law pursuant to Section 15B(c)(1) of the Act. If rules to which Section 15B(c)(1) applies were filed under the proposed new subparagraph (b)(4) of Rule 19b–4, and if the Commission did not determine to abrogate them under Section 19(b)(3)(C) of the Act, they would take effect without any formal Commission action. Nevertheless, the Commission believes that the provisions in the Act pertaining to the MSRB and its rules, together with the Commission's power under the proposed procedure to review, and in appropriate cases to abrogate, those rules, before any prohibition they contain begins to apply, provide sufficient governmental oversight to avoid the constitutional problems, involving the delgation of governmental power to non-governmental agencies, that were presented in *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935). *See also* K. Davis, Administrative Law Treatise §§ 2.01–2.03, 2.14 (1958) and authorities cited therein. *Cf. R. H. Johnson & Co. v. Securities and Exchange Comm.*, 198 F. 2d 690, 695 (2d Cir. 1952), *cert. denied* 344 U.S. 855 (1952).

[34] *See* text accompanying notes 50–73 *infra*.

[35] *See* proposed Item 7(c) of Form 19b–4A and discussion in text accompanying note 60 *infra*.

[36] *See* proposed Item III of Form of Notice, Exhibit 1 to Form 19b–4A, and discussion in text preceding note 62 *infra*.

[37] Pursuant to Section 19(b)(3)(C) of the Act, a proposed rule change that became effective summarily under the new category would be enforceable only to the extent that it was not inconsistent with the Act, the rules and regulations thereunder, and applicable Federal and State law. Under Section 23(a)(1) of the Act, a member of a self-regulatory organization who, in good faith, relied upon such a summarily effective rule would not be liable for any act done or omitted, even if that rule was thereafter amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

[38] 15 U.S.C. 78f(e). That section establishes procedures for Commission review of any proposed rule change submitted by a national securities exchange that would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged to members for effecting transactions of the exchange.

[39] Letter from William Dentzer of The Depository Trust Company to Commissioner Karmel (July 20, 1978), File No. S7–590.

[40] An example of a charge imposed on non-members is a listing fee imposed by an exchange on non-member issuers.

[41] The Commission believes it appropriate for MSRB proposed rule changes that impose fees and charges on municipal securities brokers or municipal securities dealers to continue to become effective upon filing under Section 19(b)(3)(A). The MSRB does not have any "participants" or "members" (other than members of the MSRB itself). The Act and the MSRB's rules specify that two-thirds of the members of the MSRB must be associated with and representative of municipal securities professionals: one third must be associated with and representative of non-bank municipal securities brokers and municipal securities dealers and the other third must be associated with and representative of bank municipal securities dealers. *See* Section 15B(b)(1) of the Act, 15 U.S.C. 78o–4(b)(1), and MSRB Rule A–3, MSRB Manual (CCH) ¶3011. In addition, municipal securities brokers and municipal securities dealers are solicited for nominations for membership on the MSRB and have a right to petition for additional candidates for certain positions on the MSRB. Accordingly, it appears that municipal securities brokers and municipal securities dealers have a direct voice in the selection of the membership of the MSRB. Moreover, unlike other self-regulatory organizations, the MSRB does not operate any

Footnotes continued on next page

due, fee, or other charge applicable to a non-member or non-participant should be filed for Commission review under the full procedures of Sections 19(b)(1) and (2).[42] If a self-regulatory organization other than the MSRB files a proposed rule change under Section 19(b)(3)(A)(ii) that establishes or changes a due, fee, or other charge applicable to a non-member or a non-participant, the Commission intends, unless unusual circumstances are present, to use its authority under Section 19(b)(3)(C) to abrogate that change and to require its refiling under Section 19(b)(1) for Commission action under Section 19(b)(2).[43]

The Commission is adopting this policy because it believes that notice and opportunity for comment are essential before a proposed rule change that establishes or changes a due, fee, or other charge applicable to non-members of, or non-participants in, a self-regulatory organization becomes operative. Non-members or non-participants do not have a direct voice in the selection of the governing body of the self-regulatory organization proposing the rule change or the administration of the organization's affairs. Currently, their first opportunity to comment generally occurs only after the proposed rule change has become effective under Section 19(b)(3)(A)(ii). The Commission's policy is intended to assure that these persons have a meaningful opportunity to comment before the effective date of the proposed rule change.

C. Proposed Rescission of Rule 17a–18 and of Form 19b–4B; Proposed Rule 17a–22

In reviewing the requirements applicable to proposed rule changes of self-regulatory organizations, the Commission has identified several requirements that may be duplicative or otherwise unnecessary. The Commission is proposing to remove those requirements.

Rule 17a–18 [44] currently requires national securities exchanges and registered securities associations to file with the Commission any new form, report, or questionnaire that it requires or proposes to require its members to complete. This requirement appears to be unnecessary since self-regulatory organizations currently are, and under the proposed definition of rule would continue to be, required to file such documents under Section 19(b). Accordingly, the Commission is proposing to rescind Rule 17a–18.

The Commission also is proposing to delete both paragraph (c) of Rule 19b–4 and Form 19b–4B, which implements that paragraph. Paragraph (c) of Rule 19b–4 requires each self-regulatory organization to provide notice to the Commission on Form 19b–4B of stated policies, practices and interpretations that are not deemed to be rules.[45] This notice requirement partially duplicates filing requirements in paragraph (b) of Rule 6a–3 under the Act and paragraph (d) of Rule 15Aj–1 under the Act,[46] which require national securities exchanges and registered securities associations, respectively, to submit to the Commission any material they make generally available to their members.[47] The Commission expects to rely on the remaining filing requirements to monitor the actions of self-regulatory organizations other than registered clearing agencies.

In conjunction with its proposal to rescind Form 19b–4B, the Commission is proposing Rule 17a–22, which would establish for registered clearing agencies a filing requirement that generally parallels the filing requirements imposed under Rules 6a–3, 15Aj–1, and 17a–21. Unlike national securities exchanges, registered securities associations, and the MSRB, registered clearing agencies currently are not required to file with the Commission material that they distribute or make generally available to their participants. Because receipt of this material is important to the Commission's oversight responsibilities under the Act, the Commission believes that registered clearing agencies should be required to file the material with the Commission. In addition, registered clearing agencies would be required to file with the Commission materials that they distribute or make generally available to pledgees or transfer agents.

D. Proposed Rescission of Requirement That Self-Regulatory Organizations Provide Information About Rules Adopted Before the 1975 Amendments

Paragraph (g) of Rule 19b–4 required self-regulatory organizations to respond to Items 3, 4, 5, and 6 of Form 19b–4A with respect to their rules in effect on June 4, 1975, and to file those responses with the Commission by April 1, 1976. Paragraph (g) was intended to afford national securities exchanges and associations an opportunity to provide relevant information on their existing rules before any Commission action under Section 31(b) of the 1975 Amendments. Commentators expressed the view that the information supplied would be of little assistance to the Commission.[48] To avoid imposing that burden, the Commission decided in early 1976 not to require compliance with paragraph (g) of Rule 19b–4.[49] In light of that decision, the Commission proposes now to rescind paragraph (g).

II. Content of Proposed Rule Change Filings

As indicated in the introduction to this release, one of the major problems that the Commission has encountered in administering Section 19(b) is that many of the proposed rule change filings it receives do not provide an adequate basis for Commission review. It is

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Footnotes continued from last page
ongoing enterprise, such as an exchange facility, in which a person may conduct one or more businesses and may be subject to various competitive pressures. The fees and charges of the MSRB thus may have a lesser potential for an anticompetitive imact than the dues, fees and other charges of other self-regulatory organizations.

[42] If the Commission expands the categories of rules that qualify for summary effectiveness to include those in proposed paragraph (b)(4) of Rule 19b–4, the proposed rule change could be filed under that provision, which affords public notice and opportunity for public comment before the proposed rule change becomes operative.

[43] In the past, at the Commission's request, several self-regulatory organizations have filed for review under Section 19(b)(2) proposed rule changes that change or establish dues, fees, or other charges applicable to a non-member or non-participant. *See, e.g.*, File Nos. SR–Amex–75–8, 75–13, and 76–29; SR–NYSE–77–21; SR–PSE–77–32; and SR–Phlx–77–12 and 77–16.

[44] 17 CFR 240.17a–18. Rule 17a–18 was adopted to provide greater uniformity in reports, to gather data, and to act as a general monitoring device. The Commission proposed to amend Rule 17a–18 in 1976, but later withdrew the proposal in anticipation of amendments to Rule 19b–4. *See* Securities Exchange Act Release Nos. 13100 (Dec. 22, 1976), 42 FR 782 (Jan. 4, 1977) and 13462 (Apr. 22, 1977), 42 FR 23786 (May 10, 1977).

[45] Although paragraph (c) applies to all self-regualtory organizations, the Act does not provide the MSRB with authority to formulate stated policies, practices and interpretations. MSRB opinions and interpretations are, accordingly, solely advisory and are not filed on Form 19b–4B. *See* paragraph (b) of MSRB rule A–8, MSRB Manual (CCH) § 3036.

[46] 17 CFR 240.6a–3(b), 240.15Aj–1(d). *See* response of Schiff Hardin & Waite (Nov. 14, 1975) and letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978), File No. S7–590. The NYSE indicated its belief that rule 6a–3 does not cover all stated policies, practices, and interpretations and suggested an amendment to expand the rule's reach. Rule 6a–3, however, covers any material issued, or made generally available, to exchange members and would therefore appear to cover the stated policies, practices and interpretations of exchanges. Accordingly, it does not appear that an expansion would be necessary.

[47] Rule 17a–21, 17 CFR 240.17a–21, imposes a similar requirement on the MSRB. *See* note 45 *supra*.

[48] Responses of the American Stock Exchange, Inc. (Jan. 2, 1976), the Cincinnati Stock Exchange (Feb. 25, 1976), the Pacific Stock Exchange, Inc. (Oct. 25, 1975), and Schiff Hardin & Waite (Nov. 14, 1975), and letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978), File No. S7–590.

[49] Securities Exchange Act Release Nos. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976), and 13100 (Dec. 22, 1976), 42 FR 782 (Jan. 4, 1977).

essential to the review process that the self-regulatory organizations provide the Commission with adequate information about their proposed rule changes.[50] Accordingly, to ensure that proposed rule change filings provide an adequate basis for Commission review, the Commission is proposing several changes in Form 19b–4A. In addition, to permit the Commission and its staff to focus on the review of those rule change filings that do provide an adequate basis for Commission review, the Commission is directing its staff to continue the practice it has followed on several occasions of returning documents sought to be filed that do not comply with Rule 19b–4 and Form 19b–4A. The Commission also proposes to revise Form 19b–4A to give explicit notice of that practice.[51]

The proposed amendments to Form 19b–4A specify in greater detail the information to be included in a proposed rule change filing and emphasize the importance of that information. Those proposals as well as certain comments the Commission has received on Form 19b–4A are discussed below.[52] Form 19b–4A, as proposed to be revised, is set forth at the end of this release.

A. Proposed Instruction B. Need for Careful Preparation of Form and Exhibits

The Commission is proposing to add a new Instruction B to explain that Form 19b–4A is intended to elicit information that is necessary for the public to provide meaningful comment on a particular proposed rule change and for the Commission to determine whether the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. New Instruction B would also make clear that a self-regulatory organization must provide all the information called for by the form. A proposed rule change shall be considered filed on the date on which the Commission receives the proposed rule change filing, if the filing complies with the requirements of the form. The Commission may, in its discretion, at any time before the issuance of the notice of filing return to the self-regulatory organization any filing that does not comply with the requirements of the form. Any filing so returned shall be deemed not to have been filed with the Commission.

B. Proposed Instruction D. Amendments

Proposed Instruction D (current Instruction C) sets forth the requirements applicable to amendments to Form 19b–4A filings. The Commission proposes to amend this Instruction to require a self-regulatory organization to include with each amendment a copy of the full text of the proposed rule change as amended and a separate copy of the text of the proposed rule change that was contained in the immediately preceding filing, marked to show additions and deletions. In addition, the Commission proposes to amend Instruction D to make clear that Exhibit 1 must be refiled if there is a material change in the information provided on Form 19b–4A.

C. Proposed Instruction E. Completion of Action by Self-Regulatory Organization on Proposed Rule Changes

Proposed Instruction E (current Instruction D) to Form 19b–4A provides that, if a self-regulatory organization files a proposed rule change with the Commission before it has completed all necessary action on the rule change, it must consent to an extension of time. Two commentators objected to that requirement on the ground that it delays effectiveness of proposed rule changes.[53] One of those commentators recommended that the Commission take final action on proposed rule changes filed with it even when final action on such changes has not been taken by the self-regulatory organization. According to that commentator, the version of each such proposed rule change subsequently adopted by a self-regulatory organization should be permitted to become effective upon adoption, so long as the version does not "differ materially" from that approved by the Commission.

The Commission, for the following reasons, is not proposing to delete the requirement that a self-regulatory organization consent to an extension of time if it files a proposed rule change before it has completed all necessary action on the proposed rule change. First, Section 19(b)(1) provides that a proposed rule change may not take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of Section 19(b). As a result, a self-regulatory organization is prohibited from enforcing any version of a proposed rule change other than the exact version that was filed with the Commission and became effective in accordance with the Act.

Second, it appears that this Instruction does not lead to considerable delays, as suggested, but instead may facilitate early review of proposed rule changes. A number of self-regulatory organizations on occasion file proposed rule changes that they have not yet finally adopted. In doing so, the self-regulatory organizations consent to an extension of time for Commision action to allow for publication and opportunity for public comment before they complete final action on the proposed rule changes.

This procedure allows the Commission to begin its review as quickly as possible without requiring that it take action on a proposed rule change not yet finally adopted by the self-regulatory organization. The Commission can then review the comments and approve the proposed rule changes, if appropriate, upon receipt of notice of final action by the self-regulatory organization.[54]

The commission is proposing to amend this Instruction to clarify that rule changes that become effective upon filing (including those that would be filed under the new subparagraph (b)(4) of Rule 19b–4) could not be filed until the self-regulatory organization had completed all necessary internal procedures.

D. Proposed Instruction F. Signature and Filing of Form

Proposed Instruction F (current Instruction E) prescribes requirements concerning the signature and filing of Form 19b–4A. The Commission is proposing to amend this Instruction to reflect the requirements for

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[50] One of the Congress' major concerns in drafting Section 19(b) was to ensure that self-regulatory organizations explain and justify their rule changes. The Senate Report states:

In order to facilitate expeditious Commission review and evaluation of such proposals and to assure informed public comment on them, Section 19(b)(1) would require all self-regulatory organizations to file with the SEC in connection with any proposed rule change a "concise general statement of the basis and purpose" of the proposed rule change. It is the Committee's intention in adopting this standard to hold the self-regulatory organizations to the same standards of policy justification that the Administrative Procedure Act imposes on the SEC.

Senate Report at 29.

[51] *See* proposed Instruction B to Form 19b–4A *infra*. *See also* Rule 0–3 under the Act, 17 CFR 240.0–3.

[52] In addition to the comments discussed in this section of the release, the NYSE suggested that guidelines are needed to determine whether amendments to a filing must be published. Letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978), File No. S7–590. Proposed Instruction D (current Instruction C) to Form 19b–4A provides a guideline.

[53] Responses of Milbank, Tweed, Hadley & McCloy (Feb. 25, 1976) and Schiff Hardin & Waite (Nov. 14, 1975), File No. S7–590.

[54] A consent by a self-regulatory organization to an extension of time also affords the Commission sufficient time to comply with the requirements of the Government in the Sunshine Act (Pub. L. No. 94–409 (Sept. 13, 1976)), and to coordinate review of the proposed rule change with Commission meeting schedules.

implementation of the Commission's Micrographic Conversion Program.[56] Those requirements provide for sequential numbering of the original of any document filed, pursuant to the Act, with the Commission. In addition, the commission is proposing to amend this Instruction to require a registered clearing agency for which the Commission is not the appropriate regulatory agency to file with its appropriate regulatory agency three copies, including one manually signed copy, of Form 19b–4A accompanied by Exhibits 1, 2, and 3.

E. Item 1. Text of Proposed Rule Change

Item 1 requires a self-regulatory organization to set forth the text of a proposed rule change. A number of self-regulatory rules are operative through prescribed forms, reports, or questionnaires, which generally are not set forth in the body of the rule. Commission review of such rules cannot be complete without reviewing the forms prescribed by a particular rule. Accordingly, the Commission is proposing to amend Item 1(a) to make clear that a self-regulatory organization is required to submit any existing form, report, or questionnaire that is directly related to a proposed rule change. This amendment is intended to permit the Commission to consider the role any such document plays with respect to the operation of the proposed rule change.

Paragraph (b) of Item 1 requires a self-regulatory organization to set forth the text of any other rules affected, directly or indirectly, by the proposed rule change. One commentator suggested that this requirement to provide the text of those rules is overly burdensome, particularly with respect to rules affected indirectly by the proposed rule change.[56] The Commission agrees that the requirement may be unduly burdensome and, accordingly, is proposing to amend Item 1(b) to require only a listing of rules whose application would be directly or indirectly affected by the proposed rule change.

F. Item 2. Procedures of Self-Regulatory Organization

Item 2 requires a self-regulatory organization to describe action on the proposed change taken by the members or board of directors or other governing body of the self-regulatory organization. The Commission proposes to add to Item 2 a requirement that the self-regulatory organization state the name and telephone number of the member of its staff notifies the self-regulatory organization filing a proposed rule change of the name of the member of the Commission's staff who is prepared to respond to questions and comments on the proposed rule change. Currently, the Commission's staff who is primarily responsible for the initial review of the proposed rule change. The proposal and the Commission staff's current practices are intended to improve communication about the proposed rule change between the self-regulatory organization and the Commision.

G. Proposed Item 3. Purpose of and Statutory Basis for Proposed Rule Change

Current Item 3 requires a self-regulatory organizaation to provide a concise statement of the purpose of the proposed rule change, and current Item 4 requires a self-regulatory organization to state the basis under the Act for adopting the proposed rule change. A significant number of proposed rule change filings have not adequately responded to either Item 3 or Item 4. For example, filings often fail to explain in any meaningful way the reasons for adopting the proposed rule change. Several self-regulatory organizations list each basis under the Act and then simply state, without explanation, that the basis is either applicable or inapplicable to the proposed rule change. If more than one rule change is submitted in one filing, the self-regulatory organizations often fail to respond appropriately for each proposed rule change.

Statements in response to these Items are vitally important to the review process. They provide a basis for interested persons to provide meaningful comment and for the Commission to determine whether the proposed rule change is consistent with the Act. The statement should, at a minimum, provide a sufficiently detailed and specific statement of reasons to support a finding that the proposed rule change is consistent with the Act and the rules and regulations thereunder. In light of that fact and the problems described above, the Commission is proposing to combine Items 3 and 4 and to explain in greater detail the information that should be included in the statement of the purpose and basis.

Proposed Item 3 provides that, at a minimum, the basis and purpose statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change resolves those problems, the manner with which the proposed rule change will affect various persons (*e.g.*, brokers, dealers, issuers, and investors), and any problems that the persons affected are likely to have in complying with the proposed rule change; and

(b) Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. In the case of a registered clearing agency, explain also how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible.

To simplify Form 19b–4A, new Item 3 would delete the list of bases under the Act that is currently set forth in Item 4. Self-regulatory organizations must, however, continue to consider and to discuss those bases. Item 3 would retain the notes currently in Item 4 that summarize limitations on rulemaking by self-regulatory organizations.

H. Proposed Item 4. Burden on Competition

Proposed Item 4 (current Item 6) requires self-regulatory organizations to provide a clearly articulated and thorough discussion of any competitive issues raised by the proposed rule change and by commentators. Compliance with this Item is essential since, to approve a proposed rule change of a self-regulatory organization under Section 19(b), the Commission is required to find that the change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[57]

A significant number of filings of proposed rule changes, however, have not responded adequately to this Item. Self-regulatory organizations frequently have indicated that a proposed rule change would not impose a burden on competition even though a closer examination of the change would have disclosed a probable burden on competition. Accordingly, the Commission is proposing amendments to this Item to ensure that a self-regulatory organization conducts a thorough inquiry into the possible competitive issues.

I. Items 5 and 9. Comments Received From Members, Participants or Others on Proposed Rule Change

Item 5 requires a self-regulatory organization to submit a summary of all comments it received in connection with consideration of the proposed rule

[55] *See* Securities Exchange Act Release No. 15502 (Jan. 17, 1979), 46 FR 4665 (Jan. 23, 1979).

[56] Response to Milbank, Tweed, Hadley & McCloy (Feb. 25, 1976), File No. S7–590.

[57] Sections 6(b)(8), 15A(b)(9), 15B(b)(2)(C), and 17A(b)(3)(I) of the Act, 15 U.S.C. 78f(b)(8), 78*o*–3(b)(9), 78*o*–4(b)(2)(C), and 78q–1(b)(3)(I).

change. A related provision, Item 9, requires a self-regulatory organization to file with the Commission any comments it receives. Commentators have opposed these requirements on the basis that they are unnecessarily burdensome and may inhibit comment.[58]

The emphasis in Section 19(b) on public proceedings continues to make it appropriate that all comments on proposed rule changes be available to the Commission and interested persons. The Commission has found the comments to be very helpful in its review of proposed rule changes. Moreover, experience over the last three years has not shown the above requirements to be unduly burdensome and it is not clear that they have inhibited comment. The Commission therefore plans to retain these requirements. In addition, this Item has been revised to require the self-regulatory organizations to respond in detail to significant issues that commentators raise.

In Item 9 the Commission is proposing to require that a self-regulatory organization provide the Commission with an alphabetical list of comments that the organization received on a proposed rule change. In addition, the Commission is proposing to amend Item 9 to require a self-regulatory organization to submit any transcript of comments or, if a transcript is not available, a summary of comments on the proposed rule change made at a public meeting. This information currently is provided to the Commission by the MSRB and has proved to be a significant aid to the Commission in its review of proposed rule change filings.

J. *Proposed Item 6. Extension of Time Periods for Commission Action*

Proposed Item 6 (current Item 7) requires a self-regulatory organization to state whether it consents to an extension of the time period specified in Section 19(b)(2) of the Act. One commentator suggested that this item be deleted.[59] A proposed rule change may involve important policy or legal questions and consequently may require more than the thirty-five day period specified in Section 19(b) for a Commission determination to approve the proposed rule change or to institute a disapproval proceeding with respect to the proposed rule change. Accordingly, the Commission had decided to retain this Item to encourage self-regulatory organizations to consent to extensions of time when appropriate.

The Commission is proposing one amendment to this Item. The proposed amendment repeats the requirement of Instruction D that, in the case of a proposed rule change on which final action has not been completed by the self-regulatory organization, that organization must consent to an extension of time until at least thirty-five days after it files an amendment setting forth the taking of final action on the proposed rule change.

K. *Proposed Item 7. Basis for Rule Taking, or Being Put into, Effect Pursuant to Section 19(b)(3)*

If a proposed rule change is filed for summary effectiveness pursuant to Section 19(b)(3) of the Act, Item 7 (current Item 8) of the Form requires that the self-regulatory organization designate which provision of that section authorizes summary effectiveness. As indicated earlier in this release[60] the Commission is proposing to amend Rule 19b-4 to add a new subparagraph (b)(4) authorizing summary effectiveness for any proposed rule change that a self-regulatory organization properly designates as meeting two specified criteria. In conjunction with that proposal, the Commission proposes to amend this Item of the form to permit a self-regulatory organization to designate a proposed rule change for summary effectiveness under the new subparagraph. The Commission also is proposing to amend this Item to require that a self-regulatory organization designating a proposed rule change for summary effectiveness under the new subparagraph provide a detailed and specific explanation of any novel, unique, or complex legal or policy issues raised by the proposed rule change and of any significant impact the change might have on persons affected.

L. *Proposed Item 8. Rules Based on Rules of Another Self-Regulatory Organization or of the Commission.*

The Commission is proposing a new Item 8 to require a self-regulatory organization to state whether the proposed rule change is based on a rule of either another self-regulatory organization or of the Commission, and, if so, to identify the rule and explain any differences between that rule and the proposed rule change. The Commission believes that it it important to promote some degree of regulatory comparability, particularly to facilitate the allocation of enforcement responsibility pursuant to Rule 17d-2[61] and to avoid unnecessary burdens on members of more than one self-regulatory organization. Accordingly, the Commission believes that if a self-regulatory organization decides to base a proposed rule change on either a rule of another self-regulatory organization or of the Commission it should explain any differences between the rule and its proposed rule change.

M. *Exhibit 1. Federal Register Notice*

The Commission is also proposing several changes in the Federal Register notice that a self-regulatory organization is currently required to file as part of Form 19b-4A. The changes are generally intended to facilitate public comment. The changes include, for example, a requirement that a self-regulatory organization provide a caption briefly describing the subject matter of the proposed rule change. In addition, the proposed amendments to the notice include a new instruction emphasizing the need for careful completion of the notice. Much of the delay that has occurred in the publication of notice of proposed rule changes has resulted from mistakes in the preparation of the notice. Finally, the Commission proposes to amend the form of notice, with respect to any proposed rule change filed for summary effectiveness pursuant to subparagraph (b)(4) of Rule 19b-4, to require the self-regulatory organization to include therein its explanation in response to Item 7(c) of Form 19b-4A of any novel, unique, or complex legal or policy issues raised by the proposed rule change and of any significant impact it may have on persons affected by it.

In reviewing the notice requirements, the Commission has considered objections by commentors to the Commission's decision to publish notice of the filing of a proposed rule change in the Federal Register.[62] They argued that use of the Federal Register produces an unacceptable delay in the completion of the Commission's review under Section 19(b). They suggested that other means, such as the SEC News Digest[63] or SEC

[58] Responses of the NYSE (Oct. 3, 1975) and Schiff Hardin & Waite (Nov. 14, 1975), File No. S7-590.

[59] Response of Schiff Hardin & Waite (Nov. 14, 1975), File No. S7-590.

[60] *See* text accompanying notes 31-38 *supra*.

[61] 17 CFR 240.17d-2.

[62] Responses of Milbank, Tweed, Hadley & McCloy (Feb. 25, 1976) and Schiff Hardin & Waite (Nov. 14, 1975), and letter from Donald Calvin of the NYSE to Commissioner Karmel (July 10, 1978), File No. S7-590.

[63] The SEC News Digest notice of the filing of a proposed rule change is published approximately three to ten days before the Federal Register notice of the filing and thus offers only a small time saving over the use of the Federal Register. Moreover, the SEC News Digest provides only a limited amount of information. Accordingly, as a practical matter, the SEC News Digest does not appear to offer any significant advantages over the Federal Register.

Docket,[64] be used to publish notice of filing of proposed rule changes.

Section 19(b) of the Act requires the Commission to publish notice of the filing of a proposed rule change together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. Although that provision does not specify where notice must be published,[65] the Commission believes that Federal Register notice continues to be the most appropriate method to provide notice of filing of proposed rule changes.

The legislative history of the 1975 Amendments indicates that the standards for publishing notice under Section 19(b) are intended to be the same as those in the Administrative Procedure Act,[66] which requires general notice of proposed agency rulemaking to be published in the Federal Register.[67] In addition, the Federal Register notice appears to be the most effective method to provide sufficient legal notice.[68]

III. Discussion of Other Comments on Commission Review of Proposed Rule Changes

Commentators advanced several suggestions concerning the manner in which the Commission processes and reviews proposed rule changes. The suggestions were directed primarily towards reducing the delays currently experienced in the processing of proposed rule changes. The suggestions were directed primarily towards reducing the delays currently experienced in the prcessing of proposed rule changes.[69] As is mentioned above, the Commission hopes that many of the delays currently experienced will be alleviated by the proposed amendments to Rule 19b–4, and also by the proposed amendments to Form 19b–4A, which are designed to elicit information necessary for Commission processing of proposed rule changes. At the same time, the Commission believes that delays in processing are alleviated to the extent that a self-regulatory organization is aware of possible areas of concern with respect to a proposed rule change filed with the Commission. The Commission solicits the views of the self-regulatory organizations and other interested persons as to ways in which the Commission and its staff can make the processing of proposed rule changes more efficient and can facilitate the early identification of possible problems.

One of the commentators suggested that a self-regulatory organization be given a copy of any staff memorandum to the Commission that contains an adverse recommendation on a rule change that the organization has proposed.[70] The Commission believes that making staff memoranda, which are frequently quite informal, available to a self-regulatory organization would require much more careful review of the memoranda and would tend to lengthen the review process and inhibit communication between the Commission and its staff.[71]

That commentator further suggested that the Commission permit a self-regulatory organization to offer oral testimony or comments at the time the Commission considers a proposed rule change. As noted above, the basis and purpose statement that a self-regulatory organization is required to file with the Commission should fully explain the rule change. A self-regulatory organization is always free to amend a rule change filing to advance new arguments or to modify those already made. Accordingly, the Commission does not believe that affording self-regulatory organizations a right to make oral presentations is necessary.[72] Morever, to ensure that interested persons have a meaningful opportunity to comment on a proposed rule change, all information necessary to consider the proposed rule change should be submitted as part of the rule change filing.

A second commentator suggested that the Commission develop a procedure to sever one or more parts of a proposed rule change and, with the self-regulatory organization's consent, to approve only certain parts of a proposed rule change.[73] The Commission has, in fact, followed this practice in several cases where the severed portion was sufficiently independent from the remainder of the proposed rule change. The Commission believes that is a useful practice and plans to continue it where, in the Commission's view, it is appropriate to do so.

IV. Statutory Basis

Under Section 17A(d)(3)(A)(i) of the Act,[74] the Commission is required, at least 15 days before the issuance for public comment of any proposed rule or regulation concerning a clearing agency for which the Commission is not the appropriate regulatory agency, to consult and request the views of the appropriate regulatory agency for such clearing agency. The Commission has complied with this requirement.

Proposed Rule 3b–7 would be promulgated under the Act, 15 U.S.C. 78a et seq., and particularly Sections 2, 3, 19 and 23, 15 U.S.C. 78b, 78c, 78s and 78w. Proposed Rule 17a–22 would be promulgated under the Act, and particularly Sections 2, 3, 17, 17A, and 23, 15 U.S.C. 78b, 78c, 78q, 78q–1, and 78w. The proposed amendments to Rule 19b–4 and Form 19b–4A would be promulgated under the Act, and particularly Sections 2, 3, 6, 11A, 15A, 15B, 17, 17A, 19, and 23, 15 U.S.C. 78b, 78c, 78f, 78k–1, 78o–3, 78o–4, 78q, 78q–1, 78s, and 78w.

On the basis of the above discussion and analysis, the Commission is proposing to amend Parts 240 and 249 of Chapter II of Title 17 of the Code of Federal Regulations[75] by adding §§ 240.3b–7 and 240.17a–22, revising § 240.19b–4 and related § 249.819a, and by rescinding § 240.17a–18 and § 249.819b as follows:

► **§ 240.3b–7 Definition of "rule."**

The term "rule," as used in Sections 3(a)(27) and 3(a)(28) of the Act, includes the whole or part of any statement or of any stated policy, practice, or interpretation (including any form,

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[64] Notice of the filing of a proposed rule change usually appears in the Federal Register before it appears in the SEC Docket. Accordingly, use of the SEC would not be an improvement over the use of the Federal Register.

[65] By comparison, Section 19(c), 15 U.S.C. 78s(c), specifically requires that notice be published in the Federal Register of proposed rulemaking by the Commission to abrogate, add to, or delete from the rules of a self-regulatory organization (other than a registered clearing agency).

[66] Senate Report at 129.

[67] 5 U.S.C. 553(b).

[68] *See* 44 U.S.C. 1508 and *Rodway* v. *United States Department of Agriculture*, 514 F.2d 809 (D.C. Cir. 1975), and *Kennecott Copper Corporation* v. *Environmental Protection Agency*, 462 F.2d 846 (D.C. Cir. 1972).

[69] *See, e.g.*, letter from Schiff Hardin & Waite to Andrew M. Klein (May 15, 1978), File No. S7–590.

[70] *Id.* In addition, the commentator suggested that, in situations where there is a difference in view between the self-regulatory organization and the Commission's staff, the self-regulatory organization's presentation of its views should be seen directly by the Commission. While the Commisison has discretion as to whether to review source documents or instead to rely on summaries, the Commission's staff currently furnishes to the Commission such presentations.

[71] In enacting the Freedom of Information Act, for example, the Congress recognized the importance of protecting internal agency communication. 5 U.S.C. 552(b)(5). *See also* 17 CFR 200.80(b)(5).

[72] If the Commission does not approve a proposed rule change under Section 19(b)(2)(A) but instead institutes a proceeding under Section 19(b)(2)(B) to determine whether to approve or disapprove it, the self-regulatory organization is afforded notice of the grounds for disapproval under consideration and an opportunity to submit further written comments. In appropriate cases, the Commission may also permit oral presentations at that time.

[73] Letter from Donald Calvin of the NYSE to Commissioner Karmel (July 18, 1978), File No. S7–590.

[74] 15 U.S.C. 78q–1(d)(3)(A)(i).

[75] In the text of the proposed amendments, "[ ]" indicates material to be deleted and "►◄" indicates new material.

report, or questionnaire) [a] that is of general or particular applicability and future effect, (b) that is designed to implement, interpret, describe, or prescribe a requirement, procedure, definition, standard, guideline, policy, or any part of a corporate or financial structure or organization, and [c] that directly or indirectly affects the rights or obligations of any person or the conduct of business by any person; *Provided, however,* That the term "rule" shall not include any stated policy, practice, or interpretation with respect to an existing rule that is reasonably and fairly implied by that rule and that is not required under the rules of the self-regulatory organization to be approved by the governing body of the self-regulatory organization. ◄

[§ 240.17a-18 Forms required by national securities exchanges and registered national securities associations of their members to be filed with the Commission.]

* * * * *

►§ 240.17a-22 Supplemental material of registered clearing agencies.

Within 10 days after issuing or making generally available to its participants or to pledgees or to transfer agents any material (including, for example, manuals, notices, circulars, bulletins, lists, or periodicals), a registered clearing agency shall file three copies of such material with the Commission. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall at the same time file one copy of such material with its appropriate regulatory agency.◄

§ 240.19b-4 Filings with respect to proposed rule changes by [, and notices as to certain stated policies, practices and interpretations of,] self-regulatory organizations.

(a) The term "proposed rule change" means any proposed rule or any proposed change in, addition to, or deletion from the rules of a self-regulatory organization. [A stated policy, practice or interpretation of a self-regulatory organization shall be deemed to be a rule of the self-regulatory organization if [1] action thereon by the members or by the board of directors, or similar governing body, of such self-regulatory organization is required under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto, [2] a self-regulatory organization elects or is required, pursuant to its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto, to treat it as a rule change hereunder, (3) it represents a change in, addition to, or deletion from a stated policy, practice or interpretation which the self-regulatory organization previously treated as a proposed rule change or [4] it requires a determination, or affects a prior determination, pursuant to Rules 8c-1(g) or 15c2-1(g).]

[(b) The term "stated policies, practices and interpretations" includes any material aspect of the operation of the facilities of the self-regulatory organization or any statement made generally available to the membership of, or all participants in, or persons having or seeking access [including, in the case of national securities exchanges or registered securities associations, through a member] to facilities of, a self-regulatory organization, or to a group or category of such persons, establishing or changing any standards or guidelines with respect to [1] the rights or obligations of such persons or, in the case of national securities exchanges or registered securities associations, persons associated with such persons or [2] the application or interpretation of an existing rule.]

[(d)] ►(b)◄ A proposed rule change may take effect upon filing with the Commission pursant to Section 19(b)(3)(A) of the Act if ►properly◄ designated by the self-regulatory organization as (1) constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, (2) establishing or changing a due, fee, or other charge, [or] (3) concerned solely with the administration of the self-regulatory organization [.] ►, or (4)(i) by its terms, not becoming operative for 60 days after filing with the Commission under Section 19(b)(3)(A) of the Act, and (ii) concerned solely with matters that were the subject of an exposure draft circulated, not less than 30 days before the date of such filing, to the Commission, to the appropriate regulatory agency in the case of a registered clearing agency for which the Commission is not the appropriate regulatory agency, and to all members of, or participants in, the self-regulatory organization and, in the case of the Municipal Securities Rulemaking Board, all municipal securities brokers and municipal securities dealers, and, during that 30-day period, made available on written request to other persons.◄

(c) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b-4A. [Notice on Form 19b-4B as to a stated policy, practice or interpretation which the self-regulatory organization believes may be characterized as not constituting a rule pursuant to paragraph (a) of this section shall be mailed first class, postage prepaid, to the Commission, not later than the date on which it is first made generally available.]

[(e)] ►(d)◄ After instituting ►a◄ proceeding [s] to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views and arguments and ►may afford◄, in the discretion of the Commission, an opportunity to make oral presentations.

[f] ►(e)◄ Notice of orders issued pursuant to Section 19(b) of the Act will be given by prompt publication thereof, together with a statement of written reasons therefor.

[(g) On or prior to April 1, 1976, each national securities exchange and securities association registered with the Commission on June 4, 1975, shall file with the Commission the information required by items 3, 4, 5 and 6 of Form 19b-4A with respect to each of its rules in effect on June 4, 1975, and on the date of filing.]

[(h)] ►(f)◄ self-regulatory organizations shall retain at their principal place of business a file, available to interested persons for public inspection and copying, of all filings made pursuant to this [rule] ►section◄ and all correspondence ►and other communications reduced to writing (including comments received)◄ [received by] ►to and from◄ such self-regulatory organization [with respect to] ►concerning◄ any such filing [.] ►, whether such correspondence and communications are prepared before or after the filing of the proposed rule change.◄

§ 249.819a Form 19b-4A, for filings with respect to proposed rule changes by all self-regulatory organizations.

►File No. SR- - - (See Instruction C)◄

Securities and Exchange Commission

Washington, D.C. 20549

Form 19b-4A

Proposed Rule Change by

(Exact Name of Self-Regulatory Organization)

[File No. SR- - -]
[(See Instruction B)]

Pursuant to Rule 19b–4A under the Securities Exchange act of 1934

General Instructions

A. *Use of Form*

This form shall be used for filings with respect to proposed rule changes by all self-regulatory organizations. Self-regulatory organizations include for that purpose national securities exchanges, registered securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

►B. *Need for Careful Preparation of Form and Exhibits*

This form is intended to elicit information that is necessary for the public to provide meaningful comment on the proposed rule change as well as for the Commission to determine whether the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act" and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all the information specified in the form and exhibits and must present it in a clear and comprehensible manner. A proposed rule change shall be considered filed on the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. The Commission may, in its discretion, at any time before the issuance of the notice of filing retrun to the self-regulatory organization any filing that does not comply with the requirements of this form, and any filing so returned by the Commission shall for all purposes be deemed not to have been filed with the Commission. See also Rule 0–3 under the act (17 CFR 240.0–3).◄

[B.] ►C.◄ *Documents Comprising Form*

This form shall consist of the facing sheet, the numbers and captions for all applicable items (the text of which may be omitted provided the responses thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or instructions thereto), the responses thereto and the required exhibits. Each filing [with respect to a proposed rule change should] ►shall◄ be identified with the initials of the self-regulatory organization, the year and the number of the filing for that year. [For this purpose, notices on Form 19b–4B shall be numbered consecutively with filings on Form 19b–4A.]

[C.] ►D.◄ *Amendments*

In the event information on this form is or becomes inaccurate before the Commission takes action thereon, ►, or before a rule becomes operative,◄ the self-regulatory organization shall file amendments thereto correcting any such inaccuracy. ►If a proposed rule change filed for summary effectiveness under paragraph (b)(4) of Rule 19b–4 is materially altered after the proposed rule change has been filed, the 60-day preoperative period will begin to run again.◄ Amendments to a filing [with respect to a proposed rule change] shall consist of the facing sheet marked to number consecutively the amendments [with respect to a proposed rule change], the numbers and captions for any amended item ►,◄ [and] the amended response thereto [.] ►, the full text of the proposed rule change, as amended, marked in the manner described in Item 1(a) and, as an exhibit to the amended filing, a separate copy of the text of the proposed rule change in the immediately preceding filing marked to show additions and deletions.◄ Exhibit 1 need not be refiled unless there is a material change in the language of the proposed rule change [.] ►or in the information provided on this form, in which case an additional copy shall be provided marked to show changes in accordance with Item 1(a).◄ [If a proposed rule change is still in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues which are expected to be involved.]

[D.] ►E.◄ *Completion of Action by Self-Regulatory Organization on Proposed Rule Changes*

The Commission will not approve a proposed rule change before ►the self-regulatory organization has completed◄ all action required to be taken under [the] ►its◄ constitution, articles of incorporation, by [—] laws, rules, or instruments corresponding thereto (excluding action specified in any such instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law) [of the self-regulatory organization has been completed]. ►Nevertheless,◄ proposed rule changes ►(other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act)◄ may [,however,] be initially filed before the completion of all such action if the self-regulatory organization consents ►, under Item 6 of this form,◄ to an extension of the period of time specified in Section 19(b)(2) ►of the Act◄ until at least thirty-five days after the self-regulatory organization has filed appropriate amendments setting forth the taking of all such action. ►If a proposed rule change to be filed for review under Section 19(b)(2) of the Act is still in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues that are expected to be involved.◄

[E.] ►F.◄ *Signature and Filing of Form*

Twelve copies of Form 19b–4A, twelve copies of Exhibit [(] 1[)] and four copies of Exhibit ►s◄ [(] 2 [)] ►and 3◄ shall be filed with the Commission. At least one copy ►of the completed Form 19b–4A◄ shall be manually signed by a duly authorized officer of the self-regulatory organization; ►on◄ copies not manually signed [shall be conformed.] ►the name of the signing person shall be typed or printed. The manually signed copy shall be numbered sequentially (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed. or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. The total number of pages contained in the manually signed copy shall be set forth on the first page of the document. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall also file with its appropriate regulatory agency three copies, including one manually signed copy, of Form 19b–4A accompanied by Exhibits 1, 2, and 3.◄

Information to be Included

1. *Text of Proposed Rule Change*

(a) Set forth the text of the proposed rule change. In the case of any change in, addition to, or deletion from any existing rule, the existing rule should be set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added. ►If any form, report, or questionnaire is proposed to be used in connecton with the implementation or operation of any proposed rule change, or if the proposed rule change prescribes or refers to any form, report, or questionnaire, a current copy of such document shall be attached to, and shall be considered to be part of, such proposed rule change; Provided, however, That if the completion of the form, report, or questionnaire is either

voluntary or is required pursuant to a rule of the self-regulatory organization already in effect, such form, report, or questionnaire shall be attached as an exhibit to the filing and not as part of the proposed rule change, together with a statement identifying any rule already in effect that requires completion of the form, report, or questionnaire.◄

(b) If a proposed rule change affects, directly or indirectly, the application of any other rule of the self-regulatory organization, set forth the ►designation or title◄ [pertinent portion of the text] of any such rule and describe the anticipated effect of the proposed rule change on the application ►of such other rule◄ [thereof].

(c) Set forth the file numbers for prior filings with respect to [an] ►any◄ existing rule to be affected by the proposed rule change.

2. *Procedures of Self-Regulatory Organization*

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the self-regulatory organization (by amendment if initial filing is prior to completion of ►final◄ action). ►State the name and telephone number of the member of the staff of the self-regulatory organization who is prepared to respond to questions and comments on the rule change. See Instruction E.◄

[3. *Purpose of Proposed Rule Change*

State concisely the purpose of the proposed rule change].

[4. *Basis under the Act for Proposed Rule Change*

State the basis under the Act for adopting the proposed rule change.]

►3. *Self-Regulatory Organization's Statement of Purpose of and Statutory Basis for Proposed Rule Change*

Provide a statement of the purpose of the proposed rule change and its basis under the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The statement should be sufficiently detailed and specific to support a finding under Section 19(b) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The statement should respond in detail to any significant arguments either raised by commentators or known to the self-regulatory organization that the proposed rule change is inconsistent with those requirements. At a minimum, the statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change resolves those problems, the manner in which the proposed rule change will affect various persons (*e.g.*, brokers, dealers, issuers, and investors), and any problems that the persons affected are likely to have in complying with the proposed rule change; and

(b) Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. In the case of a registered clearing agency, explain also how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.◄

Note 1. ►*National Securities Exchanges and Registered Securities Associations.*◄ Under Sections 6 and 15A [of the Act], rules of a national securities exchange or registered securities association may not permit unfair discrimination between customers, issuers, brokers, or dealers [(or, in the case of registered securities associations, the fixing of minimum profits or imposition of any schedule or fixing of rates of commissions, allowances, discounts or other fees to be charged by its members)] ►,◄ and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization. ►Rules of a registered securities association may not fix minimum profits, or impose any schedule of or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.◄ [In appropriate cases, an explanation should be supplied to indicate why a proposed rule change is not subject to the enumerated prohibitions or what other authority is relied upon.]

[Note 2.] Under Section 11A(c)(5) ►,◄ a national securities exchange or registered securities association may not limit or condition the participation of any member in any registered clearing agency.

Note ►2. *Registered Clearing Agencies.*◄ [:] Under Section 17A [of the Act], [proposed rule changes] ►rules of a registered clearing agency◄ may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency and may not regulate ►,◄ by virtue of any authority conferred by the Act, matters not related to the purposes of Section 17A or the administration of the clearing agency and may not impose any schedule of prices or fix rates or other fees for services rendered by its participants. [In appropriate cases, an explanation should be supplied to indicate why a proposed rule change is not subject to the enumerated prohibitions or what other authority is relied upon.]

Note ►3. *Municipal Securities Rulemaking Board.*◄ [:] Under Section 15B [of the Act], [proposed rule changes] ►rules of the Municipal Securities Rulemaking Board◄ may not permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, [the fixing of] ►may not fix◄ minimum profits, or [imposition of] ►impose◄ any schedule or fix [ing of], rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, and may not regulate ►,◄ by virtue of any authority conferred by the Act, matters not related to the purposes of the Act [or the] ►with respect to municipal◄ securities or the administration of the Board. [In appropriate cases, an explanation should be supplied to indicate why a proposed rule change is not subject to the enumerated prohibitions or what other authority is relied upon.]

[(a) In the case of a national securities exchange or registered securities association, explain, as appropriate, how the proposed rule change relates to:]

[(i) its capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board and its rules;]

[(ii) the ability of any registered broker or dealer, or natural person associated with a registered broker or dealer, to become a member thereof and the ability of any person to become associated with a member thereof;]

[(iii) fair representation of its members in the selection of its directors and administration of its affairs and provision for one or more directors to be representatives of issuers and investors and not be associated with a member thereof, borker of dealer;]

[(iv) equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities (or any system it operates or controls);]

[(v)(A) prevention of fraudulent and manipulative acts and practices, (B) promotion of just and equitable principles of trade, (C) fostering of cooperation and coordination with persons engaged in regulating; clearing, settling, processing information with respect to, and facilitating transactions in securities, (D) removal of impediments to and perfection of the mechanism of a free and open market and a national market system and (E) protection of investors and of the public interest;]

[(vi) provision for its members and persons associated with its members to be appropriately disciplined for violation of the provisions of the Act, the rules or regulations thereunder, and, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board or its rules;]

[(vii) rules of the exchange (in the case of a national securities exchange) required to comply with Section 6(d) of the Act and rules of the association (in the case of a registered securities association) required to comply with Section 15A(h) of the Act and in general to provide fair procedures; or]

[(viii) satisfaction (in the case of a registered securities association), insofar as applicable, of the requirements of Section 15A(c) of the Act and provisions governing the form and content of quotations.]

[(b) In the case of a registered clearing agency, explain, as appropriate, how the proposed rule change relates to:]

[(i) its capacity (A) to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, (B) to safeguard securities and funds in its custody or control or for which it is responsible, (C) to comply with the provisions of the Act and the rules and regulations thereunder, (D) to enforce compliance by its participants with its rules and (E) to carry out the purposes of Section 17A of the Act;]

[(ii) the ability of any (A) registered broker or dealer, (B) other registered clearing agency, (C) registered investment company, (D) bank or (E) insurance company, to become a participant therein;]

[(iii) a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs;]

[(iv) Equitable allocation of reasonable dues, fees, and other charges among its participants;]

[(v)(A) prompt and accurate clearance and settlement of securities transactions, (B) assurance as to safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (C) fostering of cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, (D) removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (E) protection of investors and the public interest;]

[(vi) provision for its participants to be appropriately disciplined for violation of any provision of the rules of the clearing agency; or]

[(vii) rules of the clearing agency required to comply with Section 17A(b)(3) of the Act and in general to provide fair procedures.]

[(c) In the case of the Municipal Securities Rulemaking Board explain, as appropriate, how the proposed rule change gives effect to the purposes of the Act with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers.]

[6.] ►4. *Self-Regulatory Organization's Statement on*◄ *Burden on Competition*

[Explain any burden on competition to be imposed by any proposed rule change. Set forth the basis on which the self-regulatory organization has concluded that any burden on competition imposed by the proposed rule change is necessary or appropriate in furtherance of the purposes of the Act. In that connection, respond to comments as to burdens on competition perceived by members, participants or others who comment on the proposed rule change to the self-regulatory organization.]

►State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose or relieve any burden on competition; and (ii) specify the particular categories of persons and kinds of businesses upon which those burdens will be imposed and the ways in which the proposed rule change will affect them. In the case where a proposed rule change amends an existing rule, state whether that existing rule, as amended by that proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a burden on competition, explain why. If any impact on competition is believed to be a burden on competition, explain why that burden is necessary or appropriate in furtherance of the purposes of the Act. In providing those explanations, set forth and respond in detail to comments as to any impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization.◄

5. ►*Self-Regulatory Organization's Statement on*◄ *Comments Received from Members, Participants or Others on Proposed Rule Change*

If comments were received from members of or participants in the self-regulatory organization or others, summarize the substance of all comments received[.] ►and respond in detail to any significant issues that those comments raised about the proposed rule change. If an issue is summarized and responded to in detail under Item 3 or Item 4, that response need not be duplicated if appropriate cross reference is made to the place where the response can be found.◄ If comments were not or are not to be solicited, so state.

[7.] ►6.◄ *Extension of Time Periods for Commission Action*

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

Note.—The self-regulatory organization may elect to consent to an extension of the time periods specified in Section 19(b)(2) of the Act until it shall file an amendment which specifically states the time periods specified in Section 19(b)(2) shall begin to run on the date of filing such amendment.

[8.] ►7.◄ *Basis for Rule Taking, or Being Put into, Effect Pursuant to Section 19(b)(3)*

(a) If a proposed rule change is to take, or to be put into, effect, pursuant to Section 19(b)(3), state whether the filing is made pursuant to paragrah (A) or (B) thereof.

(b) In the case of paragraph (A) of Section 19(b)(3), designate that the proposed rule change:

(i) is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(ii) establishes or changes a due, fee, or other charge, [or]

(iii) is concerned solely with administration of the self-regulatory organization [.] ►, or

(iv) (A) by its terms does not become operative for 60 days after filing with the Commission under Section 19(b)(3)(A) of the Act, and (B) is concerned solely with matters that were the subject of an exposure draft circulated, not less than 30 days before the date of such filing, to the Commission, to the appropriate regulatory agency, in the case of a registered clearing agency for which the Commission is not the appropriate regulatory agency, and to all members of, or participants in, the self-regulatory organization and, in the case of the Municipal Securities Rulemaking Board, all municipal securities brokers and municipal securities dealers, and, during that 30-day period, made available on written request to other persons.◄

and set forth the basis on which such designation is made.

►(c) For any proposed rule change designated for summary effectiveness pursuant to paragraph (b)(iv) above, provide a detailed and specific explanation of any novel, unique, or complex legal or policy issues raised by the proposed rule change and of any significant impact the change may have on persons affected.

Note.—If a proposed rule change filed for summary effectiveness under paragraph (b)(iv) above is materially altered after the proposed rule change has been filed, the 60-day pre-operative period will begin to run again. See Instruction D.◄

[(c)] ►(d)◄ In the case of paragraph (B) of Section 19(b)(3), set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of investors, the maintenance of fair and orderly markets or the safeguarding of securities and funds requires that the proposed rule change should be summarily put into effect by the Commission.

Note.—The Commission has the power under Section 19(b)(3)(C) of the Act to abrogate summarily within sixty days of its filing any proposed rule change which has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act, or was put into effect by the Commission summarily, pursuant to Section 19(b)(3)(B) of the Act. In exercising its summary power under Section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule otherwise is consistent with the requirements of the Act and the rules and regulations thereunder. Accordingly, the Commission will generally exercise its summary power under Section 19(b)(3)(B) on condition that the proposed rule change to be declared effective summarily shall also be subject to the procedures of Section 19(b)(2) of the Act. Accordingly, in most cases, a summary order under Section 19(b)(3)(B) shall be effective only until such time as the Commission shall enter an order, pursuant to Section 19(b)(2)(A) of the Act, to approve such proposed rule change or, depending on the circumstances, until such time as the Commission shall institute proceedings to determine whether to disapprove such proposed rule change or, alternatively, such time as the Commission shall, at the conclusion of such proceedings, enter an order, pursuant to Section 19(b)(2)(B), approving or disapproving such proposed rule change.

►8. *Rules Based on Rules of Another Self-Regulatory Organization or of the Commission*

State whether the proposed rule change is based on a rule of either another self-regulatory organization or of the Commission, and, if so, identify the rule and explain any differences between the proposed rule change and that rule. In explaining any such differences, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the other rule.◄

9. *Exhibits*

List of Exhibits ►to be◄ filed:

1. Form of Notice of Proposed Rule Change for ►publication in the◄ Federal Register [to be included for all proposed rule changes to be considered by the Commission pursuant to Section 19(b)(2)]. ►Amendments to Exhibit 1 should be filed in accordance with Instruction D.◄

2. ►(a)◄ Copies of all comments received in connection with consideration of the proposed rule change[:] ►, presented in alphabetical order, together with an alphabetical listing of such comments, and (b) any transcript of comments or, if a transcript is not available, a summary of comments on the proposed rule change made at any public meeting.

3. Current copies of forms, reports, or questionnaires that are covered by the proviso in Item 1(a).◄

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Self-Regulatory Organization _____

By: (Signature) *

Exhibit [One] ►1◄

Securities and Exchange Commission

(Release No. 34– ; File No. SR – – –)

Self-Regulatory Organizations

[In the Matter of]
Proposed Rule Change By
(Name of Self-Regulatory Organization)
►Relating to (brief description of subject matter of proposed rule change)
Comments Requested by: (date*)

General Instructions

A. *Format Requirements*

Leave a 1-inch margin at the top, bottom and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively. Double space all primary text, and single space lists of items, quoted material when set apart from primary text, footnotes and notes to tables.

B. *Need for Careful Preparation of Notice*

This notice is intended to provide a meaningful opportunity for public comment on the proposed rule change. A self-regulatory organization must provide all information required in the notice and present it in a clear and comprehensible manner.

It is the responsibility of the self-regulatory organization to prepare Items I, II and III of the notice. The Commission cautions the self-regulatory organizations to pay particular attention to assure that (a) the notice accurately reflects the information provided in the Form 19b–4A it accompanies, and (b) the information set forth in the notice provides a full and accurate discussion of the relevant matters called for to afford interested parties an opportunity to comment without having to examine other documents.

The Commission may, in its discretion, at any time before the Commission issues a notice of filing, return to the self-regulatory organization any filing in which the notice does not comply with the requirements of Form 19b–4A, including the requirements applicable to the notice. Any such filing returned by the Commission shall for all purposes be deemed not to have been filed with the Commission. See Instruction B to Form 19b–4A.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), [as amended by Pub. L. No. 94–29, 16 (June 4, 1975,] notice is hereby given that on (date►*◄), the [above-mentioned] ►(name of◄ self-regulatory organization►)◄ filed with the Securities and Exchange Commission [a] ►the◄ proposed rule change as [follows:] ►described in Items I, II and III below, which have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. *Self-Regulatory Organization's◄ Statement of [the] Terms of Substance of the Proposed Rule Change*

(Supply a brief statement of the terms of substance of the proposed rule change and [attach] ►include the text of◄ the proposed rule change as an exhibit ►to the notice◄. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. ►If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and underscores for words to be added.◄)

►II. *Self-Regulatory Organization's◄ Statement of [Basis and] Purpose ►and Statutory Basis of Proposed Rule Change◄*

[The basis and purpose of the foregoing proposed rule change is as follows:]

►In its filing with the Commission, the self-regulatory organization included the following statements concerning the purpose and basis of the proposed rule change and discussed comments it received on the proposed rule change. Such statements are reproduced in sections (A), (B) and (C) below.◄

(Reproduce the ►headings and◄ answers to Items 3, 4, ►and◄ 5 [and 6] of Form 19b–4A ►re-designating them as (A), (B) and (C), respectively◄.)

►III. *Date of Effectiveness of Proposed Rule Change, and Timing for Commission Action◄*

(If the proposed rule change is to be considered by the Commission pursuant

* Print name and title of signer below signature.
*To be completed by the Commission.

►*To be completed by the Commission. This date will be the date on which the Commission issues its notice of filing. See Instruction B to Form 19b–4A.◄

to Section 19(b)(2), the following paragraph should be used.)

On or before July 3, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effect[,] pursuant to Section 19(b)(3)►, other than pursuant to subparagraph (b)(4) of Rule 19b–4◄, the following paragraph should be used.)

The foregoing rule change has become effective[,] pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within [sixty] ►60◄ days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

►(If the proposed rule change is to take effect pursuant to subparagraph (b)(4) of Rule 19b–4, the following paragraph should be used.) The foregoing rule change will become operative on (date *) pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (b)(4) of Rule 19b–4 thereunder, 17 CFR 240.19b–4. At any time before that date, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934. In its filing with the Commission, the self-regulatory organization provided an explanation of any novel, unique, or complex legal or policy issues that the proposed rule change raises and of any significant impact it may have on persons affected. That explanation is reproduced below.

(Reproduce the response to Item 7(c) of Form 19b–4A.)

IV. *Solicitation of Comments*◄

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary [of the Commission], Securities and Exchange Commission, ►500 North Capitol Street,◄ Washington, D.C. 20549. Copies of the [filing with respect to the foregoing and all written submissions] ►submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552,◄ will be available for inspection and copying in the ►Commission's◄ Public Reference ►Section◄ [Room], 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted [within (number of days) of the date of this publication] ►on or before (date *)◄.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary

►Dated: (*)◄.

[Instructions for Exhibit 1:

1. Submit on bond paper or photocopy which is exactly *8x10½ inches in size.* Leave a 1-inch margin at the top, bottom, and right side and a 1½ inch margin at the left. Number all pages consecutively.

2. Double space all primary text. Single space lists of items, quoted material when set apart from regular text, footnotes and notes to tables.

3. Blanks in form with respect to release numbers and length of comment period will be completed by the Commission.]

* * * * *

[§ 249.819b Form 19b–4B, for giving notice as to stated policies, practices and interpretations of self-regulatory organizations.]

* * * * *

By the Commission.

George A. Fitzsimmons,

Secretary.

May 18, 1979.

[FR Doc. 79-16540 Filed 5-25-79; 8:45 am]

BILLING CODE 8010-01-M

* To be completed by the Commission.

►* To be completed by the Commission◄

Federal Register

Tuesday
May 29, 1979

Part VII

Department of State

Fishing Applications from Japan, Spain, and the Union of Soviet Socialist Republics

DEPARTMENT OF STATE

[Public Notice 669]

Fishery Conservation and Management Act of 1976; Applications for Permits to Fish off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94–265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the Federal Register.

Individual vessel applications for fishing 1979 have been received from Japan, Spain and the Union of Soviet Socialist Republics and are summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634–7265).

Dated: May 21, 1979.

James A. Storer,

Director, Office of Fisherics Affairs.

Fishery Codes and Designation of Regional Council's Which Review Applications for Individual Fisheries are as Follows

Code and fishery	Regional council
ABS Atlantic billfishes and sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands Trawl, longline and herring gillnet.	North Pacific.
CRB Crab (Bering Sea)	North Pacific.
GOA Gulf of Alaska	North Pacific.
NWA Northwest Atlantic	New England, Mid-Atlantic.
SMT Seamount groundfish (Pacific Ocean).	Western Pacific.
SNA Snails (Bering Sea)	North Pacific.
WOC Washington, Oregon, California trawl.	Pacific.

Activity Codes Specify Categories of Fishing Operations Applied for as Follows

Activity code:	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Nation/vessel name/vessel type	Application no.	Fishery	Activity
U.S.S.R.:			
**Priamurye*—large stern trawler	UR-79-0108	GOA	3
**Mys Lopatka*—large stern trawler	UR-79-0174	WOC	3
**Aleksandrovsk*—large stern trawler	UR-79-0207	WOC	3
**Mys Shelikova*—large stern trawler	UR-79-0703	WOC	3
Spain:			
Glaciar—side trawler	SP-79-0061	NWA	1
Punta de Robaleia—small stern trawler	SP-79-0148	NWA	1
Japan:			
Takashiro Maru No. 51—cargo/transport	JA-79-1151	BSA, CRB, GOA, NWA, SMT, SNA.	3

* These vessels are submitted as replacements for the *Mys Chukovskogo, Kolyvan, Mys Grozny* and the *Kazakh* which have been approved to conduct activities in support of U.S. fishing vessels.

[FR Doc. 79-16574 filed 5-25-79, 8:45 am]

BILLING CODE 4710-09-M

Federal Register

Tuesday
May 29, 1979

Part VIII

Department of Housing and Urban Development

Office of the Secretary

Uniform Relocation Assistance and Real Property Acquisition

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 42

[Docket No. R-79-518]

Uniform Relocation Assistance and Real Property Acquisition

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is issuing final rules implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) in Departmental programs. The present rules are being comprehensively revised in order to adopt requirements appropriate to the community development block grant program under Title 1 of the Housing and Community Development Act of 1974, to set forth requirements governing acquisition and rehabilitation activities which take place with no intent to displace the tenants of the property, to include requirements previously specified only in Departmental Handbooks, to make general improvements based on past experience in implementing the Uniform Act, and to make the regulations more readable and easy to understand.

DATES: The effective date of these rules is (September 26, 1979). However, with respect to projects for which no initiation of negotiations to acquire real property has taken place, the State agency may by resolution establish an earlier effective date, not earlier than (June 28, 1979).

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. Huecker, Director, Relocation and Real Estate Division, HUD/Community Planning and Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-6330.

SUPPLEMENTARY INFORMATION: On March 31, 1978 (43 FR 13836), the proposed comprehensive revision of 24 CFR 42 was published in the Federal Register for public comment. Interested parties were given until May 30 1978, to submit written comments. Seventy-six persons submitted one or more comments. All comments received with respect to the proposed rules were carefully considered. As a result of the comments received, a number of changes have been made. Following is the Department's response to the comments received.

Change of Title of Regulations

The title of the regulations in this part has been shortened to "Uniform Relocation Assistance and Real Property Acquisition."

Applicability of Regulations

1. A number of persons indicated their concern that the regulations in this part do not apply to certain displacement causing activities under certain HUD and HUD-assisted programs. It should be noted that the regulations in this part apply only to activities subject to the Uniform Act. HUD-associated activities that are not governed by the regulations in this part have been determined by the Department to be outside the purview of the Uniform Act. The Department does not administer any programs under which it directly acquires real property for a Federal project within the meaning of the Uniform Act.

The Department recognizes and is very much concerned about the hardships to persons forced to move by HUD or HUD-assisted activities that are not covered by the Uniform Act and is actively considering what measures it can take to address the relocation needs of these persons.

On January 31, 1978, the Department published requirements at 24 CFR 881.309 (43 FR 4236) that assure relocation assistance to tenants displaced by rehabilitation or by the acquisition of real property by a private developer for Section 8 substantial rehabilitation projects under the Neighborhood Strategy Areas Program.

By memorandum dated July 11, 1978, the Department directed that no tenant be displaced as a result of a Section 312 rehabilitation loan (42 U.S.C. 1452b), unless adequate relocation assistance is provided.

On May 4, 1979 the Department adopted at 24 CFR 882.407 (44 FR 26671) relocation requirements to protect lower-income families and individuals displaced from their dwellings as a result of rehabilitation by a private owner under the Section 8 moderate rehabilitation procedures described at 24 CFR Part 882, Subpart D.

In most respects, the relocation assistance to be provided under these three programs is similar to that under the regulations in this part.

Section 902 of the Housing and Community Development Amendments of 1978 required the Department to conduct a study on the nature and extent of involuntary displacement under Federal housing and community development programs and "report to the Congress on recommendations for the formulation of a national policy to minimize involuntary displacement caused by the implementation of the Department's programs, and to alleviate the problems caused by displacement of residents of the Nation's cities due to residential and commercial development and housing rehabilitation, both publicly and privately financed." Further changes in the Department's relocation policies may result from the findings and recommendations of this review.

2. Section 42.101(b) and § 42.203(b) of the regulations published for comment proposed making the regulations applicable to certain acquisitions and resulting displacements which take place in the three-year period before the date of submission of a community development block grant application for related construction, rehabilitation or demolition assistance.

These provisions were proposed to prevent a State agency from circumventing the acquisition and relocation requirements of the Uniform Act by acquiring real property and displacing the occupants prior to submitting a request to HUD for block grant funding for related project activities such as construction or rehabilitation of improvements on the property.

Several persons indicated that the proposal to cover these activities placed undue and burdensome restrictions on local programs. Two persons thought the increased coverage should be reduced. One suggested that it be limited to the one-year period immediately prior to the submission of the application.

One person suggested that the 3-year period be replaced with full coverage for all acquisitions and resulting displacements determined to be "for a CDBG activity" regardless of how many years prior to submission of the CDBG application they occurred.

On April 17, 1979, the Supreme Court of the United States issued decisions, No. 77-874, *Alexander et al.* v. *United States Department of Housing and Urban Development et al.*, and No. 77-1463, *Harris, Secretary of Housing and Urban Development, et al.*, v. *Cole et al.*

In the opinion discussing these two cases, the Court indicated "* * * that persons directed to vacate property for a Federal program cannot obtain relocation assistance unless the agency also intended at the time of acquisition to use the property for such a program or project."

In light of the Supreme Court's decision in the *Alexander* and *Cole* cases, the Department is currently examining how the Department's rules for determining the applicability of the

Uniform Act to real property acquisitions and resulting displacements may best encompass a test of intent which is in keeping with the Court's view of the requisites of the Uniform Act.

As soon as the Department has reached this determination, a revised rule will be issued. Until the revised rule is published, the Department is retaining without change the existing rule (described at § 42.79(b)).

3. One commenter asked for clarification as to the applicability of the regulations to acquisitions by private entities. The Department has determined that the Uniform Act does not apply to the acquisition of real property carried out by a private entity or to resulting displacements. The Uniform Act applies only to acquisitions by a "State Agency" as that term is defined in Section 101(3) of the Uniform Act and to displacements that result from such acquisitions. Therefore, unless specifically provided for in applicable program regulations, these regulations do not apply to privately undertaken acquisitions or resulting displacements. Section 42.101(a) has been clarified to reflect this determination.

4. Section 42.101(a)(1) exempts from the acquisition rules any acquisition which results from a voluntary proposal submitted by the owner in response to a public invitation or solicitation for offers. (It should be noted, however, that any displacement resulting from such an acquisition is governed by the relocation rules of these regulations.) One commenter expressed support for this rule and one objected to it. Several persons suggested expanding the exemption in a manner that would exempt certain acquisitions carried out through a broker or otherwise offered voluntarily.

The Department has determined that any voluntary property sale, which is not identified at § 42.101 as a transaction exempted from the acquisition rules, is subject to the Uniform Act and therefore must be subject to the regulations in this part which implement that Act. For this reason, the suggestion to expand that exemption to the purchase of any property listed with a broker cannot be adopted.

Several commenters protested the application of the regulations to the acquisition of real property easements. The Department has determined that the Uniform Act applies to the acquisition of all permanent interests in real property, including easements. Since the regulations in this part implement the Uniform Act, the Department does not have the authority to exempt permanent easements from these regulations.

Federalwide Uniformity

Several persons commented about the need for federalwide uniformity of Uniform Act regulations. The Department does not have the authority to promulgate federalwide regulations. The Department is, however, considering what measures it can take to make it possible for a local agency to follow the Uniform Act regulations of one Federal agency whenever it undertakes a project using funds provided by two or more Federal agencies.

Use of Relocation Plans

A number of commenters discussed the need for HUD to require as part of these regulations that a State agency submit to HUD as a condition for HUD approval of an application for program assistance a detailed "relocation plan" that very specifically analyzes and correlates planned displacement and available housing resources.

At present, HUD encourages State agencies to do whatever advance relocation planning is appropriate to a proposed project, and various HUD program regulations contain specific relocation planning requirements. However, neither the present nor proposed regulations in this part contain requirements for advance relocation plans.

The Department believes that such relocation plan requirements as are appropriate to a project should be contained in the applicable program regulations so that program variables can be fully reflected. Under the community development block grant program, the Department has adopted requirements for local displacement strategies and for an identification of estimated displacement over a three-year period. The Department is now considering what, if any, changes need to be made to the block grant application process to address displacement. The Department is not, however, considering the adoption of requirements for prior HUD review and approval of specific relocation plans that are based on a correlation of the needs and preferences of occupants with the availability of housing that meets those needs and preferences. There are several reasons for this position.

First, HUD review and enforcement of such relocation plans would require substantial staff time that the Department believes is more effectively spent monitoring actual State agency compliance with the relocation requirements of these regulations. The relocation rules contained in these regulations provide comprehensive protection for people displaced by activities subject to the Uniform Act. In particular, attention is invited to § 42.209(a) which states that no person can be required to move, unless he is given a reasonable choice of opportunities to relocate to a comparable replacement dwelling. Comparable replacement dwellings must be decent, safe and sanitary and within a person's ability-to-pay.

Second, it has been the Department's experience that relocation plans prepared prior to approval of a project often become out of date before actual displacement. If the original plan is specific, rigid adherence is often neither feasible nor desirable.

Third, the location of many block grant activities, such as rehabilitation, is not determined in advance of the application, making detailed advance determinations of the needs and preferences of those to be displaced difficult or impossible.

Information at Public Hearings

In response to one comment, the Department would like to point out that the requirements of § 42.9 (Information at public hearings) may be met by having a supply of the appropriate information statements on hand at the public hearing, announcing their availability, and making them available upon request. Provisions to assure that every affected person receives appropriate information on a timely basis are contained in § 42.105 and § 42.205(a).

Expediting Payments

1. Several persons requested that State agencies be required to process a claim within a specified time limit, such as 20 or 30 days. In accordance with these suggestions, § 42.11(a) has been revised to require that the State agency issue the payment for a satisfactory claim within 30 days following receipt of sufficient documentation to support the claim. This time limit is consistent with the time limits imposed by paragraph 4-28 of HUD Handbook 1371.1 (REV).

2. In response to two comments, the Department has revised § 42.11(b) to indicate that the State agency "shall" make an advance payment whenever the State agency determines that a hardship exists and an advance payment is necessary. The proposed rule indicated that the State agency "may" make such payment.

HUD Monitoring and Corrective Action by State Agencies

Several comments indicated that the writer was either uncertain as to the meaning of § 42.15 (HUD monitoring and corrective action by State agency) or was not familiar with the Department's Uniform Act monitoring procedures. Section 42.15 advises in a general manner that the Department will monitor compliance with these regulations. Detailed HUD monitoring procedures are set forth in HUD Handbook 1373.1, Field Procedures for Monitoring Relocation and Real Property Acquisition Activities, dated November 1975.

Section 42.15(b) describes the Department's present policy that a State agency must promptly issue payment, as specified by HUD, whenever HUD determines that the State agency has failed to issue the full amount of a payment required by these regulations.

Section 42.15(c) (proposed as § 42.15(b)) describes the basic choice of methods for remedying those situations in which a person moves to substandard housing and HUD determines that the person would not be occupying substandard housing if the State agency had properly provided the housing referrals, services, and payments required under the regulations in this part.

In requiring corrective actions, the Department seeks solutions appropriate to the circumstances of the case, including the nature of the violation and the needs of the displaced person. The Department would like to point out that this rule does not preclude a State agency from using its code enforcement powers or other programs to ensure that the landlord of a dwelling provides at his own expense the repairs or rehabilitation necessary to bring a replacement dwelling into compliance with these rules.

It should also be noted that the procedures and manner of sanctions to be applied after a HUD determination of noncompliance are governed by the applicable program regulations and are therefore not specified in the regulations in this part.

Manner of Notices

In response to one suggestion, § 42.19 has been revised to require that each notice shall be written in plain understandable language. Recipients who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

Waiver of Regulations

In response to one comment, the Department has clarified § 42.21(a) of the regulations to indicate that the one-year purchase and occupancy requirement for a replacement housing payment for a 180-day homeowner (see § 42.401(a)(2)) cannot be waived. That rule is required by law. A State agency may, however, waive, on a case-by-case basis, the one-year purchase and occupancy requirement that must be met by a displaced person who applies for a replacement housing payment for rental or downpayment assistance (see § 42.451(c)).

Owner-Occupant Waivers of Relocation Assistance

In response to one comment, the Department would like to point out that the relocation assistance requirements of these regulations apply to the displacement of an owner-occupant who voluntarily sells real property to a State agency. The voluntary nature of a sale does not exempt it from relocation requirements in this Part. However, a fully informed owner-occupant who sells property to a State agency may waive his right to relocation assistance. Section 42.23(c) describes the Department's procedure governing such waivers.

Briefly, under that policy a State agency may acquire property without providing relocation assistance to the owner-occupant if the owner voluntarily waives his right to such assistance after being fully informed that he cannot be required to sell his property without being offered such relocation assistance. The owner must sign a written waiver in a format prescribed by HUD. Prior HUD Area Office approval of the State agency's voluntary acquisition program is required.

Ability-to-pay Criteria

Several commenters suggested that the Department eliminate a provision proposed at § 42.45(f)(1) of the regulations published for comment under which the cost for a "comparable replacement dwelling" could exceed 25% of a person's gross income, if monthly housing costs generally paid by persons in the locality exceeds that figure. Prior to publication for comment, the provision had been contained in paragraph 2-9 of HUD Handbook 1371.1 REV.

The Department agrees with this suggestion and has deleted the provision from the final regulations. The Department believes the resulting rule will be fair and equitable to displaced persons and will be easier to enforce. It should be noted that, while the 25% standard governs the State agency's obligations in making referrals to comparable replacement dwellings, it does not prevent a person from voluntarily electing to rent or purchase a replacement dwelling that exceeds his ability-to-pay and obtaining the appropriate replacement housing payment.

Replacement Dwellings for Handicapped

The provision at § 42.47(a)(5) governing minimum criteria for replacement dwellings for the handicapped has been modified to set forth a general performance standard. To the extent that criteria prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1-1961 (R 1971), are pertinent, the performance standard will be considered met if it meets those criteria. The purpose of the change is to ensure needed flexibility to meet special situations and to prevent the denial of a replacement housing payment to a handicapped person who voluntarily moves to a replacement dwelling that is satisfactory to him and which meets reasonable pertinent standards for the handicapped.

Prevention of Lead-based Paint Poisoning in Replacement Dwellings

A number of commenters objected to the proposal at § 42.47(a)(4) to require all replacement dwellings to meet HUD requirements for the prevention of lead-based paint poisoning (24 CFR Part 35). Several persons stated that it was difficult to determine whether a dwelling met these requirements. The Department recognizes the difficulties in determining the level of lead-based paint in housing. However, many HUD programs have similar requirements which are already being met by program participants. Therefore, the Department believes that needed inspections are feasible.

One commenter expressed the thought that the rule should not apply to replacement dwellings not permanently occupied by children. The Department notes, however, that children may visit the occupants of such dwellings.

Others indicated that the rule could result in the denial of replacement housing payments and thereby result in hardships to persons it is intended to help. The Department is very much concerned about the possibility that the rule might be used to deny a

replacement housing payment to a displaced person. In an effort to prevent or minimize such cases, the Department has included in the final regulations a requirement that the State agency must notify the HUD Area Office before denying a replacement housing payment to a person as a result of the lead-based paint poisoning prevention requirement at § 42.47(a)(4). The notification shall indicate the State agency's efforts to obtain compliance with the rule.

Acceptability of Section 8 Housing Quality Standards

Several persons suggested that some dwellings certified as meeting the Section 8 housing quality standards at 24 CFR 882.109 would not necessarily meet the decent, safe and sanitary standards at § 42.47 of these regulations, which, among other things, require compliance with local housing codes. For this reason, they objected to the provision at § 42.47(b) under which a replacement dwelling that is assisted under the Section 8—existing housing—program and found to meet the standards at § 882.109, is considered to be a decent, safe and sanitary dwelling under the relocation regulations in Part 42.

The Department believes that replacement dwellings in compliance with the Section 8 housing quality standards at § 882.109 are decent, safe and sanitary. Equally important, the rule will facilitate the use of Section 8 housing as a relocation resource. The Section 8 program generally provides longer term benefits for low and moderate income persons than are offered under the Uniform Act regulations.

It should be especially noted that unless the proposed rule is adopted, a displaced person who moves into a unit assisted under the Section 8 existing housing program could be denied a supplementary Uniform Act rental assistance payment. The rule also eliminates the need for duplicate inspections.

For these reasons, the Department has adopted the rule as published for comment.

Temporary Move to Permit Code Enforcement

The rule at § 42.49(d)(7) provides that a person required to move for a period up to five days in order to permit fumigation or other code enforcement work is not a displaced person. One person suggested that the 5-day period be extended to 30 days. The Department believes that a 30-day period would impose too great a hardship on the occupants. Therefore, the suggestion was not adopted.

Monthly Housing Cost

Section 42.67 provides that all reasonable utility charges be included when estimating monthly housing cost. One commenter suggested that insurance costs be added. The Department considered but did not adopt this suggestion.

One commenter suggested that § 42.67 be revised to eliminate the State agency's discretion to base estimated utility costs for the acquired dwelling on a period other than the 12-month period immediately preceding acquisition. The Department has rejected this suggestion as impractical to apply to those situations in which the actual utility costs for the 12-month period were uncommonly low or high.

Section 42.67 has been reworded to improve clarity and the policy published for comment at § 42.67(b)(1) has been moved to § 42.453(b)(1).

Utility Charges

In order to insure uniform interpretation of references to "utility charges," a new § 42.91 has been added to define this term.

Appraisal of Property to be Donated

A State agency may acquire real property by donation without actually offering just compensation to the owner if the procedure at § 42.23(b) is followed. (The procedure was published for comment at § 42.125 of the proposed regulations.) Under that procedure, the State agency must appraise the property, determine just compensation, and inform the owner of that amount before it can accept the donation.

One commenter objected to the requirement that a State agency must always obtain the prior appraisal of property that the owner may be willing to donate for street-widening improvements that benefit his property. However, the Department has determined that the appraisal requirement and notification of just compensation are required by law. Therefore, the suggestion could not be adopted.

Establishing Just Compensation

In response to one suggestion, § 42.103(b) has been clarified to indicate that a minimum of one appraisal is required for real property to be acquired.

Additional language has been added to § 42.107(b) (Appraisal standards) to explain Departmental policy that factors relating to race, color, religion, sex, or national origin, or to racial, religious and ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

In response to another suggestion, the Department wishes to note that the procedures of § 42.111 do not specify the type of certification or other document to be used in establishing just compensation. The State agency may establish its own controls over this procedure. However, the amount established as just compensation must not be less than the appraised fair market value of the property as set forth in paragraph (a)(1) or (a)(2) of § 42.111, and the files must contain a copy of the document used to establish just compensation (see § 42.125(e)).

Eligibility for Relocation Assistance Based on Person's Occupancy on Date of Initiation of Negotiations

A number of persons objected to the Department's proposal to defer eligibility for relocation assistance until the acquisition of the real property. The commenters preferred an earlier date. Under most HUD-assisted programs, the present rules grant basic eligibility to persons occupying the property on the date of a notice of intent to acquire or the date of the initiation of negotiations (initial written offer to acquire).

In response to these suggestions, the Department has revised the final rule to provide that a person to be displaced will be given a notice of displacement, effective on the date of the initiation of negotiations to acquire the property for the project, unless a different date is specified in applicable program regulations. The notice of displacement (described at § 42.205) triggers basic eligibility for relocation assistance.

To simplify the relocation process under the turnkey low-income public housing program, the Department has determined that the "initiation of negotiations" under that program should be the date of HUD execution of the annual contributions contract, or the date of tentative site approval, if that is later (see § 42.65(b)). That eligibility date is generally similar to the date that presently triggers basic eligibility under the turnkey program.

The Department encourages State agencies to issue a preliminary relocation notice (see § 42.203). However, in those situations where the final rule provides for issuance of a notice of displacement (or notice of right to continue in occupancy) within thirty (30) days after the initiation of negotiations, the revised preliminary

relocation notice will not be mandatory. (Some HUD programs continue to mandate a preliminary relocation notice to inform a person of his potential rights to assistance, because the date of actual eligibility for assistance must be deferred to take into account those situations in which no project funding is ultimately approved.)

In order to be subject to the regulations in this part, acquisitions and displacements must take place after the HUD-assisted undertaking is officially recognized as a project. The pertinent dates at which HUD recognizes an undertaking as a project are described in § 42.79. Because this information has been included in § 42.79, similar provisions describing applicability of the rules, which were published for comment at § 42.101(b), § 42.203, and § 42.205, have been deleted from the final rules and subsequent provisions have been relettered or renumbered.

Notice of Right To Continue in Occupancy

1. Several commenters expressed the thought that the tenant should have the option to receive relocation assistance as an alternative to continuing in occupancy under the provisions of § 42.207. Another thought that a tenant should be permitted to appeal under Subpart J the decision of the State agency as to whether it issues a notice of right to continue in occupancy or a notice of displacement.

The objective of the right to continue in occupancy provision is to provide a reasonable uniform procedure for protecting residential tenants (the procedure does not apply to owner-occupants) who occupy a property to be acquired and/or rehabilitated for a HUD-assisted project, when there is no intent or necessity for the tenants to move. It provides 4-year protection against paying an excessive rent.

The procedure is especially suitable for rehabilitation projects. Similar rules were applied to structures selected for substantial rehabilitation with Section 8 housing assistance under the Neighborhood Strategy Areas Program (see 24 CFR 881.309(d); 43 FR 4243, effective January 31, 1978) and certain situations in which a HUD-owned property or property on which the mortgage is insured or held by HUD is purchased for a public housing program (see 24 CFR 841.406; 42 FR 5886, effective February 7, 1977).

There are two alternatives to adopting some method that provides a "right to continue in occupancy" procedure. One is to require State agencies to offer relocation assistance in situations when there is no intent to displace the tenants. The potential cost of such a policy, however, would sharply curtail needed rehabilitation and certain other government actions designed to help tenants. The second alternative is to provide no protections at all to the tenants. The Department has considered and rejected both alternatives.

2. Several commenters expressed a fear that the notice of right to continue in occupancy would be issued to some residential tenants whom the State agency actually planned to displace at the end of the 4-year guaranteed occupancy period. In response to these comments, a provision has been added at § 42.207(c) that would preclude a State agency from meeting its obligations under these regulations by offering a "right to continue in occupancy" of a dwelling to be demolished for the project or to be altered for the project in such a manner as to prevent the person from continuing occupancy after the 4-year period expires.

3. A number of commenters expressed support for the proposed right to continue in occupancy concept. One commenter recommended that it be expanded to cover business tenants. However, since relocation payments for nonresidential tenants are related only to moving expenses (a business, nonprofit organization, or farm is not eligible for a payment for the cost of renting or purchasing a replacement facility), the Department believes that the "right to continue in occupancy" procedure would not be approriate for situations in which a property occupied by a nonresidential tenant is acquired and/or rehabilitated without the intent to displace the tenant. In the absence of detailed rules to address those situations in which there is no intent or necessity to displace a nonresidential tenant as a result of the project, it is expected that the State agency and the nonresidential tenant will together work out mutually satisfactory arrangements for continued occupancy.

4. Two commenters suggested that no increase in rent be charged to a person paying less than 25 percent of his income for housing costs at the time of acquisition. The Department believes that the proposed 25 percent ceiling on rent is reasonable and that a lower ceiling could jeopardize the financing for many rehabilitation projects. Therefore, this suggestion was not adopted.

5. Several commenters objected to the provision under which a person could be relocated for a temporary period up to 12 months without the option to obtain relocation assistance for a permanent move. The Department is aware of the hardship that can be caused by a temporary relocation. However, elimination of this provision would seriously curtail the rehabilitation of many tenant-occupied properties. In view of the need for such rehabilitation, the Department has determined to retain the temporary relocation provision. It should be noted that the regulations at § 42.207(a)(3) require the State agency to pay all moving expenses associated with the temporary relocation and any increase in the tenant's monthly housing cost during the temporary period.

6. One commenter suggested that each tenant be given the right of first refusal to return to the specific dwelling unit that he occupied prior to rehabilitation. This suggestion was carefully considered. However, the Department did not adopt the suggestion because it believes that the proposed provision under which the tenant may return to a comparable replacement dwelling in the same building or a nearby building on the real property is fair to the tenant, while at the same time facilitating the efficient rehabilitation of a project.

7. One commenter suggested that at the end of the 4-year period, lower income persons who are unable to afford a comparable replacement dwelling should be considered displaced persons and given relocation assistance under the regulations in this part.

The Department encourages State agencies to use all available programs, such as Section 8 housing assistance or other public housing programs, to provide the longer term assistance needed by some low and moderate income persons. However, the Department does not believe that the suggested long term guarantee should be included as a rule under the regulations in this part.

The Uniform Act does not provide long term protection against excessive rents. The 4-year rent protection under the "right to continue in occupancy" procedure is comparable to that provided to displaced persons who receive Uniform Act rental assistance payments based on 4-year needs.

The Department also believes that adoption of the suggestion would increase the funding liability of project sponsors to the point where needed rehabilitation of many tenant-occupied buildings would be rendered infeasible.

8. In response to another comment, a provision has been added at § 42.207(b)(2) to require that, when determining whether or not a temporary move is necessary to permit rehabilitation, the State agency must take into account any hardship that is

likely to result from the actual rehabilitation of the property.

Affirmative Action for Low-Income and Minority Persons

Section 42.213(a) of the proposed regulations indicated that no minority or low-income person shall be required to move unless he has been given reasonable opportunities to relocate to a comparable replacement dwelling that is not located in a area of low-income and/or minority concentration.

A number of commenters expressed the thought that this provision could not be met under the method of computing a replacement housing payment as described in § 42.457(a). Others suggested that the rule would result in significantly greater payments and opportunities for minority and low-income persons than for non-minority middle income persons.

One person suggested that in his community, the rule, if adopted, could bring several programs to a standstill. Another person indicated that his entire community would be considered impacted and asked if the community was to offer comparable replacement dwellings in another community in order to meet the requirement.

It is not the intent of the Department to establish procedures that result in different replacement housing payments on the basis of race or which are impractical to apply. The Department desires, however, that State agencies take reasonable steps to assure that full choice and real opportunities exist for low-income and minority families and individuals to select replacement dwellings from the total housing market. To clarify this requirement, the Department has revised the final affirmative action rules to indicate that a low-income or minority person shall not be required to move unless he has been given a reasonable choice of opportunities to move to a comparable replacement dwelling in a non-impacted area if such opportunities are available. The affirmative action rules published for comment at § 42.213(a) and § 42.215(c) have been consolidated in a new § 42.213 (Affirmative action for low-income and minority persons).

Rental Charges on Acquired Dwelling

In accordance with one suggestion, § 42.215 (published for comment at § 42.217) has been clarified to indicate that the 25 percent ceiling on rent charges for a dwelling which has been temporarily leased by the State agency to a former owner or tenant covers both contract rent and estimated reasonable utility charges.

Ninety-Day Notice

1. One commenter suggested that the ninety-day notice (see § 42.217) should not be issued to a person unless he has been offered replacement housing. The Department agrees with this suggestion and has modified § 42.217(b) to prohibit issuance of the notice before the person has been offered a reasonable choice of opportunities to relocate to a comparable replacement dwelling.

2. Another person suggested that the ninety-day notice include information about eviction policies and housing referral requirements. The housing referral requirements are addressed in both the Notice of Displacement and through the advisory assistance requirements in § 42.211. The Department believes that a discussion of eviction requirements in the ninety-day notice may encourage recipients to refuse to comply with a proper ninety-day notice. Therefore, the Department has not accepted this suggestion.

Eviction Policy

Several commenters suggested that the regulations should set forth an eviction policy, such as that presently contained in paragraph 2-29 of HUD Handbook 1371.1 REV. The Department agrees that a statement of such policy would be helpful in defining the rights of both displaced persons and State agencies. Therefore, the Department's basic policies governing eviction for cause have been included in the regulations in a new § 42.219. Under these policies, eviction for cause must be carried out in accordance with applicable State and local law. If a person is evicted for cause on or after the effective date of a notice of displacement granting him basic eligibility for relocation assistance, he retains that basic eligibility after the eviction.

Justification for Moving Expenses in Excess of $1,500

At § 42.315 of the rules published for public comment, the Department proposed some changes in its rules governing the documentation of claims for moving expenses that exceed $1,500. The rules required the displaced person to obtain three bids.

One commenter suggested that two rather than three bids should be sufficient to establish the validity of a displaced person's claim for payment of moving expenses that exceed $1,500. The commenter also cited the difficulty encountered in obtaining three bids in some cases.

In response to this suggestion, the Department reexamined the need for prescribing a mandatory three-bid requirement. Based on this review, the Department has concluded that both the present and proposed three-bid rules are unnecessarily restrictive. Moreover, the present exceptions under which the three-bid requirement either does not apply (e.g., self-move) or can be waived by the State agency, further reduce the justification for retaining a mandatory three-bid rule.

Accordingly, the Department has deleted the provision published for comment at § 42.315 (Additional documentation for claims over $1,500). The documentation of such claims will remain governed by the more general documentation requirements of § 42.221(a) and applicable State law. Under these general requirements, the State agency may reasonably establish a three-bid requirement for large moving expense claims, but would not be precluded from approving a claim on the basis of different documentation.

Fixed Payment for Nonresidential Moves

In response to one suggestion, the Department has included a new provision at § 42.355(f), explaining the Department's policy that a fixed payment for a nonresidential move does not cover "loss of good will." Therefore, compensation to a person for "loss of good will" under State or local law or policy shall not be used as a reason for denying him a fixed payment under § 42.355 of these regulations.

Replacement Housing Payment for Homeowners

1. Two commenters suggested that the $15,000 limit for a replacement housing payment for homeowners under Subpart F is too low. However, that limit is established by law and cannot be increased by the Department.

2. In the rules published for public comment, the Department proposed eliminating a special procedure that applies to the computation of a replacement housing payment when the acquired dwelling is appraised on the basis that its value for its highest and best use (e.g., a commercial use) is higher than its value for residential use. Under that special procedure, the amount that would have been paid, if the property had been valued at its lower residential use value, is deemed to be its "acquisition cost."

One commenter objected to the Department's proposal to use the actual acquisition cost because it would reduce

the amount of a replacement housing payment to some homeowners.

The Department believes that a person's ability to pay for replacement housing is related to the payment he actually receives for the acquired dwelling, not a hypothetical lower amount. Therefore, the Department has not adopted the suggestion.

Under the final rule, the replacement housing payment shall reflect the actual purchase price of the property rather than a lower hypothetical amount. (The elimination of the special procedure does not affect the rule at § 42.405(b) which applies when the acquired dwelling is part of a mixed-use property.)

Eligibility of Tenant for Replacement Housing Payment

One commenter indicated that under certain circumstances a tenant in occupany less than 90 days prior to the beginning of negotiations to acquire the property should be eligible for a replacement housing payment. However, the 90-day occupancy requirement is statutory and cannot be changed by the Department by regulation.

Downpayment Assistance

One commenter suggested that § 42.455(b) be revised to limit the payment for downpayment assistance to the amount necessary for a downpayment on a comparable replacement dwelling. The Department believes that the $4,000 ceiling on the downpayment assistance payment assures that no person will receive an excessive payment for downpayment assistance. Therefore, the suggestion was not adopted.

Two other persons favored elimination of the requirement that a person must match dollar for dollar any downpayment assistance payment over $2,000. However, this requirement is specified in the Uniform Act and cannot be changed without a change in that law.

Determining Reasonable Cost of Comparable Replacement Dwelling

1. A number of commenters objected to the proposal at § 42.457(a) which required a case-by-case comparison to determine the cost of a comparable replacement dwelling. It was suggested that the determination of replacement housing payments on the basis of schedules of typical sales and rental prices results in equitable and timely determinations and increased referrals. Two others indicated that schedules are more helpful in establishing payments that promote integration.

Two persons indicated that schedules improve uniformity of payments. One suggested that the displaced person be given the right to choose whether his payment shall be based on a schedule or a comparison with the actual cost of comparable replacement dwellings.

Many of the comments appeared to reflect a concern that the proposed mandatory use of a case-by-case comparison to determine the upper limit of a replacement housing payment is administratively difficult, costly, and inefficient.

In response to these suggestions, the Department has modified § 42.211(b)(2) and § 42.457(a) to allow State agencies to continue to use schedules of comparable replacement dwellings or other current information as a basis for determining the *estimated* upper limit of cost *when making referrals.*

A case-by-case comparison to accurately determine the upper limit of the cost of a comparable replacement dwelling must be made in any case in which the State agency does not base the replacement housing payment on the cost of the replacement dwelling actually purchased or rented by the displaced person. The Department believes that this policy is necessary to assure that displaced persons do not receive inadequate payments based on hypothetical dwelling costs listed on schedules which do not accurately reflect the actual cost of available housing.

However, when making a referral to a decent, safe, and sanitary dwelling which is not a comparable replacement dwelling or to a comparable replacement dwelling for which the cost may exceed that to be used as the upper limit for establishing a replacement housing payment, the State agency must inform the person of his right to a comparable replacement dwelling and the criteria for a comparable replacement dwelling, and must indicate the estimated purchase price or rental cost to be used as the basis for establishing the upper limit of the replacement housing payment and the basis of that estimate.

2. Section 42.457(a) would continue the present policy under which the determination of comparable replacement dwelling costs is based on the cost of comparable replacement dwellings in the neighborhood in which the displacement took place, if such comparables are available. One commenter stated that when the displacement neighborhood is a low-income minority area, this procedure would stymie affirmative action and prevent low-income minority persons from purchasing comparable replacement dwellings outside low-income minority areas. The Department invites attention to the definition of comparable replacement dwelling at § 42.45 and the affirmative action requirements of § 42.213. These provisions are designed to maximize opportunities for low-income minority persons to relocate outside of low-income minority areas.

Last Resort Replacement Housing

1. Several commenters objected to the fact that the regulations do not contain a requirement that the State agency must ensure that a new housing unit is added to the market to replace each unit removed by displacement causing activities. For a similar reason, one person objected to the provision at §42.45(g) under which a State agency may meet its obligation to a person displaced from a subsidized dwelling by offering similarly subsidized replacement dwellings and thereby decreasing the amount of subsidized housing available to others.

The Department does not have the authority to change the statutory requirement that the implementation of the last resort housing procedure is based on a determination that a project cannot proceed to construction because no comparable replacement dwelling is available to a person to be displaced by the project. Moreover, under most Departmental programs, the governing laws do not mandate that the grant recipient provide housing on a one-for-one basis to replace housing demolished for the project.

The Department does, however, encourage use of the last resort housing provisions to provide replacement housing whenever there is a "reasonable likelihood" that the project will not be able to proceed to actual construction because comparable replacement dwellings will not be available on a timely basis.

2. Several persons expressed concern that the provision of housing under Subpart I (Last Resort Replacement Housing) could, but should not, be permitted to result in the displacement of tenants. One of the commenters suggested that rehabilitation under Subpart I be limited to units that were vacant for at least 90 days.

The Department invites attention to the provisions of § 42.605(b) which reaffirm that relocation assistance must be provided to those displaced by last resort housing activities that are subject to the Uniform Act. To assure protection for all tenants displaced by last resort housing activities, paragraph § 42.605(b)

has been revised to indicate that, if last resort housing is provided by an activity that is not subject to the Uniform Act (e.g., rehabilitation under the community development block grant program), the State agency shall not displace any tenant, unless the tenant is given the relocation assistance to which he would be entitled if he were a displaced person as defined at § 42.29 of these regulations.

The Department anticipates that State agencies will generally avoid or minimize displacement when providing last resort housing. However, some displacement may be appropriate; that is, it may result in an improvement in housing for all affected persons, including those displaced from the last resort housing site.

3. Another commenter preferred that no changes be made to the existing last resort housing rules under which State agencies were required to meet certain governmentwide requirements set forth at 24 CFR Part 43, Subpart A. The commenter was particularly interested in retaining the preliminary planning requirements. Another commenter suggested that the planning requirements applicable to new construction (see § 42.607) be applied to rehabilitation.

The Department wishes to encourage State agencies to provide last resort replacement housing when it appears appropriate. The regulations in Subpart I of the regulations in this part will make it easier for State agencies to carry out last resort housing projects because fewer steps will be required to justify the need for a last resort project. State agencies complying with the procedures of Subpart I will not be required to consult the governmentwide regulations (24 CFR Part 43, Subpart A) for additional guidance.

For the reasons described above, the suggested changes were not adopted. The regulations in Subpart I have been adopted substantially as published for comment.

Appeals

1. One commenter suggested that State agencies be required to establish a panel for hearing an appeal that would include an agency representative, an individual from the project area and a jointly selected third party. The person making the comment was concerned about the impartiality of hearings under the present system under which either the head of the State agency or his authorized representative usually hears the appeal.

The Department believes that the present procedure has worked satisfactorily. Moreover, under the present system, a person making an appeal has the right to appeal to HUD if he is dissatisfied with the State agency's determination. Therefore, the Department has not adopted the suggestion.

2. One person suggested that when a State agency submits information to HUD with respect to an appeal, it shall submit copies of the information to the person who filed the appeal. The Department believes this could result in voluminous and unnecessary copying requirements and has therefore not adopted these suggestions. It should be noted that the person making an appeal has access to inspect and copy all materials pertinent to his appeal, except those which are confidential. Also, the Department has included a statement at § 42.705(c)(3) requiring the State agency to ensure that the person making the appeal has had reasonable opportunity to review any materials and information on which an adverse appeal ruling may be based.

3. In response to another suggestion, a statement has been added at § 42.703 to make it clear that a person's acceptance of a payment that is less than the full amount that he claimed does not limit his right to appeal the State agency's determination.

Miscellaneous Comments

The following miscellaneous comments were beyond the scope of the Department's proposals and could not be adopted. In some cases, a suggested change could not be adopted without a change in the law. In other cases, the suggestion could not be adopted without prior publication for public comment. These latter suggestions will be considered in the course of future proposals for amendments to this Part.

1. Require that, prior to a displacement-causing project, at least two public hearings must be held to provide relocation information to residents and to discuss the relocation plan.

2. Establish rule that a comparable replacement rental unit must be within 25% of a person's income, without taking into account possible rental assistance payment. (Presently, computations are based on the premise that the rental assistance payment may reduce the actual rent to the 25% ceiling.)

3. Use adjusted income as defined in the low-rent public housing program to compute a person's ability to pay housing costs. Presently, gross income is used.

4. Base ability-to-pay housing costs on 20 percent of income, rather than 25 percent of income.

5. Eliminate the present requirement that the cost of a comparable replacement dwelling must be within a person's ability-to-pay (defined at § 42.45(f)(1)). (NOTE: This requirement is statutory.)

6. Eliminate the requirement that a comparable replacement dwelling must not be subjected to unreasonable adverse environmental conditions and that it must be in an area not generally less desirable than the location of the acquired dwelling with respect to public utilities and public and commercial facilities.

7. Eliminate the requirement that a comparable replacement dwelling must be reasonably accessible to the place of employment of the displaced person (see § 42.45(e)).

8. Give all citizens the right to review the State agency's relocation records.

9. Establish a rule that in the case of an overcrowded dwelling, separate tenancies and separate entitlements to relocation payments are deemed to exist if the occupants of the dwelling relocate to more than one dwelling. (Presently, the State agency makes a determination as to whether separate tenancies exist. The determination is based upon existing lease arrangements.)

10. Establish a rule that all persons who move into a property after acquisition for the project shall be entitled to relocation assistance when they move.

11. Require State agency to make monthly reports of its relocation activities.

12. Require State agencies to make two appraisals of all real property to be acquired for a project.

13. Require State agencies to disclose real property apprisals to owners.

14. Section 42.103(h) defines "uneconomic remnant" as "a parcel of real property in which the owner is left with an interest after the partial acquisition of his property and which has little or no untility or value to him." One person suggested that the "utility or value to him" should be replaced with "market value."

15. Delete provision (see § 42.111(c)) under which increases in fair market value of property caused by the project are to be disregarded when determining just compensation.

Note.—The present requirement, which is based upon a statutory provision at Section 301(3) of the Uniform Act, applies to the extent permitted by State law.

16. Require State agencies to pay all costs incurred to enable an owner to withdraw a court award from the court registry.

Note.—Under the present rule, when such costs are incidental to the acquisition, the State agency must pay them (see § 42,119). However, State agencies are not presently required to pay title curative costs.

17. Broaden the provisions of § 42.209 (Availability of comparable replacement dwellings prior to displacement) to cover businesses.

18. Require State agencies to offer owner-occupants the right to remain in the property for a two-month period after acquisition without payment of rent.

19. Require State agency to establish relocation site office in proximity to project or in area of concentrated displacement to provide advisory services.

20. Establish provisions governing voluntary temporary relocations carried out at the request of the displaced person.

21. Require State agency to reimburse displaced person for interest on loan to pay moving expenses if loan was necessary due to demonstrated inability to pay.

Note.—An advance payment and/or payment directly to moving contractor can be arranged under present regulations.

22. Require State agency to reimburse any indigent displaced person for legal or other fees to prepare moving expense claim or represent claimant.

23. Require State agency to reimburse displaced person for expenses in searching for replacement dwelling if expenses cause hardship.

24. Require as a condition of eligibility for a fixed payment to a business (in lieu of payment for actual moving expenses) that the business must have been in operation for a specified length of time prior to the initiation of negotiations or notice of intent to acquire.

25. Establish a rule that State agency acquisition of a rental income producing property does not qualify the owner for a fixed payment for moving expenses, unless it can be demonstrated that there is no opportunity to reinvest the acquisition payment.

26. For purposes of determining the replacment housing payment for a person who owns only a partial interest in the acquired dwelling, establish his pro rata share of the acquisition payment as the "acquisition cost" of the dwelling. This could result in a larger payment to the person than provided under present policy.

Note.—Present requirement is based on statute.

27. Compute replacement housing payment for 180-day homeowner displaced by code enforcement as described at § 42.205(b) on the basis that "acquisition cost" of dwelling is zero. Under present rule the "acquisition cost" is fair market value of property because person actually retains ownership of such property.

28. Require that replacement housing rental assistance payments be made in regular installments rather than a lump sum.

29. Provide State agencies the option to distribute rental assistance payments in regular installments rather than a lump sum.

30. Provide annual increases in relocation rental assistance payments to reflect inflation.

31. Establish rule that a person shall not be denied a rental assistance payment on the basis that he moved to housing that was not decent, safe, and sanitary.

Note.—Present rule is based on statute.

32. Establish right of person to appeal under Subpart J any State agency failure to comply with any provision of § 42.211 (Relocation Assistance Advisory Services).

33. Establish right of person to appeal under Subpart J any failure of the State agency to comply with any requirement of these regulations.

34. Eliminate appeal procedures under Subpart J in favor of immediate review by court of competent jurisdiction.

35. Require that appeal by owner concerning litigation expenses under § 42.123 be through judicial process, with no recourse to procedures of Subpart J, Appeals.

36. Require that State agency bear expenses of legal counsel or other advisor for indigent person filing appeal under Subpart J.

Other Information

A Finding of Inapplicability with regard to the Environmental Impact of these rules has been prepared in accordance with HUD Handbook 1390.1. A copy of the Finding is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

HUD Handbook 1320.1, Real Property Acquisition, and HUD Handbook 1371.1 REV, Relocation Policies and Procedures, are cancelled, effective on the effective date of these regulations.

To provide additional assistance in administering the policies in these regulations, the Department intends to issue supplementary material in the near future.

For the reasons described above, 24 CFR Part 42 is revised to read as follows:

PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

Subpart A—General

General Policies and Instructions

Sec.
42.1 Purpose.
42.3 Supersedure of regulations.
42.5 Assurances with respect to acquisition and displacement.
42.7 No duplication of payments.
42.9 Information at public hearings.
42.11 Expediting payment to owners and displaced persons.
42.13 Notice of denial of claim.
42.15 HUD monitoring and corrective action by State agency.
42.17 Confidentiality of records.
42.19 Manner of notices.
42.21 Waiver of regulations.
42.23 Waiver of rights by owner.

Definitions

42.40 Applicability of definitions.
42.41 Acquired dwelling.
42.43 Business.
42.45 Comparable replacement dwelling.
42.47 Decent, safe, and sanitary dwelling.
42.49 Displaced person.
42.51 Dwelling.
42.53 Fair market rent.
42.55 Fair market value
42.57 Farm operation.
42.59 Federal agency.
42.61 Federal financial assistance.
42.63 HUD.
42.65 Initiation of negotiations.
42.67 Monthly housing cost.
42.69 Mortgage.
42.71 Nonprofit organization.
42.73 Owner.
42.75 Person.
42.77 Personal property.
42.79 Project.
42.81 Salvage value.
42.83 State.
42.85 State agency.
42.87 Tenant.
42.89 Uniform Act.
42.91 Utility charges.

Subpart B—Real Property Acquisition

42.101 Applicability of acquisition requirements.
42.103 Basic acquisition policies.
42.105 Preliminary acquisition notice.
42.107 Criteria for appraisals.
42.109 Review of appraisals.
42.111 Establishment of just compensation.
42.113 Statement of the basis for the determination of just compensation.
42.115 Acquisition of tenant-owned improvements.

Sec.
42.117 Notice of determination not to acquire.
42.119 Expenses incidental to transfer of title to the State agency.
42.121 Statement of settlement cost.
42.123 Certain litigation expenses.
42.125 Acquisition recordkeeping.
42.127 Effect of these regulations on acquisition.

Subpart C—General Relocation Requirements

42.201 Purpose and applicability.
42.203 Preliminary relocation notice.
42.205 Notice of displacement.
42.207 Notice of right to continue in occupancy.
42.209 Availability of comparable replacement dwellings prior to displacement.
42.211 Relocation assistance advisory services.
42.213 Affirmative action for low-income and minority persons.
42.215 Fair rental charges.
42.217 Ninety-day notice.
42.219 Eviction for cause.
42.221 General requirements—claims for relocation payments.
42.223 Relocation payments not considered as income.
42.225 Relocation recordkeeping.

Subpart D—Moving and Related Expenses—Actual Costs

42.301 Eligibility.
42.303 Actual reasonable moving and related expenses—residential moves.
42.305 Actual reasonable moving and related expenses—nonresidential moves.
42.307 Payment for direct loss of personal property—nonresidential moves.
42.309 Substitute personal property—nonresidential moves.
42.311 Expenses in searching for replacement location—nonresidential moves.
42.313 Ineligible moving and related expenses.

Subpart E—Moving and Related Expenses—Fixed Payment

42.351 Eligibility.
42.353 Fixed payment for moving expenses—residential moves.
42.355 Fixed payment for moving expenses—nonresidential moves.
42.357 Average net earnings of business or farm.

Subpart F—Replacement Housing Payments for 180-days Homeowner-Occupants

42.401 Eligibility.
42.403 Determination of replacement housing payment.
42.405 Differential amount.
42.407 Increased interest costs.
42.409 Incidental expenses.

Subpart G—Replacement Housing Payments for Tenants and Certain Others

42.451 Basic eligibility requirements.
42.453 Replacement housing payment for rental assistance.
42.455 Replacement housing payment for downpayment assistance.
42.457 Additional rules governing replacement housing payments under Subparts F and G.

Subpart H—[Reserved]

Subpart I—Last Resort Replacement Housing

42.601 Applicability.
42.603 Basic rights and rules.
42.605 Methods of providing replacement housing.
42.607 Construction of housing with project funds.
42.609 Compliance with other laws and regulations.

Subpart J—Appeals

42.701 Purpose.
42.703 Basic rights and rules.
42.705 Appeal to State agency.
42.707 HUD review of appeal.
42.709 State agency dismissal of appeal not based on merits.
42.711 Judicial review.

Authority.—Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

General Policies and Instructions

§ 42.1 Purpose.

The purpose of the regulations in this part is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et. seq.), in accordance with the following objectives—

(a) To insure that owners of real property to be acquired for HUD-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal land acquisition; and

(b) To insure that persons displaced as a result of HUD-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

§ 42.3 Supersedure of regulations.

Except as provided at § 42.305(d), these regulations supersede the regulations formerly appearing in this part. However, any acquisition of property or displacement of a person occuring prior to the effective date of these regulations shall continue to be governed by the regulations at 24 CFR Part 42 in effect at the time of the acquisition or displacement.

§ 42.5 Assurances with respect to acquisition and displacement.

HUD will not approve any project which may result in the acquisition of real property, or in the displacement of any person, until the State agency submits satisfactory written assurances that, in accordance with the Uniform Act, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) and HUD implementing regulations at 24 CFR Part 1, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), and Executive Order 11063, it will—

(a) Carry out the policies and procedures of this part in a manner that insures that the acquisition and relocation processes do not result in different or separate treatment to persons on account of race, color, religion, sex, national origin, or source of income;

(b) Assure that, within a reasonable period of time prior to displacement, comparable replacement dwellings (defined at § 42.45) will be available to all displaced families and individuals and that the range of choices offered to such persons will not very on account of their race, color, religion, sex, national origin, or source of income;

(c) Carry out relocation services in a manner that will promote maximum choice in housing, that will promote lessening of racial, ethnic and economic concentrations, and that will facilitate desegregation and racially inclusive patterns of occupancy and use of public and private facilities; and

(d) Inform affected persons of their rights under the policies and procedures set forth under the regulations in this part, including their rights under Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968.

§ 42.7 No duplication of payments.

No persons shall receive any compensation under the regulations in this part that would have substantially the same purpose or effect as compensation which he receives under the State law of eminent domain and which is part of the cost of the project.

§ 42.9 Information at public hearings.

If real property acquisition or displacement for a project is discussed at a public hearing, the State agency shall—

(a) Indicate that just compensate will be offered for real property to be acquired for the project and that related incidental expenses (described at § 42.119) will be paid;

(b) Generally describe available relocation payments and other

relocation assistance, including the conditions of eligibility therefor; and

(c) Make available to affected persons the acquisition information statement (described at § 42.105(c)) and the relocation information statement(s) (described at § 42.205(a)(4)). There is to be no charge for the brochures.

§ 42.11 Expediting payments to owners and displaced persons.

(a) *General.* The State agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support his claim. Payment for a satisfactory claim shall be made within 30 days following receipt of sufficient documentation to support the claim.

(b) *Advance relocation payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the State agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

§ 42.13 Notice of denial of claim.

If the State agency denies the eligibility of a claimant for a payment under § 42.119 or § 42.123, or any relocation payment under this part, or disapproves the full amount claimed or refuses to consider the claim on its merits because of untimely filing or any other ground, the State agency shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures and time limitations for appealing that determination under Subpart J (Appeals).

§ 42.15 HUD monitoring and corrective action by State agency.

(a) *General.* HUD will monitor State agency compliance with the regulations in this part. The State agency shall take whatever corrective action is determined by HUD to be necessary to comply with these regulations. HUD may also apply sanctions in accordance with applicable program regulations.

(b) *No Payment or Underpayment.* Whenever HUD determines that the State agency has failed to provide the full amount of a payment required under these regulations, the State agency shall promptly make the payment as specified by HUD.

(c) *Remedies for substandard replacement housing.* Whenever a displaced person has relocated to substandard housing because required payments, housing referrals, property inspection, or other services were not offered in accordance with the regulations in this part, the State agency shall promptly take whatever steps are appropriate and shall bear whatever reasonable costs are necessary to—

(1) Enable the displaced person to relocate to a comparable replacement dwelling (defined at § 42.45) or a decent, safe, and sanitary dwelling of his choice; or

(2) Ensure the repair or rehabilitation of the replacement dwelling occupied by the displaced person to the extent necessary to correct deficiencies which would not be present if the State agency had met its obligations under the regulations in this part. The State agency is not required to remedy housing deficiencies which it can demonstrate were caused after the displaced person occupied the replacement dwelling.

§ 42.17 Confidentiality of records.

Records maintained by State agencies in accordance with the provisions of this part are confidential and are not to be treated as public information, unless State law provides otherwise. Only authorized staff of the State agency or HUD shall have access to them. However, upon the written request of an affected person, the State agency shall give him or his designated representative the opportunity to inspect and copy during normal business hours all pertinent records and files, except materials which the State agency determines should not be disclosed to the person for reasons of confidentiality.

§ 42.19 Manner of notices.

Each notice which the State agency is required to provide to a property owner or occupant under these regulations shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice shall be written in plain understandable language. Recipients who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 42.21 Waiver of regulations.

(a) *State agency.* Any time limit specified for the filing of a claim or an appeal under the regulations in this part may, on a case-by-case basis, be extended by the State agency. However, the State agency may not waive the one-year purchase and occupancy requirement specified at § 42.401(a)(2).

(b) *HUD.* HUD may waive any requirement of the regulations in this part that is not required by law. Any request for a HUD waiver shall be submitted to the HUD Area Office serving the State agency and shall be justified on a case-by-case basis.

§ 42.23 Waiver of rights by owner.

(a) *General.* Nothing in these regulations shall prevent a fully informed owner of real property from voluntarily waiving any of his rights under the regulations in this part. Waivers must be in conformance with pertinent provisions of this section.

(b) *Waiver of acquisition compensation.* Nothing in these regulations shall prevent a person from donating real property or any of the compensation payable for such real property, if prior to the donation—

(1) The State agency informs the owner in writing as to the amount it has established as just compensation for the real property as described at § 42.111; and

(2) The owner indicates in writing that although he understands that he cannot be required to donate the property or sell it to the State agency at less than the amount determined to be just compensation, he voluntarily agrees to do so.

(c) *Waiver of relocation payments.* An owner-occupant may waive his right to a relocation payment by refusing to file a claim for such payment. If an owner-occupant desires to waive any of his rights to a relocation payment as an agreed-upon condition of the acquisition of the property, the State agency may acquire the real property without offering the relocation payment to the owner-occupant, if—

(1) The State agency informs the owner in writing prior to the sale that the displacement is subject to the Uniform Act and that the owner cannot be required to sell the property to the State agency unless it offers the relocation assistance prescribed by the Uniform Act. The relocation assistance to be waived shall be generally described;

(2) The owner provides the State agency with a written statement, in a format prescribed by HUD, that indicates that he understands that he cannot be required to sell the property without being offered such assistance, but he voluntarily agrees to do so; and

(3) The State agency obtains HUD Area Office approval before proceeding with the acquisition. The HUD approval shall be on a case-by-case basis or in accordance with specified procedures approved for a specified program or

project. Approval on a program or project basis, however, shall be limited to one-year periods, which may be renewed by the Area Manager upon request. A request for HUD approval shall describe the program and contain enough information to enable the HUD Area Office to determine that the owner-occupant's waiver is voluntary. The request shall include the State agency's certification that the property to be acquired is not part of a site which has already been designated or planned for public acquisition that would be carried out in the foreseeable future if the voluntary offer is not made.

Definitions

§ 42.40 Applicability of definitions.

Except where otherwise noted, the definitions appearing in this Subpart A apply to the regulations in this part.

§ 42.41 Acquired dwelling.

The term "acquired dwelling" means the dwelling acquired or deemed to be acquired for the project (defined at § 42.79).

§ 42.43 Business.

The term "business" means any lawful activity, except a nonprofit organization or a farm operation, that is—

(a) Conducted primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Conducted primarily for the sale of services to the public; or

(c) Solely for the purpose of Subpart D of these regulations, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project.

§ 42.45 Comparable replacement dwelling.

The term "comparable replacement dwelling" means a dwelling that meets the criteria of this section. A comparable replacement dwelling shall be—

(a) Decent, safe, and sanitary as described in § 42.47;

(b) Functionally equivalent to and substantially the same as the acquired dwelling with respect to the number of rooms and area of living space (but not excluding new construction nor excluding larger dwellings necessary to comply with the decent, safe, and sanitary criteria of § 42.47);

(c) Demonstrated to be available to all persons regardless of race, color, religion, sex, or national origin in a manner consistent with the requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and available without discrimination based on source of income;

(d) In an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources and in an area not generally less desirable than that of the acquired dwelling with respect to public utilities and public and commercial facilities;

(e) Reasonably accessible to the place of employment of the displaced person or, if unemployed (but employable), reasonably accessible to sources of employment;

(f) Available at a rental or purchase price within the ability-to-pay of the displaced person. A replacement dwelling shall be considered within the ability-to-pay of the displaced person if, after he receives a replacement housing payment and any available housing assistance payments, his new monthly housing cost (defined at § 42.67) for the replacement dwelling does not exceed—

(1) Twenty-five (25) percent of the monthly gross income of all adult members of the household, including supplemental income payments received from public agencies. If the person's monthly income pattern is irregular, the State agency shall base its determination of average gross monthly income on the period of time, actual and/or projected, that most fairly and equitably represents the person's ability-to-pay; or

(2) In the case of a student or other dependent as described at § 42.453(c), his monthly housing cost (defined at § 42.67) for the acquired dwelling; and

(g) Actually available to the displaced person on the private market. However, in the case of a tenant who is displaced from a government owned or subsidized dwelling and who elects to rent (rather than purchase) a replacement dwelling, the comparable replacement dwelling(s) may be similarly government owned or subsidized.

§ 42.47 Decent, safe, and sanitary dwelling.

(a) *General.* The term "decent, safe, and sanitary dwelling" means a dwelling which—

(1) Meets applicable local housing and occupancy codes;

(2) Is structurally sound, clean, weathertight and in good repair;

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services;

(4) Meets the requirements of the HUD lead-based paint regulations (24 CFR Part 35) issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.). If the State agency determines that a replacement housing payment may have to be denied because the replacement dwelling does not meet this provision, the State agency shall notify HUD at least 15 days in advance of the denial. The notification shall indicate the efforts made to obtain compliance with this provision;

(5) In the case of a physically handicapped person, is free of any architectural barriers. To the extent that standards prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1–1961(R 1971), are pertinent, this provision will be considered met if it meets those standards;

(6) Has heating as required by climatic conditions;

(7) Has habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants;

(8) Has (or, if not a housekeeping unit, has access to) a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, properly connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system; and

(9) In the case of a housekeeping dwelling, has (i) a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and a refrigerator, and (ii) adequate living area.

(b) *Section 8 housing.* Any existing replacement dwelling, which is assisted under the section 8 housing assistance payments program (see § 42.61(c)) and which is found to meet the section 8 housing quality standards described at § 882.109 of this Title, shall be considered to be a decent, safe, and sanitary dwelling under the regulations in this Part.

§ 42.49 Displaced person.

(a) *General.* The term "displaced person" means any person (defined at § 42.75) who moves from the real property or moves his personal property from the real property—

(1) As a result of the State agency's acquisition of such real property in whole or in part for the project (defined at § 42.79); or

(2) As a result of the written order from the acquiring State agency to vacate such real property for the project; or

(3) As a result of the State agency's acquisition of, or written order to vacate, other real property on which he conducts a business, farm operation, or nonprofit organization, for the project. However, eligibility as a displaced person under this paragraph (a)(3) applies only for purposes of obtaining relocation assistance advisory services (described at § 42.211) and moving expenses under Subpart D or E.

(b) *Displacement for code enforcement, demolition, or rehabilitation under certain programs.* If a person moves as a direct result of code enforcement, demolition, or rehabilitation under the urban renewal, neighborhood development, code enforcement, model cities, demolition or interim assistance programs (see paragraphs (j), (k), (o), (r), and (s) of § 42.61), he is deemed to have been displaced as a result of the State agency's acquisition and to be a displaced person under these regulations.

(1) In the case of a displacement as a result of code enforcement or demolition, the State agency must determine that the code enforcement or demolition is in accordance with the approved plan for the project and cannot reasonably be undertaken without the vacating of the real property (other than for a temporary period in accordance with § 42.49(d)(7) or § 42.207(a)(3)). As soon as feasible, the State agency, shall issue a written notice to vacate to each person occupying the real property.

(2) In the case of rehabilitation, the State agency shall (1) enter into a written agreement with the owner of the real property under which the rehabilitation activities will be undertaken in accordance with HUD policies and requirements and the approved plan for the project, (2) determine that such activities cannot be undertaken without the vacating of the real property (other than for a temporary period in accordance with § 42.49(d)(5) or § 42.207(a)(3)), and (3) issue a written notice to vacate to each person occupying the real property.

(c) *Notice of displacement.* If a person moves or moves his personal property on or after the effective date of a notice of displacement issued to him as described at § 42.205 (a) or (b), he is considered to have been displaced as a result of the State agency's acquisition and to be a displaced person under these regulations.

(d) *Persons not displaced.* This paragraph contains a nonexclusive listing of persons not displaced. A person is not considered to have been displaced as a result of acquisition or an order to vacate the real property for the project and is therefore not a displaced person if—

(1) He moves before the effective date of the notice of displacement issued as described at § 42.205 (a) or (b); or

(2) He initially enters into occupancy of the property after the date of its acquisition for the project, and, prior to occupancy, he is notified in writing that he will not be eligible for relocation payments or other assistance under the Uniform Act or HUD regulations; or

(3) He is a tenant occupying a dwelling and has been properly issued a notice of right to continue in occupancy (described at § 42.207); or

(4) He begins his move after receiving a notice of the determination not to acquire the property (described at § 42.117), unless he has been issued a notice of displacement (described at § 42.205) which has not been cancelled; or

(5) He is an owner-occupant who voluntarily agrees to move for a temporary period in order to carry out the rehabilitation of the real property, and the State agency does not acquire the property or require the owner to move from the property; or

(6) He retains a life estate interest in the real property giving him the right to continue occupancy for the remainder of his life; or

(7) His relocation is required in order to permit fumigation or other code enforcement work and is limited to a temporary period not to exceed five calendar days.

§ 42.51 Dwelling.

The term "dwelling" means the place of permanent or customary and usual residence of a person, including a single-family house, a single-family unit in a two-family, multi-family or multi-purpose property, a unit of a condominium or cooperative housing project, a nonhousekeeping unit, a mobile home, or any other residential unit.

§ 42.53 Fair market rent.

The term "fair market rent" means the charge being paid for the unsubsidized use of similar or equivalent real property in similar areas.

§ 42.55 Fair market value.

The term "fair market value" means the value recognized under applicable eminent domain law as the appropriate measure of consideration for the taking of the real property.

§ 42.57 Farm operation.

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§ 42.59 Federal agency.

The term "Federal Agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Bank and branches thereof.

§ 42.61 Federal financial assistance.

The term "Federal financial assistance" means any grant, loan, or contribution, except a Federal guarantee or insurance, made by HUD to a State agency, including the following:

(a) A community development block grant under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301);

(b) A loan or annual contribution made in connection with a low-income public housing project under the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.);

(c) Assistance payments under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f et seq.);

(d) A loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(e) Assistance payments under section 235 or interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z-1);

(f) Interest reduction payments under section 221(d)(3) (BMIR) of the National Housing Act (12 U.S.C. 1715-1);

(g) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(h) A grant under section 713(a) or loan under section 714(a) of Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4514 and 4515) to assist in financing a new community development program;

(i) A loan or grant to assist an eductional institution in construction of housing or other educational facilities under Title I of the Housing Act of 1950 (12 U.S.C. 1749);

(j) A grant or loan for an urban renewal project or neighborhood development program under Title I of the Housing Act of 1949 (42 U.S.C. 1450);

(k) A grant for concentrated code enforcement and public improvements under section 117 of the Housing Act of 1949 (42 U.S.C. 1468);

(l) A water and sewer facilities grant under Title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101);

(m) A grant for open-space use or for a historic preservation or urban beautification project under Title VII of the Housing Act of 1961 (42 U.S.C. 1500);

(n) A grant for a neighborhood facilities program under Title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101);

(o) A grant for the purpose of carrying out a comprehensive city demonstration program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301);

(p) A public facility loan under Title II of the Housing Amendments of 1955 (42 U.S.C. 1491);

(q) A grant for advance acquisition of land under Title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101);

(r) A grant for the demolition of unsafe structures under Section 116 of the Housing Act of 1949 (42 U.S.C. 1467); and

(s) A grant for interim assistance to slums or blighted areas under Section 118 of the Housing and Urban Development Act of 1949 (42 U.S.C. 1468(a)).

§ 42.63 HUD.

The term "HUD" means the Department of Housing and Urban Development and more particularly, the Secretary of Housing and Urban Development or an officer or employee duly authorized to perform the functions of the Secretary.

§ 42.65 Initiation of negotiations.

(a) *General.* Except as provided in paragraphs (b), (c) and (d) of this section, the term "initiation of negotiation" means the initial written offer by the State agency to the owner to purchase real property for the project for the amount determined to be just compensation, or the date of HUD recognition of the project (see § 42.79(b)), whichever is later.

(b) *Low-income public housing program.* Unless a different date is specified in applicable program regulations at 24 CFR Part 841, the term "initiation of negotiations" means:

(1) For new construction or acquisition under the turnkey method or acquisition of a HUD-owned property, the date of HUD execution of the applicable annual contributions contract, or the date of tentative site approval, if that is later; and

(2) For all other public housing, as described in paragraph (a) of this section.

(c) *Rehabilitation.* Whenever a rehabilitation activity is subject to these regulations as described at § 42.49(b) and there is no State agency acquisition, the execution of the written agreement between the State agency and the owner of the property under which the rehabilitation will be undertaken is deemed to be the "initiation of negotiations."

(d) *Code enforcement or demolition.* Whenever a code enforcement or demolition activity is subject to these regulations as described at § 42.49(b) and there is no State agency acquisition, the State agency's notice to vacate the real property is deemed to be the "initiation of negotiations."

§ 42.67 Monthly housing cost.

(a) *General.* The term "monthly housing cost" for a dwelling that is rented means the average monthly cost for rent and utility charges (defined at § 42.91). The term "monthly housing cost" for a replacement dwelling purchased by a displaced person means the average monthly cost for all mortgage payments, real property taxes, and reasonable utility charges.

(b) *Computation of monthly housing cost for replacement dwelling.* A person's monthly housing cost for a replacement dwelling shall be a projected amount that includes one-twelfth of the estimated reasonable annual cost for utility charges.

§ 42.69 Mortgage.

The term "mortgage" means a lien commonly given to secure an advance on, or the unpaid purchase price of, real property under the laws of the State in which the real property is located, together with any credit instrument(s) secured thereby.

§ 42.71 Nonprofit organization.

The term "nonprofit organization" means a corporation, partnership, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal or State law.

§ 42.73 Owner.

The term "owner" means any person who hold any of the following interests in real property to be acquired for the project—

(a) Fee title, a life estate, a 99-year lease, or a lease, including options for extensions, with at least 50 years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) a contract to purchase any of the interests or estates described in paragraphs (a) or (b) of this section; or

(d) Any interest which in the judgment of the State agency or HUD warrants consideration as ownership.

§ 42.75 Person.

The term "person" means any individual, family partnership, corporation, or association. For purposes of Subparts E, F, G, H, and I, two or more individuals, whether or not they are members of the same family, who live together in a single family dwelling and are displaced from such dwelling, shall be regarded as one person, unless the State agency determines that separate tenancies exist.

§ 42.77 Personal property.

The term "personal property" means tangible property located on the real property that is not compensated for (other than for moving expenses) in the real property acquisition.

§ 42.79 Project.

(a) *General.* The term "project" means any undertaking which receives Federal financial assistance from HUD as defined at § 42.61.

(b) *Federal recognition.* To be subject to the regulations in this part, the real property acquisition or displacement must take place after the HUD-assisted undertaking is officially recognized as a project. Except as provided in paragraphs (c) through (f), HUD recognition of the project occurs on the earlier of (1) the date of the execution of the applicable contract for Federal financial assistance, or (2) the date of HUD approval of a budget for project execution activities, if the pertinent contract for Federal financial assistance is later executed.

(c) *Community development block grant program.* Any acquisition of real property by a State agency and any displacement resulting from the acquisition of real property by a State agency shall be considered to be for an activity assisted under the community development block grant program (see § 42.61(a)) and to be subject to the regulations in this part if the acquisition or displacement occurs on or after the date of the submission of the application requesting Federal financial assistance

which is granted for an activity in connection with which the acquisition has been or will be undertaken.

(d) *Low-income public housing program.* The date of HUD recognition of a low-income public housing project (see § 42.61(b)) is the date of the annual contributions contract or the date of tentative site approval by HUD, whichever is later, unless a different date is specified in applicable program regulations at 24 CFR Part 841.

(e) *Section 8 housing assistance payments program.* The date of HUD recognition of a project assisted under the Section 8 housing assistance payments program (see § 42.61(c)) is the date HUD notifies the State agency that its final proposal (or only proposal, if pertinent) is approved.

(f) *Model cities program.* (1) Displacement resulting from acquisition in connection with a model cities program (see § 42.61(o)) shall be considered displacement for the project, if it occurs on or after—

(i) The date of the applicable contract for Federal financial assistance for the project; or

(ii) The date approved by HUD for a specific undertaking upon the request of the State agency, if the displacement occurs prior to the approval of the pertinent contract for Federal financial assistance, and such contract for Federal financial assistance is later executed and the comprehensive city demonstration program thereafter identifies the undertaking as one being carried out in connection with such program.

(2) In any case in which a comprehensive city demonstration program is amended to incorporate a displacement causing activity which was carried out prior to the date of such amendment and to recognize the eligibility of persons displaced by reason of any such activity, the displacement shall be considered displacement for the project and the date of displacement for such person shall be considered to be the date on which the comprehensive city demonstration program was amended to include the displacement causing activity.

§ 42.81 Salvage value.

The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

§ 42.83 State.

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the trust territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.

§ 42.85 State agency.

The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or of two or more States, or of two or more political subdivisions of a State or States.

§ 42.87 Tenant.

The term "tenant" means a person who rents or is temporarily in possession of an interest in real property.

§ 42.89 Uniform Act.

The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et. seq.; Pub. L. 91-646).

§ 42.91 Utility charges.

The term "utility charges" means the cost for heat, hot water, lighting, water and sewer, and trash removal.

Supart B—Real Property Acquisition

§ 42.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this Subpart B apply to any State agency acquisiton of real property for a project that occurs on or after the effective date of these regulations, except—

(1) The acquisition of real property which results from a voluntary proposal submitted by the owner in response to a public invitation or solication for offers (The public invitation or solicitation shall indicate that the sale must be on a voluntary basis and that if a mutually satisfactory agreement cannot be reached, the State agency will not acquire the property); and

(2) The acquisition of real property from a State, a State agency, or a Federal agency.

However, the displacement of any person as a result of an acquisition identified in paragraph (a)(1) or (a)(2) of this section is governed by the relocation requirements of the regulations in this part.

(b) *Less-than-fee permanent interests in real property.* The provisions of this subpart apply to acquisitions of a life estate, acquisitions by leasing where the lease term, including option(s) for extension, is fifty years or more, and to any other acquisition for a project of a less-than-fee permanent interest in real property, such as an easement.

(c) *Application of State law.* In acquiring real property for a project, the State agency shall comply with the provisions of §§ 42.103, 42.107, 42.109, 42.111, 42.113, and 42.115 to the extent permitted by State law.

§ 42.103 Basic acquisition policies.

(a) *Expeditious acquisition.* If the State agency determines to acquire real property, it shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Appraisal and invitation to owner.* Before the initiation of negotiations, the State agency shall have the real property appraised and shall assure that the owner or his designated representative is contacted in advance of the appraisal(s) and given an opportunity to accompany each appraiser during the appraiser's inspection of the property. A minimum of one appraisal is required (see also review appraisal requirement at § 42.109).

(c) *Determination and offer of just compensation.* Before the initiation of negotiations, the State agency shall establish an amount which it believes is just compensation for the real property as described at § 42.111. Promptly thereafter, it shall make a written offer to the owner to acquire the property for that amount. If feasible, the written purchase offer shall be given within 90 days after issuance of the preliminary acquisition notice (described at § 42.105). If any real property improvement will have to be removed or will be adversely affected by the completed project, the State agency shall offer to acquire at least the same interest in the improvement as it acquires in the real property on which the improvement is located (see also § 42.115, Acquisition of tenant-owned improvements).

(d) *Basic negotiation procedures.* The State agency shall make reasonable efforts to meet with the owner or his representative and (1) discuss its offer to purchase his property including the basis for the determination of just compensation (see § 42.113) and (2) explain its acquisition policies and procedures including its payment of incidental expenses in accordance with § 42.119. The owner shall be given

reasonable opportunity to present material which he believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase, and the State agency shall consider the owner's presentation.

(e) *Updating determination of just compensation.* If the evidence presented by an owner or a material change in the character or condition of the property indicates the need for new appraisal evidence, or if a significant delay has occurred since the time of the appraisal(s) of the property, the State agency shall have the appraisal(s) updated or obtain new appraisal(s). If the latest appraisal evidence indicates that an increase in the purchase offer is warranted, the State agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(f) *Coercive action.* The State agency shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action, in order to compel or induce an agreement on the price to be paid for the property.

(g) *Payment before taking possession.* Before requiring an owner to surrender possession of his real property, the State agency shall—

(1) Pay the agreed purchase price to the owner; or

(2) Deposit with the court in the condemnation proceeding, for the benefit of the owner, an amount not less than the State agency's determination of just compensation for the property or the court award of compensation for the property.

(h) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the State agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. For purposes of this Subpart, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of his property and which has little or no utility or value to him.

(i) *Inverse condemnation.* If the State agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

§ 42.105 Preliminary acquisition notice.

As soon as feasible in the acquisition process, but not later than the time at which the owner is invited to accompany the appraiser on the appraiser's inspection of the real property, the State agency shall issue a preliminary acquisition notice to the owner. The notice shall—

(a) Inform the owner of the State agency's interest in acquiring his real property;

(b) Explain that such preliminary acquisition notice is not a notice to vacate and that it does not establish eligibility for relocation payments or other relocation assistance under these regulations; and

(c) Include a copy of either (1) the HUD information brochure, "When a Public Agency Acquires Your Property," or (2) a statement which contains substantially the same information, modified as necessary to conform to the requirements of State law.

§ 42.107 Criteria for appraisals.

(a) *Qualifications of appraisers.* The State agency shall establish criteria for determining the minimum qualifications of appraisers. Appraisal qualifications shall be consistent with the level of difficulty of the appraisal assignment. The State agency shall obtain a signed statement by each appraiser setting forth his appraisal qualifications, and it shall review the experience and education and other qualifications of appraisers and identify and employ only qualified appraisers to perform the appraisals.

(b) *Appraisal standards.* The State agency's appraisals of fair market value shall be based upon nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State factors relating to race, color, religion, sex or national origin, or to racial, religious and ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

(c) *Documentation.* Appraisal reports must contain sufficient documentation, including supporting valuation data and the appraiser's analyses of that data, to demonstrate the correctness of the appraiser's opinion(s) of value.

(d) *Conflict of interest.* No appraiser shall have any interest, direct or indirect, in the real property which he appraises for the State agency that would in any way conflict with his performance of the appraisal. No appraiser shall act as a negotiator for the State agency or the owner in the acquisition of real property which he has appraised in connection with the project, except that a review appraiser on the staff of the State agency is not precluded from acting as a negotiator for the State agency. Compensation for an appraisal shall not be based on the amount of the valuation.

§ 42.109 Review of appraisals.

(a) *Evaluation of appraisals.* If the appraised fair market value of the real property to be acquired exceeds $2,000, the appraisal(s) of the property shall be reviewed by a qualified staff appraiser or independent fee appraiser. The reviewer shall determine the adequacy of the appraiser's supporting data and documentation, the soundness of the appraiser's reasoning and whether the appraisal conforms with recognized appraisal practices. In particular, the reviewer shall determine the correctness of the appraiser's opinion of the fair market value of the property. To the extent appropriate, the reviewer shall require the appraiser to make necessary corrections in his appraisal report. After any necessary corrections are made, the reviewer shall determine the acceptability of the appraisal report.

(b) *Review appraiser's report.* If the review appraiser finds the appraisal report(s) to be acceptable, he shall set forth in a written report his recommendation as to the fair market value of the property. The reviewer's report shall identify the appraisal report(s) reviewed and explain the basis for his recommendation.

§ 42.111 Establishment of just compensation.

(a) *General.* Except where HUD program regulations specify that HUD shall determine just compensation, the State agency shall establish the amount of just compensation to be offered to the owner for the real property. Such amount shall not be less than—

(1) The State agency's review appraiser's recommendations as to the fair market value of the property; or

(2) The fair market value estimate set forth in the agency's approved appraisal, if the property is valued at $2,000 or less and the appraisal is not reviewed by a qualified review appraiser.

(b) *Just compensation for tenant-owned improvements.* If any real property improvement has been identified as being the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term, the State agency

shall determine as just compensation for such improvement the greatest of—

(1) The amount which the improvement contributes to the fair market value of the real property (this may be defined as the amount by which the fair market value of the real property with the improvement exceeds the fair market value of the real property without the improvement); or

(2) The depreciated replacement cost of the improvement installed. Depreciation from all sources, including physical deterioration, functional obsolescence, and economic obsolescence, shall be deducted; or

(3) The salvage value of the improvement as defined at § 42.81.

(c) *Influence of projects on just compensation.* To the extent permitted by State law:

(1) In determining just compensation for real property to be acquired, the State agency shall disregard any decrease or increase in the fair market value of the real property, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project other than that due to physical deterioration within the reasonable control of the owner; and

(2) In the case of a partial acquisition, just compensation for the part acquired shall be the amount by which the fair market value of the entire property of the owner, disregarding the increase or decrease in value caused by the project, exceeds the fair market value of the remainder, taking into account the increase or decrease caused by the project.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal off-site, the amount determined to be just compensation for the interest in real property to be acquired from him shall be not less than the amount determined by subtracting the salvage value of the improvements he retains for off-site removal from the amount determined to be just compensation for his entire interest in the real property.

(e) *Payments in excess of just compensation.* Unless prohibited by State law or HUD program regulations, the State agency may pay an owner, as compensation for his real property, an amount in excess of the fair market value of such real property. However, any such determination shall be on a case-by-case basis and a justification shall be included in the applicable case file. Unjustified overpayments may be determined to be ineligible project costs and/or cause for HUD to impose sanctions under applicable program regulations.

§ 42.113 Statement of the basis for the determination of just compensation.

At the time of the initiation of negotiations to acquire the real property, the State agency shall furnish the owner, along with the initial written purchase offer, a written statement of the basis for the determination of just compensation. To the extent permitted by State law, the statement shall include the following—

(a) An accurate description and location identification of the real property and the interest in the real property to be acquired.

(b) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. To the extent known, the owner of each item of the inventory which is not owned by the owner of the land shall be identified.

(c) A recital of the amount of the offer and a declaration that such amount—

(1) Is the full amount believed by the State agency to be just compensation for the property and is not less than the fair market value of the property as determined on the basis of the appraisal(s);

(2) Disregards any increase or decrease in the fair market value of the property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner; and

(3) Does not reflect any relocation paymentss or other relacation assistance which the owner is entitled to receive.

(d) The recognized definition of the term "fair market value" or equivalent term used in the State in which the real property is located.

(e) A brief explanation of the principal appraisal techniques used in appraising the real property (e.g., market data approach, capitalization of net income approach, and/or replacement cost approach).

(f) In the case of a tenant-owned improvement, the amount determined to be just compensation for the improvement and the basis for such determination as set forth in § 42.111(b) (just compensation for tenant-owned improvements).

(g) If only a portion of a property is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition between—

(1) An amount representing just compensation for the real property to be acquired (the amount considered to be the fair market value of the portion to be acquired as part of the whole property); and

(2) An amount representing any damages and benefits to the remaining portion of the property. A brief description of such damages and benefits shall also be included.

§ 42.115 Acquisition of tenant-owned improvements.

(a) *Improvements considered to be real property.* If any building, structure, fixture, or other improvement would be considered to be real property if it was owned by the owner of the real property on which it is located, it shall be considered to be a real property improvement for purposes of this subpart.

(b) *Offer to acquire.* If any real property improvement has been identified as being the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term, the State agency shall furnish the tenant a written offer to acquire such improvement for the amount determined to be just compensation for the improvement as described at § 42.111(b) and a written statement of the basis for its determination as described at § 42.113.

(c) *Special conditions.* No payment shall be made to a tenant for his real property improvements unless—

(1) The tenant, in consideration for the payment, assigns, transfers, and releases to the State agency all his right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(d) *Right to alternative compensation.* A tenant has the right to reject payment under this section and obtain payment for his real property interests in accordance with other applicable law.

§ 42.117 Notice of determination not to acquire.

If the State agency has issued a preliminary acquisition notice or a firm offer to acquire, and later determines not to acquire the real property, it shall so notify the owner and any person who is occupying the property or has received a preliminary relocation notice (described at § 42.203). The notice shall

be served in writing within 10 days after the determination not to acquire and shall appropriately notify those who will not be eligible for relocation assistance. However, if a notice of displacement (described at § 42.205) has already been issued, it may not be cancelled, unless the person has not yet moved and the State agency agrees to reimburse him for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement.

§ 42.119 Expenses incidental to transfer of title to the State agency.

(a) *Eligible costs.* The State agency shall reimburse the owner for all reasonable expenses he necessarily incurred for—

(1) Recording fees, transfer taxes, documentary stamps, title certificates and other evidence of title, boundary surveys and legal descriptions of the real property, and similar expenses incidential to conveying the real property to the State agency. However, the State agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes and other charges for public services such as water, sewage and trash collection, which are allocable to the period subsequent to the date the State agency obtains title to, or effective possession of the property, whichever is earlier.

(b) *Method of payment.* Whenever possible, the State agency shall pay for costs eligible for reimbursement under this section directly and minimize the need for an owner to pay any such costs from his own finances and then claim reimbursement from the State agency. If the real property is acquired by direct purchase, reimbursement of documented settlement costs shall be made at settlement. If the property is acquired by condemnation, such reimbursement shall be made as soon as possible after the deposit of funds to satisfy the court award.

(c) *Claims after acquisition.* A claim by the owner for reimbursement of settlement costs shall be submitted to the State agency within 6 months after the acquisition of the property or the court award in a condemnation proceeding. However, the State agency may extend this time period.

(d) *Appeals.* An owner who believes that he has been denied the full amount of a payment to which he is entitled under paragraph (a) of this section may appeal that denial under Subpart J (Appeals) of the regulations in this part.

§ 42.121 Statement of settlement cost.

A statement of settlement cost shall be prepared and furnished to the owner at the settlement of the acquistion, or as soon as feasible after the award of the judgment in a condemnation proceeding. The statement shall include an identification of all known incidental costs for which the owner has been reimbursed or may be entitled to reimbursement under § 42.119 (Expenses incidental to transfer of title). The statement shall be dated and certified as true and correct by the closing attorney or other person handling the transaction.

§ 42.123 Certain litigation expenses.

(a) *General.* The State agency shall reimburse the owner of the real property for the owner's reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually and necessarily incurred because of a condemnation proceeding, if—

(1) The final judgment of the court having jurisdiction over the condemnation proceeding is that the State agency cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the State agency other than under an agreed-upon settlement of the proposed acquisition of the property by direct purchase; or

(3) A court of competent jurisdiction renders a judgment in favor of the owner as plaintiff in an inverse condemnation proceeding or the State agency effects a settlement of such proceeding.

(b) *Time for filing claim.* A claim for payment under paragraph (a) of this section shall be submitted within 6 months after final judgment in the condemnation proceeding, or the abandonment of the proceeding by the State agency, whichever is applicable. However, the State agency may extend this time period.

(c) *Documentation of claim.* A claim for payment under paragraph (a) of this section shall be supported by such reasonable documentation as may be required by the State agency.

(d) *Appeals.* Any owner who believes that he has been denied the full amount of a payment to which he is entitled under paragraph (a) of this section may appeal the denial under Subpart J (Appeals) of the regulations in this part.

§ 42.125 Acquisition recordkeeping.

The State agency shall maintain a separate acquisition file for each real property acquisition for at least three years after completion of the project, final settlement of the acquisition, or the disposition of the applicable relocation records, whichever is latest. All data shall be readily accessible and available to HUD on request. The State agency shall also maintain a summary list identifying all planned and completed acquisitions for the project. Except as otherwise specified, each separate acquisition file shall include—

(a) A record form indicating the applicable HUD project number, date of project approval, the State agency's parcel number for the real property and the name of each owner and tenant;

(b) A copy of the preliminary acquisition notice (copy of standard brochure not required), and evidence, including date, of receipt by owner;

(c) Evidence that owner was invited to accompany each appraiser on his inspection of the real property;

(d) A copy of any appraisal report, including any review appraiser's report on which the determination of just compensation, was based. However, such appraisal report(s) may be filed separately with an appropriate reference in the acquisition file;

(e) A copy of document establishing just compensation or reference to location of the document;

(f) A copy of the written purchase offer, including all basic terms and conditions, and citation of date of delivery to owner;

(g) A copy of the statement of the basis for the determination of just compensation and citation of date of delivery to owner;

(h) A copy of any purchase agreement, deed, declaration of taking, waiver, or related document involving the conveyance;

(i) A copy of the statement of settlement cost;

(j) Evidence that owner received purchase price; and

(k) A copy of any appeal concerning a payment under § 42.119 or § 42.123, together with a copy of all pertinent determinations and other relevant documentation.

§ 42.127 Effect of these regulations on acquisition.

(a) The provisions of §§ 42.103, 42.107, 42.109, 42.111, 42.113, and 42.115 create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(b) Nothing in these regulations shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or of damage not in existence immediately prior to January 2, 1971.

Subpart C—General Relocation Requirements

§ 42.201 Purpose and applicability.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part. The relocation requirements of the regulations in this part apply to the relocation of any displaced person as defined at § 42.49.

§ 42.203 Preliminary relocation notice.

Under certain HUD-assisted programs, the notice of displacement (described at § 42.205) or notice of right to continue in occupancy (described at § 42.207) is not issued within thirty days after the initiation of negotiations. In these programs (see § 42.205(c)), the State agency shall, within 30 days after the initiation of negotiations, issue a preliminary relocation notice to each occupant of the property. The notice shall—

(a) Identify the project;

(b) Insofar as possible, inform the person whether or not he will be required to relocate permanently as a result of the project;

(c) Explain that the preliminary relocation notice is not a notice to vacate the real property and that the person will not be entitled to relocation payments or other relocation assistance under the Uniform Act, unless he is occupying the property on the effective date of a notice of displacement that has been issued to him;

(d) Indicate that if the person remains in the property until (*specify eligibility action*), he may become eligible for relocation payments and other assistance or be issued a notice of right to continue in occupancy, whichever the case may be. The provisions of the notice or notices to which reference is made shall be generally described; and

(e) Generally describe the relocation payments and other assistance for which the person may become eligible, including the maximum allowable dollar amounts and basic conditions of eligibility for the payments.

§ 42.205 Notice of displacement

(a) *General.* The State agency shall issue a written notice of displacement to each person to be displaced (see definition of displaced person at § 42.49). Except as provided in paragraph (c) of this section, the notice shall be issued not later than thirty (30) days after the initiation of negotiations and shall be effective on the date of the initiation of negotiations. The notice shall—

(1) Identify the project and inform the person of his eligibility for relocation payments and other assistance and the effective date of that eligibility;

(2) Generally describe the relocation payment(s) for which he may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

(3) Inform him that he will be given other help (e.g., housing referrals) to facilitate the move;

(4) Include a copy of either (i) the applicable HUD information brochure(s), "Relocation Assistance to Displaced Homeowners," "Relocation Assistance to Displaced Tenants," or "Relocation Assistance to Displaced Businesses, Farms, and Nonprofit Organizations," or (ii) statement(s) containing substantially the same information, modified as necessary to conform to the requirements of State law.

(b) *Automatic notice of displacement.* A person shall be deemed to have been issued a notice of displacement and to be eligible for relocation payments and other assistance under these regulations, if—

(1) He is not issued a written notice of displacement under this section or a notice of right to continue in occupancy (described at § 42.207) within thirty (30) days after the initiation of negotiations, or, if applicable, within the period described at paragraph (c) of this section. The automatic notice of displacement shall be effective on the initiation of negotiations (or the date described at paragraph (c) of this section). As soon as possible after discovery of its error, the State agency shall issue the person a written notice of displacement. If, after receiving the written notice of displacement, the tenant indicates a preference to continue in occupancy, the State agency may enter into a voluntary agreement under which the tenant waives his relocation rights as a condition of receiving a notice of right to continue in occupancy. Upon execution of such agreement, the automatic notice of displacement is cancelled; or

(2) He is a tenant who has been issued a notice of right to continue in occupancy (described at § 42.207), but the State agency fails to meet one or more of its commitments to him under that notice. The tenant is entitled to the full amount of the relocation payments and other assistance provided under these regulations (not a prorated amount), and the State agency shall immediately acknowledge this right by issuing to him a written notice of displacement, effective on the date of the violation. If the State agency does not issue the written notice of displacement, the person must file an appeal under Subpart J (Appeals) within six months after (i) his permanent move from the property, or (ii) the end of the 4-year occupancy period, whichever is earlier.

(c) *Modification of eligibility date.* For certain HUD-assisted projects, applicable program regulations may establish a different time period for the issuance of a notice of displacement or notice of right to continue in occupancy. In the case of a Section 8 substantial rehabilitation project in a neighborhood strategies area (see 24 CFR Part 881, Subpart C), the notice of displacement or notice of right to continue in occupancy shall be issued within 60 days after HUD notification of the approval of the proposal for the project. The notice of displacement under paragraph (a) or (b)(1) of this section shall be effective on the date of the HUD notification of the approval of the proposal for the project.

§ 42.207 Notice of right to continue in occupancy.

(a) *General.* If a tenant of a dwelling (not an owner-occupant) is permitted to continue in occupancy of a dwelling in accordance with the provisions of this section, he is not considered a displaced person under the Uniform Act or the regulations in this part. Within thirty (30) days after the initiation of negotiations (or by the date described in § 42.205(c)), the State agency shall issue a written notice to each residential tenant who will not be displaced for the project. The notice shall indicate the nature of the project and that, if the property is acquired and/or rehabilitation is initiated, as the case may be, he will be permitted to continue in occupancy under the following conditions—

(1) The tenant shall have the right to lease and occupy a decent, safe, and sanitary dwelling which is either his current dwelling or a comparable replacement dwelling located within the same building or nearby building

located on the same site, for a continuous period of at least four years. The four-year period shall begin on the date of acquisition, or the date the dwelling is placed in decent, safe, and sanitary condition, or the termination date of any required temporary relocation, whichever is latest. The conditions of occupancy imposed in the lease shall be reasonable and, in the case of a low-income public housing project (see § 42.61(b)), shall conform to the requirements of 24 CFR Part 866.

(2) The tenant's monthly housing cost (defined at § 42.67) for the four-year period shall not exceed twenty-five percent of his gross income, or the fair market rent for the dwelling, whichever is lesser.

(3) The tenant shall not be required to move from his dwelling, other than for cause (see § 42.219), unless the move is necessary to carry out the project. If any such move is required, (i) not more than one temporary relocation by the tenant shall be required, (ii) the temporary relocation, if any, shall not exceed twelve months in duration, (iii) a decent, safe, and sanitary dwelling in a location not generally less desirable than that of the acquired dwelling with respect to public and commercial facilities and the occupant's place of employment shall be available to the tenant for the period of any temporary relocation, and (iv) the State agency shall pay actual reasonable out-of-pocket expenses, including all moving costs and any increase in monthly housing cost (defined at § 42.67), incurred by the tenant in connection with the move(s) and/or temporary relocation; and

(4) The provisions of § 42.205(b)(2) shall be explained along with a brief description of the relocation assistance to which the tenant would be entitled, if one or more of the commitments to him under this notice is not met.

(b) *Special conditions.* (1) The State agency shall take such steps as may be necessary to insure that no person who continues in occupancy under the provisions of this section is subjected to an unreasonable change in the character of his immediate environment without being given the opportunity to move and qualify for relocation assistance as a displaced person. Special attention shall be given to the needs of the elderly, handicapped persons, and tenants with special problems.

(2) In determining whether or not temporary relocation is necessary to facilitate the rehabilitation, the State agency must consider any hardships likely to result if the person occupies the property during the rehabilitation.

(c) *Notice prohibited.* The State agency shall not issue a notice of right to continue in occupancy of a dwelling that is to be demolished for the project or altered for the project in such a way that the tenant would be required to vacate the dwelling after the 4-year guarantee period expired.

(d) *Tenant moves prior to notice.* If a tenant moves from the real property before he is issued a notice of right to continue in occupancy (but after the initiation of negotiations), the State agency shall not issue him a notice of right to continue in occupancy, unless it agrees to reimburse the tenant for any expenses incurred to satisfy any binding contractual obligations securing the dwelling to which he moved and all reasonable out-of-pocket expenses for the move to that dwelling and his return move to the acquired dwelling. The tenant shall be informed of this agreement.

(e) *Recordkeeping.* The State agency shall maintain a separate file for each tenant issued a notice in accordance with this section. All data shall be readily available to HUD on request. Each file shall be retained for at least three years after the termination of the four-year guarantee period and shall contain—

(1) A copy of the notice of right to continue in occupancy issued to the tenant;

(2) Documentation of the determination(s) of the rent to be paid by the tenant during the four-year guarantee period;

(3) If a temporary relocation is required, evidence of compliance with paragraph (a)(3) of this section;

(4) An inspection certificate indicating that the dwelling was decent, safe, and sanitary at the beginning of the four-year period and the date that period began; and

(5) A copy of any appeal filed in accordance with Subpart J and all related determinations.

§ 42.209 Availability of comparable replacement dwellings prior to displacement.

(a) *General.* This section applies only to persons to be displaced from a dwelling. The State agency shall not require a person to move from his dwelling, unless he has been given a reasonable choice of opportunities to relocate to a comparable replacement dwelling (defined at § 42.45). If a person must be required to move after he refuses without justification to accept any of the opportunities provided to him to enable him to relocate to a comparable replacement dwelling, the State agency shall include in the case file a full justification for its action. That justification shall describe in full detail the specific opportunities and assistance (see § 42.211) provided to the person prior to his displacement to enable him to relocate to a comparable replacement dwelling.

(b) *Circumstances permitting waiver.* The provisions of paragraph (a) of this section implement Section 205(c)(3) of the Uniform Act. These provisions will not be waived, unless it is necessary for the State agency to require a person to move because of—

(1) A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A Presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Request for waiver.* If the State agency believes that a waiver of the provisions of paragraph (a) of this section is necessary, it shall request HUD Area Office approval for the waiver as soon as possible. The request to HUD shall include—

(1) An explanation of the necessity for the waiver, including a description of the emergency causing the need for the waiver;

(2) An estimate of the duration of any resulting temporary relocation; and

(3) A copy of the notice sent or to be sent in accordance with § 42.209(d)(2)(iv).

(d) *Basic rules when emergency move takes place.* (1) If a person moves from the property on or after the effective date of a notice of displacement that has been issued to him as described at § 42.205(a) or (b), he is eligible for the relocation payments and other assistance prescribed by the regulations in this part. That eligibility is not affected when the immediate cause of the move is an emergency (e.g., a fire).

(2) Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the 18-month period within which he must file any claim for a relocation payment (see § 42.221(b)) and the one-year period within which he must obtain and occupy a replacement dwelling in order to be eligible for a replacement housing payment (see § 42.401(a)(2) and § 42.451(c)) shall begin on the date the person moves from the temporarily-occupied dwelling. The State agency shall—

(i) Assure that a decent, safe, and sanitary dwelling is made available to the person for the period of the temporary relocation;

(ii) Assure that, at the earliest possible time, but in no event later than 12 months after the date of such move, the person is given reasonable opportunities to relocate permanently to a comparable replacement dwelling in accordance with the regulations in this part;

(iii) Pay actual reasonable out-of-pocket expenses, including any moving costs and any increase in monthly housing cost (defined at § 42.67), incurred in connection with the temporary relocation; and

(iv) Promptly furnish a written notice to the person informing him of the requirements of this paragraph (d) and that the relocation payments and assistance to which he is entitled under these regulations will not be affected by any payments and other assistance provided in connection with the temporary relocation. A copy of the notice shall be placed in the relocation case file.

§ 42.211 Relocation assistance advisory services.

(a) *General.* The State agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this section and § 42.213. If the State agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer such services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to—

(1) Personally interview each person to be displaced, determine his relocation needs and preferences, and explain to him the relocation payments and other assistance for which he may be eligible, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings and comparable commercial and farm properties and locations, as the case may be. If any referral is made to a decent, safe, and sanitary dwelling which is not a comparable replacement dwelling or to a comparable replacement dwelling for which the cost may exceed that to be used as the upper limit for establishing a replacement housing payment, as determined under § 42.457(a), the State agency shall inform the person of his right to a comparable replacement dwelling and the criteria for a comparable replacement dwelling and shall indicate the estimated purchase price or rental cost to be used as the basis for establishing the upper limit of the replacement housing payment and the basis of that estimate. The housing must be inspected prior to referral to assure that it meets applicable standards (see §§ 42.45 and 42.47). The State agency shall not make referrals on the basis of listings provided by a broker who has not certified his compliance with applicable antidiscrimination laws;

(3) Assure that comparable replacement dwellings are available to all persons to be displaced as described at § 42.209(a);

(4) Assist any person displaced from his business or farm operation to obtain and become established in a suitable replacement location;

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to persons to be displaced;

(6) Insure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, or source of income;

(7) Assure that during the period between acquisition and displacement, property occupied by a person to be displaced is maintained in a safe and habitable condition; and

(8) Minimize hardships to persons in adjusting to relocation.

(c) *Coordination of relocation activities.* The State agency shall coordinate its relocation activities with project work and other local governmental actions to the extent necessary to enable it to carry out its relocation assistance advisory program, while giving due regard to the relocation needs of other local programs. The State agency shall cooperate with other local displacing agencies to insure that, to the extent possible, persons displaced receive consistent treatment.

§ 42.213 Affirmative action for low income and minority persons.

(a) *Availability of replacement dwellings in non-impacted areas prior to displacement.* The State agency shall not require a minority or low-income person to move from his dwelling, unless he has been given opportunities to relocate to a comparable replacement dwelling that is not located in an area of low-income and/or minority concentration, if such opportunities are available. This requirement is in addition to that contained in § 42.209(a).

(b) *Advisory Services.* In carrying out its relocation activities, the State agency shall provide additional assistance in order to assure that full choice and real opportunities exist for low-income and minority families and individuals to select replacement dwellings from the total housing market, thereby facilitating desegregation and racially and economically inclusive patterns of occupancy. All low-income and minority persons shall be informed through personal interview (see § 42.211(b)(1)) of housing opportunities outside of low-income and minority neighborhoods, and of the full scope of additional assistance available, and shall be encouraged to take advantage of these opportunities. The State agency shall provide, or secure through contract with fair housing or civil rights groups, additional assistance which shall include, but not to be limited to—

(a) All services necessary to familiarize low-income and minority persons with non-impacted neighborhoods including transportation, escort services to brokers or rental offices, and counseling and help to obtain whatever services and sources of assistance may be available both before and after relocation (e.g., schools, transportation, food stamps, medicare, jobs); and

(2) All services necessary to insure that in securing replacement housing persons are not discriminated against by brokers, rental agents, or mortgagees on the basis of race, color, religion, creed, sex or national origin. Discriminatory acts include, but are not limited to, refusal to rent or sell, offering a unit on different terms, racial steering by directing minorities and whites to different neighborhoods, and requiring different minimum standards of income, payments, deposits, or other financial requirements or standards. Services to be provided by the State agency include, but are not limited to: (i) A description in lay language (bilingual if appropriate) of varying types of discrimination and of the displaced person's rights to remedy under Title VII of the Civil Rights Act of

1968; (ii) follow-up testers or auditors if discrimination is suspected, and (iii) assistance in filing for administrative and judicial relief if discrimination is alleged.

§ 42.215 Fair rental charges.

The amount charged a former owner or tenant for the use of the real property between the date of acquisition and the date of displacement for the project shall not exceed the fair rental value for a short-term occupier or the fair market rent, whichever is less. The monthly housing cost (defined at § 42.67) for a dwelling so occupied shall not exceed 25 percent of the person's average monthly gross income.

§ 42.217 Ninety-day notice.

(a) *General.* Unless there is an urgent need for the property (see paragraph (d) of this section), the State agency shall not require any lawful occupant to move from his dwelling or to move his business or farm operation, without at least 90 days' advance written notice of the earliest date by which he may be required to vacate the property. The 90-day notice must include a specific date by which the property must be vacated or include a statement indicating that the occupant will be given a further written notice indicating at least 30 days in advance, the specific date by which be must vacate.

(b) *Timing of notice.* The 90-day notice shall not be given before the notice of displacement is issued. Also, it shall not be given to the lawful occupant of a dwelling, unless he has been given a reasonable choice of opportunities to relocate to a comparable replacement dwelling as prescribed by § 42.209(a). Finally, the 90-day notice shall be timed so that no lawful occupant shall be required to vacate the property before 30 days after the date on which the State agency obtains title to the property or the legal right of possession of the property, whichever is earlier.

(c) *Rehabilitation.* Whenever the displacement results from the rehabilitation of tenant-occupied property owned by a private party as described at § 42.49(b), the State agency shall require the private owner of the real property to give notice to each tenant in accordance with this section.

(d) *Urgent need.* An occupant may be required to vacate the property on less than 90 days' advance notice if the State agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to his health or safety. A copy of the State agency's determination shall be sent to HUD within three days after its issuance.

(e) *Agreement in negotiated purchase contract.* An agreement as to the time for delivering possession of the real property specified in a negotiated purchase contract fulfills the requirement for a 90-day notice to the owner. However, such agreement does not fulfill the requirement for a 90-day notice to a tenant who is not a party to the purchase contract.

(f) *Notice not required.* The provisions of this section do not apply in any case where—

(1) The real property is vacant land; or

(2) The occupant initially occupies the property after acquisition by the State agency and is notified prior to occupancy that he will not be eligible for relocation assistance under the Uniform Act or HUD regulations; or

(3) The occupant voluntarily moves prior to receiving a notice to vacate; or

(4) The required move is for a temporary period in accordance with § 42.49(d)(7) or § 42.207.

§ 42.219 Eviction for cause.

Eviction for cause is permissible only as a last resort and must conform to applicable State and local law. If a person is evicted for cause on or after the effective date of a notice of displacement issued to him as described at § 42.205(a) or (b), he retains his right to the relocation payments and other assistance for which he may be eligible under these regulations. However, the date of the eviction establishes the date of his displacement. A person who has received a notice of right to continue in occupancy (described at § 42.207) and is subsequently required to move for cause is not eligible for relocation payments or other assistance under these regulations.

§ 42.221 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment under Subparts D, E, F, G, or H shall be submitted to the State agency on the appropriate HUD form and supported by such documentation as may reasonably be required by the State agency or HUD to demonstrate expenses incurred, such as bills, certified prices, appraisals or other evidence of such expenses. However, the State agency must assure that the required HUD form is available to the displaced person and must provide whatever assistance is necessary to enable the person to complete the form and file his claim for payment.

(b) *Time for filing.* All claims for a relocation payment shall be filed with the State agency within 18 months after the move is completed, unless this time period is waived by the State agency. However, a person may appeal under Subpart J (Appeals) the refusal of the State agency to waive the 18-month time limit.

(c) *Multiple occupants of one acquired dwelling.* If two or more occupants, whether or not they are members of the same family, lived together in the acquired dwelling but moved to separate replacement dwellings, each such occupant is entitled to his reasonable prorated share, as determined by the State agency, of any payment(s) under Subparts E, F, G, and H, that would apply if such occupants together acquired, or rented, as the case may be, and moved to a comparable replacement dwelling. However, if the State agency determines that two or more separate tenancies exist, the tenants have separate entitlements to payments under these regulations.

(d) *Direct payment of claim.* The State agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to the State agency or any other creditor. The full amount of a relocation payment shall be made payable to the eligible claimant, unless the claimant designates in writing that a specific amount shall be paid to another party.

§ 42.223 Relocation payments not considered as income.

No relocation payment received by a displaced person under the regulations in this part shall be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

§ 42.225 Relocation recordkeeping.

The State agency shall maintain a separate relocation case file for each displaced person for at least three years after the project has been completed or the person has received his final relocation payment, whichever is later. All data shall be readily available to HUD on request. The State agency shall also maintain a management control system that includes regular reports to State agency officials as to the size and composition of the estimated, active, and completed relocation workloads. Each separate relocation case file shall include—

(a) A record form indicating—

(1) Name of person;

(2) Minority group classification;

(3) Address and census tract of dwelling or location from which displacement has or will take place;

(4) In the case of a dwelling, the date of initial occupancy, the age and sex of all members of the household, the monthly gross income of all adult members of the household, and the monthly housing cost at both the acquired and replacement dwellings. In the case of a nonresidential unit, the type of enterprise shall be specified;

(5) Relocation needs of person to be displaced;

(6) Services and assistance provided, including nature and dates, beginning with the initial contact and/or referral;

(7) Referrals made to replacement dwelling or location, including date of referral, address, sale or rental price, and date of availability of property. If referral is rejected, the reason(s) for rejection shall be indicated;

(8) Type and amount of each relocation payment;

(9) Address and census tract of the replacement dwelling or location, and the date of the relocation; and

(10) In the case of a low-income or minority person who was displaced from a dwelling, an indication as to whether or not the replacement and referral dwellings are located in an area of low-income and/or minority concentration;

(b) A copy of any preliminary relocation notice (described at § 42.203), and evidence, including date, of receipt by person to be displaced;

(c) A copy of the notice of displacement (described at § 42.205) and evidence, including date, of receipt by person to be displaced.

(d) A copy of any lease or other occupancy agreement between the State agency and the occupant and a statement identifying the basis for the State agency's determination of the rental;

(e) If relocation has not been completed within 6 months following the acquisition of the property, an explanation of the reasons for the delay and a plan for timely relocation;

(f) A copy of the 90-day notice required under § 42.217 or a statement as to why no such notice was required;

(g) In the case of a dwelling, a record of the inspection, date of inspection, and description of the replacement dwelling;

(h) A copy of each relocation payment claim form and supporting documentation submitted by the displaced person, a copy of each worksheet or other document used to determine eligibility for or the amount of the payment made, a copy of the cancelled check or other evidence of receipt of payment, and a copy of all correspondence relating to the claim;

(i) A copy of any appeal filed by the displaced person under Subpart J (Appeals), a description of the action taken to resolve it, and a copy of all pertinent determinations; and

(j) Any other pertintent information, such as the referral of a discrimination complaint or information detailing the circumstances and resolution of any required temporary relocation.

Subpart D—Moving and Related Expenses—Actual Costs

§ 42.301 Eligibility.

(a) *General.* All displaced persons (defined at § 42.49) are eligible for moving and related expenses as prescribed in this subpart. A displaced person who lives on his business or farm property may be eligible for both a payment as a dwelling occupant and a payment with respect to the business or farm operation.

(b) *Least costly approach.* The amount of payment for an eligible expense under this subpart shall not exceed the least costly method, as determined by the State agency, of accomplishing the objective of the payment without causing undue hardship to the displaced person.

§ 42.303 Actual reasonable moving and related expenses—residential moves.

Subject to the limitations contained in this subpart, a displaced owner-occupant or tenant of a dwelling is entitled to actual reasonable expenses for—

(a) Transportation of the displaced person and personal property from the acquired site to the replacement site. Transportation costs for a distance beyond 50 miles are not eligible, unless the State agency determines that relocation beyond 50 miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;

(d) Storage of the personal property, as the State agency determines to be necessary;

(e) Insurance of the personal property in connection with the move and necessary storage; and

(f) Other moving-related expenses that are not listed as ineligible under § 42.313, as the State agency determines to be reasonable and necessary.

§ 42.305 Actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Subject to the limitations of this subpart, a displaced business, farm operation or nonprofit organization is entitled to payment for actual reasonable expenses for—

(1) Transportation of personal property from the acquired site to the replacement site. Transportation costs for a distance beyond 50 miles are not eligible, unless the State agency determines that relocation beyond 50 miles is justified;

(2) Packing, crating, unpacking, and uncrating the personal property;

(3) Disconnecting, dismantling, removing, reassembling and installing relocated and substitute machinery, equipment, and other personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property;

(4) Storage of the personal property, as the State agency determines to be necessary;

(5) Insurance of personal property in connection with the move and necessary storage;

(6) Any license, permit or certification required by the displaced person, to the extent such cost is (i) necessary to its reestablishment at the replacement location and (ii) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less;

(7) Professional services, including architect's attorney's and engineer's fees, and consultant's charges, necessary for (i) planning the move of the personal property, (ii) moving the personal property, or (iii) installing the relocated personal property at the replacement location;

(8) Relettering signs and printing replacement stationery made obsolete as a result of the move;

(9) Actual direct loss of tangible personal property as described at § 42.307;

(10) Purchase of substitute personal property as described at § 42.309;

(11) Searching for a replacement location as described at § 42.311; and

(12) Other moving-related expenses that are not listed as ineligible under § 42.313, as the State agency determines to be reasonable and necessary.

(b) *Self-move.* If the displaced person self-moves his business, farm operation, or nonprofit organization, the State agency may approve a payment for his moving expenses in an amount not to

exceed the lowest acceptable bid or estimate obtained by the State agency, without submission of documentation of moving expenses actually incurred.

(c) *Notification to State agency and inspection.* To be eligible for a payment under this section, the displaced person shall—

(1) Provide the State agency at least 30 days' advance written notice of the approximate date of the start of the move or disposition of the personal property, which property shall be generally described in the notice. However, the State agency may waive this notice requirement; and

(2) Permit the State agency to make reasonable and timely inspections of the personal property at the displacement and replacement sites.

(d) *Exception for certain projects.* When relocation activities are taking place in connection with a project receiving Federal financial assistance under Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 et seq.) (see § 42.61 (j) and (k)) that has not been financially closed out by HUD, the State agency may, with prior HUD concurrence, make payments to businesses and farm operations in accordance with the provisions of § 42.65 (actual reasonable moving expenses), 40 FR 7607, effective March 31, 1975. A request for HUD concurrence shall be supported by written evidence that the governing body of the State agency and the chief executive of the locality approve the request and that all claims submitted by businesses or farm operations displaced by the project will be computed on the same basis. No funds used for payments to cover costs incurred in accordance with § 42.65(b)(2) of the regulations effective March 31, 1975, will be included in a calculation of funding need in connection with a request for funds to permit financial settlement pursuant to section 103(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

§ 42.307 Payment for direct loss of personal property—nonresidential moves.

(a) *General.* A displaced person is entitled to payment for actual direct loss of an item of tangible personal property incurred as a result of moving or discontinuing his business, farm operation, or nonprofit organization. The payment shall consist of the reasonable costs incurred in attempting to sell the item plus the lesser of—

(1) The fair market value of the item for continued use at the acquired site, less the proceeds from its sale. (When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

(2) The estimated cost of moving the item as determined under § 42.305, but with no allowance for storage. (If the business, farm operation or nonprofit organization is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(b) *Advertising sign.* The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of—

(1) The depreciated reproduction cost of the sign as determined by the State agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(c) *Sales effort.* To be eligible for payment for direct loss of personal property, the claimant must make a good faith effort to sell the personal property, unless the State agency determines that no such effort is necessary.

(d) *Transfer of ownership.* To be eligible for payment for direct loss of personal property, the claimant shall transfer to the State agency ownership of the unsold personal property.

§ 42.309 Substitute personal property—nonresidential moves.

(2) *General.* If an item of personal property, which is used as part of a business, farm operation or nonprofit organization, is not moved but is promptly replaced with a comparable substitute item at the replacement site, the displaced person is entitled to payment of the lesser of—

(1) The cost of the substitute item, including installation cost at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, if any; or

(2) The estimated cost of moving the replaced item, based on the lowest acceptable bid or estimate obtained by the State agency for eligible moving and related expenses (described at § 42.305), but with no allowance for storage.

(b) *Transfer of ownership.* To be eligible for a payment under this section, the claimant shall transfer to the State agency ownership of the personal property that has not been sold or traded in.

§ 42.311 Expenses in searching for replacement location—nonresidential moves.

A displaced business, farm or nonprofit organization is entitled to an amount not to exceed $500, as determined by the State agency, for actual reasonable expenses incurred in searching for a replacement location, including—

(a) Transportation;

(b) Meals and lodging away from home;

(c) Time spend searching, based on reasonable salary or earnings;

(d) Fees paid to a real estate agent or broker to locate a replacement site.

§ 42.313 Ineligible moving and related expenses.

A displaced person is not entitled to payment for—

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this rule does not preclude the computation under § 42.405(e)); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Physical changes at replacement location of business, farm or nonprofit organization, except as provided at § 42.305(d); or

(g) Any additional expense of a business, farm, or nonprofit organization incurred because of operating in a new location; or

(h) Personal injury; or

(i) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the State agency or HUD; or

(j) Expenses for searching for a replacement dwelling.

Subpart E—Moving and Related Expenses—Fixed Payment

§ 42.351 Eligibility.

A displaced person (other than an outdoor advertising display business (see § 42.43(c)) who is eligible for a payment for his actual moving and related expenses under Subpart D of these regulations, is entitled to receive a fixed payment in lieu of a payment for such actual moving and related expenses.

§ 42.353 Fixed payment for moving expenses—residential moves.

The fixed payment for moving and related expenses of a person displaced from a dwelling consists of—

(a) A moving expense allowance not to exceed $300 which shall be determined in accordance with the approved Federal Highway Administration schedule applicable to the displacement (49 CFR 25.153, Appendix A); and

(b) A dislocation allowance of $200.

§ 42.355 Fixed payment for moving expenses—nonresidential moves.

(a) *General.* The fixed payment for moving and related expenses of a displaced business or farm operation that meets the applicable requirements under this section is an amount equal to its average annual net earnings as computed in accordance with § 42.357, but not less than $2,500 nor more than $10,000. A nonprofit organization which meets the applicable requirements under this section is entitled to a payment of $2,500.

(b) *Business.* A business qualifies for payment under this Section if the State agency determines that—

(1) The business cannot be relocated without a substantial loss of its existing patronage. A business is assumed to meet this test, unless the State agency demonstrates that it will not suffer a substantial loss of its existing patronage;

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the State agency, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than $2,000 and average annual net earnings of less than $1,000, during the two taxable years prior to displacement, shall be considered "another establishment"; and

(3) The business had (i) average annual gross receipts of at least $2,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least $1,000 as determined in accordance with § 42.357. However, the State agency may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which—

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business, and

(4) The same person or closely related persons own, control or manage the affairs of the entities.

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the State agency determines that it meets the criteria set forth in paragraph (b)(3) of this section. In the case of a partial acquisition, the fixed payment shall be made only if the State agency determines that—

(1) The part acquired was a farm operation before the acquisition; or

(2) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a $2,500 payment under this Section, if the State agency determines that it—

(1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A non-profit organization is assumed to meet this test, unless the State agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the State agency.

(f) *Loss of good will.* A fixed payment under this section does not cover "loss of good will." Therefore, compensation to a person for "loss of good will" under State or local law or policy shall not be used as a basis for denying payment under this section.

§ 42.357 Average net earnings of business or farm.

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes, during the two taxable years immediately prior to the taxable year in which it was displaced. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the State agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the State agency proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

Subpart F—Replacement Housing Payments for 180-Day Homeowner-Occupants

§ 42.401 Eligibility.

(a) *Basic eligibility requirements.* A displaced person is eligible for the replacement housing payment specified at § 42.403 if he—

(1) Has actually owned and occupied an acquired dwelling for not less than 180 days prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date he receives final payment for the acquired dwelling or the date he moves from the acquired dwelling, whichever is later.

(b) *Other rules and requirements.* A payment under this Subpart F is subject to the other applicable rules and requirements of these regulations. See in particular, § 42.221(c) (Multiple occupants of one acquired dwelling) and § 42.457 (Additional rules governing replacement housing payments under Subparts F and G).

§ 42.403 Determination of replacement housing payment.

(a) *Amount of payment.* The replacement housing payment for a 180-day homeowner-occupant who meets the eligibility requirements of § 42.401 is an amount, not to exceed $15,000, which represents the combined cost of—

(1) The amount, if any, by which the cost of a replacement dwelling exceeds the State agency's "acquisition cost" for the acquired dwelling, as determined in accordance with § 42.405 (Differential amount);

(2) The amount, if any, necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined under § 42.407 (Increased interest costs); and

(3) The amount of the reasonable expenses, as determined in accordance with § 42.409 (Incidental expenses), that are incidental to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) *Conversion of payment.* A 180-day owner-occupant, who initially rents a replacement dwelling and receives a rental assistance payment under § 42.453, is eligible to receive a payment under this section if he meets the eligibility criteria described at § 42.401, including purchase and occupancy within the prescribed one-year period. The amount of the rental assistance

payment shall be deducted from the amount computed under this section.

(c) *Determination pending condemnation award.* If the exact amount of a replacement housing payment cannot be determined because of a pending condemnation suit, an advance payment may be made to the claimant, if the State agency and claimant agree in writing to recompute the payment on the basis of the acquisition price determined by the court and to make any necessary adjustment. For purposes of the advance payment, the fair market value of the property, as determined by the State agency, shall be considered its "acquisition cost."

§ 42.405 Differential amount.

(a) *General.* The differential amount to be paid under § 42.403(a)(1) is the amount, if any, which must be added to the acquisition cost of the acquired dwelling to provide a total amount equal to the lesser of—

(1) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 42.457(a); or

(2) The purchase price of the decent, safe, and sanitary replacement dwelling actually acquired and occupied by the displaced person.

(b) *Mixed-use and multifamily properties acquired.* If the acquired dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, only that portion of the acquisition payment which is actually attributable to the acquired dwelling shall be considered its "acquisition cost" when computing the differential amount.

(c) *Certain dwellings not acquired.* If an owner-occupant is displaced by rehabilitation, code enforcement or demolition as described at § 42.49(b), the fair market value of the dwelling, including site, shall be considered its "acquisition cost" when computing the differential amount.

(d) *Disaster-related insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the acquired dwelling shall be included in the "acquisition cost" of the acquired dwelling when computing the differential amount.

(e) *Owner retention of acquired dwelling.* If the owner retains ownership of his dwelling, moves it from the acquired site, and reoccupies it on a replacement site (see also § 42.111(d), Owner retention of improvements), the purchase price of the replacement dwelling shall be considered to be the sum of—

(1) The moving and restoration expenses;

(2) The costs, if any, incurred to make the unit a comparable replacement dwelling (defined at § 42.45); and

(3) If the claimant owned the acquired site, the cost of the replacement site, not to exceed the cost of an available replacement site comparable to the acquired site.

§ 42.407 Increased interest costs.

The amount to be paid for increased mortgage interest costs under § 42.403(a)(2) is the sum of the present value of any increase in interest costs resulting because the interest rate on the mortgage financing on the replacement dwelling exceeds that on the acquired dwelling, and other debt service costs, all computed on the basis of the following rules—

(a) The payment shall only be based on bona fide mortgages that were a valid lien on the acquired dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the acquired dwelling shall be used to compute the payment;

(b) The payment shall be based on the unpaid mortgage balance on the acquired dwelling or the new mortgage amount, whichever is less;

(c) The payment shall be based on the remaining term of the mortgage on the acquired dwelling or the actual term of the new mortgage, whichever is shorter;

(d) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located;

(e) The present value of the increased cost shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located; and

(f) Purchaser's points and origination fees, but not seller's points, shall be paid to the extent (1) they are not paid as incidental expenses, (2) they do not exceed rates normal to similar real estate transactions in the area, and (3) the State agency determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the acquired dwelling or the new mortgage amount, whichever is less.

§ 42.409 Incidental expenses.

(a) *Eligible costs.* Subject to the limitations in paragraphs (b) and (c) of this section, the incidental expenses to be paid under § 42.403(a)(3) or § 42.455 are those actually incurred by the displaced person incident to the purchase of the replacement dwelling, including—

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing plats, and recording fees;

(2) Lender, FHA or VA appraisal fees;

(3) FHA or VA application fee;

(4) Certification of structural soundness when required by the lender;

(5) Credit report;

(6) Owner's and mortgagee's evidence or assurance of title;

(7) Escrow agent's fee;

(8) State revenue or documentary stamps, sales or transfer taxes; and

(9) Such other costs as the State agency determines to be incidental to the purchase.

(b) *Limitation.* If the purchase price of the replacement dwelling exceeds the price of a comparable replacement dwelling, the amount payable for an expense under paragraph (a) of this section shall not exceed the cost that would have been incurred if the displaced person purchased a comparable replacement dwelling.

(c) *Truth in lending charge.* Any expense, which is determined to be part of the debt service or finance charge under 15 U.S.C. 1631–1641 and Regulation Z (12 CFR Part 226) issued thereunder by the Board of Governors of the Federal Reserve System, is not eligible for reimbursement as an incidental expense.

Subpart G—Replacement Housing Payments for Tenants and Certain Others

§ 42.451 Basic eligibility requirements.

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $4,000 for rental assistance, as computed in accordance with § 42.453, or downpayment assistance, as computed in accordance with § 42.455, if such displaced person—

(a) Has actually and lawfully occupied the acquired dwelling for at least 90 days prior to the initiation of negotiations; and

(b) Is not eligible to receive a replacement housing payment for 180-day homeowner-occupants under Subpart F; and

(c) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year after—

(1) In the case of a tenant, the date he moves from the acquired dwelling; or

(2) In the case of an owner-occupant, the date he receives final payment for the acquired dwelling or the date he moves from the acquired dwelling, whichever is later.

§ 42.453 Replacement housing payment for rental assistance.

(a) *Amount of payment.* A displaced person who rents the replacement dwelling and qualifies for a payment under § 42.451 is entitled to a payment up to but not to exceed, $4,000 for rental assistance. Such payment shall be 48 times the amount, if any, obtained by subtracting the base monthly housing cost for the acquired dwelling, as determined under paragraph (b) or (c) of this section from the lesser of—

(1) The monthly housing cost (defined at § 42.67) for a comparable replacement dwelling; or

(2) The monthly housing cost for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(b) *Base monthly housing cost.* Except as provided in paragraph (c) of this section, the base monthly housing cost for the acquired dwelling is the lesser of—

(1) The average monthly housing cost (defined at § 42.67) for the 12-month period immediately prior to displacement or such other period (not to exceed 12 months) that the State agency determines will more accurately reflect average costs. However, in the case of an owner-occupant or other person who does not pay rent, the monthly housing cost shall be the fair market rent for the acquired dwelling, including reasonable charges for utilities; or

(2) Twenty-five (25) percent of the displaced person's gross monthly income as described at § 42.45(f)(1).

(c) *Students and other dependents.* The base monthly housing cost for a person who derives 51 percent or more of his income in the form of private gifts or academic scholarship or stipend is the average monthly housing cost for the acquired dwelling computed as described at paragraph (b)(1) of this section. A full-time student or an individual residing in a hospital, sanitarium, or similar institution is assumed to be such a dependent person, unless he provides evidence to the State agency which demonstrates that 50 percent or more of his income is derived from sources other than gifts, scholarships, or stipends.

(d) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum amount, unless the displaced person requests the payment to be made in installments.

§ 42.455 Replacement housing payment for downpayment assistance.

(a) *Amount of payment.* A displaced person who purchases the replacement dwelling and qualifies for a payment under § 42.451 is entitled to a payment for downpayment assistance up to, but not to exceed, $4,000. Such payment shall be the full amount of the first $2,000 of the required downpayment and incidental expenses computed under § 42.409 plus one-half of any amount required over $2,000. The displaced person must provide the other half of the amount over $2,000. However, the total payment by the State agency shall not exceed $4,000.

(b) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the State agency determines is necessary for the downpayment.

(c) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 42.457 Additional rules governing replacement housing payments under Subparts F and G.

The rules in this section apply to replacement housing payments under Subparts F and G of the regulations in this part.

(a) *Determining reasonable cost of comparable replacement dwelling.* The reasonable purchase or rental cost of a comparable replacement dwelling, which is used as the basis for establishing the upper limit of a replacement housing payment, shall be determined by an examination of the proposed selling price or rental cost of one or more dwellings which meet the definition of a comparable replacement dwelling as set forth at § 42.45 and which are most representative of the acquired dwelling. Such dwelling(s) shall be selected from the neighborhood in which the acquired dwelling was located. However, to the extent that representative comparable replacement dwellings are not available in such neighborhood, dwelling(s) shall be selected from adjacent or nearby neighborhoods in ascending order of housing costs. Neighborhoods in which housing costs are generally lower than those of the neighborhood of the acquired dwelling shall not be used for the selection. The determination of the upper limit of the payment shall be made on a case-by-case basis in accordance with the findings of a qualified individual who is familiar with real property values in the area. However, such case-by-case comparison is not necessary if the State agency makes the replacement housing payment on the basis of the cost of the decent, safe and sanitary replacement dwelling actually purchased or rented by the displaced person.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, as the case may be, the State agency or its designated representative shall inspect the replacement dwelling and determine whether or not it meets the definition of a decent, safe, and sanitary dwelling as set forth at § 42.47.

(c) *Purchase requirement.* A displaced person is considered to have met the requirement to purchase a dwelling, if he—

(1) Acquires a dwelling; or

(2) Acquires and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he owns or acquires; or

(4) Constructs a dwelling on a site he owns or acquires; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site he owns or acquires.

(d) *Delay in occupancy after purchase of replacement dwelling.* If the displaced person initially occupies the replacement dwelling after the date by which occupancy is required, but the delay beyond such date is caused by reasons beyond his control, the date of occupancy shall be established as follows—

(1) If construction, rehabilitation or relocation of a replacement dwelling is the cause of the delay, the date the displaced person enters into the contract for such construction, rehabilitation or relocation, or for the purchase of the replacement dwelling upon completion of the construction or rehabilitation, shall be considered to be the date of occupancy; or

(2) If the delay is caused by hardship, the date the displaced person became entitled to possession of the dwelling

shall be considered to be the date of occupancy.

(e) *Presidentially declared disaster.* No person shall be denied eligibilty for a replacement housing payment solely because he is unable, because of a major disaster as determined by the President, to meet the occupancy requirements set forth in the regulations in this part.

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his death the undisbursed portion of any such payment shall not be paid to his heirs or assigns, except that—

(1) The amount attributable to the displaced person's actual occupancy of the replacement housing shall be paid;

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy the replacement dwelling selected in accordance with the regulations in this part; and

(3) That portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart H—[Reserved]

Subpart I—Last Resort Replacement Housing

§ 42.601 Applicability.

The provisions of this subpart apply only when the State agency determines that, unless it acts under the provisions of this subpart, there is a reasonable likelihood that the project will not be able to proceed to actual construction because comparable replacement dwelling(s) will not be available on a timely basis to person(s) to be displaced.

§ 42.603 Basic rights and rules.

(a) *General.* The provisions of this subpart do not deprive any displaced person of any rights described elsewhere in this part. The State agency shall not require any displaced person, without his written consent, to accept a dwelling provided by the State agency under the procedures in this subpart in lieu of any acquisition payment or any relocation payment for which he may otherwise be eligible under these regulations. However, the State agency may meet its obligation to provide persons with reasonable opportunities to relocate to a comparable replacement dwelling as described at § 42.209(a) by offering such opportunities developed or to be developed under this subpart.

(b) *Documentation.* The State agency shall include in the applicable relocation case file documentation that demonstrates that, to the maximum extent feasible, it has accommodated the displaced person's preferences.

§ 42.605 Methods of providing replacement housing.

(a) *General.* It is intended that State agencies shall have broad latitude in their methods for implementing this subpart. The methods of providing last resort housing include, but are not limited to—

(1) Rehabilitation of, and/or additions to, an existing replacement dwelling;

(2) A replacement housing payment in excess of the limits set forth in Subparts F and G or the provision of direct State agency mortgage financing;

(3) The construction of a new replacement dwelling;

(4) The relocation and, if necessary, rehabilitation of a replacement dwelling;

(5) The purchase of land and/or a replacement dwelling by the State agency and subsequent sale or lease to, or exchange with, a displaced person; and

(6) The removal of barriers to the handicapped as may be necessary to meet the requirements of § 42.47(a)(5).

(b) *Protections for affected persons.* In acquiring real property for last resort housing or causing the displacement of occupants of a last resort housing site, the State agency shall comply with applicable provisions of the regulations in this part.

If last resort housing is provided by an activity that is not governed by the Uniform Act (e.g., rehabilitation under the community development block grant program), the State agency shall not displace any tenant, unless the tenant is given the relocation payments and other assistance that he would receive if he were a displaced person as defined at § 42.49 of these regulations.

§ 42.607 Construction of housing with project funds.

(a) *Preliminary study.* If it appears necessary to use project funds for the construction of replacement housing in order to satisfy the requirements of this part, the State agency shall—

(1) Prepare an inventory of the characteristics and housing needs and desires of persons to be displaced;

(2) Determine the quantities and types of comparable replacement dwellings that can reasonably be expected to be available to displaced persons; and

(3) Coordinate with other displacing agencies to ensure that their plans for displacement are taken into account.

(b) *Replacement housing plan for new construction.* If the preliminary study indicates the need for the State agency to use project funds to provide last resort replacement housing through new construction, the State agency shall promptly develop and request HUD Area Office approval of a replacement housing plan. The plan shall indicate—

(1) How, when, and where the housing will be provided;

(2) How the housing will be financed, including the amount of project funds to be used;

(3) The prices or rentals at which the housing will be sold or rented to displaced persons, and the arrangements for maintaining rent levels appropriate for the persons to be rehoused;

(4) The arrangements for rental housing management and social services, as appropriate;

(5) The environmental suitability of the housing project and any information that may be required under HUD Handbook 1390.1, Departmental Policies, Responsibilities, and Procedures for Protection and Enhancement of Environmental Quality (38 FR 19182, as amended, 41 FR 23878), or, if the last resort housing is provided under the community development block grant program, the information required by 24 CFR Part 58;

(6) The planned disposition of the proceeds from the rental or sale of the housing and any subsequent resale of the housing by displaced persons;

(7) The State agency's assurances that the housing will be developed in compliance with the requirements of this part and can be legally accomplished in accordance with State law; and

(8) If the last resort housing project includes more than 25 dwelling units, the comments, if any, of the State and Areawide Clearinghouses designated under OMB Circular No. A-95 and the advisory committee established in accordance with paragraph (c) of this section. However, if any of these organizations fails to comment within the specified reasonable time period provided, it shall be considered as having no comments. At least 30 days shall be provided for comment, unless the State agency determines that a shorter but reasonable period is necessary to permit timely implementation of the plan.

(c) *Advisory committee—26 units or more.* If a last resort housing project involves the construction of 26 or more new units, the State agency shall

appoint an advisory committee to provide advice and assistance on the development of the replacement housing plan. The advisory committee shall include representatives of the State agency, the chief executive officer of the locality, the local housing authority, central relocation agency, the persons to be displaced, and other appropriate groups knowledgeable about housing and the problems of housing discrimination. The failure of any person to participate on the committee shall not preclude the committee from satisfying the requirements of this section. Having afforded the committee the opportunity to provide advice and assistance in the development of the plan, the State agency shall have full authority for the recommendation of a plan to HUD and for carrying out the approved last resort housing project.

§ 42.609 Compliance with other laws and regulations.

The implementation of this subpart shall be in compliance with the following, including HUD implementing regulations—

(a) Section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.);

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.);

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347);

(e) Executive Order 11063 (Equal Opportunity in Housing) 3 CFR Comp. 1959–1963, page 652;

(f) Executive Order 11246 (Equal Employment Opportunity) 3 CFR Comp. 1964–1965, page 339, as amended by Executive Order 11375, 3 CFR Comp. 1966–1970, p. 684; and

(g) Executive Order 11625 (Minority Business Enterprise) 3 CFR Comp. 1971, page 213.

Subpart J—Appeals

§ 42.701 Purpose.

The purpose of this subpart is to prescribe HUD requirements governing appeals of certain State agency actions.

§ 42.703 Basic rights and rules.

(a) *Actions which may be appealed.* A person may file an appeal in any case in which he believes that the State agency has:

(1) Failed to properly determine his eligibility for, or the amount of, a payment required under § 42.119 or § 42.123 or any relocation payment required under the regulations in this part. (A person's acceptance of a payment that is less than the full amount he claimed does not limit his right to appeal the State agency's determination.) A person may also appeal the refusal of the State agency to waive the time limit for filing a claim or the one-year purchase and occupancy requirement described at § 42.451(c); or

(2) Failed to provide appropriate housing referrals or to properly inspect the replacement dwelling as described at § 42.211(b)(2) or failed to comply with a requirement of § 42.209 (Availability of comparable replacement dwellings prior to displacement); or

(3) Failed to comply with a requirement of § 42.207 (Notice of right to continue in occupancy).

(b) *Order of appeal.* An appeal must first be filed with the head of the State agency in accordance with the provisions of this subpart. If a person is not satisfied with the results of the State agency's determination on his appeal, he may seek to have his appeal reviewed by HUD in accordance with § 42.707 (HUD review of appeal).

(c) *Joint appeals.* Two or more persons may join in filing a single appeal if each has grounds for an appeal as specified in paragraph (a) of this section.

(d) *Right to representation.* A person has a right to be represented by legal counsel and to be accompanied by an advisor, attorney or other representative in any personal appearance in connection with his appeal, but solely at his own expense.

(e) *Review of files by person making appeal.* The State agency shall permit a person to inspect and copy all files and records pertinent to his appeal, except materials which are confidential. The State agency may, however, impose reasonable conditions on the person's right of inspection.

(f) *Minimum notice to move.* If a person files a written appeal under paragraph (a)(2) or (a)(3) of this section, he shall not be required to move from the real property until at least 20 days after he receives the State agency's written determination on his appeal, or, if he appeals to HUD, the written HUD determination. The person shall be given at least 20 days advance written notice of the date by which he must move.

(g) *Construction of rules and regulations.* In deciding appeals, it is intended that applicable rules and regulations be applied in a manner that best fulfills the objective of providing "fair and equitable treatment" so that displaced persons do "not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

§ 42.705 Appeal to State agency.

(a) *Timing for initiating appeal to State agency.* Unless waived by the State agency or HUD, an appeal to the State agency (either oral or written appeal) shall be filed as follows—

(1) An appeal concerning eligibility for, or the amount of, a payment shall be filed within 6 months after the State agency's notification to the person of its determination on the claim. An appeal of the State agency's refusal to waive the time limit for filing a claim or its refusal to waive the one-year purchase and occupancy requirement described at § 42.451(c) shall be filed within 30 days after such refusal;

(2) An appeal alleging failure to provide appropriate housing referrals or to properly inspect the replacement dwelling as described at § 42.211(b)(2) or failure to comply with § 42.209 (Availability of comparable replacement dwellings prior to displacement) shall be filed not later than 6 months after the person's displacement; and

(3) An appeal alleging failure of the State agency to comply with § 42.207 (Notice of right to continue in occupancy), shall be filed not later than 6 months after (i) the person's permanent move from the real property, or (ii) the end of the 4-year occupancy period, whichever occurs first.

(b) *Oral appeal to State agency.* If a person, orally or in writing, asks to make an oral appeal to the State agency, the State agency shall give him the opportunity to present his appeal orally to an appropriate State agency official within 15 days. The State agency shall prepare a summary of the matters discussed in the oral presentation and include it as part of its case file. If the State agency does not grant the full relief requested by the person, it shall promptly notify him to that effect, in writing, with a copy to HUD. The notification shall indicate that the person has a right to file a written appeal under this Section. A person's request for an oral presentation shall not entitle him to any postponement of displacement.

(c) *Request for review of written appeal.* A person may file a written appeal to the State agency, whether or not he has made a prior oral presentation. The appeal may include any related statement of fact or other material. If necessary, the applicable time limit for filing an appeal shall be extended to assure that the person has at least 30 days after receiving notification of the decision on his oral appeal in which to file a written appeal.

(d) *Scope of review of written appeal.* The State agency shall consider a

person's written appeal, regardless of form. In deciding the appeal, the State agency shall consider—

(1) All applicable rules and regulations;

(2) All pertinent justification and written material submitted by the person making the appeal; and

(3) All material upon which the State agency based the determination(s) being appealed and any other available information that is needed to insure a fair and full review of the appeal.

However, the State agency must ensure that the person making the appeal has had reasonable opportunity to review any such materials and information on which an adverse ruling on the appeal may be based.

(e) *Determination and notification after written appeal.* Within 30 days after receipt of all information submitted by a person in support of his appeal, the State agency shall make its written determination on the appeal and furnish the person with a copy. The written determination shall include, but need not be limited to—

(1) The State agency's decision upon review of the appeal;

(2) The factual and legal basis upon which the decision is based, including any pertinent explanation;

(3) If any payment or other relief to the person is granted, a brief statement on how this will be provided; and

(4) If the full relief requested is not granted, a statement of the person's right to appeal to HUD within 30 days and the address of the applicable HUD office.

(f) *Request for additional time.* If a person makes a reasonable request for additional time to gather and prepare information for a written appeal he must be granted a reasonable amount of additional time.

(g) *Assistance to person making appeal.* If a person is unable to prepare a written appeal, the State agency shall offer him appropriate assistance and notify him of other available sources of assistance.

(h) *Recommendation by third party.* A person making an appeal and the State agency may, by mutual agreement, arrange for a third party to review the appeal and make recommendations to the State agency for its final determination. The agreement may provide for an extension of the 30-day time limit for State agency review. In reviewing the claim and making recommendations, the third party shall be guided by the provisions of paragraph (d) of this section. After receiving the recommendation, the State agency shall comply with the requirements of paragraph (e) of this section.

(i) *State agency official to hear appeal.* The State agency official hearing an oral appeal or conducting the review of a written appeal shall be either the head of the State agency or his authorized designee other than an official directly involved in the action appealed or a subordinate to such an official.

§ 42.707 HUD review of appeal.

(a) *Request for HUD review.* If a person is not satisfied with the State agency's determination on his appeal, he may request HUD to review that appeal. An appeal to HUD, with a copy to the State agency, shall be submitted to the area manager of the appropriate HUD area office within 30 days after the person receives the State agency's determination on his appeal. A person may support his appeal to HUD with any related facts or other material. However, he need not repeat any arguments nor submit any information previously provided to the State agency for its review.

(b) *Determination and notification by HUD.* HUD may elect to assign staff from its headquarters or any of its field offices to review or participate in the review of an appeal. When reviewing the appeal, HUD shall consider all relevant and available information, rules, and regulations. Within 30 days after receipt of all information supporting the appeal, HUD shall make its written determination on the appeal and shall furnish a copy to the State agency and the person making the appeal. The determination shall include, but need not be limited to—

(1) The HUD decision on review of the appeal;

(2) The factual and legal basis upon which the decision is based, including any pertinent explanation;

(3) If any payment or other relief to the person is ordered, appropriate directions to the State agency on how this shall be provided and a statement of the person's right to seek further HUD assistance in the event such relief is not provided as directed; and

(4) If the full relief requested is not granted, a statement of the person's right to seek judicial review.

(c) *Submission of State agency's file.* Within 5 days after receiving a copy of a person's appeal to HUD, the State agency shall submit to HUD its complete case file on the appeal.

§ 42.709 State agency dismissal of appeal not based on merits.

(a) *General.* If the State agency dismisses an appeal as being too late or premature or because of any other reason not based on the merits of the issues involved, it shall notify the person in writing, with a copy to HUD, of its reasons for the dismissal. The notification shall be sent to the person within 10 days after he files the appeal and shall indicate that he shall have 30 days to seek HUD review of the dismissal.

(b) *HUD review of dismissal.* If a person seeks HUD review of the dismissal of his appeal within the prescribed 30-day period, HUD shall review the dismissal. If HUD finds the State agency's refusal to decide the appeal on its merits was unreasonable, HUD shall require the State agency to review and determine the appeal on its merits within 15 days in accordance with § 42.705 (appeal to State agency) and shall so notify the person making the appeal. If HUD does not find the State agency's dismissal of the appeal to be unreasonable, it shall so notify the person making the appeal. The notification shall inform the person that he may have a right to judicial review. If the dismissal was based on the belief that the appeal was premature, the person shall be advised that he may file an appeal at an appropriate later date.

§ 42.711 Judicial review.

Nothing in this subpart shall in any way preclude or limit a person from seeking judicial review of his appeal on its merits after exhaustion of such administrative remedies as are available to him under this subpart.

Issued at Washington, D.C. May 17, 1979.

Patricia Roberts Harris,

Secretary, Housing and Urban Development.

[FR Doc. 79-16604 Filed 5-25-79; 8:45 am]

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Federal Register

Tuesday
May 29, 1979

Part IX

Department of Energy

Office of Energy Conservation and Solar Applications

Energy Conservation Program for Consumer Products; Amendment of Furnace Test Procedures

DEPARTMENT OF ENERGY

Office of Energy Conservation and Solar Applications

[10 CFR Part 430]

[Docket No. CAS-RM-79-104]

Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking Regarding Amendment of Furnace Test Procedures

AGENCY: Department of Energy.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: By this advance notice of proposed rulemaking the Department of Energy invites interested persons to present written data, views and arguments with respect to the need for amending the Department's test procedures for furnaces in order to address any areas which interested persons feel should be expanded or changed, and to include pulse combustion furnaces and condensing furnaces in the test procedures.

DATE: Written comments by June 28, 1979.

ADDRESS: Written comments to: Margaret W. Sibley, U.S. Department of Energy, Office of Conservation and Solar Applications, Office of Public Hearing Management, Room 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

James A. Smith, U.S. Department of Energy, Office of Conservation and Solar Applications, Division of Buildings and Community Systems, Consumer Products Efficiency Branch, Room 2248, Mail Station 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585, (202) 376-4814.

William J. Dennison, Office of General Counsel, 20 Massachusetts Avenue, N.W., Room 3228, Washington, D.C. 20585, (202) 376-4100.

SUPPLEMENTARY INFORMATION:

A. Background

The energy conservation program for consumer products was established pursuant to Title III, Part B of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163).[1] Section 323 (42 U.S.C. 6293) of the Act requires that standard methods of testing be prescribed for covered consumer products, including furnaces. Final test procedures for furnaces were prescribed by the Department of Energy (DOE) on May 2, 1978 (43 FR 20147, May 10, 1978) at 10 CFR Part 430, Subpart B, and Appendix N to Subpart B. Subsequently, some manufacturers have begun to test their furnaces in accordance with these procedures in order to be able to make representations respecting energy consumption, under section 323(c), and in anticipation of labeling rules being developed by the Federal Trade Commission, under section 324.

B. Discussion

It has been brought to the attention of DOE that through the experience of testing, some manufacturers have identified areas in the test procedures which they feel should be expanded or changed. In particular, at the Seminar on DOE Test Procedures for Gas-fired Appliances sponsored by the American Gas Association (AGA) and the Gas Appliance Manufacturers Association (GAMA), held at the AGA Laboratory in Cleveland, Ohio, on March 27, 1979, numerous questions regarding the test procedures were raised. DOE has noted the questions raised to date and intends to address them in an upcoming proposal to make certain amendments to the furnace test procedures. By this notice DOE is inviting interested persons to present suggestions for amending the existing test procedures. Further, DOE urges anyone who has previously brought such suggestions to the attention of DOE to reiterate their suggestions by responding to this notice so as to ensure that no issues are overlooked.

In addition, information available to DOE indicates that furnaces incorporating two new design features will soon be distributed in commerce. The first feature uses a method of producing heat by a steady sequence of explosions instead of continuous flames used by other furnaces. The steady sequence of explosions is termed "pulse combustion." The second new design feature employs methods of recovering the latent heat of vaporization from the moisture content of the products of combustion. In other furnaces this heat is lost. Boilers and other furnaces which recover latent heat are termed "condensing furnaces."

Although the information available to DOE indicates that both these new features are presently being incorporated into a single furnace design, DOE is not aware of any technological reason which would preclude either feature alone from being incorporated into a furnace design. Therefore, DOE is considering the development of test procedures suitable for testing furnaces which incorporate these new features either independently or in combination.

DOE believes that the energy consumption of pulse combustion furnaces is not accurately measured by the existing furnace test procedures. The test procedures presently specify the use of a stack designed to vent furnaces which, unlike pulse combustion furnaces, require free convection. The cross-sectional area of the flue pipe used in pulse combustion furnaces is less than one-tenth the cross-sectional area of the stack specified in the test procedures. Therefore the flue temperatures and CO_2 concentrations of pulse combustion furnaces are not readily measured by methods specified in existing DOE test procedures. The test procedures also make no provision for measuring the heat recovered by condensing moisture vapor from the products of combustion. Therefore, test of condensing furnaces would not measure the true total heat output. Finally, the existing test procedures specify the use of boiler water temperatures lower than can be reasonably used with condensing furnaces.

DOE is considering the proposal of amendments to its test procedures for furnaces, in order to measure more accurately the energy consumption characteristics of furnaces utilizing the pulse combustion and/or condensing features. The National Bureau of Standards has been directed to develop a test methodology for evaluating these energy consumption characteristics. In conjunction with the test methodology developed by the National Bureau of Standards, DOE will consider any comments received in response to this notice in developing the amendments to the furnace test procedures.

Because DOE believes that the existing test procedures do not accurately measure the energy consumption characteristics of pulse combustion and condensing furnaces, DOE hereby gives notice that it does not consider the existing test procedures applicable to those products.

C. Comment Procedure

Interested persons are invited to participate in the development of amendments to the furnace test procedures by submitting data, views or arguments to Margaret W. Sibley, U.S. Department of Energy, Office of Conservation and Solar Applictions, Office of Public Hearing Management,

[1] Subsequently, the Act was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619). References in this notice to "the Act" or to sections of the Act refer to the Energy Policy and Conservation Act as amended by NECPA.

Room 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

Comments which identify any suggestions to expand or change the existing furnace test procedures are specifically requested.

Comments which suggest test methodologies for pulse combustion and condensing furnaces are also specifically requested. Any test methodology should provide for the determination of the estimated annual operating cost and a measure of efficiency similar to the annual fuel utilization efficiency defined for other classes of furnaces in DOE test procedures.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Furnaces—Test Procedure Amendments (Docket No. CAS–RM–79–104)." Fifteen copies should be submitted. All comments received by June 28, 1979, before 4:30 p.m., and all other relevant information will be considerd by DOE in its development of proposed test procedure amendments.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempted from public disclosure.

Issued in Washington, D.C., May 22, 1979.

Maxine Savitz,

Deputy Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79–16617 Filed 5–25–79; 8:45 am]

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Federal Register

Tuesday
May 29, 1979

Part X

Department of Energy

Electric and Hybrid Vehicle Program Small Business Planning Grants

DEPARTMENT OF ENERGY

[10 CFR Part 476]

[Docket No. CAS-RM-79-203]

Electric and Hybrid Vehicle Program Small Business Planning Grants; Notice of Proposed Rulemaking and Public Hearing

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to issue regulations to establish a planning grant program to provide aid to qualified small business concerns which require financial assistance in order to develop, prepare and submit proposals for entering into contracts with DOE for research, development or demonstration of electric or hybrid vehicles under the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (Act). The planning grant program, prescribed by section 9(c) of the Act, is intended to help assure that small businesses having an interest in and capability for research, development or demonstration of electric or hybrid vehicles (EHV) will have a realistic and adequate opportunity to compete for research, development and demonstration contracts.

DATES: Written comments must be received by 4:30 p.m., e.d.t., on July 30, 1979. The public hearing will be held on June 28, 1979, at 9:30 a.m., e.d.t. Requests to speak at the hearing must be received by 4:30 p.m., e.d.t., on June 15, 1979, and speakers will be notified by June 18, 1979. Written copies of a speaker's statement must be received by 4:30 p.m., e.d.t., on June 25, 1979.

ADDRESSES: Send written comments, requests to speak and copies of speaker's statement to Margaret W. Sibley, Office of Conservation and Solar Applications, Mail Stop 2221C, Department of Energy, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585. The public hearing will be held in Room 3000A, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Anthony H. Ewing, Office of Conservation and Solar Applications, Room 3224, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585, (202) 376-4747.

Mary Ann Masterson, Office of the General Counsel, Room 3228, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585, (202) 376-9469.

SUPPLEMENTARY INFORMATION:

I. Background
II. Elements of the Program
A. Definitions
B. Eligibility Requirements
C. Program Solicitation
D. Evaluation and Selection
E. Allowable Expenditures.
F. Contract Proposals
G. General Requirements
III. Written Comment and Public Hearing Procedures
A. Written Comments
B. Public Hearing
IV. Other Matters
A. Environmental Review
B. Regulatory Review
C. Urban Impact Analysis

I. Background

Section 9(c)(2) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, 90 Stat. 1260 *et. seq.* (15 U.S.C. 2501 *et seq.*), as amended (Act), directed the Energy Research and Development Administration (a predecessor agency of DOE) to make planning grants available to qualified small business concerns which require financial assistance in developing, submitting and entering into contracts with DOE for research, development or demonstration of electric or hybrid vehicles. The assistance required by this provision is intended to enable small, interested and capable businesses to be able to compete with larger enterprises for the award of contracts under the Act.

In May, 1978, DOE issued a program announcement (EM-78-N-01-4205) soliciting the first group of application for planning grants. In response to the program announcement, 84 small business concerns submitted a total of 147 applications for planning grants. Grant awards totalling approximately $205,000 were made to 23 of the applicants. Multiple grants were awarded to four business concerns.

Drawing upon the experience gained from the initial planning grant competition, DOE hereby proposes to issue a rule for the establishment and administration of a program to provide planning grants to qualified small business concerns on a regular basis.

II. Elements of the Program

A. Definitions

Section 476.2 defines a number of terms used in the proposed regulation. The most important of these definitions is that of "small business concern."

Section 3(8) of the Act requires that the term "small business concern" have the meaning prescribed by the Secretary of Energy after consultation with the Small Business Administration (SBA). The proposed definition of "small business concern" was arrived at in consultation with the SBA and is intended to facilitate simple, straight/forward self-determinations by potential applicants of their potential eligibility for planning grants under this program. Since the purpose of this program is to make planning grants available to small businesses which require financial assistance to develop, prepare and submit proposals for research, development or demonstration contracts, the proposed definition of small business concern is designed to describe, as objectively as possible, the characteristics of a business concern which may need and benefit from the financial assistance provided under this program.

The definition in proposed § 476.2 takes into account the issues of size and potential need by considering an applicant's total assets ($3 million, maximum), its average annual receipts ($3 million, maximum) for the three preceding years and its average annual net income ($300,000 maximum) for the three preceding years. Business concerns exceeding any of these limitations are considered to be of sufficient size to have annual operating budgets which can adequately accommodate proposal costs typical of the amounts for which planning grants under this program may be awarded. It should be noted that the definition of "small business concern" in § 600.33(e) of DOE's Assistance Regulations was determined to lack adequate limitations for purposes of this program.

The terms "affiliate" and "annual receipts," both used in the program definition of "small business concern," are proposed to be defined as prescribed by the SEA in 13 CFR Part 121.3-2. The term "concern" is the same as that prescribed in 13 CFR Part 121.3-2, except that the proposed regulation requires that a concern's principal place of business be located in the United States. This limitation is intended to encourage the expeditious introduction of electric and hybrid vehicles into the nation's transportation fleet and to reduce the nation's dependence on foreign sources of oil.

B. Eligibility Requirements

Section 476.4 sets forth the eligibility requirements for planning grants. Small business concerns, as defined in proposed § 476.2, which lack adequate funds to develop, prepare and submit proposals for entering into contracts for research, development or demonstration of electric or hybrid vehicles under the Act, are eligible for planning grants under this part.

As part of the application for a planning grant, applicants are required to complete and submit budget and financial status forms (proposed § 476.5)

which are designed to substantiate the applicant's status as a small business and its need for financial assistance. The financial and budget information submitted by the applicant will be evaluated by DOE to determine if the applicant is a small business concern which requires financial assistance to develop, prepare and submit a proposal. If, on the basis of this evaluation, DOE determines that the applicant is a small business concern which requires financial assistance to develop, prepare and submit a proposal for research, development or demonstration contracts under the Act, then, under proposed § 476.4, the applicant will be considered for a planning grant.

As proposed, determination of the need for financial assistance would be made on a case by case basis, taking into account financial and budget information submitted. No more specific criteria for determining need have been set forth. DOE would welcome comment on this approach for judging need, including any suggestions for specific criteria to assess the adequacy of funds available to an applicant, as well as whether to consider funds available from other sources in determining need.

C. Program Solicitation

As set forth in § 476.5, DOE proposes to issue program solicitations to invite applications for planning grants from small businesses. Subject to the availability of funds, DOE plans to issue a program solicitation at least once each year. Planning grants cannot be made unless an application is submitted in response to a program solicitation.

The program solicitation is a comprehensive document designed to inform potential applicants of the planning grant program provisions and to explain the procedures and substantive requirements for applying for planning grants. It will describe the evaluation criteria and the selection process. Required budget and financial status forms will be included in the program solicitation. The applicant will be required to complete and submit these forms with the application in order to substantiate the applicant's qualifications as a small business concern, the amount of the requested grant and the applicant's financial need therefor. Several other informational and explanatory items will also be set forth in the program solicitation, such as: specific problems or areas of concern DOE is emphasizing in its research, development and demonstration activities; the total amount of funds available for the program; the required terms and conditions of the grant award; notification that DOE is not responsible for application preparation costs; and notification that information contained in the application which may be exempt by law from public disclosure will be handled in accordance with the procedures in DOE's Freedom of Information Regulations.

To assure adequate publicity and opportunity for participation, timely notice of the program solicitation will be published in the Federal Register, Commerce Business Daily, newspapers, and trade and professional journals and will also be distributed directly to potential applicants, as appropriate.

D. Evaluation and Selection

Prior to a substantive evaluation of an application for a planning grant, DOE proposes in § 476.6 (a) to subject each application to a preliminary review to determine if the requirements of the program solicitation have been met. With this process, DOE will be able to determine an applicant's eligibility and an application's suitability for evaluation before DOE makes the substantive evaluation required in § 476.6(b).

Applicants whose applications are rejected at this point will be notified of the rejection and the reasons therefor. This preliminary review is intended to minimize delay in the selection of grantees by allowing DOE to concentrate on those applications which carry out the intent and purposes of the planning grant program. Applications with nonsubstantive or minor omissions or defects will not be rejected by this preliminary review. The applicant, however, must correct such deficiencies prior to the award of a grant.

Applications which pass the preliminary review will be evaluated and ranked on the basis of (1) the technical merit and quality of the project for which the applicant intends to develop a proposal, including its potential for making a significant contribution to the EHV research, development and demonstration effort, (2) the applicant's capability to carry out the proposal if a DOE contract is awarded, and (3) the reasonableness of the applicant's budget for the preparation of the proposal.

The proposed evaluation criteria are intended to determine the extent to which an applicant's proposal is likely to result in research, development or demonstration which contributes to the overall success of the electric and hybrid vehicle program. Planning grants will be awarded to applicants taking into account the evaluation of the applications and the availability of funds.

The amount of the planning grant award will be determined by the financial assistance actually needed by the grantee, but not exceeding the amount requested by the grantee, to develop, prepare and submit the proposal. Although the proposed regulation does not prescribe an upper limit on the amount of a grant award, DOE expects that most grantees will be able to complete and submit their proposals at a cost of $10,000 or less.

E. Allowable Expenditures.

Proposed § 476.7 limits the use of grant funds to direct costs, and other identified costs normally included as overhead, incurred by the grantee in developing, preparing and submitting the planning grant proposals to DOE. No profits or fees may be added to the grantee's direct costs.

DOE proposes this limitation in order to ensure that grant funds are used solely to carry out the purposes of the planning grant program and in order to provide assistance to as many grantees as possible with available funds.

F. Contract Proposals.

The purpose of the planning grant program is to assist small businesses in developing, submitting and entering into contracts for research, development or demonstration of electric or hybrid vehicles under the Act. Pursuant to this purpose, a proposal developed and submitted to DOE by a grantee will be considered as either a solicited or unsolicited proposal for a DOE contract, as appropriate.

In most cases, the schedule for the planning grant program solicitation and grant award will not coincide with the schedule for DOE solicitation notices for contracts for research, development or demonstration activities under the Act. Therefore, it is expected that most proposals prepared and submitted by grantees will be evaluated as unsolicited proposals.

If, on the other hand, DOE receives an application for a planning grant for the development of a proposal which falls within the scope of a current or pending DOE solicitation notice, DOE will furnish the applicant a copy of the solicitation notice. If the applicant is awarded a planning grant in these circumstances, its proposal will be considered as being in response to the solicitation notice.

G. General Requirements

The general requirements which govern the award and administration of

grants under the program are set forth in § 476.3 of the proposed regulations. This section specifically references the recently issued DOE Assistance Regulations (44 FR 12920, March 8, 1979); and generally references other DOE and Federal requirements applicable to grants under this part.

III. Written Comments and Public Hearing Procedures

A. Written Comments.

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed regulations set forth in this notice. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "EHV Small Business Planning Grants (Docket No. CAS-RM-79-203)." Fifteen (15) copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room; Room GA-152, Forrestal Building; 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., e.d.t., Monday through Friday. All comments received by July 30, 1979, before 4:30 p.m., e.d.t., and all other relevant information will be considered by DOE before final action is taken on the proposed regulations.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Public Hearing

1. *Request Procedures.* The time and place of the public hearing are indicated in the dates and addresses sections of this preamble. DOE invites any person who has an interest in this proposed rulemaking or who is a representative of a group or class of persons that has an interest in the proposed rulemaking to make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at the address indicated in the addresses section of this preamble and must be received before 4:30 p.m., e.d.t., on June 15, 1979. A request may be hand delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Requests should be labeled both on the document and on the envelope "EHV Small Business Planning Grants—Public Hearing (Docket No. CAS-RM-79-203)."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where the requester may be contacted through the day before the hearing. Each person selected to be heard will be notified by DOE before 4:30 p.m., e.d.t., June 18, 1979. Each person selected to be heard must submit 15 copies of his or his statement to the address given in the addresses section of this preamble. In the event that any person wishing to testify cannot provide 15 copies, alternative arrangements can be made with the hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation.

2. *Conduct of the Hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial type hearing. Questions may be asked by those conducting the hearing, and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person wishing to make an oral presentation at the hearing, but who does not file a timely request as specified above, may notify Margaret Sibley before the hearing or the presiding officer during the hearing of his or her desire to make a presentation. Such person will be admitted as a "limited" participant and will be heard at such time and for such duration as the presiding officer may permit.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

IV. Other Matters

A. Environmental Review

Upon review of an Environmental Assessment prepared to evaluate the environmental effects of the EHV Research, Development, and Demonstration Program of which this rulemaking is a part, it has been determined that the program does not constitute a major federal action significantly affecting the quality of the human environment and that, therefore, no additional review is necessary at this time to fulfill DOE's responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

B. Regulatory Review

It has been determined that the proposed regulation is significant, as that term is used in Executive Order 12044 and ampliffed in DOE Order 2030. This determination is based upon the importance of the overall electric and hybrid vehicle program in encouraging the development of alternative means of transportation. It has been further determined that this regulatory action is not likely to have a major impact, as defined by Executive Order 12044 and DOE Order 2030; consequently, no regulatory analysis will be prepared in this instance.

C. Urban Impact Analysis

This proposed regulation has been reviewed in accordance with OMB Circular A-116 to assess the impact on urban centers and communities. In accordance with DOE's finding that the regulation is not likely to have a major impact, DOE has determined that no community and urban impact analysis of

the rulemaking is necessary, pursuant to section 3(a) of Circular A-116.

(Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, 90 Stat. 1260 *et seq.* (15 U.S.C. 2501 *et seq.*), as amended by the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95-238; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.* (42 U.S.C. 7101 *et seq.*).)

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations by establishing Part 476 as set forth below.

Issued in Washington, D.C., May 22, 1979.

Maxine Savitz,

Deputy Assistant Secretary, Conservation and Solar Applications.

Chapter II of Title 10, Code of Federal Regulations is amended by establishing Part 476 as follows:

Part 476—Electric and Hybrid Vehicle Research, Development, and Demonstration Program Small Business Planning Grants

Sec.

476.1 Purpose and scope.
476.2 Definitions.
476.3 General requirements.
476.4 Eligibility requirements.
476.5 Program solicitation.
476.6 Evaluation and selection.
476.7 Allowable expenditures.
476.8 Contract proposals.

Authority: Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, 90 Stat. 1260 *et seq.* (15 U.S.C. 2501 *et seq.*), as amended by the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95-238; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.* (42 U.S.C. 7101 *et seq.*).

§ 476.1 Purpose and scope.

This part establishes a program which makes planning grants available to qualified small business concerns which require assistance in developing, submitting and entering into contracts for research, development, or demonstration of electric or hybrid vehicles pursuant to section 9(c)(2) of the Electric and Hybird Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, 90 Stat. 1260 *et seq.* (15 U.S.C. 2501 *et seq.*), as amended.

§ 476.2 Definitions.

As used in this part—

"Act" means the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, 90 Stat. 1260 *et seq.* (15 U.S.C. 2501 *et seq.*), as amended.

"Affiliate" means "affiliate" as defined in 13 CFR Part 121.3-2(a).

"Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year and each of the two preceding years (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service for Federal income tax purposes. If a concern has been in business less than 3 years, its average annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

"Concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with its principal place of business located in the United States. "Concern" includes, but is not limited to, an individual, partnership, corporation, joint venture, association or cooperative. For the purpose of making affiliation findings, any business entity, whether organized for profit or not, and any foreign business entity (i.e. any entity located outside the United States), shall be included.

"DOE" means the Department of Energy.

"Electric vehicle" means a vehicle which is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a nonelectrical source of power designed to charge batteries and components thereof.

"Hybrid vehicle" means a vehicle propelled by a combination of an electric motor and an internal combustion engine or other power source and components thereof.

"Small business concern" means a concern which, including its affiliates, is independently owned and operated, (a) does not have assets exceeding $3.0 million as of the date of the latest available balance sheet of the concern, (b) does not have average annual receipts for the three preceding fiscal years in excess of $3.0 million, and (c) does not have an average annual net income (after Federal income taxes) for the three preceding fiscal years in excess of $300,000 (to be computed without any benefit of carryover losses), or if a concern has been in business less than three fiscal years, such average annual income shall be based on the relevant period it has been in existence.

"United States" means each of the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico and the District of Columbia.

§ 476.3 General requirements.

Except where this part provides otherwise, the award and adminstration of financial assistance under this part will be governed by—

(a) 10 CFR Part 600, entitled "Assistance Regulations";

(b) Such other requirements applicable to this part as DOE may from time to time prescribe; and

(c) Any Federal requirements applicable to grants under this part.

§ 476.4 Eligibility requirements.

Grants under this part may be made only to small business concerns which lack adequate funds to develop, prepare and submit proposals for entering into contracts for research, development or demonstration of electric or hybrid vehicles under the Act.

§ 376.5 Program solicitation.

(a) Subject to the availability of funds, DOE will solicit applications for planning grants, at least once each year, by issuing a program solicitation. Planning grants may be awarded only in response to the program solicitation.

(b) Each program solicitation shall set forth the requirements and procedures for applying for grants under this part, including—

(1) An explanation of the planning grant program and how to prepare and submit applications;

(2) A time schedule for submission of, and DOE action on, applications;

(3) The place for and manner of submission of applications;

(4) A unique number for identification purposes;

(5) The eligibility requirements;

(6) The evaluation criteria and their relative importance;

(7) An explanation of the evaluation and selection procedures;

(8) The specific problems or areas of concern, if any, which DOE is emphasizing in its funding of research, development or demonstration of electric or hybrid vehicles under the Act;

(9) A statement notifying potential applicants that the program solicitation does not commit DOE to pay any application preparation costs and that DOE reserves the right to award planning grants to any, all or none of the applicants;

(10) The total amount of funds which will be available for the award of planning grants pursuant to the program solicitation;

(11) An explanation of how late applications will be handled;

(12) A copy of DOE's "Guide for the Submission of Research and Development Proposals by Individuals and Organizations other then Educational Institutions," and "Guide for the Submission of Unsolicited Proposals," or such other similar documents as DOE may from time to time issue;

(13) The required terms and conditions which will be included in grant instruments;

(14) The budget and financial status formats to be submitted with the application by which the applicant is required to substantiate its qualifications as a small business concern, the amount of the requested grant, and the applicant's financial need therefor;

(15) A statement notifying potential applicants that whenever an application contains information which may be exempt by law from public disclosure, it shall be handled in accordance with the procedures in 10 CFR Part 1004.11.

(16) A DOE contact (name and telephone number) for additional information; and

(17) Copies of any portions of those materials listed in § 476.3 with which grantees will be required to comply.

(c) Timely notice of the program solicitation will be published in the Federal Register, Commerce Business Daily, trade and professional journals and newspapers. Timely notice of the program solicitation will also be distributed directly to potential applicants to the extent considered necessary by DOE to assure adequate publicity and opportunity for participation.

§ 476.6 Evaluation and selection.

(a) Each application will undergo a preliminary review to determine whether it has been completed in accordance with the requirements of the program solicitation and whether the applicant meets the eligibility requirements. If this preliminary review reveals that the applicant does not meet the eligibility requirements, has failed to submit required financial and budgetary information or has omitted other required substantive information, the application shall be rejected and a prompt reply shall be sent to the applicant stating the reason(s) for the rejection. Applications with nonsubstantive or minor omissions or defects shall not be rejected. The applicant shall be notified of such omission or defect and must correct it prior to the award of a grant.

(b) Applications which successfully pass the preliminary review in accordance with paragraph (a) of this section will be evaluated and ranked based on the following criteria:

(1) The technical merit and quality of the research, development or demonstration project for which the applicant intends to develop a proposal, including such considerations as:

(i) Its potential for making a significant contribution to accelerating the introduction of electric and hybrid vehicles into the nation's transportation fleet;

(ii) Its potential for making a significant contribution to solving, or helping to solve, major problems facing the EHV program; and

(iii) The problems which must be solved before the anticipated results of the proposal may make a meaningful contribution, and the applicant's recognition and acknowledgment of those problems and their need to be resolved.

(2) The capability of the applicant successfully to carry out the proposal, as measured by the following factors:

(i) The qualifications of the applicant's personnel;

(ii) The adequacy of the applicant's facilities; and

(iii) The quality of discussion and analysis in the application.

(3) The reasonableness of the applicant's budget for the preparation of the proposal.

(c) DOE will select applicants for planning grant awards taking into account the evaluation of the applications under paragraph (b) and the availability of funds.

§ 476.7 Allowable expenditures.

Planning grant funds may be used only for the direct costs, and other identified costs normally included as overhead, incurred by the grantee in developing, preparing and submitting proposals to DOE. No profits or fees may be added to the grantee's direct costs.

§ 476.8 Contract proposals.

(a) When DOE receives an application for a planning grant for the development, preparation and submission of a proposal for entering into a contract for research, development or demonstration activities under the Act which falls within the scope of a current or pending DOE solicitation notice, DOE will furnish the applicant a copy of the solicitation notice when available. If the applicant is awarded a planning grant in these circumstances, its proposal will be considered as being in response to the solicitation notice.

(b) All other contract proposals will be considered as unsolicited proposals.

[FR Doc. 79-16618 Filed 5-25-79; 8:45 am]
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Federal Register

Tuesday
May 29, 1979

Part XI

Environmental Protection Agency

Improving Environmental Regulations; Final Report Implementing E.O. 12044

ENVIRONMENTAL PROTECTION AGENCY

[FRL 990-8]

Improving Environmental Regulations

Agency: Environmental Protection Agency.
Action: Final report
Summary: The Environmental Protection Agency (EPA) presents its report on how it will implement Executive Order 12044, Improving Government Regulations. The report describes procedures to improve management oversight in the development of regulations, to involve the public and other governmental organizations in evaluating regulatory proposals, to analyze the effects of new and existing regulations, and to avoid unnecessary regulatory burdens on the public.

A request for public comments on EPA's plan appeared in the Federal Register on July 11, 1978 (Vol. 43, pp. 29891–29900), and the Agency held public meetings in San Francisco, Kansas City, and Washington, D.C. in August. A summary of EPA's response to major comments appears as Appendix B.

Dated: March 29, 1979

Douglas M. Costle,
Administrator.

Organization of this Report:

Preface.
A. Agency Administrator's Oversight.
B. External Participation.
C. Analysis.
D. Reporting Burdens Reduction.
Appendix A—Sunset Policy for New Reporting Requirements.
Appendix B—Response to Public Comments.

PREFACE

EPA is now using an efficient system for drafting and reviewing regulations, parts of which have served as models for the President's Order. This report presents ways in which we are modifying that system to comply with the Order. EPA's internal and external review procedures ensure that new EPA regulations meet the Order's standards for quality of analysis of regulatory impacts, openness to participation by outside parties, and avoidance of undue regulatory burdens.

Part A of this report describes EPA's internal procedures for writing regulations. Key features are the priority classification for all EPA regulations and the use of management controls that systematically focus attention on the most important regulations. Part B describes how EPA will involve interested citizens and outside groups (both private and public organizations and local, State and Federal agencies) in developing regulations, and presents EPA's plan to formulate a new Agency-wide policy for external participation in regulation development. Part C sets out guidelines for economic analysis of regulations in each priority class. It also describes a one-year project to screen all existing EPA regulations to identify those that require revision to eliminate unnecessary burdens or improve effectiveness. Part D describes how EPA will avoid unnecessary paperwork burdens on the public in the reporting and recordkeeping requirements of new and existing regulations.

The parts of this report describing EPA's mechanisms for public participation are printed in italics.

EPA has received and considered a large number of public comments on its proposed plan, including those submitted at public discussion meetings in three cities. Appendix B describes EPA's response to major comments and tells how to obtain a detailed analysis of all comments.

EPA is now implementing portions of this plan. Many other parts will be implemented through revision of the Agency's Manual for Regulation Development. The Manual will provide detailed instructions to those developing new regulations. *It will be publicly available in order to facilitate outside participation. To receive a copy when it is completed, write to Philip Schwartz, Standards and Regulations Evaluation Division (PM-223), EPA, Washington, D.C. 20460.*

The process described in this report meets all requirements of the Order. Table 1 lists sections of the Order and shows where to find a description of our plan to implement it. As indicated in Section 7 of the Order, failure to comply with procedures established in response to the Order is not grounds for judicial review of EPA regulations. Procedures described in this part will not apply when they conflict with statutory requirements.

TABLE 1—*Relationship of This Report to Executive Order Requirements*

Executive Order Section	*Corresponding Part(s) of This Report*
§ 2 Reform of the Process	
(a) Semiannual Agenda	B Agency Participation Policy
(b) Agency Head Oversight	A(2) Development Plan
(c) Public Participation	B Agency Participation Policy
(d) Approval of Significant Regulations	
(1) Necessity of the Regulation	A(2) Development Plan: A(3) Decision Package
(2) Consideration of Impacts	A(3) Decision Package; C(1) Analysis of New Regulations
(3) Evaluation of Alternatives	A(3) Decision Package; C(1) Analysis of New Regulations
(4) Response to Public Comment	A(3) Decision Package; B Agency Participation Policy
(5) Use of Plain English	A(3) Decision Package; A(4) Internal Review; B Agency Participation Policy
(6) Reporting Burden Assessment	A(3) Decision Package; D Reducing Burdens on the Public
(7) Name of Responsible Official	A(3) Decision Package; B Agency Participation Policy
(8) Evaluation Plan	A(3) Decision Package; C(2) Review of Existing Regulations
(e) Criteria for Significant Regulations	A(1) Initiation of Work; Chart 1
§ 3 Regulatory Analysis	
(a) Criteria	C(1) Analysis of New Regulations; Chart 4
(b) Procedures	C(1) Analysis of New Regulations
§ 4 Review of Existing Regulations	
(a) Selection Criteria	C(2) Review of Existing Regulations
(b) List of Possible Candidates	C(2) Review of Existing Regulations

PART A: AGENCY ADMINISTRATOR'S OVERSIGHT

This Part describes how EPA will strengthen top management oversight for the development of new regulations. It emphasizes EPA's internal processes and only touches on (see italicized sections) the way the Agency will involve outside parties in its decisions. Part B is entirely devoted to external participation in EPA regulation development.

In outlining the steps for EPA's process the following definitions may be useful:

—*Lead Office:* The Assistant Administrator for the relevant program (the Office of Air, Noise and Radiation, the Office of Enforcement, the Office of Toxic Substances, or the Office of Water and Waste Management) has the lead responsibility for initiating and writing most new regulations.

—*Work Group:* This is a group of specialists drawn from various offices within EPA to advise and assist the lead office in preparing each significant regulation and its support materials.

—*Steering Committee:* This is a continuing group representing the six Assistant Administrators, General Counsel, and appropriate Office Directors on the Administrator's staff. It oversees the mechanics of the process and conducts the first internal review of materials prepared by the lead office.

—*Red Border Review:* This is an internal review by all Assistant Administrators, General Counsel and chief Staff Office Directors. The heads of EPA's ten regional offices (Regional Administrators) also have an opportunity to submit comments. A full review takes three weeks.

—*Senior Management:* This group includes the Administrator, Deputy Administrator, Assistant Administrators, Regional Administrators, General Counsel, and appropriate Staff Office Directors.

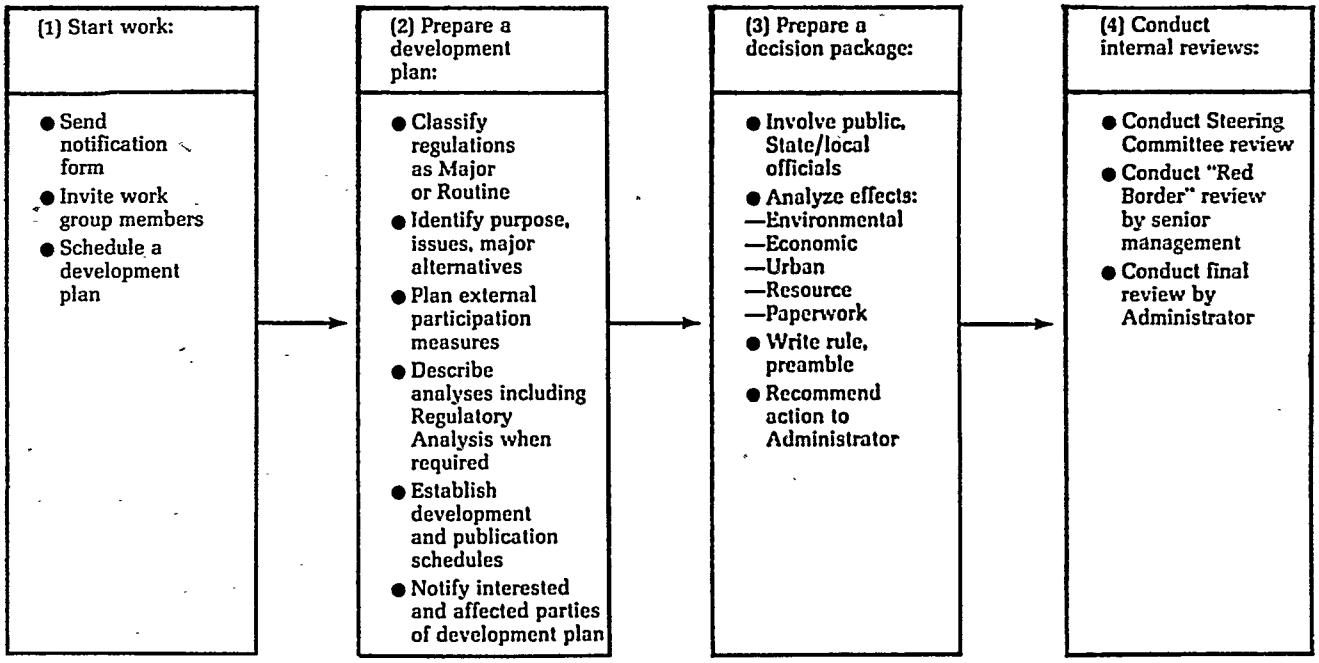
—*The Administrator:* As Agency head, the Administrator provides the final level of internal review.

—*Interagency Regulatory Liaison Group (IRLG):* This group includes EPA, the Consumer Product Safety Commission, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Food Safety and Quality Service.

EPA produces regulations in a four stage process: (1) starting work on a regulation, (2) preparation of a development plan, (3) preparation of a decision package, and (4) conducting a three-part internal review prior to publication (see Figure 1). Each regulation goes through the third and fourth stages twice, first as a proposal and again in final form. The stages of regulation drafting are explained in detail below.

FIGURE 1

STAGES IN THE DEVELOPMENT OF SIGNIFICANT EPA REGULATIONS



EPA is changing this process in response to the President's Executive Order according to two general principles. First, EPA will establish priorities for all regulations and introduce management controls that reflect those priorities. Priorities and different degrees of attention are essential at EPA because of the large volume of regulations. More than 400 regulations are already in one stage or another of the drafting process.

EPA uses the label "Significant" (as recommended in the Executive Order) for about 200 of its regulations. These regulations are subject to the formal EPA procedures outlined in this report. Regulations that are not classified as Significant are not subject to the uniform procedures described in this report. They follow other specialized procedures that include provisions for public review and comment.

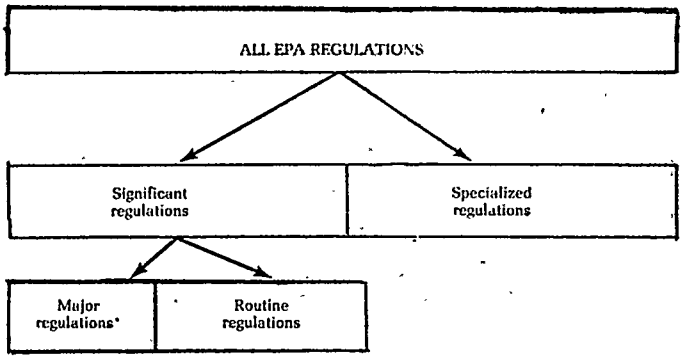
Significant regulations are subdivided as "Routine" and "Major". Routine regulations will include most of the Significant actions in the drafting process. The Major subclass of Significant regulations (about 50 at present) receive extra attention from senior management, allowing EPA and the public to focus their attention on the most important policy areas.

The criteria we use to classify regulations appear in Charts 1 and 2. Figure 2 shows how the classes are related.

Some of EPA's Major regulations require Regulatory Analyses as specified in Section 3 of the Executive Order. This requirement is the only factor distinguishing these regulations from other Major regulations for purposes of management oversight.

FIGURE 2

PRIORITY CLASSIFICATIONS FOR EPA REGULATIONS



*Some major regulations will meet economic criteria requiring preparation of a Regulatory Analysis. (See Part C.1.)

CHART 1

CRITERIA FOR SIGNIFICANT AND SPECIALIZED REGULATIONS

EPA presumes that all new regulations are Significant unless they fall into one of the specialized exclusion categories below. Significant regulations follow the uniform development process described in this report. Other regulations follow separate specialized procedures.

Exclusions:

1. Regulations that are administrative or procedural in nature and do not affect stringency, compliance costs, or the environmental (health) benefits of EPA programs.
2. Minor amendments to existing regulations when the amendment does not affect the stringency, compliance costs, or the environmental (health) benefits of the regulation.
3. Regulatory actions resulting from detailed Congressional mandates (e.g., deadline changes) that leave EPA no discretion to evaluate alternatives.
4. Regulations designated by a lead office Assistant Administrator in the notification form as not sufficiently important to require formal development procedures. Any senior manager may request a change in the classification to Significant.
5. EPA actions on regulations developed by State and local governments.* Some of these actions have large impacts; however, adding this report's procedures to State/local regulation development procedures would introduce unnecessary duplication of effort and excessive delay. Such actions include:

   a. Approval or disapproval of the following plans and their revisions: (a) State Implementation Plans (SIP) under section 110 of the Clean Air Act and (b) plans for designated pollutants from designated facilities under section 111(d) of the Clean Air Act. Although the approval of a SIP or a 111(d) plan with national policy implications is not subject to full regulation development procedures, additional EPA review is required. All SIPs, 111(d) plans, and their revisions are subject to specialized EPA review procedures that include public participation.

   b. Water Quality Standards set by States or by EPA in the event a State fails to set an acceptable standard. These local standards are subject to specialized EPA review procedures that include public participation.

6. Pesticide tolerances and regulations to exempt pesticides from the provisions of the pesticide statute (the Federal Insecticide, Fungicide, and Rodenticide Act—FIFRA) under its section 25(b) because of a determination that: (a) the pesticide is adequately regulated by another agency, or (b) it is of a character which need not be subject to FIFRA in order to carry out the purposes of FIFRA.* [Note: Many important decisions in EPA's pesticide program do not take the form of regulations and are not therefore subject to this report. These include pesticide registrations, cancellations, suspensions, "rebuttable presumptions against registration", experimental use permits and emergency exemptions. These actions follow specialized requirements for public notification and comment.]

* These actions do not require the notification form described in Part A(1).

CHART 2

CRITERIA FOR MAJOR REGULATIONS

For internal management purposes EPA will divide all Significant regulations into two classes, Major and Routine. Both types will follow the uniform regulation development process. However, Major regulations will receive extra attention from senior Agency management. We will classify a regulation as Major if it is likely to:

1. Address a major health or ecological problem.
2. Result in a major health, ecological, or economic impact.
3. Cause substantial urban impact, including constraints on transportation mobility.
4. Initiate a substantial regulatory program or change in policy.
5. Cause a substantial impact on another EPA program or another Federal agency program.
6. Cause a substantial change on a national scale in the scope of State-administered environmental programs or in the relationship between EPA and States or localities.
7. Cause a disproportionate impact on a particular region of the United States.
8. Implement a regulatory program central to the basic purpose of the statute under which it is adopted.

The second general principle of the internal process is extensive and continuous participation by various EPA offices. Participatory decisionmaking continues to be important at EPA because systematic review by other offices provides several types of valuable input. Scientists and economists check data and analyses; lawyers check procedures, clarity and consistency with the law; and other program managers will know how proposed regulations would affect their programs. This process starts when the lead office invites Assistant Administrators, the General Counsel, Regional Offices, and Staff Offices to send representatives to a work group to participate in writing a

Significant regulation. The lead office seeks to identify and resolve issues at each stage, in work groups, Steering Committee review, and senior management review. The lead office retains primary responsibility for new regulations. When consensus is not reached at a particular level, the disagreement is spelled out and the matter is taken to a higher level for review. When consensus is reached on major issues at lower management levels, the lead office identifies for senior management the nature of the issue and the consensus that has been reached. As a result, final decisions remain with publicly responsible appointed officials at the top of the Agency. The lead office may withdraw a particular regulation from parts of the formal process, or use some modification of the process, as long as it justifies the need and meets legal and Executive Order requirements. Before making such changes, the lead office Assistant Administrator must notify the other Assistant Administrators, the General Counsel, and Office Directors and consult with them if requested. The Administrator resolves any differences of opinion.

The four stages of regulation writing and review are as follows:

Stage 1: Starting Work on a Regulation

When the Assistant Administrator for a lead office determines that he or she is required by law or otherwise decides to start work on a new regulation, he or she sends a *notification form* to senior management. This brief standard form requires no analysis. The lead office submits this notification form as soon as possible, usually within 45 days of the time it learns (through passage of new legislation, a court order, etc.) that regulation may be necessary.

The notification form tells interested persons that a regulation is contemplated and allows them to plan accordingly.

The notification form indicates whether or not the new regulation is Significant based on the criteria in Chart 1. At the request of another office the Administrator may reclassify a regulation as Significant. *Submitting this form places Significant regulations on EPA's Regulatory Agenda, which is printed quarterly in the Federal Register and distributed to the public.*

NOTE: Regulations not classified as Significant are not subject to the requirements described below for a development plan and a decision package. These regulations do not pass through Steering Committee review. When published in the Federal Register, EPA will indicate that they do not meet the criteria for Significant EPA regulations and are subject to specialized development procedures.

Notification forms invite interested offices to assign appropriate personnel as work group members. (See Chart 3 for a list of EPA offices with formal responsibilities for regulation development. These offices receive a notification form.)

The notification forms set a date for submitting a development plan for Significant regulations to the Steering Committee.

CHART 3

WORK GROUP REPRESENTATION

EPA Regional Offices
Office of Air, Noise and Radiation*
Office of Enforcement
Office of General Counsel
Office of Legislation
Office of Planning and Management
Office of Research and Development
Office of Toxic Substances
Office of Water and Waste Management**

The Office of International Activities, Office of Civil Rights, Office of Environmental Review, and Office of Public Awareness will serve on appropriate work groups.

*Previously called the Office of Air and Waste Management.
**Previously called the Office of Water and Hazardous Materials.

Certain actions, such as revisions in State Implementation Plans, State water quality standards, and some pesticide actions, are initiated by other organizations and reviewed by EPA. They do not require a notification form.

Stage 2: Preparation of a Development Plan

The Assistant Administrator for the lead office (or someone, such as a Deputy Assistant Administrator, to whom such authority is delegated) appoints a chairperson for the work group assigned to work on a particular Significant regulation. In the event that special expertise exists in a Regional Office, the lead office Assistant Administrator considers asking the Regional Administrator to concur in the appointment of an expert in the Regional Office to serve as chairperson. The lead office puts together a development plan with the advice and assistance of the work group. An early step in this process is deciding whether the Significant regulation falls into the Routine or Major class (see Chart 2 for criteria). At the request of another office the Administrator may change this classification.

Development plans for Routine regulations are approved by the lead office and reviewed by the Steering Committee before substantial work begins. These development plans are sent to senior managers for their information.

Development plans for Major regulations are reviewed by the lead office and the Steering Committee but must pass through Red Border review and receive the Administrator's approval before substantial work begins.

The format for the development plan varies according to the type of regulation. Development plans include the following items when they are applicable.

- *Purpose:* This is a brief description of the possible need to regulate and the consequences of not regulating.
- *Schedule:* This is a timetable with target dates for: identifying and notifying interested outside parties, completion of required analyses of the impacts of the proposed actions (including a Regulatory Analysis when required [See Chart 4], an Environmental Impact Statement when required by Agency policy, and such other analyses as the lead office will include in the decision package), completion of the initial draft, internal and external review of drafts, award and completion of contract work, any required progress reports, Steering Committee review, publication of the proposed regulation, end of the public comment period, and promulgation of the final regulation.
- *Public Notice: This is the text of a Federal Register notice (usually an Advance Notice of Proposed Rulemaking) that describes the purpose of the proposed action, the development schedule, the issues that must be resolved, the alternatives to be considered, the special analyses that will be conducted, the plan to obtain external participation, and the name and location of an*

appropriate Agency contact person. It invites comments and solicits the submission of needed information.

- *Priority Classification:* This reports whether the Significant regulation is Routine or Major according to EPA criteria (Chart 2).
- *Issues:* This is a list of issues to be resolved.
- *Alternatives:* This is a summary of the major options (available under the authorizing statute) that will be evaluated, including a discussion of whether alternatives or supplements to direct regulation are feasible (such as economic incentives; see the discussion of alternatives in Part C.1).
- *Exclusions:* This is a list of any normally required materials that the work group expects to omit from the decision package, with a brief explanation.
- *Internal Participation:* This is a list of offices within EPA whose expertise and assistance will be needed, and a plan for coordination with EPA Regional Offices.
- *External Participation: This is a plan to involve those parties outside the Agency in the regulation development process. It indicates how persons interested in and affected by the regulation will be identified, notified, and brought into the process. It notes any interest by other Interagency Regulatory Liaison Group members or other Federal agencies and lists contact persons. It lists actions planned for coordination with State and local governments.*
- *Resources:* This is an estimate of EPA money and personnel needed to develop the regulation, with a specific estimate of resources coming from EPA offices outside the lead office.

Stage 3: Preparation of a Decision Package

After the development plan is completed, the lead office with the advice and assistance of the work group begins analyzing alternatives, assembling support materials and writing the preamble and regulation. These make up the decision package.

Members of the work group may, in some cases, write portions of the document. They review drafts as they are prepared and keep in close touch with their offices' senior management and Steering Committee representatives.

The work group chairperson has overall responsibility for regulation drafting and is accountable to lead office superiors (Division Director, Deputy Assistant Administrator, and Assistant Administrator), who provide guidance on the substance, procedures, and policy of the regulation.

The chairperson is responsible for resolving any issues or problems that may arise during the drafting process. This may be done through progress reports to senior management or by consultation with lead office superiors and other appropriate EPA managers. For Major regulations the lead office has an affirmative duty to keep EPA senior management periodically informed of issues that the work group has under consideration and to seek their policy guidance.

The lead office actively seeks the views of outside groups and consults with them both before and after formal publication of regulatory proposals. These groups include those persons directly affected by the regulation, environmental and other interested groups, industry representatives, other Federal agencies and State and local governments. This last group, State and local governments, often have a major role in the process because they implement and enforce many EPA regulations and have special knowledge of local conditions and available program resources. Whenever possible, the lead office provides an opportunity (and adequate time) for the outside parties to review regulatory proposals and support documents, including the Regulatory Analysis when one is prepared.

The decision package contains the following items:

- *Action Memorandum:* This is a brief summary of the regulation, and includes a description of alternatives considered, environmental, economic, and resource impacts, unresolved issues, anticipated reactions by the public, and recommended action. The alternatives described should include realistic options that the lead office and work group have considered seriously. Where feasible, a summary of incremental environmental and economic effects should accompany the discussion of each alternative. The action memorandum contains a summary of why the recommended alternative is the least burdensome way to accomplish environmental goals.
- *Federal Register Documents:* These include a preamble written in plain English that describes the facts and rationale for the decision to regulate and how the regulation fits into the larger regulatory program; it shows how the recommended action is the least burdensome way to accomplish environmental goals. *For final regulations the preamble summarizes public and inter-governmental comments and the Agency's response to each major point raised.* The regulation itself is written in a manner clearly understandable to those it affects and complies with the *Federal Register Document Drafting Handbook. The name and address of an EPA contact is included.*
- *Analyses:* These are support documents that lay out the major issues and show how alternatives were analyzed. The analyses identify and quantify (where possible) the regulation's environmental effects, economic (including incremental) impacts, energy impacts, technical feasibility, anticipated barriers to implementation, alternatives and supplements to direct regulation, and, for selected Major regulations, urban and community impacts. When any of these impacts cannot be determined exactly, the documents include the operating assumptions the Agency has made. The analyses show how unnecessary duplication with other EPA or Federal programs has been avoided. The Regulatory Analysis, when one is required, summarizes the results of several of these analyses. An Environmental Impact Statement is written when necessary to comply with Agency policy. *The support documents are available to the public or the reason for confidentiality is explained.*
- *Resource Requirements Summary:* This is a summary of money and personnel that EPA, State, and local governments will need to implement the regulation. *(Affected officials and the public have an opportunity to review a draft of this assessment.)* Where possible, this includes (or refers to) portions of Agency program guidance and zero base budgeting documents that show necessary short term and long term adjustments in EPA resources.
- *Reporting Impacts Statement:* This details the impacts of reporting and record-keeping on those subject to the regulation, including staffing projections and required expertise. New EPA reporting and record-keeping requirements have "sunset" expiration schedules. (See Part D.)
- *Public Participation Summary: This is a summary of comments, including comments from other Federal agencies and State and local governments received during the process, and the Agency's response to each major comment.*

•*Evaluation Plan:* This is a plan and schedule for subsequent evaluation of the effects of the regulation. (See Part C.2.)

Stage 4: Conducting Internal Reviews

After the lead office Assistant Administrator approves the decision package, he or she submits it for prepublication review. This process has three parts: Steering Committee review, Red Border review and final review by the Administrator.

The Steering Committee reviews all Significant regulations to help resolve any issues on which the work group does not reach consensus and to make sure the decision package meets standards of completeness, quality, and comprehensibility. When the Steering Committee resolves a major issue it identifies for senior management the nature of the issue and the resolution reached. The Steering Committee makes sure all components of the decision package are prepared and that material to be published is clear and understandable. It is the Steering Committee's responsibility to see that the regulation meets the eight specific requirements set forth in Section 2(d) of Executive Order 12044.

For Routine regulations, EPA's senior managers rely on the Steering Committee to see that decision packages are in order. They are notified when the Steering Committee reviews Routine regulations. Unless a senior manager requests a full Red Border review period, any Routine decision package that has received consensus approval from the Steering Committee is scheduled for an expedited Red Border review of eight working days. At the end of the eighth day it goes to the Administrator for signature. If the Steering Committee does not reach a consensus the package enters normal Red Border review.

During the Red Border process EPA senior management reviews all Major regulations regardless of concurrence at lower levels. For Major regulations, the Steering Committee checks the completeness of decision packages and makes sure any unresolved issues are clearly and fairly presented to senior management.

Red Border review of Major regulations does not exceed three weeks. The lead office Assistant Administrator may request a shorter review period. The lead office reports to the senior management on how formal objections or comments by senior managers have been resolved.

When all top-level reviews are complete or the review time has lapsed, the regulation goes to the Administrator. When the Administrator has signed it, it is published in the Federal Register.

PART B. EXTERNAL PARTICIPATION

EPA will continue to place a high priority on improved public awareness and public participation in its decision making processes.

The Administrator will continue to approve Regulatory Agendas and will see that they are published four times a year. Each Regulatory Agenda will list the title and status of all Significant regulations for which notification forms have been filed and that will be issued in the next year. It will cite the appropriate statutory authority, say whether a Regulatory Analysis is required, and give the name and telephone number of a person to contact at EPA. The Agenda will show the status of regulations removed from the list since the last Agenda was published. It will list existing regulations that are scheduled for review (see Part C.2) and reporting requirements that will reach their sunset date (see Part D). In addition to publishing the Agenda in the Federal Register, EPA will distribute it directly to interested and affected parties.

For each Significant regulation, EPA will:

(1) Draw up a plan for external participation (as part of the development plan) that shows in detail how interested and affected parties will be identified and notified.

(2) Provide early notice that regulation development is under way. This includes publishing a Federal Register notice (usually an Advance Notice of Proposed Rulemaking), which informs the public that work is beginning, provides the general approach and schedules, and identifies particular areas where additional information is needed. This notice describes the purpose, schedule, issues, available alternatives, analyses, external participation measures, and the name, address and telephone number of an EPA contact person for the regulation. EPA will mail this Notice directly to interested and affected groups and will use appropriate news articles and radio and television spots to provide timely notice that regulation development is beginning.

(3) Meet to discuss issues and alternatives during the development of the regulation with representatives of consumer, environmental and minority associations; trade, industrial, and labor organizations; public health, scientific and professional societies; educational associations and other appropriate individuals or groups of interested and affected parties from outside the Agency.

(4) Hold open conferences, workshops, hearings, meetings, and arrange direct mailings as appropriate to supplement other opportunities for public participation, and keep a mailing list of those interested in receiving draft regulations and background materials.

(5) Provide suitable background information prior to any meeting to those who will be attending. This information may include such material as a description of EPA's regulation development process; a summary of the draft regulation and key supporting materials; a list of major issues; and the name, address and telephone number of persons who can supply additional information.

(6) Consult with State and local governments. On the day that he signed Executive Order 12044, President Carter also signed a memorandum that terminated existing procedures for the review of Federal regulations by State and local governments. He asked that each Agency develop substitute measures. EPA is currently working with national organizations of State and local public officials to replace the former review procedures according to the President's memorandum. For particular regulations EPA also coordinates with particular States and localities and consults with groups of non-Federal environmental officials. A summary of intergovernmental consultation appears in the Federal Register preambles for new regulations that have major intergovernmental consequences.

(7) Track any Agency overlap or joint interest with other members of the Interagency Regulatory Liaison Group. For regulations of interest to other IRLG members, the preamble will describe coordination efforts and how they have affected the substance and procedure of the regulation.

(8) Communicate with other Federal agencies affected by a planned regulatory action. EPA's lead office contacts another Federal agency when the other agency (a) has a statutory mandate in the area to be regulated, (b) will require additional resources because of the EPA action, or (c) has important expertise relevant to the matter to be regulated. (Note: where possible, any interagency differences will be resolved at the staff level).

(9) Write the regulation and explanatory materials clearly. To help lead offices write regulations that people

can understand, EPA is developing a style book for regulation writers, selecting several regulations and developing them as models of good writing, and hiring editors to assist work groups write selected regulations.

(10) Make available a draft of the Regulatory Analysis (when one is required) by the time we publish a Notice of Proposed Rulemaking. The Federal Register preamble will have a summary of the Regulatory Analysis and information on how the public can obtain it. (Note: EPA will make public a final Regulatory Analysis when it publishes the final rule.)

(11) Provide at least 60 days for public comment, measured from the date the proposal is published, and refrain from requiring commenters to supply multiple copies of their comments. When a 60-day comment period is not possible the proposal will contain a brief statement of the reasons for using a shorter time period.

(12) Summarize outside comments, indicate EPA's response to major points and distribute both to interested and affected individuals and groups. (We summarize comments and our responses in preambles to our final regulations.)

As stated in the July 11, 1978 version of this report, EPA will adopt an Agency-wide public participation policy and write specific guidance to its employees for ensuring public participation in the regulation writing process. We intend to adopt the policy and corresponding guidance using a process that will fully and effectively involve interested and affected persons outside EPA. Although we don't now know the form the overall policy or the guidance will take, they will contain at a minimum the twelve elements listed above.

PART C. ANALYSIS

The Executive Order calls for careful analysis of available regulatory alternatives. In this Part we describe criteria and procedures for EPA analysis of (1) the economic effects of new Significant regulations and (2) regulations the Agency has already issued.

(1) Economic Analysis for New Significant Regulations

Other parts of this report (see Part A) describe the range of analyses that EPA will provide for all Significant regulations: EPA assesses health, ecological, economic, urban, energy, and program resource impacts. This subpart provides further detail on EPA's economic analysis requirements. In each economic analysis the lead office indicates by reference the other parts of the decision package that analyze the benefits the regulation will generate. This provides to the extent possible a clear identification of the regulation's costs and benefits. The economic analysis itself examines, in appropriate cases, positive as well as negative economic consequences.

The extent of analysis of the economic impact of new Significant regulations depends on whether the regulation is Routine, Major, or subject to the Regulatory Analysis requirements of the Executive Order. Guidelines based on our current internal requirements are presented for each of these categories. The guidelines in section (a) apply to those Major regulations that trigger a Regulatory Analysis (see Chart 4). Not all regulations requiring a Regulatory Analysis lend themselves to the analytic approach in the guidelines. In these cases, the lead office with the advice and assistance of the work group may amend the approach to suit the circumstances. For other Major regulations a less intensive analysis is sufficient, as described in section (b). For Routine regulations the basic guidelines in section (c) apply.

CHART 4

CRITERIA FOR CONDUCTING REGULATORY ANALYSES

The lead office prepares a Regulatory Analysis of potential economic impacts for any regulation that triggers one of the following criteria:

1. Additional annual costs of compliance, including capital charges (interest and depreciation), total $100 million (i) within any one of the first five years of implementation, or (ii), if applicable, within any calendar year up to the date by which the law requires attainment of the relevant pollution standard.
2. Total additional cost of production of any major industry product or service exceeds 5 percent of the selling price of the product.
3. The Administrator requests such an analysis (for example, when there appear to be major impacts on geographical regions or local governments).

(a) *Guidelines for Regulatory Analysis*

The lead office bases its Regulatory Analysis on the general approach described below. EPA has used this approach to determine the costs of such regulations as effluent guidelines and new source performance standards. Some types of regulations may require a modified approach. Sewage treatment plant regulations and some solid waste regulations that affect primarily other government agencies are examples that do not require industry segmentation as part of the analysis.

General Approach

1. Prepare an economic profile of the affected sectors (producers and/or consumers), including the industry structure (e.g., degree of concentration, the way prices are determined), the type of competition in the affected sectors, and performance trends (e.g., financial rates, growth trends) of the affected sectors.

2. Segment the industry (or other affected groups) into categories of economic units that will be similarly-impacted (e.g., according to size distribution, pollution control process, age).

3. Develop marginal (incremental) cost effectiveness curves for each process/strategy for each affected industry segment.

4. Analyze the economic impact of proposed standards and of alternatives including any economic benefits from regulation such as the generation of new product markets and new employment opportunities. It may not be necessary to analyze all alternatives in the same level of detail. The following impacts are analyzed when feasible:

(a) price effects
(b) production effects
(c) industry growth, profitability, capital availability effects
(d) employment effects
(e) community effects, including disproportionate effects on particular regions or localities
(f) balance of trade effects
(g) energy effects

When feasible, effects on productivity are described. For grant programs, some impact categories are not applicable, although user charges (as an analogue to price), effects on communities (affordability, employment, growth), and energy effects may be applicable.

EPA has developed more detailed internal working guidance to assist program offices in conducting their economic analyses. It is available upon request from Frans J.

Kok, Director, Economic Analysis Division, EPA, Washington, D.C. 20460.

Alternatives

Although the decision package for a regulation addresses alternatives available under the authorizing statute, the lead office and work group may, during their analysis, identify attractive regulatory alternatives that cannot be implemented under existing law. EPA will review such alternatives and, where appropriate, develop (apart from the regulation development process) legislative proposals that would permit their use.

The analysis covers the important alternatives that EPA has considered. Such alternatives may include:

1. Alternative types of regulations
—taking no additional regulatory action.
—relying on market forces (e.g., use of a marketable rights approach).
—using an informational requirement where applicable (e.g., product labeling).
—specifying performance levels (e.g., an allowable level of emissions) but allowing those regulated to achieve attainment by whatever means they prefer.
—using engineering design approaches that specify how a proposed outcome is to be achieved.
2. Alternative stringency levels
—making the standard or regulation either more or less stringent.
—tailoring the degree of stringency to stages of processing, particular industries or other pertinent groups.
3. Alternative timing
—using different effective dates.
—phasing in the requirement more or less rapidly.
4. Alternative methods of ensuring compliance
—using economic incentives.
—employing various enforcement options (e.g., on-site inspections vs. periodic reporting, sharing implementation responsibilities variously among the different levels of government).
—using different compliance methods for different industry segments or types of economic activity where costs of compliance vary sharply (e.g., treating small firms and large firms differently).

(b) *Other Major Regulations*

For Major regulations that do not require a Regulatory Analysis, the lead office conducts an analysis for EPA purposes. This analysis follows the same general approach as outlined above, but it need not provide the same level of detail as a formal Regulatory Analysis.

(c) *Routine Regulations*

EPA will continue to analyze all Routine regulations for insights into the potential effects on the economy and on those who are affected.

To minimize the burden on lead offices, this analysis is less sophisticated. It includes the following estimates:
—the number of establishments that will be affected
—an estimate of the total costs that will be borne by each affected industry segment
—an estimate of the price impacts under an assumption that cost changes will be reflected in prices
—an estimate of revenue changes for each segment if costs are not fully reflected in price changes
—an estimate of job gains and losses
—an estimate of total energy impacts for each affected industry segment
—an estimate of impacts on any particular regions and localities that will be more seriously affected than others.

This analysis covers both the proposed regulation and, if applicable, the alternatives considered; however some alternatives may be analyzed in less detail.

(2) Review of Existing Regulations

Section 4 of the Executive Order calls for the review of existing regulations. To comply, EPA has established criteria and processes to select regulations for immediate review and to identify additional regulations for subsequent review. Section 2 of the Executive Order requires that each new Significant regulation include a plan for its future evaluation.

(a) *Selection Criteria and Process*

Many of EPA's most important regulations have recently been reviewed or scheduled for review in response to statutory or judicial direction:

Air Program
—Ambient Air Quality Standards
—New Source Performance Standards
—Approval of State Implementation Plans
Water Program
—Best Available Technology for Primary Industries
—Water Quality Management and Standards Regulations
—NPDES Permit Regulations
—Construction Grants Regulations

This set of reviews is either under way or completed. To make the review of existing regulations a comprehensive program, EPA has begun to screen all of its existing regulations. The screening will conclude in November 1979. The EPA program office responsible for each part (or subpart) of Title 40 of the *Code of Federal Regulations* (which contains almost all of EPA's regulations) has formed work groups to conduct the screening.

The lead office, with the advice and assistance of the work group, is relying on currently available data for this initial screening. The selection criteria are:
—Estimated high actual costs to the public of the regulation;
—Estimated low actual benefits;
—Existence of overlap with other regulations (issued by EPA or other agencies);
—Need for integration with other programs;
—Existence of preferable alternatives;
—Low degree of compliance;
—Low enforceability;
—High reporting burden;
—Lack of clear language;
—Length of time since the regulation became effective or was last substantively amended; *
—Intensity of public sentiment in favor of changing the regulation;
—Availability of adequate data for analysis of the effectiveness and cost of the regulation.

During the screening the lead office will summarize its assessment of each regulation and designate appropriate regulations for formal review. It will prepare a plan to review all regulations so selected within five years. When possible the lead office will schedule related regulations for review at the same time.

The review plan will include an estimate of the necessary dollar resources and identify data needed for the review. Where there are not sufficient data for review, the plan will include provisions for obtaining them. The lead office should make any request for additional or reprogrammed resources

* EPA is now writing regulations that will be adopted during the screening project, including regulations to implement a hazardous waste control program, identify criteria for acceptable landfills, and set various new air quality and drinking water standards. Such new regulations are not subject to the screening or review requirements listed in this Part. They are subject to section (c) of this Part which asks that each new Significant regulation contain an evaluation plan.

to carry out its review plan through the zero base budget process.

The lead office will submit designated regulations and review plans to the Steering Committee for review and to senior management for approval.

EPA will publish its five-year review schedule in 1979 and will indicate upcoming reviews as a regular part of its quarterly Regulatory Agendas.

(b) *Nature of the Review*

Once it has selected a regulation for review, the lead office will conduct the review at the time scheduled in the five year plan with the advice and assistance of a work group.

The review of existing regulations will follow the procedures for the development of new regulations, including measures to assure public participation. The review will not duplicate any analyses made when the regulation was first issued if the analyses are still valid and meet current quality standards.

(c) *Development of Evaluation Plans*

Section 2(d)(8) of the Executive Order requires that each new Significant regulation have a plan for evaluating its effectiveness. In compliance with this requirement, the lead office for each Significant regulation develops a plan to evaluate the regulation within five years of implementation. Evaluation plans indicate the resource needs, data requirements, and a schedule for conducting the subsequent evaluation. One objective of the evaluation is to improve the relevance and adequacy of data collected over time to support the analysis of regulatory effectiveness. *In order to invite public involvement in these evaluations, a schedule of upcoming assessments will appear regularly in EPA's Regulatory Agenda.*

If an evaluation leads to modification of the regulation, the full procedures of this report (including provisions for external participation) will apply.

Part of each evaluation will be a plan and schedule for subsequent evaluation. In this way EPA regulations will receive continuing retrospective reviews.

PART D: REPORTING BURDENS REDUCTION

To carry out its statutory mandates, EPA must obtain data from the public, industry, and State and local governments. We often request data on environmental (health) effects, economic parameters, pollutant discharge and emission rates, and much more. EPA's permit and grant programs also require submission of applications that often contain detailed requests for information.

While this information remains essential, EPA has installed mechanisms to minimize paperwork, record-keeping and reporting burdens wherever possible. These devices comply with Section 2(d) of the Executive Order, which requires an analysis of new reporting or record-keeping burdens before Significant new regulations are adopted; and with Section 4 which requires a review of burdens imposed by existing regulations.

First, EPA has established a "sunset" policy on reporting and recordkeeping requirements contained in new regulations. This will terminate automatically those reports that cannot be justified after a set period, usually five years. If a lead office requests renewal of a reporting requirement, EPA will conduct an internal review (not to exceed six months) of its costs and its benefits. The reporting requirement will not expire during the time it is under review. *The review process will include an early opportunity for public comment.* Only after this review, and upon order of the Administrator, will a reporting requirement continue beyond its sunset date. (See Appendix A for details of this policy.)

Second, EPA requires a "reports impact analysis" for all new Significant regulations. This analysis is part of the decision package that moves through the review stages described in Part A. The analysis describes the reason for the reports, evaluates major alternatives (including the use of existing sources of information), outlines the information requested and the form of the report, and estimates the costs for the Agency and for those reporting to collect, prepare and analyze the data. The analysis describes any known overlapping data requirements imposed by other government agencies in order to prevent duplication of burdens. *EPA considers public comments on the analysis before it issues the regulation.*

Third, EPA continues to include a request for public comment on reporting burdens in the Federal Register preambles for proposed new regulations. In the past, EPA has sent these comments to the Office of Management and Budget when seeking OMB clearance for the report. *The lead office and work group consider these comments in drafting the final regulation.*

Fourth, as part of its screening and review of existing regulations (according to subpart C.2 of this report) EPA is re-examining reporting and record-keeping requirements. *These reviews follow the public participation measures used for new regulations.*

APPENDIX A—SUNSET POLICY FOR NEW REPORTING REQUIREMENTS

I. Coverage

New regulations that impose a reporting or record-keeping requirement contain a provision for repeal of that requirement on a specific date unless action is taken by EPA to renew or modify it.

This policy places a continuing burden of proving the report's desirability on those who advocate its retention. *The process will include participation by affected parties and the general public.*

The lead office proposing a new regulation that imposes a reporting requirement must include a sunset provision. The lead office has three options:

(1) To set as a termination date the semiannual sunset date (May 1 or November 1) that falls within 5 years after reporting begins (e.g., a reporting requirement taking effect on January 1, 1979 would expire no later than November 1, 1983).

(2) To set an earlier or later sunset date, depending on such factors as the life-span of the program for which the information is being sought; the time needed to evaluate the usefulness of the report; and the burden that frequent changes in the reporting requirement might impose.

(3) To exempt the reporting requirement from the sunset process if the resources that would be needed for a sunset review are greater than the burdens imposed by the report itself, or if the report is required by statute.

II. Review

The review process will begin six months before the scheduled sunset date. *At that time, EPA will publish in its Regulatory Agenda a list of reporting requirements due to expire on the next semiannual sunset date. This notice will invite public comment on the need to review, modify or terminate any of the requirements scheduled to expire.* The EPA lead office administering the requirement and any

outside party affected by the program may request renewal for an appropriate period.

After 60 days, another public notice will list those reporting requirements for which renewal has been requested. It will invite further public comment to be included in a public docket for each requirement.

The lead office that administers the requirement will evaluate it, inviting other interested EPA offices (including the office with responsibility for reports management) to participate on a work group. The evaluation will resemble the reports impact analysis for new regulations, but will reflect the actual costs, burdens, and usefulness of the reporting requirement. The program office and work group either must provide a justification for renewing the requirement or recommend that it be modified or terminated.

The Steering Committee will review the assessment along with public comment and Agency responses to those comments and recommend to the Administrator that he renew, modify, or terminate the reporting requirement. Upon his approval the Administrator will sign an order implementing the decision.

On the sunset date, a Federal Register notice will list those regulations repealed and those renewed. Reporting requirements will not lapse while they are under review. In the case of a regulation for which modification is proposed EPA will retain it until the Agency completes procedures to implement the modified regulation.

APPENDIX B—RESPONSE TO PUBLIC COMMENTS

I. Background

In the two months following publication of its draft report on improving the regulation writing process, EPA received 65 written comments from interested organizations and individuals. These suggestions and critiques came from private companies, trade associations, governmental agencies, public interest groups and citizens. They were carefully considered along with transcripts from public meetings in San Francisco, Kansas City and Washington, D.C., as the EPA staff prepared the final report on the regulatory process.

This summary of public comments cannot begin to catalog the depth and variety of thoughtful comments EPA received. All of the public comments, however, have been compiled for internal use, especially in drafting public participation provisions of the proposed "EPA Guidelines for Regulatory Development." For a detailed compilation of public comments please contact Chris Kirtz, EPA, (PM-223), Washington, D.C. 20460.

II. Analysis for New Regulations

One of the most important revisions had to do with the impact of EPA regulations on local communities. As a result of comments, a new criterion has been added to the list of items to be considered in the Regulatory Analysis conducted for new regulations. In the future each new regulation will be examined for any disproportionate effects it might have on particular regions or localities. Similarly, regulations that do not require a Regulatory Analysis will also be studied for an estimate of the impacts on particular regions or localities that are most severely affected.

In addition EPA has specified that economic analyses of new regulations consider the positive as well as any negative economic consequences of the regulation being proposed. This suggestion came from several commenters.

Because EPA has to regulate in situations where information is imperfect or incomplete, certain assumptions must be made. In the future, the analyses will state these assumptions explicitly and their rationale.

A number of commenters suggested that the quantitative criteria for preparing a formal Regulatory Analysis—$100 million in annual costs or 5% impact on product costs—are too high. We retained these criteria, which EPA has used for preparing Economic Impact Assessments in the past. EPA will subject all regulations to rigorous economic analysis, but feels it must marshal its analytic resources to provide the most thorough analysis on the regulations with greatest potential impact.

III. Review of Existing Regulations

The public's concern with procedures for reviewing existing regulations led to modifications in the final report. Those commenting on the review process agreed that EPA must take into account the cumulative effects of related regulations. In the future, lead offices will schedule existing related regulations for review at the same time when possible. Because the public expressed interest in which regulations will be reviewed and when the review will take place, EPA will publish a five year review plan that will list all the major existing regulations scheduled for scrutiny. Upcoming reviews of individual regulations will also be listed in EPA's quarterly Regulatory Agenda.

Several commenters recommended a "sunset" policy for all EPA regulations. EPA believes that the existence of expiration dates for its regulations could give those regulated an incentive to delay compliance. However, the final report clarifies the Agency's intent to conduct a fresh evaluation of regulations every 5 years.

IV. Paperwork Burdens

Some commenters expressed concern that EPA regulations might impose reporting or record-keeping burdens duplicating those of other government agencies. In response to this concern, EPA lead offices are now required to describe in their "reports impact analysis," known data requirements imposed by other agencies so that duplication can be avoided. This reports impact analysis will be presented for Administrator and senior management review in each decision package going to the Administrator for signature.

There was extremely broad support for EPA's proposed "sunset" provision that will set a five-year time limit for reporting and record-keeping requirements unless a need for their continuance is demonstrated. The final report clarifies that "sunset" covers both reporting and record-keeping and makes it clear that the burden of proof rests with those advocating retention of the requirements.

V. External Participation

Most commenters, particularly the participants in the public meetings, were interested in the public participation procedures for EPA regulation writing. Based on their suggestions, EPA has made several modifications for this final report. To make sure there is no delay in informing the public about a proposed regulation, a new requirement has been added. Whenever a lead office Assistant Administrator learns that a new regulation will be required—due to new legislation, a court order, etc.—the lead office will submit a notification form within 45 days. The next Regulatory Agenda will provide public notice that action is intended.

As another step to keep the public regularly informed of work in progress, EPA has expanded the publication of its Regulatory Agenda from twice a year to four times a year.

Comments on the importance of early and informed public participation generated additional procedural changes,

including requirements that (1) the lead office keep lists of interested and affected people outside the Agency for use as contact points for each regulation; (2) the Agency provide appropriate background information for public use prior to public meetings; and (3) the Agency distribute Advance Notices of Proposed Rulemaking as widely as possible.

There were several comments that a 60-day public comment period for proposed regulations is too short, that EPA should more frequently hold meetings and hearings in relevant field locations, and that State and local governments should be invited to consult on new regulations. The final report does not address these suggestions; the Agency will investigate these points more carefully as it develops its Agency-wide guidance on external participation and as it formulates its new intergovernmental consultation procedures in compliance with the President's March 1978 memorandum.

Opinion was divided on whether EPA should fund external participation in regulation development. The final report takes no position on this matter. EPA has undertaken a pilot funding program and will base its policy on the results of the test program.

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May 29, 1979

Part XII

Community Services Administration

Summer Youth Recreation Programs for Fiscal Year 1979

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1061

[CSA Instruction 6168-2c]

Character and Scope of Specific Community Action Programs; Summer Youth Recreation Programs

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is filing its final rule describing the FY 1979 Summer Youth Recreation Program to be funded under section 222(a)(6) of the Economic Opportunity Act of 1964, as amended. This final rule remains basically the same as the regulation that governed the FY 1978 program. This final rule discusses the purposes and conditions of the program, categories of projects eligible for funding, financial policies, and application procedures.

EFFECTIVE DATE: June 28, 1979.

FOR FURTHER INFORMATION CONTACT: Nolan Lewis, Community Services Administration, Office of Program Development, 1200 19th St., NW., Rm. 310, Washington, D.C. 20506, (202) 254-5276, Teletypewriter # (202) 254-6218.

For any specific program or grant application question(s) contact the appropriate CSA Regional Office.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the Federal Register on March 19, 1979, volume 44, Number 54 for a 30 day review and comment period. The Community Services Administration received 15 written comments on the proposed rule and each was considered in drafting the final rule.

The most significant issues raised by the commenters dealt with: (1) Restriction on trips outside a 100-mile radius of the grantee's jurisdiction, (2) Transportation, (3) Eligible Participants and (4) General Requirements—Program Reports. In our review and analysis of the above concerns we concluded that:

(1) Restriction on trips outside a 100-mile radius of the grantees jurisdiction—Several commenters from rural areas stated that this regulation was too restrictive and placed unnecessary hardships on program operator who would like to take field trips to professional sports events, state parks, state capitals and other cultural and educational sites which are located outside the 100-mile radius of their jurisdictions. We disagree that the regulation is too restrictive since it does provide for approval of trips outside the 100-mile radius of the grantees jurisdiction if justified in writing and approved by the CSA Regional Director.

(2) Transportation—Several commenters requested an interpretation of whether or not § 1061.20 permitted the use of existing internal transportation to support recreational activities at reimbursable mileage rates. Yes, the regulations do permit the use of properly licensed vehicles and we encourage grantees to utilize all available resources in support of the Summer Youth Recreation Program.

(3) Eligible Participants—Many commenters indicated that due to cutbacks under the Summer Youth Employment Program many 14 and 15 year olds will not be employed. They felt the regulation was too restrictive and should be revised to allow 14 and 15 year olds to participate in the Summer Youth Recreation Program, since they were the most likely to be bored with inactivity and represent the greater potential problem for parents and the community.

The Summer Youth Recreation Program is targeted for youth 8 to 13 since this group is ineligible to apply for employment under the Summer Youth Employment Program and Federal programs focusing on their needs are either non-existent or limited. In addition, the regulations do not prohibit 14 and 15 year olds from participating in the program but merely target upon youth 8 to 13.

The United Cerebral Palsy Association (UCPA) suggested the inclusion of a special recognition clause, referring to the handicapped as a sub-target group eligible for services under the Summer Youth Recreation Program. In addition, UCPA stated that, "due to the nature of handicapping conditions, modifications to existing recreation programs may be necessary in order to make many of these programs accessible to the handicapped." We agree with the suggestion recommended by UCPA and § 1061.20-5, Eligible Participants, has been revised in the final rule to include a special recognition clause requiring all grantees to the extent possible to provide access and services to the handicapped.

(4) General Requirements—Program Reports—Based upon several telephone comments from CSA Regional Office staff and grantee staff regarding the submission date for program reports, we have revised § 1061.20-10 in order to adhere with the normal report period for Community Action Agencies.

In view of the short duration and time frame we have to implement the Summer Youth Recreation Program, we have negotiated with the Office of Management and Budget a procedural variation to the A-95 requirement of a sixty (60) day period for Clearinghouse review and comment. The provisions of the variation to A-95 are outlined in § 1061.20-7(c) Clearinghouse Notification and Review. Due to late publication of this rule, a further modification to OMB's procedural variation has been included which will allow Clearinghouses the same time for review.

CSA wishes to thank all who took the time to comment and while not every recommendation could be adopted, we believe that through this process our regulations will be greatly strengthened.

William W. Allison,
Acting Director.

45 CFR § 1061.20 is amended to read as follows:

Sec.
1061.20-1 Applicability.
1061.20-2 Definitions.
1061.20-3 Summer youth recreation program—description and components.
1061.20-4 Eligible sponsors/alternates.
1061.20-5 Eligible participants.
1061.20-6 Funding.
1061.20-7 Application process.
1061.20-8 Expenditure of funds.
1061.20-9 Coordination with other programs.
1061.20-10 General requirements.
Appendix A CSA regional offices.
Appendix B State school lunch directors.

Authority: Section 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart—Summer Youth Recreation Programs

§ 1061.20-1 Applicability.

This subpart applies to grantees funded under Section 222(a)(6) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.20-2 Definitions.

For purposes of this subpart the following definitions will apply:

(a) "Act" shall mean the Economic Opportunity Act of 1964, as amended.

(b) "Allocation" shall mean the distribution of funds among Community Action Agencies, and, where applicable, other public or private non-profit agencies.

(c) "Certification" shall mean a legally binding statement that certain requirements have been fulfilled.

(d) "CETA Act" shall mean the Comprehensive Employment and

Training Act of 1978 (Public Law 95-524).

(e) "Chief Elected Official" and "Chief Executive Officer" shall include their designees.

(f) "Community Action Agency" shall mean a political jurisdiction, public agency, or private non-profit agency which has the power and authority and will perform the function set forth in Section 212 of the Act and is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently recognized as a community action agency by the Director.

(g) "CSA Regional Director" shall mean the ten Regional Directors of the Community Services Administration in specified geographical areas of the country. (See Appendix A for the appropriate CSA Regional Office serving your area).

(h) "Director" shall mean the Director of the Community Services Administration.

(i) "Economically Disadvantaged" shall mean a person who is a member of a family as defined under CSA income poverty guidelines.

(j) "Summer Youth Program" shall mean the Summer Employment Program for Economically Disadvantaged Youth funded under Title IV Section 481(a) of the Comprehensive Employment and Training Act of 1978 and administered by the U.S. Department of Labor.

§ 1061.20-3 Summer youth recreation program—description and components.

(a) *Description.* (1) The Summer Youth Recreation Program is designed to provide recreational opportunities for low-income children during the summer months. The programs will be conducted in conjunction with the Summer Youth Program administered by the U.S. Department of Labor. Summer Youth enrollees should be utilized to the maximum extent possible in the conduct of this program.

(2) The program shall begin as soon as possible after the spring closing of school and shall not continue beyond the end of the Federal fiscal year (September 30).

(3) To the maximum extent possible, Summer Youth Recreation Program sites shall be located directly in low-income communities or areas to ensure that disadvantaged youth are the beneficiaries of the programs. Activities shall be conducted in as many areas of the sponsor's jurisdiction and designed to serve as many low-income children as possible within the constraints of effective program management and support.

(b) *Components.* (1) Summer Youth Recreation Programs will consist of the following components:

(i) Recreation support programs will provide recreation opportunities such as playground activities, organized sports and games, arts and crafts, informational tours, cultural field trips, instruction in the creative arts and special events.

(ii) Transportation support programs will provide transportation services to such cultural, recreational, or educational activities.

§ 1061.20-4 Eligible sponsors/alternates.

(a) *Eligible Agencies.* Agencies eligible to receive summer recreation funds shall be Community Action Agencies or other public or private non-profit agencies where no Community Action Agency exists or has been designated to administer a program.

(b) *Alternative Sponsors.* The CSA Regional Director may provide for the funding of an alternative sponsor if a sponsor, for any reason, is unable to establish or maintain an acceptable Summer Youth Recreation Program.

(c) *Delegate Agencies/Subgrants.* A Summer Youth Recreation sponsor may enter into contracts or subgrants under the terms set forth in and through use of OEO Form 280, *Agreement for Delegation of Activities.*

§ 1061.20-5 Eligible participants.

Participants in a Summer Youth Recreation Program shall be economically disadvantaged youth too young to obtain employment.

The main target group for the Summer Youth Recreation Program shall be disadvantaged youth between the ages of eight and thirteen. In addition, to the extent possible all eligible grantees will provide access and services to the handicapped.

§ 1061.20-6 Funding.

(a) *Allocation of Funds.* The allocation formula for each state will be based upon section 225 of the Act, except that the discretion therein provided shall be used to increase states to the percentage of $17.0 million they would have received if the relative number of poor residing within that State had been the formula used. No state is automatically entitled to receive its allotment. The allotments for states are target allotments to which they are entitled if applications of sufficient quality are submitted to justify funding. Target planning figures will be provided each Community Action Agency by the appropriate CSA Regional Office based upon the relative number of poor residing within that CAAs target area. CAAs will make applications for funding in the amount of that target planning figure in accordance with the application procedures established herein. CSA Regional Directors shall have discretionary authority to provide funds to serve the recreational needs of economically disadvantaged children in areas not covered by a CAA where there is a clearly demonstrated need for such services and a viable delivery system exists to deliver the services. $8,000 will be the minimum target planning figure a potential SYRP grantee will receive.

In exceptional circumstances, where a grantee submits a satisfactory SYRP grant application but funding constraints preclude the grantee being funded at the $6,000 minimum level, the Regional Director may fund the grantee for a lesser amount after thoroughly reviewing the situation to assure that the overall resources to be mobilized and the coordination with other agencies to be affected will result in a viable SYRP program being carried out.

Additional factors which will be taken into consideration in making funding decisions will be: grantee's ability to operate a high quality program based upon past overall grantee performance; evidence in the grant application of mobilization of non-CSA resources; coordination with other appropriate state and local organizations; and, the number of poor children proposed to be served.

(b) *Non-Federal Share; Waiver of.* Non-Federal share required by section 225(c) is waived for all programs funded under section 222(a)(6), Summer Youth Recreation Programs. Due to the depressed economic circumstances existing for State and local governments which has impacted particularly on local educational institutions, the most logical source for non-Federal share for this program, the Director has waived the requirement for this year. However, where possible, grantees are encouraged to seek non-Federal share and mobilize local resources. The waiver is automatic and does not require a request for waiver.

§ 1061.20-7 Application process.

(a) *Forms/Documentation Required.* The basic forms to be used in applying for a Summer Youth Recreation Program are as follows:

(1) *CSA Form 301, Applicant Certification (new grantees only).*
(2) *CAP Form 25, Program Account Budget.*
(3) *CAP Form 25a, Program Account Budget Support Sheet.*

(4) *CSA Form 419, Summary of Work Programs and Budget.*
(5) *SF 424, Federal Assistance (Sections I and II completed).*

(i) When Delegating Programs:

(A) *CAP Form 11, Assurance of Compliance with Civil Rights Act.*
(B) *CAP Form 85, Administering Agency Funding Estimate.*
(C) *CAP Form 87, Delegate Agency Basic Information.*
(D) *OEO Form 280, Agreement for Delegation of Activities.*

These forms will be made available to grantees by the appropriate CSA Regional Office.

(ii) All eligible applicants should submit the original and two (2) copies of all required forms and documents to the appropriate CSA Regional Director.

(b) *Deadline for Submission of Applications.* Summer Youth Recreation Program grant applications shall be submitted to CSA Regional Offices no later than 30 days following publication in the Federal Register.

(c) *Clearinghouse Notification and Review.* All eligible applicants should follow the Project Notification and Review System procedures as outlined in 45 CFR 1067.10 (CSA Instruction 6710–3a) or the procedural variation granted by OMB in Administrative note 6 dated April 16, 1979. However, due to late publication of this final rule, some applicants may not have completed this modified Clearinghouse review process granted by OMB. For those applicants, a revised submission schedule is as follows:

—Applicants must submit their notifications of intent (NOIs) to the Clearinghouses by June 1.
—Clearinghouses will have until July 1 to review NOIs or applications if they request them.
—Clearinghouses will submit their comments directly to CSA Regional Offices with a copy to the applicant.
—Applicants who have not already submitted their NOIs should inform Clearinghouses of the revised dates in this final rule.

A prior to release special condition will, when necessary, be attached by CSA to any funding action to allow Clearinghouses 30 days from the date of receipt of an applicant's NOIs, to review and submit any comments directly to the appropriate CSA Regional Office. This special condition will allow modification of the grant up to and including partial or total deobligation of funding if CSA finds such action warranted based on the Clearinghouses' comments.

The above revised time schedule allows Clearinghouses the same time period to review and comment as was provided for in the initial procedural variation granted by OMB. Although some applicants may not receive funding at the beginning of June as originally intended by CSA, the thirty day delay is essential to allow Clearinghouse comments on those NOIs or applicants submitted late to the Clearinghouse. Applicants may expedite the final release process by obtaining the appropriate Clearinghouse and Governor's approval in advance or in less time than required.

(d) *Delegation of Authority.* Regional Directors are hereby delegated the authority to sign Summer Youth Recreation Program grants.

(e) *Monitoring and Evaluation.* The CSA Regional Offices will be responsible for monitoring and evaluation of the Summer Youth Recreation Program. In addition, CSA Headquarters may undertake on-site evaluations of selected projects.

§ 1061.20–8 Expenditure of funds.

(a) *Allowable Costs.* (1) Administration, includes salaries, wages and fringe benefits of administrative staff (but not program staff); consumable office supplies; rent, and utilities; telephone and postage; travel of administrative staff and audit costs. Funds in this category are subject to the administrative cost limitation of 15% as defined in OEO Instruction 6807–1, Limitation on CAA Administrative Costs.

(2) Recreation services including but not limited to: purchase of recreation equipment* and supplies up to $200 per unit cost to be used in support of the program; rental of recreational equipment and supplies to be used in support of the program; admission to special events; field trip expenses; salaries; wages, fringe benefits, and orientation of program staff, such as, art instructors and playground supervisors; transportation for participants and program staff; lunches or food provided as an integral part of a recreation activity; recreation clothing and insurance. The standards to be used for the procurement of supplies, equipment, and other material and services with federal grant funds are described in CSA Instruction 7001–01a and OMB Circular A–102 (FMC 74–7).

(3) Charges above operating costs for the use of grantee owned facilities will not be made to the Summer Youth Recreation Program except with the written authorization of the appropriate CSA Regional Director.

(4) Transportation services, including but not limited to: bus tokens, and rental of buses and vans.

(b) *Non-Allowable Costs.* (1) Summer Youth Recreation Program funds shall not be expended on office equipment, in-place installations, capital improvements, to compensate participants in the program or to purchase transportation vehicles or equipment such as cars, vans, or buses.

(2) Summer Youth Recreation Program funds shall not be used to finance any other program activities and services not authorized under the Summer Youth Recreation Program such as, but not limited to, work experience, on-the-job training or public service employment activities.

(3) Summer Youth Recreation Program funds shall not be used to finance trips outside a 100-mile radius of the sponsor's jurisdiction unless the trip has received the specific written approval of the CSA Regional Director of his/her designee.

§ 1061.20–9 Coordination with other programs.

(a) The success of the Summer Youth Recreation Program depends to a great degree upon coordination with other programs and upon the mobilization of other public and private resources. A particularly key element in successful recreational programs is the utilization of the Summer Youth Program (summer employment for disadvantaged youth between the ages of 14 and 21). This program has been used since the inception of the Summer Youth Recreation Program to provide program personnel who serve as playground supervisors, coaches, field trip monitors, etc. in the Summer Youth Recreation Programs.

(b) All grantees should utilize the Summer Food Service Program for children as a part of the Summer Youth Recreation Program.

The Summer Food Service Program provides meals for low-income children from needy areas and is administered by the Department of Agriculture through state agencies or the Food and Nutrition Service Regional Offices (see Appendix B for listing of those organizations which can assist grantees in applying for the program). Organizations planning to apply for a Summer Youth Recreation Program grant should contact the appropriate state or regional officials as soon as possible to assure participation in the Summer Food Service Program for Children.

*Disposition of property will be in accordance with the CSA policy published in CSA Instruction 7001–01a.

(c) The Summer Youth Recreation Program will be closely coordinated with related social service programs operated by other community based organizations (park and recreation departments, schools, etc.) with a view of minimizing possible duplication of effort and promoting efficiency by use of common facilities and services.

§ 1061.20–10 General requirements.

(a) *Maintenance of Effort.* No grantee shall, because of funds granted under Section 222(a)(6) of the Act, reduce or decrease funds already planned for summer youth recreation activities of a nature similar to those provided under the aforementioned section.

(b) *Insurance.*—(1) *Public Grantees.* Public Grantees will follow their requirements and practices.

(2) *Nongovernmental Grantees.* General liability insurance, including automobile liability insurance must be obtained, in amounts which assure the adequate protection of program participants and the grantee. The required minimum property damage coverage shall be $25,000.

(c) *Bonding.* (1) Public grantees will follow their regular requirements and practices.

(2) Prior to the release of funds to any private grantee, CSA must receive written assurance that they are covered by or have made arrangements for appropriate bonding of grantee officials in accordance with provisions set forth in 45 CFR § 1050.15 (CSA Instruction 6800–3).

(d) *Program Progress Report.* All grantees must submit a Program Progress Report (PPR) as outlined in 45 CFR § 1050.15 (CSA Instruction 6800–9) on the accomplishments of the Summer Youth Recreation Program to the appropriate CSA Regional Office. In the case of CAAs and grantees with other CSA funding, the Program Progress Report will be submitted during the report period following termination of the program. All other grantees must submit a final report within 90 calendar days following the termination date of the grant or 90 days after the program concludes.

(e) *Financial Reporting.* In the case of CAAs and grantees with other CSA funding, a financial report on the Summer Youth Recreation Program is to be submitted as part of the quarterly report which follows termination of the program to the appropriate CSA Regional Office in accordance with the requirements and procedures set forth in 45 CFR § 1050.70 (CSA Instruction 6800–8). All other grantees must submit a final financial report within 90 days after the termination date on the grant or 90 days after the program concludes.

(f) *Auditing.* Audit requirements for this program are to be met by complying with CSA Instruction 6801–1 and any special conditions that are part of the grant award.

(g) *Safety and Health Conditions.* Participants shall not be exposed to conditions which are unsanitary or hazardous or dangerous to their safety or health.

(h) *Licensing.* All transportation services under this program will be from sources properly licensed to provide carriage of the public, and which are operated in compliance with all applicable local, state and/or federal statutes covering public transportation.

Appendix A.—CSA Regional Offices

Director, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Region I—States served: Connecticut, Maine, Massachusetts, New Hamphsire, Rhode Island, Vermont.

Director, 26 Federal Plaza, 32nd Floor, New York, New York 10007, Region II—States served: New Jersey, New York, Puerto Rico, Virgin Islands.

Director, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104, Region III—States served: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Director, 101 Marietta Street, NW., Atlanta, Georgia 30323, Region IV—States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Director, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606, Region V—States served: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Director, 1200 Main Street, Dallas, Texas 75202, Region VI—States served: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Director, 911 Walnut Street, Kansas City, Missouri 64106, Region VII—States served: Iowa, Kansas, Missouri, Nebraska.

Director, Federal Office Building, 1961 Stout Street, Denver, Colorado 80202, Region VIII—States served: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Director, 450 Golden Gate Avenue, P.O. Box 36008, San Francisco, California 94102, Region IX—States served: Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories.

Director, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101, Region X—States served: Alaska, Idaho, Oregon, Washington.

Appendix B—State School Lunch Directors

1. Mr. T. G. Smith, Coordinator, Child Nutrition Program, State Department of Education, 410 State Office Building, Montgomery, AL 36130.
2. Mrs. E. Ruth Benigno, School Food Coordinator, State Department of Education, Pouch F, Juneau, AK 99801.
3. Mrs. Letea Tuaolo, Director, Food Services Program, Department of Education, Pago Pago, AS 96920.
4. Mrs. Junetta Barrett, Director, Food Nutrition Division, Department of Education, 1535 West Jefferson, Phoenix, AZ 85007.
5. Mr. Doyle Border, Coordinator, School Food Services, State Department of Education, 403 E Education Building, Little Rock, AR 72201.
6. Mrs. L. Gene White, Director, Office of Food and Nutrition Services, State Department of Education, 721 Capitol Mall, Sacramento, CA 95814.
7. Mr. Daniel G. Wisotzkey, Director, School Food and Services and Supportive Services, Colorado State Department of Education, 201 East Colfax, Room 318 State Office Building, Denver, CO 80203.
8. Mrs. Ann Tolman, Director, Child Nutrition Programs, State Department of Education, Post Office Box 2219, Room G–25, Hartford, CT 06115.
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Vol. 44, No. 104

Tuesday, May 29, 1979

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523-5239	TTY for the Deaf
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523-3408	Automation
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FEDERAL REGISTER PAGES AND DATES, MAY

25393-25620.....1
25621-25832.....2
25833-26056.....3
26057-26730.....4
26731-26840.....7
26841-27062.....8
27063-27376.....9
27377-27634.....10
27635-27968.....11
27969-28278.....14
28279-28654.....15
28655-28770.....16
28771-29022.....17
29023-29428.....18
29429-29634.....21
29635-29866.....22
29867-30066.....23
30067-30310.....24
30311-30662.....25
30663-31004.....29

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Ch. I.....25393

3 CFR

Memorandums:
May 7, 1979.....27063
May 15, 1979.....28773

Executive Orders:
11041 (Superseded by EO 12137).....29023
11250 (Superseded by EO 12137).....29023
11451 (Superseded by EO 12136).....28771
11470 (Superseded by EO 12137).....29023
11603 (Superseded by EO 12137).....29023
11753 (Revoked by EO 12131).....26841
12036 (Amended by EO 12139).....30311
12050 (Revoked in part by EO 12135).....27639
12057 (Revoked by EO 12135).....27639
12131.....26841
12132.....27377
12133.....27635
12134.....27637
12135.....27639
12136.....28771
12137.....29023
12138.....29637
12139.....30311

Proclamations:
4610 (Amended by Proc. 4663).....30663
4659.....25619
4660.....27065
4661.....29635
4662.....30067
4663.....30663

Administrative Orders:

Presidential Determinations:
No. 79-9 of May 3, 1979.....30069

4 CFR

Proposed Rules:
403.....30347
410.....30347
422.....30347

5 CFR

213.....25393, 25394, 26843, 28279, 28280, 30665
334.....25394
735.....26843
890.....25395

Proposed Rules:
293.....30820
297.....30820
595.....27663
620.....29673
831.....26885
890.....29086

6 CFR

705.....25800
706.....25800

7 CFR

2.....26057, 27067, 29867, 30313
17.....26845
227.....28280
230.....28286
245.....29027
246.....28287
273.....27641
295.....25396
331.....29641
416.....25397
718.....26848, 28293
729.....25404, 28294
781.....29029
907.....25833
908.....25833, 27404, 27405, 28775, 30071
910.....26057, 27643, 29033, 29867, 30313
913.....25409
915.....30071
916.....29641
917.....28775, 28776
918.....25403, 28777
932.....27405
944.....30071
953.....29642
979.....26731, 27969, 28775, 28776
981.....30074
1079.....29429
1207.....25621
1430.....26731
1496.....27405
1701.....25409
1822.....27644, 28655
1823.....27408
1888.....27408
1890c.....30665
1890f.....30665
1901.....27408
1942.....27407
1980.....28782
2900.....28782

Proposed Rules:
Chs. I-VII....28474
Chs. IX-XII....28474, 28806
Chs. XIV-XVIII....28474
Chs. XXI....28474
Chs. XXIV-XXIX....28474
53....25614
68....28805, 28806
245....30351
271....26089
272....26089, 29086
301....26089, 28382
402....27107
417....27113
430....27119
650....25786
911....27424
912....27425
915....25460
923....29904
929....25846
944....25460, 27424
979....25846, 25848
991....25463
1011....30353
1049....27426
1133....29088
1207....26113
1260....25464
1425....27997
1435....27125
1464....29904, 30690
1701....25465, 28383, 30353, 30354
1822....27130
1944....27130
3100....25606

8 CFR

Proposed Rules:
204....30354

9 CFR

73....25410, 27649, 29643
75....28294
78....27058
82....25410, 26850, 27650, 28296, 28297, 29034
91....28298
92....28299, 29034
94....27058
113....25411
381....27059

Proposed Rules:
Chs. I-IV....28474
201....27665
318....28331

10 CFR

30....30076
40....30076
51....26060, 29037
70....26850, 30076
205....25412, 29431, 29896
210....25412
211....25621, 26060, 28606, 28655
212....25828
218....27969
320....25592
500....28530
501....28530
502....28950
503....28950, 29021
504....28594
505....28950, 29021
507....28950
516....27606

Proposed Rules:
Ch. II....30052
Ch. III....30052
Ch. X....30052
4....26887
211....26113, 26115
212....29090
430....27191, 30978
436....27194
440....27668
456....27200
476....30982
508....27668
580....27676
585....27676, 30355
600....28670
797....30278

11 CFR

Ch. IX....26733

12 CFR

7....29038
205....25850, 30690
217....28302
265....28301
303....30076
308....25412, 28787
336....27379
545....30314
561....30314
563....29867, 30314
614....30316
701....27068, 27379

Proposed Rules:
28....27431
204....25465
408....28823
545....26892
725....26115

13 CFR

101....29871
105....27072
121....26852
124 (2 documents)....30666, 30672

Proposed Rules:
120....26748

14 CFR

39....25834, 26734, 26735, 27380-27382, 27975-27978, 28787, 29434-29438, 30077, 30678
71....25834, 25835, 26735, 26736, 27383, 27979, 28787, 30077, 30078, 30679
73....25834, 28787, 29439, 29440, 30079
75....25834, 27383, 28787
95....29440
97....25835, 28787
121....26737, 27980
135....26737, 27980
221....25627
239....28656
252....28657, 30080
287....26738
291....26852, 26853, 29038
298....30080
302....27383, 28302
311....25627
380....30680
385....27073, 28657
1203....26066, 28303

Proposed Rules:
Ch. I....28824, 28825, 29481
Ch. II....26893, 27160
39....28825, 30100
71....25865, 25866, 26748, 26749, 27433, 27434, 27998, 27999, 29482-29484, 30101-30103, 30691-30693
73....26749, 27434
75....28000, 29484, 29485, 30693
121....25867, 25869
123....25869
203....30104
207....26121, 30694
208....26121, 30694
212....26121, 30694
214....26121
215....30694
221....28826
223....27680
252....29486
253....28670
296....30694
297....30694
302....28826
325....27435
380....26121
381....26121
385....27435, 30694
398....27438
399....28670, 28826, 30108
1204....27161
1216....27161

15 CFR

368....30316
369....30320
373....29448
377....30322
502....29038
931....29580
2301....30898

16 CFR

13....25630, 25631, 26853, 26854, 27384, 28304, 28305, 30083
1411....30322

Proposed Rules:
13....25465, 25653, 27683, 28671, 29676, 30356-30372
443....26127, 27685
1019....27685
1145....28828

17 CFR

1....25431, 29448
17....25431
200....26067, 28317, 29644, 30680
231....26739
240....28318
261....26739
270....29644

Proposed Rules:
15....28678, 29090
211....26702, 28683
229....26702, 28683
240....25470, 26688, 26692, 26702, 28683, 30924
249....26702, 28683, 29906, 30924
270....29678, 29908, 29911, 29913

18 CFR

2....27980
3....30323
35....26067
154....26067, 26854, 30681
157....27980, 28789, 30331
270....27980, 30681
271....26068, 27980
273....26068, 27980
274....27980
275....27980
276....27980
281....26855
284....27980, 30323
308....29647
Ch. II....30682
Ch. XIII....30682

Proposed Rules:
Ch. I....29915
Ch. VI....29916
32....28683
35....28683
154....27168
271....27168
281....26894, 28685
282....29090
286....29091
290....29092
704....30194

19 CFR

4....27834
134....27835
153....29045, 29046
159....28319, 28658, 28790-28792

Proposed Rules:
4....30375
141....29916
142....29916
146....29489

20 CFR

404....29046
654....26071
675....28654, 30596
676....28654
677....28654
678....28654
679....28654
689....30596

Proposed Rules:
401....29102
422....29102
688....27812

21 CFR

Ch. I....30332
2....30333
14....28321, 29048
73....28321
131....28322
182....28323
186....28323
436....30334
444....26071

455.....30334, 30682
520.....28323
895.....29214
1020.....29653
1220.....30335
1308.....27980
Proposed Rules:
20.....30377
70.....26899
145.....25471, 27690
146.....29105
155.....28331
163.....28332
167.....27691
168.....29106
182.....28332, 28335, 28336, 29102
184.....28334-28336
186.....28335, 29102
193.....26750
455.....26900
500.....26899
514.....26899
555.....26900
561.....26750
571.....26899
870.....30377, 30378
882.....25471, 26127, 26900

22 CFR

22.....25631
42.....28659
51.....25631
151.....29450
Proposed Rules:
121.....28000
122.....28000
123.....28000
124.....28000
125.....28000
126.....28000
127.....28000
128.....28000
130.....28000
220.....26726
221.....26726
222.....26726

23 CFR

Ch. II.....28792
650.....25434
Proposed Rules:
625.....29921
750.....28946
751.....28946
772.....30682

24 CFR

20.....28762
39.....27618
42.....30946
201.....27982
219.....29632
221.....28659
235.....25837
240.....26073
280.....27650
300.....30084
510.....27626
841.....27652
882.....26660, 28274
1914.....25631, 26867, 27074, 27983, 29871, 29872, 30683
1915.....25633, 25636, 27074, 27984, 28324, 28793
1917.....25436-25446, 25637-25646, 26751-26761, 27386-27391, 29452, 29654-29665, 29873-29890, 30084-30094, 30699-30701
1920.....27654-27656
Proposed Rules:
201.....28685
570.....28686
880.....28001
882.....27926
888.....28686
1917.....25871-25882, 26900-26925, 27168-27179, 28686, 28687, 29492, 29922, 29923, 30114, 00
2205.....27922

25 CFR

114.....29492
Proposed Rules:
31a.....29832
31b.....29834
31g.....29836
31h.....29842
31i.....29854
33.....29857

26 CFR

1.....26868, 27078, 27079, 27656, 27984, 28794
5b.....27079
20.....28794
38.....27089
301.....27986, 28660, 29048
402.....29048
Proposed Rules:
1.....27180-27182, 27446, 28001, 28004, 28830, 29679, 29923
5b.....27181
20.....27446
25.....27446
31.....27182, 27183
53.....29680
601.....29923

27 CFR

71.....27093
Proposed Rules:
170.....29691
231.....29691
240.....29691

28 CFR

0.....25837, 28800, 29890
2.....26540-26550, 27391, 27658
45.....29890

29 CFR

89.....29048
575.....28663, 29049
786.....26870
860.....30650
870.....30684
1952.....28325, 28326
2702.....29666
Proposed Rules:
Ch. XII.....26761
524.....26127
525.....26127
1420.....26128
1910.....26925

30 CFR

46.....28588
651.....28588
Proposed Rules:
Ch. VII.....28005
49.....29692
250.....27448, 27449
710.....30610
715.....30610
717.....30610

31 CFR

5.....27990
103.....26871
223.....30685
408.....29666

32 CFR

217.....30338
252.....27095
631.....27391
707.....27990
716.....25647
744.....30685
806b.....26739
819.....28801
920.....26871
1201.....27096
1203.....27096
1212.....27096
1214.....27096
1216.....27096
1220.....27096
1221.....27096
1250.....27096
Proposed Rules:
214.....28338
633.....28008

32A CFR

Ch. XVIII.....27991
Ch. XIX.....27991
Proposed Rules:
Ch. I.....29368

33 CFR

33.....30094
40.....30094
117.....27391
127.....27991
164.....26740
208.....29050
239.....28524
Proposed Rules:
100.....28830, 30701
110.....25883
117.....27459, 28009, 29494 30114
157.....29495
161.....30115
280.....30892
344.....30288

36 CFR

7.....26073
Proposed Rules:
Ch. II.....28474
Ch. IX.....29695
219.....26554
251.....29107

37 CFR

302.....29892

38 CFR

2.....25648
3.....28328
21.....25648
36.....25839
Proposed Rules:
3.....26762
21.....26763

39 CFR

3.....30686
3000.....27658
3001.....26074

40 CFR

35.....30016
51.....27558
52.....25840, 26741, 27558, 27991, 29453
53.....27558
58.....27558
65.....25446, 25448, 25450, 25649, 25842, 25843, 26741-26743, 27101-27106, 27660, 27661, 29455, 29667, 30337
81.....30338
130.....30016
131.....30016
162.....27932, 27945
180.....29050, 29051
228.....27662, 29052
180.....25452, 25844, 26743
413.....27993
Proposed Rules:
Ch. I.....29495
6.....25475
52.....25471, 25472, 26763, 26765, 26926, 27183-27188, 27691, 27699, 28232, 28234, 28688, 28692, 29496, 29497, 29499, 29931, 29932, 30115-30124, 30378, 30702
62.....27189
65.....25473, 26767, 26768, 26928-26943, 28010, 28343, 29499, 29933, 29934, 29936, 30379, 30381, 30703
81.....29500
85.....26769
86.....25883, 27700
122.....25475
123.....25475
124.....25475
125.....25475
162.....25475, 29121
180.....28693
256.....28344
762.....27702
770.....27334
771.....27334
772.....27334, 27335
1510.....28196

41 CFR

Ch. 1.....25845
Ch. 3.....25454
Ch. 101.....27393
5-1.....29668
5A-1.....29668
5A-60.....29456
5B-1.....29668

14-1 30095
14H-1 26744
51-5 30339
101-1 30096
101-42 28664
101-43 27392
101-44 27392
101-45 27392
114-50 28329
Proposed Rules:
Ch. 4 28474
Ch. 101 29368

42 CFR

55a 30340
57 29053
75 30341
124 29372
205 26745
206 26745
405 29058
441 29420
447 30341
Proposed Rules:
Ch. I 25476
51 25476
52f 28010
66 25886
405 ..... 25476, 28768
441 30382
447 30382
466 26769

43 CFR

Proposed Rules:
17 29501
1600 29501
3400 25653
426 28831
3500 26130
Public Land Orders:
5662 ..... 28666, 29065
5663 29894

44 CFR

Ch. I 25797

45 CFR

100e 30528
146a 25820
199a 27993
205 ..... 26075, 29426
206 26075
233 ..... 26075, 29065
302 28802
1060 ..... 26745, 27994
1061 ..... 29458, 31000
1062 28266
1611 28329
Proposed Rules:
Ch. X 28016
Ch. XI 26771
100 ..... 26298, 27703
100a 26298, 27703
100b 26298, 27703, 28012, 29121
100c 26298, 27703
100d 26298, 27703
116d 28184
119 28258
120 28258
134 28238
134a 28238
134b 28238
160f 30540
161b 30636
161e 27630
161m 27630
232 29122
233 29122
302 29122

46 CFR

31 25986
34 25986
40 25986
54 25986
56 25986
98 25986
154 25986
154a 25986
531 25651
536 25651
544 29894
Proposed Rules:
Ch. IV 28022
502 ..... 28694, 29936
512 26944
547 ..... 29122, 30386

47 CFR

2 ..... 29066, 29067
5 29070
13 29076
15 29066
19 29071
21 29070
73 ..... 30096, 30097
83 ..... 29072, 29073, 29077
87 29073
90 ..... 27994, 29067
Proposed Rules:
73 ..... 26772, 26955, 28022-28029, 29126, 30128, 30129
76 28347
78 30131
83 ..... 28031, 29127, 30134
87 29127
90 30135
94 25886

48 CFR

Proposed Rules:
4 29502
8 29502
15 29502

49 CFR

171 30686
393 ..... 25455, 25456
571 ..... 26884, 27394-27402
630 26050
10003 30346
1033 ..... 26084-26087, 27662, 27995, 28667, 28803, 29078, 29079, 29894
1036 29476
1091 30687
1245 25457
1246 25457
1056 30346
Proposed Rules:
Ch. II 29416
Ch. X 25476, 25653
23 28928
71 28696
107 29503
171 ..... 25886, 27460
172 ..... 25886, 27460, 29503
173 ..... 25886, 27460, 29503
174 27460
175 ..... 27460, 29503
176 ..... 25886, 27460
177 27460
178 ..... 25886, 26772, 28032
192 28831
195 28831
229 29604
230 29604
391 30704
571 ..... 30138, 30141
575 30139
580 28032
830 25889
1056 30387
1100 25653
1206 26131
1207 26131

50 CFR

17 29478
26 ..... 26747, 27402, 28330, 28668
33 ..... 25458, 27403, 27996, 28804, 29895
212 27404
222 29478
661 ..... 26747, 30097
671 30688
672 30097
674 29080
Proposed Rules:
Ch. IV 25891
17 ..... 27190, 29128, 29566, 30044
23 25480
285 28372
296 30292
410 29300
602 25891
611 ..... 26131, 26956
651 25484

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

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

Rules Going Into Effect Today

DEFENSE DEPARTMENT

Engineers Corp—

24551 4–26–79 / Marshall Ford Dam and Reservoir, Tex; flood control

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

26067 5–4–79 / Commission action on research development and demonstration program, time limit modification

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner—

24833 4–27–79 / Section 8 housing assistance; fair market rents for new construction and substantial rehabilitation

List of Public Laws

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–375–3030).

Last Listing May 25, 1979

S. J. Res. 71 / Pub. L. 96–13 To authorize and request the President to proclaim the week of May 6 through 12, 1979, as "National Historic Preservation Week". (May 24, 1979; 93 Stat. 28) Price $.60.

S. 532 / Pub. L. 96–14 "Pension Policy Commission Act". (May 24, 1979; 93 Stat. 29) Price $.60.